Vol. 764
No. 31

Tuesday
14 July 2015

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

£4·00

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
www.publications.parliament.uk/pa/ld201516/ldhansrd/index/150714.html

PRICES AND SUBSCRIPTION RATES

DAILY PARTS

Single copies:
Commons, £5; Lords £4

Annual subscriptions:
Commons, £865; Lords £600

LORDS VOLUME INDEX obtainable on standing order only.
Details available on request.

BOUND VOLUMES OF DEBATES are issued periodically during the session.

Single copies:
Commons, £65 (£105 for a two-volume edition); Lords, £60 (£100 for a two-volume edition).
Standing orders will be accepted.

THE INDEX to each Bound Volume of House of Commons Debates is published separately at £9·00 and can be supplied to standing order.

All prices are inclusive of postage.

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

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

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Tuesday, 14 July 2015.

2.30 pm

Prayers—read by the Lord Bishop of Portsmouth.

Oaths and Affirmations

2.36 pm

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

Authors: Rights and Income

Question

2.38 pm

Asked by ***The Earl of Clancarty***

To ask Her Majesty's Government what steps they plan to take to improve the rights and income of professional authors and writers.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, it is important that authors are properly remunerated for their work, which is why the United Kingdom provides strong copyright protection for authors as well as the public lending right. The Government have introduced a range of measures to improve the enforcement of copyright, including a dedicated online IP crime unit run by the City of London Police.

The Earl of Clancarty (CB): My Lords, is the Minister aware of the recent ALCS research which finds, alongside a significant decline in the number of full-time writers, a 29% drop in the median income of professional authors in the last 10 years to a paltry £11,000 a year? What are the Government doing to protect the written word in this country and enable being a writer to be a viable career choice for young people?

Baroness Neville-Rolfe: My Lords, I agree with the noble Earl that writing is a vital part of our creative industries, and that is why we have the public lending right. We have a great library network to encourage people to read and to borrow. I think that we also have world-leading copyright laws.

Baroness Rebuck (Lab): My Lords, I declare that I have spent 40 years in book publishing. We should be proud of launching more titles per head of population in this country than anywhere else in the world. However, our overall revenues are falling. Half of our independent bookshops have closed, undercut by cheaper e-books and heavy discounting of physical books. "Every little helps", as the Minister will know from her former life, but it does not always help everyone. Does she agree that we need to safeguard not only the revenues for writers but the whole book ecosystem on which their revenue depends?

Baroness Neville-Rolfe: I agree with much of what the noble Baroness says. She is a great role model from her work in the publishing industry, which was worth upwards of £9.9 billion of GVA in 2013. The creative industries make an enormous contribution to our economy. The digital world and the digital single market are of course changing everything; that is why we are always looking at how we should adapt our regulatory framework, both at national level and within the European Union.

Lord Clement-Jones (LD): My Lords, as the Minister knows, there have been many calls to change the application of the Unfair Contract Terms Act to intellectual property contracts over the past few years. Is it not now time to have a full review of how contracts for creators can be made fairer? How can we regard ourselves as the champions of creativity in the UK when the scales are so heavily weighted against creators?

Baroness Neville-Rolfe: My Lords, I do not agree that the scales are too heavily weighted against creators: there is a balance between the consumers who are going to buy works and the creators and writers. We have to have a good incentive system. The noble Lord knows a huge amount about the law of contract and I will follow up the point that he makes with him. We made a lot of reforms following the Hargreaves review. We have adjusted and changed matters appropriately, and I think that was a good result.

Lord Walton of Detchant (CB): My Lords, I declare an interest in that for many years I have been a member of the ALCS—the Authors' Licensing and Collecting Society—from which I receive minuscule sums about twice a year when people, in their wisdom, decide either to borrow or to photocopy from any of my published works. Many libraries have lost their paid staff and are staffed wholly by volunteers. Can the Minister say whether such libraries are no longer covered by the public lending right so that those authors whose works are photocopied or borrowed from them no longer receive any financial benefit?

Baroness Neville-Rolfe: My Lords, it is for the local authority to determine how best to provide a comprehensive and efficient library service. Volunteer-supported libraries are considered for public lending right—the point that was at issue—where they are within a library authority's statutory public library service.

Baroness Williams of Crosby (LD): My Lords, in the discussions that are going to take place on the BBC licence, will the Minister recognise the huge contribution the BBC makes to encouraging and supporting young authors? It has a whole list of series, such as "Book of the Week", that depend on attracting young authors. Would the Government agree to bear this very much in mind in whatever decision they finally make about the licence issue?

Baroness Neville-Rolfe: The noble Baroness is absolutely right. I am glad to say that, thanks to my noble friend Lord Fowler, we will be debating the BBC later today in this House.

Lord Stevenson of Balmacara (Lab): My Lords, a very sunny atmosphere descended on your Lordships' House as the Minister mentioned the PLR and public libraries, which cannot be right. Fully operating public libraries have been decimated in the last five years and, as the noble Lord said, there are now difficulties in interpreting how the PLR operates when volunteers are involved. Is it not time now, given the change in the way publishing operates, for the Government to institute a proper review of the PLR to make sure that our authors, who contribute so much to the creative industries, get proper remuneration from all borrowing that is done?

Baroness Neville-Rolfe: My Lords, the noble Lord is right that libraries have declined in number, but the new modern libraries are amazing. We still have 3,142, which is an impressive network. I was in one of the modern libraries at Canada Water only last week. The Government are committed to looking at the options to extend PLR to remote e-learning. That was one of our manifesto commitments and I am sure we will be debating some of the related points that he has made in the coming weeks and months.

Lord Brooke of Sutton Mandeville (Con): My Lords, in the light of what has transpired in these exchanges in relation to the public lending right, would my noble friend consider encouraging a prize for the public library responsible for raising the most public lending right in the course of a year?

Baroness Neville-Rolfe: My Lords, I like it when this noble House gives us innovative ideas, and I shall take that back to the Culture Minister, who I am sure will be very interested in the idea.

Mediterranean: Migrant Trafficking

Question

2.45 pm

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government what proposals they have to support Italy and Greece in their efforts to assist people trafficked across the Mediterranean from north Africa and the Middle East.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, the best way to support member states under pressure is to break the link between getting on a boat in north Africa and being permitted to settle permanently in the EU. The UK is playing a leading role in EU efforts to tackle the people smugglers, address the upstream drivers of illegal immigration, and explore radical ideas to greatly reduce the likelihood of illegal immigrants being able to remain in the EU.

Lord Roberts of Llandudno (LD): I thank the Minister for that response. Many noble Lords will know that Llangollen international music festival—

Noble Lords: Hear, hear.

Lord Roberts of Llandudno: I am delighted at that. Last week, it brought in thousands of people but only one group there had a standing ovation—the group from Nepal. People are sympathising with the terrible destruction that there has been. It shows the basic compassion and care of the British people. Does the Minister really think that the Government are responding to the immigration and the great tragedy evolving in the Middle East and Mediterranean—and the burden is being shared between Greece and Italy more than anybody else—in a way that is equivalent to the compassion and care that British people feel?

Lord Bates: The noble Lord is absolutely right in this regard. This country has a proud record of offering asylum to those in need, and we continue to do that through a variety of programmes—but our view is that it is best done through individual programmes such as Gateway, introduced by the party opposite when it was in government, Mandate, and the Syria Vulnerable Persons Relocation Scheme. It is better done at a country level rather than internationally, but we are absolutely unrelenting in wanting to seek a solution to the tragedy unfolding in the Mediterranean.

Lord Alton of Liverpool (CB): Did the Minister have a chance to read the debate in your Lordships' House last Thursday about the biggest displacement of people since World War II? In particular, could he tell us—given the reply that the House received on Thursday—when the interdepartmental ministerial meeting will take place? Will there be on the agenda for that meeting the creation of protection zones for those who are at risk and, particularly, the plight of children, after the request last week by Save the Children that this country should find places for 1,500 at-risk children?

Lord Bates: My noble friend Lord Courtown told me about that debate, and I have had an opportunity to read it. I gave a commitment that we would have a cross-departmental ministerial meeting, and that is in process. Certainly, all those issues, particularly looking for radical solutions to this crisis through the UN and the EU, will be very much on the agenda, and I will be happy to report back to the House.

Baroness Kinnock of Holyhead (Lab): My Lords, does the Minister share the questionable view expressed by the Home Office Minister James Brokenshire, who last week said that the majority of those who seek to make the journey to Europe are economic migrants. Is it not crystal clear, for instance, that desperate Afghans, Eritreans and Syrians who are fleeing violence, conflict, oppression and persecution should definitely not be categorised as economic migrants?

Lord Bates: I think that the quotation from my right honourable friend James Brokenshire was particularly about the central Mediterranean, where there were examples of a large number of people coming from sub-Saharan Africa who would not normally be granted asylum. That is not the case—and I am sure we would agree on this—in the eastern Mediterranean, where the vast majority are coming from Syria, Afghanistan and Iraq. There are different causes, and it is a fast-changing problem.

The Lord Bishop of Portsmouth: My Lords, is the Minister aware of the practical support being given in welcome and support for displaced people by the British community, particularly in Greece, working in partnership with ecumenical colleagues in the country and supported by many churches here, donors and the Anglican communion throughout the world? That work is focused on the Anglican Church in Athens. Will the Minister give an assurance of the Government's support for that work for these many people in very acute need?

Lord Bates: I am very happy to give our support to that. We give our support to the European Asylum Support Office which has locations in Greece, Cyprus, Bulgaria and Italy. In fact, we are the largest provider of bilateral assistance to that organisation. What the church is doing is to be applauded. It is absolutely in keeping with the priority we see in providing these vulnerable people with the care they need.

Earl Attlee (Con): My Lords, does the Minister agree that it is very important to concentrate on a long-term, upstream solution rather than purely on short-term solutions?

Lord Bates: My noble friend is absolutely right. Part of the issue is to deal with the immediate crisis and stop the deaths that are occurring in the Mediterranean, but there is a bigger part, which is how you build stability within these countries so that people do not have to embark on this perilous journey. That is why we are so proud of our overseas aid budget, which of course is the second largest, in cash terms, in the world.

Lord Davies of Stamford (Lab): My Lords, if the Government are serious about breaking the link between being picked up in the water and getting permanent access to live in the EU, which is the phrase the Government always use and which the Minister used today, why do the Government not instruct the Royal Navy that when it picks up these poor people, having saved them, to ship them back to Libya or where they come from? If that requires some negotiation in advance with the powers currently controlling the ports of Libya, why are such negotiations not already in progress?

Lord Bates: Because we have an agreement with our EU partners that when people are picked up under international maritime rules they will be taken to reception centres in Lampedusa or Italy. That is the current plan.

Lord Harries of Pentregarth (CB): Italy is spending £800 million a year on this work and is receiving £60 million a year from the European Union. Should Her Majesty's Government work with the European Union in order to give Italy and Greece greater support in this work?

Lord Bates: I am sure that that is right. We are trying to do that through the European Asylum Support Office. It must be remembered—this is a serious point about how we approach this—that the overseas aid we give is some five times what Italy gives in overseas aid. We need to provide help, but we also need to draw attention to what this country is already doing to address the problems upstream.

Lord Paddick (LD): Does the Minister agree with the Chancellor of the Exchequer that those with the broadest shoulders should bear the biggest burden? In terms of absorbing the refugees coming across the Mediterranean, the two weakest economies in Europe are having to absorb all these migrants whereas this country, which has very broad shoulders, accepts hardly any.

Lord Bates: I do not think it is quite right to say that we do not accept any. We grant asylum to 12,000 migrants a year and have granted asylum to 4,200 from Syria. It is a point, where they come from. We have asked to work with the Italian Government and for them to abide by the Dublin regulations to ensure that there is better fingerprinting and recording of people as they arrive in that country and then we can have a better discussion about how we handle their relocation thereafter.

Income Per Capita

Question

2.53 pm

Asked by ***Lord Wigley***

To ask Her Majesty's Government what steps they are taking to secure an increase in the level of income per capita.

The Commercial Secretary to the Treasury (Lord O'Neill of Gatley) (Con): My Lords, to achieve meaningful and lasting growth in the level of income per capita and living standards we need a sustained pick up in productivity. Interestingly, the most recent data have shown a notable rise in productivity, admittedly from somewhat disappointing data beforehand. Of course, it should not necessarily be assumed that this is the start of a trend. This is why the Government have just published a productivity plan that sets out how we will achieve a step change in productivity.

Lord Wigley (PC): Does the Minister accept that GDP per capita now is still lower than it was in the first quarter of 2008 and that the disparity between the level of income per head in London and in Wales or, indeed, in the north of England, remains very stubborn indeed? What plans do the Government have in the document he has just drawn to the attention of the House to close the disparity between London and the rest of these islands?

Lord O'Neill of Gatley: My Lords, I encourage every Member of this House to read all 82 pages of the document because it includes considerable detail to answer those questions. To be brief—I am aware from my recent appearances in this House that one has to be brief and not put Members to sleep—one of the most important measures related to previous Questions that I have been asked is that we have authorised an independent review into the accuracy of all UK economic statistics, which are highly relevant to this Question.

Baroness Kramer (LD): My Lords, I am pleased that the Liberal Democrat plan to help to close the gender pay gap has been reannounced by the Government. Will the Minister join me in congratulating the former coalition Minister, Jo Swinson, who pushed through the relevant amendment on corporate disclosure? Will the Government now take steps to close the pay gap between older people and the under-25s, who will not be eligible for the new minimum living wage?

Lord O'Neill of Gatley: I would like to make reference to the presentation of the Budget and the policies included, which, I think I am right in saying, considered many ideas from many people in undertaking its commitments to raise the living standards of everyone in the UK.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend agree that the way in which we can increase per capita income is by selling goods and services competitively across world markets, and that there is a limit to the good that Governments can do but almost no limit to the harm?

Lord O'Neill of Gatley: My Lords, while again I use this opportunity to encourage all Members to read our brilliant document, I shall also make reference to forces that I believe are important from my previous life on the topic of sustainable development and GDP per capita, one of which is indeed the performance of a country's trade balance, particularly its export performance. That is something that our private sector needs to take the lead on. All that a Government should do is to make sure that it has the right environment to allow it to flourish.

Lord Foulkes of Cumnock (Lab): My Lords, this is no laughing matter. Can the Minister explain to the House how the proposed changes in child tax credits will affect the per capita income of those involved?

A noble Lord: It is on page 64.

Lord O'Neill of Gatley: My Lords, I am very pleased to hear that one Member of the opposition Benches has read the productivity report in detail. On the specific question, as we showed in the Budget documents and in parts of the productivity document, we believe that when all the measures are looked at in total, eight out of 10 working households will be better off as a result of the personal allowance, the national living wage and the welfare changes announced collectively in the Budget.

Lord Flight (Con): Does the Minister agree with Alistair Darling that the Government subsidising wages tends to depress wages and leads to overemployment, and thus poor productivity growth?

Lord O'Neill of Gatley: My Lords, I suggest that Alistair Darling has made many interesting contributions towards improving Britain's economic performance and productivity performance, including that observation.

Lord Davies of Oldham (Lab): My Lords, I take it that the Minister accepted the post because he intends to do good rather than harm to our productivity figures, in which we compare so badly to our leading competitors. However, how are the Government doing good when they dither over airport expansion, postpone rail electrification, have slippage on road programmes and generally fail to give the necessary government investment that would help on productivity? Even the construction industry is anticipating a drop in productivity this coming quarter. How on earth are we going to solve our chronic balance of payments problem while our productivity levels remain so low?

Lord O'Neill of Gatley: My Lords, I am still learning the practices here, and I am extremely tempted to give a very long answer to that very detailed question. I shall find the appropriate moment do so. Suffice it to say, at the risk of repeating myself, that I think I am right in saying that the very specific attention this document gives to all the factors that are important for productivity has never before been given, including virtually every single topic that the noble Lord mentioned.

Lord Wrigglesworth (LD): My Lords, as the Minister has done so much work on this subject, can he tell the House which he thinks comes first: higher pay or higher productivity?

Lord O'Neill of Gatley: My Lords, there is considerable debate in leading academic circles about causation, as I am sure many Members of this House are aware. Historically the conventional belief has been that higher productivity will lead to higher wages. Due to the length of time during which this country and many others have shown signs of weak productivity and wages there is growing evidence, which has obviously influenced the choice of policy, that deliberately trying to raise wages for the less well off may result in a boost to productivity, as the ONS estimated in its independent analysis of this measure when it was announced last week.

Criminal Justice: Secure College

Question

3.01 pm

Asked by ***Lord Beecham***

To ask Her Majesty's Government what plans they have to support young people in the criminal justice system in the light of the decision not to go ahead with the building of a secure college.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, in recent years we have seen welcome reductions in proven offending by young people and in the number of young people in custody. However, we have not seen similar success in reducing reoffending by young people. We are carefully considering how the youth justice system can more effectively prevent offending by young people and set them on a path to a better future.

Lord Beecham (Lab): My Lords, will the Minister convey to the Lord Chancellor the thanks of this House for his abandonment of his predecessor's misconceived plan to house in a so-called secure college one-third of the young offenders in custody? Can he tell us whether and how the £1.56 million staffing and procurement costs and the £4.04 million of development costs incurred during this sorry saga can be recouped?

Lord Faulks: I am happy to convey the good wishes of your Lordships' House to the Secretary of State. As to the spend, it will not be recovered. The pathfinder designs could be used or adapted to other forms of youth or adult custody in the future, and alternative provision could be developed on the prepared site at Glen Parva. However, the noble Lord and the House may be relieved to know that we will not be spending £85 million on the secure college.

Lord Dholakia (LD): My Lords, will the Minister agree that the purpose of the secure colleges, as against secure training centres, was to double the time available for education in these prison establishments, thus leading to better job opportunities for inmates on release? Now that this option is not available, and bearing in mind the shocking report produced by the prison inspector about the lack of staffing in prisons, how will these objectives be met, and what will be the future role of the Youth Justice Board in providing the type of education required?

Lord Faulks: The noble Lord is right that the secure college had at its heart the ambition of improving the provision of education for young offenders. As he will know from his experience in this area, a large majority of them have either been expelled from school or not attended school, and many of them are barely literate or numerate. The Government intend to focus very much on the education of young people. Since March 2015 a greater focus on education has followed, and the number of hours of education available to young people has more than doubled. However, we are not complacent.

Baroness Howarth of Breckland (CB): My Lords, the noble Lord will be aware that I am truly grateful that this plan has been abandoned. However, has he looked at all the wealth of research on community interventions with reoffending young people? Down the generations, material has been produced on how working in a one-to-one relationship with these youngsters can change their behaviour significantly. I ask the Minister to look at that again in the review, because that is what changes lives.

Lord Faulks: The noble Baroness was a doughty opponent of secure colleges and I acknowledge that. Of course, she will be as pleased as the rest of the House at the drop in the number of young offenders in various forms of youth custody from 3,000 in 2007 to just over 1,000 now. However, we need to do more, and she is right that when young people leave we will be encouraging them to become re-established in the community and to make up for the very unfortunate starts that many of them have had.

Lord Elystan-Morgan (CB): The Minister will know that for many years we have been incarcerating far more young people per 100,000 of the population than almost any other country in Europe. Do we still hold that unmeritorious accolade?

Lord Faulks: I am afraid that I cannot give the noble Lord the statistics off the top of my head. At the moment we certainly incarcerate something like 85,000 of the overall adult population. As I said, we have reduced the number of young people in prison, and I shall write to the noble Lord with the comparative figure in due course.

Baroness Corston (Lab): I think it is right to say that there are now fewer than 50 girls in the category to which this Question applies. A couple of years ago the All-Party Parliamentary Group on Women in the Penal System, which I chair, held a year-long inquiry which showed that even those girls do not need to be held in this kind of accommodation and can be dealt with in the community. Does the Minister accept that?

Lord Faulks: I can assist the noble Baroness and the House by telling her that, as of today, 36 girls are in custody—19 in secure training centres and 17 in secure children's homes—so it is a reducing number. I think that those who are responsible for sending young women and girls to prison have it well in mind that it should be a last resort. The Government are anxious to keep all young women and girls out of prison if it can possibly be avoided.

Lord Ramsbotham (CB): My Lords, in connection with the question asked by my noble friend Lady Howarth, the Children and Young People's Mental Health and Wellbeing Taskforce, formed by NHS England, is currently looking at ways of holding these damaged children near enough to their homes to ensure continuity of treatment. Can the Minister assure the House that the findings of this task force will be included in whatever work is done in the Ministry of Justice?

Lord Faulks: It is very much a matter that will be at the forefront of our mind. Of course, one of the difficulties is that if a limited number of young people are in youth custody establishments of one sort or another, they will inevitably be scattered all over the country. Having, as it were, local institutions creates quite a challenge but it is a consideration that is highly relevant.

Baroness Walmsley (LD): My Lords—

Lord Elton (Con): My Lords, the purpose of incarceration is rehabilitation. In view of the growing clarity of the importance of education in that function, when did the Government last review sentencing policy, and are there available sentences that enable children to be held in suitable accommodation long enough to achieve some educational progress?

Lord Faulks: The noble Lord identifies one of the main philosophies behind the secure college, which was to enable a sufficient block of education to be provided to young people when they were in youth custody of one form or another. That will be very much a part of the consideration that the Government give to maintaining some sort of continuity, even if there are relatively short periods when a young offender is in some form of establishment.

Psychoactive Substances Bill [HL]

Report

3.08 pm

Clause 1: Overview

Amendment 1

Moved by ***Baroness Meacher***

1: Clause 1, page 1, line 3, after "about" insert "synthetic"

Baroness Meacher (CB): My Lords, the contents of Amendment 1 are reflected in Amendment 3. I am grateful to my noble friend Lord Rees, the noble Lords, Lord Norton and Lord Howarth, and my noble friend, if I may call her that, Lady Hamwee, for putting their names to one or other of those amendments. My noble friend Lord Patel also wanted to add his name to one or other of the amendments but unfortunately the lists were full. I simply want to make the point about the breadth of support for the amendments.

The purpose of the amendments is to limit the scope of a blanket ban to synthetic psychoactive substances. That raises two issues: should we seek to limit the scope of the blanket ban at all; and, if we should, is the word "synthetic" the right one? I will not repeat what I or others said in Committee, but will refer to events since—there have been a number.

On the first point, since Committee, overwhelming support has emerged for limiting the scope of the blanket ban. As the Minister knows, the Government's Advisory Council on the Misuse of Drugs makes very clear in a letter to the Home Secretary that it cautions against a blanket ban on all psychoactive substances. The ACMD points out:

"It is almost impossible to list all possible desirable exemptions under the Bill. As drafted, the Bill may now include substances that are benign or even helpful to people including evidence-based herbal remedies that are not included on the current exemption list".

The Minister will also be aware of the letter to the Prime Minister published in the *Times* from the former Archbishop of Canterbury—one cannot go a lot higher than that—among other eminent academics and ethicists. They say:

"It is not possible to legislate against all psychoactive agents without criminalising the sale of harmless, everyday products that produce changes in mood".

I very much hope that the Home Secretary will heed the advice of those many experts.

The second point raised by the amendment is why we use the term "synthetic" to define the ban on psychoactive substances. I believe I am right in saying that the Conservative manifesto referred to a ban on legal highs. In tabling the amendment, I assure the House that we seek to respect the Government's manifesto commitment. However, the term "legal high" is, I am told, not appropriate for legislation. There is consensus among the experts that the target of the Bill should indeed be legal highs. The ACMD uses the word "novel", and I shall quote a short paragraph from the ACMD letter on the issue. It states:

"The ACMD would support a 'blanket ban' on Novel Psychoactive Substances, but cautions against a blanket ban on *all psychoactive substances*".

I have very good reason to believe that the ACMD would be entirely happy with the term "synthetic psychoactive substances" in place of the word "novel" to define a legal high. For me, that is very important.

At a meeting with a top professor of neuropsychopharmacology and a QC, we discussed the relative merits of the words "novel", "new" and "synthetic" in this context. It was agreed that neither the term "novel" nor the term "new" would be recognised in a court of law. We have many lawyers here, and I am sure they will tell me if my legal adviser is wrong or right. Mr Fortson QC was very clear on this point. He said that the best term to define legal highs and thus to honour the Conservative manifesto commitment would be "synthetic psychoactive substances". The following sets out what we agreed as drafted by one of those experts:

"We recommend that the target of the Bill be amended to define the banned substances as synthetic psychoactive substances. This will at a stroke eliminate the requirement for many innocuous psychoactive botanicals to be exempted, eg, perfumes, incense, herbal remedies".

I believe that there could be many hundreds, perhaps thousands more. In particular, it will cover all current and future synthetic cannabis analogues, which are proving such a huge problem in prisons and elsewhere.

The only botanicals currently used recreationally that might currently pose any concern—I emphasise "any"—are kratom and salvia. However, they are not reported to lead to deaths or public disorder and, if they became more of a concern, they could readily be controlled under the Misuse of Drugs Act 1971. The point about botanical substances is that it takes years to create a new one. The Bill is designed to control synthetic substances, a new one of which can be created in a matter of minutes. The need is to find a definition of banned substances that is proportionate, ensuring that the Government avoid banning all sorts of harmless products and cause untold problems for manufacturers, shops and consumers, while spreading the blanket ban widely enough to catch all harmful synthetic substances—that is, those substances not controlled by the Misuse of Drugs Act.

On this point, I should notify Ministers and the House that I plan to table a tidying-up amendment at Third Reading to bring all synthetic psychoactive substances currently controlled under the Misuse of Drugs Act under the control of this legislation. It makes no sense to have hundreds of synthetic psychoactive substances controlled under one Act, while any new psychoactive substance would be controlled under different legislation—that is, this Bill. I hope very much that that amendment at Third Reading will not be controversial.

3.15 pm

I turn to the issue of harm, addressed in Amendments 2, 6 and 7. I say at the outset that the wording of these probing amendments could be improved. For me, the main point of these amendments is to focus the minds of Ministers and your Lordships on what many have described as an extraordinary feature of the Psychoactive Substances Bill: the elimination altogether of the concept of harm from the system of control of supply, importation and production of psychoactive substances. The Government's hand-picked expert panel recommended the inclusion of the concept of harm and a safety clause whereby substances of low or no harm would be excluded from the Bill. It is a matter of concern that this key recommendation is not reflected in the Bill—though I must confess that I have a feeling I know why, and it is a perfectly reasonable reason.

The Government's Advisory Council on the Misuse of Drugs draws attention in its letter to the Home Secretary to the view of the expert panel concerning the need to include the concept of harm in the policy framework. The ACMD points out quite rightly that the suppliers of benign or beneficial substances could be prosecuted under the Bill. Is that what the Government really intend? The letter in the *Times* from senior scientists, academics and ethicists also expressed concern that:

> "It is not possible to legislate against all psychoactive agents without criminalising the sale of harmless, everyday products that produce changes in mood".

This amendment seeks only to bring the boundaries of the Psychoactive Substances Bill into line with the Misuse of Drugs Act 1971 in determining a level of harm below which the supply, import and distribution of a substance would not be a criminal offence. As some in this House know, I am a critic of the Misuse of Drugs Act on many grounds, but it does recognise that only harmful drugs should be controlled.

I understand that the Government want to avoid delays in banning dangerous substances while their level of harm is assessed, and this is a matter with which many of us have considerable sympathy. The issue of setting the level of harm as a floor below which a substance would not fall within the scope of the legislation is complex. The European Union still has not implemented its excellent regulation on psychoactive substances, purely because it is still working on defining what that threshold of harm should be. All are agreed that this is an important matter and a solution needs to be found, but it will certainly not be straightforward to find it. Therefore, I seek an assurance from the Minister that the Government will work with the ACMD and others to find that solution.

To end my remarks, I return to the first matter addressed in Amendments 1 and 3: the use of "synthetic" to define psychoactive substances controlled under this legislation. Can the Minister assure the House that the Government plan to work with the ACMD to find the right solution to the definition issue? Does he agree that, as it stands, the very wide definition in the Psychoactive Substances Bill is not satisfactory? Will the Government either work with the ACMD to agree the word "synthetic" or, if there is a better term to define legal highs, use that? I beg to move.

Baroness Hamwee (LD): My Lords, I have added my name to the noble Baroness's Amendment 3, and my noble friend Lord Paddick and I have Amendments 4, 5, 8 and 9 in this group.

On the term "novel", which is the subject of one of our amendments, the Secretary of State in her correspondence with the Advisory Council on the Misuse of Drugs has explained how difficult a term this would be in legislation. I entirely accept that point, but as it was raised by the ACMD, which said that the omission of the term widened the scope of the Bill beyond that originally intended and cautioned against a blanket ban on psychoactive substances—because, for reasons we have heard, it would be almost impossible to list all desirable exemptions—I thought it was appropriate to raise it. As the Secretary of State points out, one might ask: novel since when? The use of the term "novel" as used by the ACMD is in itself slightly novel, but it is a term that is widely used. We have talked throughout this Bill—the term has come into common usage—of "new" psychoactive substances. If "novel" means new, and we have been using the term "new" again today, I think that it deserves some explanation from the Minister.

Importantly, I support the noble Baroness with regard to the term "synthetic", because surely that is what this Bill is really all about. The Minister spoke in Committee about producers of new psychoactive substances constantly looking for loopholes, and I of course understand that, but the term is more precise than "novel". I hope the Government can consider some way of addressing concern about the breadth of the ban. To me, the term "synthetic" imports a notion of artificiality, of materials being brought together, a combination. That is probably what it means; I suspect one of those comes from the Greek and one from the Latin. It suggests imitating a natural product.

The Minister referred in defence of the Bill to natural products being available in head shops which are far from safe. He mentioned fly agaric mushrooms. I had a quick look at the Kew botanic gardens website this morning, which calls them,

> "the most iconic of … toadstools … commonly depicted in children's books and on Christmas cards",

so let us be very careful where we tread. It refers to their hallucinogenic properties, which I do not doubt, but then states that they have been well-known for centuries. Much the same can be said about salvia divinorum. The second part of that name suggests that there are sacred aspects to that substance, as is the case. Again, it has been in use for centuries. So I question whether it is appropriate to ban such substances now through this mechanism. We have a lot of drugs legislation, as the noble Baroness said, and one has to accept that this is a fairly hastily prepared Bill. It is not, I would have thought, directed at natural, albeit dangerous, substances known for centuries.

Is there something about how these plants are treated that distinguishes them from other plant-based drugs which are covered by the Misuse of Drugs Act? In the case of a substance that is integral to a religion, like the variety of sage to which I have referred, is there a mechanism for permitting its use in a religious context?

[Baroness Hamwee]

The question of harm is fundamental to everything we are talking about. As has been said, this issue has been raised by the ACMD and we on these Benches—and, I am sure, the whole House—are concerned about ensuring that harm is the focus of the legislation. My noble friend and I are concerned about the whole premise of the Bill—we have debated this before—because we do not believe that a complete ban can work. Human beings do not take well to prohibitions and if new psychoactive substances become more difficult to get hold of, they will be driven underground or users will turn to more harmful substances. That is why we believe that harm should be the focus of the Bill.

I turn now, as I did at the previous stage, to the Misuse of Drugs Act. This established the Advisory Council on the Misuse of Drugs and gave it an advisory role where,

"the misuse is having or appears to them capable of having harmful effects sufficient to constitute a social problem",

and in,

"preventing the misuse of such drugs or dealing with social problems connected with their misuse".

I thought it would be appropriate to import those words into the Bill and our amendments deal with that. We do not seek to put them into Clause 1, as the noble Baroness has done, because that is an overview. It points to the definition clause but we have included the words in our amendment to Clause 2, the definition clause, providing a requirement on Ministers to refer matters to the ACMD and allowing it to oppose exemptions on this basis. The Secretary of State's letter to the ACMD refers to a discretion about the definition and scope of the exemptions. We want to make it clear that the basis should be harm, not an unqualified, undefined term but using the terms in established legislation.

I have just seen, as other noble Lords will have done, the ACMD's letter of 13 July. I do not criticise it but I am sure that I am not the only noble Lord who thinks that we could have done a better job on this Bill if there had been consultation with the ACMD before it was published. The advisory council has moved very quickly—it cannot have been easy for it—but it refers in its letter to having had only a narrow window of opportunity to make recommendations for amendments and to begin to formulate advice. This House does its best work when we have a good basis to work from and are not trying to second-guess the experts in the field.

Lord Howarth of Newport (Lab): My Lords, it is remarkable that the international community, having been increasingly aware of and alarmed by the dangers of new psychoactive substances, has none the less not so far succeeded in establishing a definition that is watertight in legal terms and available to the Government to use in their legislation as they seek to fulfil their manifesto pledge. The expert panel, on page 38 of its report, advised that the definitions in use in legislation would need to be robust. This group of amendments seeks to specify more closely the generic problem that we are seeking to address through this legislation.

In seeking to tighten and, in a sense, limit the scope of the Bill in this way, let me not give the impression—I know that other noble Lords who have supported these amendments would not want the impression to be given—that we in any way minimise the dangers from new psychoactive substances. This is a serious and challenging social problem.

3.30 pm

Some of these new psychoactive substances have shown themselves to be capable of inducing paranoia, psychosis, seizure and, indeed, death. We have very limited testing facilities. The risks of taking an unidentified powder on its own, let alone in combination with other such drugs or alcohol, are very great. Some new psychoactive substances are more dangerous than the controlled substances that they seek to mimic. There is a very serious problem and we are absolutely at one with the Government in their determination to find effective ways to address this problem.

However, it seems to me that the term "psychoactive substance", as deployed in the Bill, qualified only by the exemptions set out in Schedule 1, is too loose and too imprecise. Noble Lords who are lawyers and experienced judges will know far better than me what difficulties such looseness of definition might present to the courts. The noble Lord, Lord Paddick, with his experience as a senior police officer, will also appreciate the difficulty of looseness of definition when it comes to police officers performing the duties laid down for them in the Bill. It is very important that we try to light upon a form of words that expresses more precisely the nature of the drugs and the danger with which we are seeking to deal.

Therefore, I was encouraged by what the Home Secretary said in her letter of 11 July. Perhaps I may say how much, I am sure, all noble Lords who participate in these debates appreciate the rapidity and the comprehensiveness with which the Home Secretary has responded to the letter dated 2 July that she received from Professor Les Iversen, the chairman of the Advisory Council on the Misuse of Drugs. Her letter is very helpful in a great many respects. She says that she welcomes the offer of the ACMD to discuss this issue with officials and that:

"I propose that such discussions might usefully explore options for strengthening the definition of a psychoactive substance".

I take it that we are all agreed that further work is needed to get the wording of this legislation right so that it is appropriately targeted.

Legislation in other countries, from which the Government have borrowed—the Irish, Polish and Romanian legislation—all omit the language of harm, which has been introduced, or I might say would be reintroduced, from the language of the Misuse of Drugs Act 1971 in Amendment 2 and, I think, Amendments 6 and 7. The Irish and Polish laws state that the psychoactive effect must be "significant" for the offences to come into play, which is a kind of qualification. The Romanian legislation goes further and is much more akin to the New Zealand legislation, which the Government have rejected. Under the Romanian legislation, a supplier or producer is required to submit a psychoactive risk assessment and to describe the nature of the substance in question.

There are difficulties with the concept of harm. The Misuse of Drugs Act 1971—chapter 38—established the remit of the advisory council. In wording that is

used in some of these amendments, the advisory council is enjoined to take into account questions of harm. But it seems to me that there cannot be a simple, objective view taken of harm. The harm that a drug may cause depends on the context. It depends on the dosage, on the purity of the particular batch and on the person who consumes it, who may be an experienced, recreational drug user or perhaps a vulnerable and ignorant teenager. It depends on a whole range of social factors that probably would need to be taken into account. Even the original legislation probably creates a task that is singularly difficult for the ACMD to fulfil. No doubt that is one of the considerations that will be dwelt upon in the conversations between the ACMD and Home Office officials.

The expert committee also warned that closer thought needed to be given to possible unintended consequences of the loose and generalised term "psychoactive substances" used in the Bill. We do not want to criminalise priests. The more vigorously the priest swings the censer, the more incense is let loose into the body of the church. As I understand it, these days priests can no longer enjoy the benefit of clergy, so we have to be very careful that we do not unintentionally criminalise either priests or florists because flowers have psychoactive effects. I remain concerned about Lady Bates and the Minister, as, when he presents her with a bouquet of flowers, both he and the florist may be in breach of the law. He shakes his head but he has not yet told us how the language of the Bill protects him in such a situation. Of course, the enforcement authorities are advised to take a proportionate response so they may let him off lightly, but I would not be happy to rely upon that alone.

The Home Office's own annual review declares that the Government's policy in the European Union is to,

"work to ensure proportionate and effective EU level action on NPS"—

that is, new psychoactive substances. But then the Government rejected the EU's proposed legislation and produced this legislation which, as drafted, is neither proportionate nor, it seems to me, likely to be effective because it imposes too much of a blanket ban, and we know that life does not work like that. If you simply say, "Here's a social evil, we're going to ban it. We want it to go away", however much the police and other authorities attempt to prioritise enforcement of the ban amid all their other very challenging and difficult responsibilities, it seems to me highly unlikely that people will give up their drug-taking practices.

Given those considerations and given the warning of the ACMD that,

"The psychoactivity of a substance cannot be unequivocally proven",

we have to tread very carefully. I believe that the term "synthetic" proposed in Amendments 1 and 3 is appropriate because the drugs that we are trying to deal with—the so-called new psychoactive substances—are now being routinely and rapidly synthesised, principally in China but also in India. I understand that the Minister, on one of his admirable sponsored walks, is about to do a walking tour of China. It may well be that in the course of his perambulations he will look in on one or two of these laboratories. Following his earlier fact-finding mission incognito to Glastonbury, he ought to pursue his investigations that little bit further. Anyway, we must deal with that. These are new drugs, synthesised in rogue laboratories, principally in China. If we use the term "synthetic", we catch what we need to catch.

I understand that naturally derived substances have over the years since 1971 been pretty comprehensively reviewed by the advisory council. One or two may escape the more limited, tighter definition of "synthetic psychoactive substances", and nitrous oxide, which the Government are anxious to control, may be one of them. However, if they are perturbed about that, I think that they already have means to hand under the 1971 legislation to deal with the problem of nitrous oxide. Salvia was mentioned, as were one or two other botanical substances. They can all be dealt with under the powers that already exist. I am very pleased that the Home Secretary, having regrettably sidelined the ACMD in the earlier phase of preparation of this legislation, is now keen to consult it, allow it to advise her officials and to bring it on board so that its expertise can be brought to bear.

I hope that, by the time this Bill reaches the other place, the Minister and his colleagues will find language which delimits and denotes much more precisely and exactly the drugs which are the evil that we are trying to protect our young people's health and lives from.

Lord Hope of Craighead (CB): My Lords, the noble Baroness, Lady Meacher, is right to avoid the use of the word "novel" or "new". The problem is that what may be new or novel today may not be so next year. What we are seeking to do in this legislation is to create a series of criminal offences, and the prosecutor will need to be very precise in leading evidence to satisfy the requirements of the definition. A solution along the lines suggested by the noble Baroness, supported by the noble Lord, Lord Howarth, avoids that word, which lacks the precision that is needed. Of course, the word new or novel is widely used in common parlance, but that is not really the test that should be applied for legislation such as this. I am therefore sure that the noble Baroness was right to find some other form of wording, and the one she has suggested avoids that difficulty.

Lord Kirkwood of Kirkhope (LD): My Lords, I want to make two quick points as a codicil to this important group of amendments. I strongly support the attempt of the noble Baroness, Lady Meacher, to insert the word "synthetic". As a former pharmacy graduate—non-practising—who studied such things, to me, the word "synthetic" makes perfect sense in this context, and it would make the Bill a lot clearer. I also support the amendments in this group that would reintroduce the concept of harm, which the 1971 legislation introduced in a way that has stood the test of time. Indeed, I am behind the thrust of all these amendments.

My noble friend Lady Hamwee referred to the Committee stage of this Bill, which the ministerial team dealt with in an exemplary way; it listened very carefully and did the best it could. But any Member of this House who has had the advantage, as some of us have, of reading the recent letter from Professor Les Iversen

[Lord Kirkwood of Kirkhope]
and the Home Secretary's response of a few days later, will be left, as I certainly am, with a real concern about the difference in tone between the two approaches taken. I and many others expressed the concern in Committee that the Advisory Council on the Misuse of Drugs was being written out of the script. I use that harsh language deliberately, although I am not blaming the Minister.

On the second page of his letter, Professor Iversen says:

"The ACMD … wishes to present its concerns that the Bill, as drafted, may not achieve its aims",

which is a pretty fundamental thing to say,

"and may produce serious unintended consequences".

The heading of the subsequent paragraph states:

"The omission of the word 'novel' has widened the scope of the Bill",

which all of us on my side of the argument were arguing against with the Government Front Bench. The heading of the next paragraph states:

"The psychoactivity of a substance cannot be unequivocally proven".

Again, with my academic background, I support that view, which is the one taken in Committee. The heading of the next paragraph states:

"The Bill uncouples the concept of harm from control of supply, importation and production",

which is the point that the noble Baroness, Lady Meacher, and others were making.

What relationship do the Government really have with the ACMD, given that they seem to be so far apart? We had a manifesto commitment which talked in yellow journalese about,

"a blanket ban on all new psychoactive substances, protecting young people from exposure to so-called 'legal highs'".

That is the kind of language we would see in manifestos, and a few short weeks or months afterwards we get this Bill, which seems a long way away from Professor Iversen and his colleagues. That is a concern to me. I do not blame the Minister, by the way, but that is a concern that this House is right to reflect on Report. Admittedly, there are proceedings in the House of Commons and I am sure that the Minister's approach in Committee—the way that he was prepared to pick up points and reflect on them—will continue. I have been in this business a long while and I can see a long distance between these two bits of correspondence. The Minister has some work to do to persuade this House on Report that that gap is not dangerous and that people may not get hurt unless this is sorted out before the final passage and Royal Assent of this Bill.

3.45 pm

Lord Ramsbotham: My Lords, I was very glad to hear the confirmation by my noble and learned friend Lord Hope of the possibility of the use of the word "synthetic". I must admit that, having been slightly unhappy at the thought of the way this Bill might go, that thought was exacerbated by reading the annual report of the Chief Inspector of Prisons yesterday, in which he mentioned specifically the harm that was being done in our prisons by legal highs. That added speed to the need to do something about it. I was very glad that my noble friend Lady Meacher mentioned prisons because in addition to the police, the prison authorities need weapons in their hands so that they can take action against the people who are causing the harm with these substances.

Lord Elton (Con): My Lords, I have a very small question to ask relating to the definition of harm, which is qualified by the word "social". I wonder what in fact that constitutes. If a drug results merely in the inability of the user to sleep satisfactorily or if it interferes with his learning but does not, as a general effect, cause him to disrupt those about him, is it still a social harm? It seems to me that self-harm is a dangerous product of these drugs and it would be a great pity if individuals taking them were not protected when we have the opportunity to do so by a definition which included that which harms the individual as well as society. This is a lawyer's question. I hope that the noble and learned Lord, Lord Hope, might be able to lay my fears to rest; otherwise, either the Minister or the mover will doubtless do so.

Lord Hope of Craighead: My Lords, I am not sure if I am allowed to speak again on Report but I am challenged here. The words in the amendment are "social problem", not social harm. I think that may be an answer to the noble Lord. They are different phrases, with different meanings.

Lord Mackay of Clashfern (Con): My Lords, I have no particular difficulty with the first amendment concerning "synthetic", and I think I indicated that to the Minister some time ago before it was actually formulated as an amendment.

However, I have considerable difficulty with the second amendment and how it is going to work. If somebody produces this material and that production is to be a crime, in the general view I have about the law he must at least have the means of finding out whether what he is doing is criminal. The difficulty that has been expressed before in relation to these psychoactive substances is that they are produced so quickly and changed so quickly and the harm is done so quickly that the Misuse of Drugs Act can hardly catch up with them. That is a very serious problem.

I agree very much with what the inspector has said in his report about the difficulty of prisons. Indeed, I have been told before that there are considerable difficulties with the input into prisons, by whatever means, of these legal highs. They certainly seem to have the effect of producing considerable violence, which is undoubtedly a social problem if ever there was one. How is this to work? The Advisory Council on the Misuse of Drugs will have to give advice. Will that not create exactly the same difficulty as the attempt to use the Misuse of Drugs Act to control these legal highs has proved to have in the past? That is the need and reason for the production of the Bill.

The noble Lord, Lord Howarth of Newport, said that the definition is very wide. My view is that, on the whole, the legal effect of a definition is rather more related to its precision than to its particular width. In some cases, the definition of what is made criminal is very wide indeed—as undoubtedly it should be to

encompass many methods of carrying out the offence. I cannot see how the mechanism suggested here is going to be capable of working, given the problems that exist. I have been trying to think of how this could be modified but so far without too much success, except that something depends on the intention of the laboratories producing these substances. What are they doing it for? Are they intending to help people to sleep well or behave well and so on? I think they are probably not.

The purpose for which these substances, which may be synthetic, are produced seems highly relevant but it is quite difficult to get at defining an offence by reference to that. However, if the purpose for which the substance is produced is something that the state considers should be criminalised, that is a possible way to define an offence. That would at least have the effect of it being decided in relation to the time of production. It might not be possible to prove it immediately but the essence of it would be something that has happened before that production was put into the hands—or the body, one way or another—of the person receiving it, which is part of the crime that the Bill seeks to establish.

Lord Howarth of Newport: What would be the practicalities of trying to prove the intention of a chemist in China?

Lord Mackay of Clashfern: The intentions in China are possibly as human as intentions here. If people produce a substance in China, it is bound to be possible to say why they are doing it. I agree that the more remote they are, the more difficult it is to bring to bear our criminal system but the system has to work when the drug is brought into operation in this country. The people who bring it in will have a purpose. They will no doubt have some kind of relationship with those who produce it, in China or elsewhere. I do not think that they are normally bringing it in as a charity but for some commercial purpose.

As far as I can see, the type of approach that the noble Baroness, Lady Meacher, has suggested may be capable of being rephrased to bear on the purpose for which the drug is produced. If that were possible, it would be a much more feasible and workable solution than is contained in Amendment 2 at the moment. I am very sceptical about anything I could say about a definition of this kind that is supported by no less a person than the noble Lord, Lord Rees of Ludlow. However, this has legal implications as well, which is why I have been encouraged to say what I have thought about it up to now.

Lord Tunnicliffe (Lab): My Lords, the noble and learned Lord, Lord Mackay of Clashfern, hit on the essence of the Bill at the beginning of his contribution. It takes a different approach from the Misuse of Drugs Act 1971, because of the speed with which these new products are coming into our society. We all at least agree that their impact is one of tremendous and peculiar harm. The Labour Front Bench supports the Bill and the essential concept behind it. We had a manifesto commitment to address legal highs and we approve of the device used, which is a wide definition with exceptions. That is the difference between the two sides in this debate. We therefore, as a generality, oppose the narrowing of definitions, as that would go to the essence of how the Bill is designed to work.

Amendment 1 would narrow the definition to "synthetic", which would potentially exclude a large group of naturally occurring substances. Amendments 2, 5, 6, 8 and 9 all seem to be about the same concept, with the same words used over and over again, as in Amendment 2, to limit the definition to,

"any drug which is, or appears to the Advisory Council on the Misuse of Drugs to be, misused and of which the misuse is having, or appears to the Advisory Council on the Misuse of Drugs"—

here we get to the key words—

"to be capable of having, harmful effects sufficient to constitute a social problem".

Those ideas would drive right through the concept of the Bill and reverse its essence, meaning the psychoactive substance would first have to be proved harmful. The Bill is poised the other way round: if the substance is psychoactive, it is presumed to cause harm and is illegal under the Bill unless exempted.

The wording and framing of those amendments seems also to leave out the concept of self-harm, which the Bill seeks to address. It certainly takes out the more complex issues of harm such as dosage, volume, et cetera. We therefore cannot support those amendments.

Lord Howarth of Newport: I am very grateful to my noble friend for giving way. How does he deal with the objection raised by Professor Iversen and his colleagues on the ACMD in their letter of 2 July? The professor warns that:

"The psychoactivity of a substance cannot be unequivocally proven".

He goes on to say how difficult it would be to demonstrate in court that a particular substance was indeed psychoactive. He also says:

"It is almost impossible to list all possible desirable exemptions under the Bill".

Are those two objections not very serious ones to the legislation? What is my noble friend's response to Professor Iversen?

Lord Tunnicliffe: My Lords, I thank my noble friend for that intervention and hope to respond to it, at least in part, as I progress through the points I am making.

Amendment 7 would delete the definition in the Bill and would hence create the opposite effect from the one that we wish to pursue. For those reasons, in general we oppose these amendments. But—and it is an important but—we have become increasingly concerned with the operation of the Bill. What will happen? The concern that was building up and which came out on the first day in Committee was about how it will work operationally. It is of particular concern because the Bill refers specifically to the "balance of probabilities" and then, in other places, ends up with criminal sanctions. That is starting to feel very wrong. We challenged the Minister on this and he promised to write to me to provide reassurances about the operational aspects and the whole issue of proving whether something was psychoactive. I intend to refer to the letter that I got from the Minister. I thank him for the letter and

[Lord Tunnicliffe]

I thank him and the team for making sure that it was copied to anybody who has spoken in the event—so anybody who has spoken in the debate so far should have a copy of the letter.

4 pm

The letter touches on the whole problem of what an enforcing officer does, how he handles things and how he comes to a conclusion, and so on—and it is not that helpful. But perhaps that is because being a policeman, customs officer or whatever is a difficult task; it is about decisions of degree. We have a concern about that, but I think that the Government in the letter commit to doing the best job that they can and to use the best advice, and I do not think that we can take that any further. The really key issue is about when someone will go to prison or be fined. What will be the process and the burden?

On the first page of the letter, the Government assure us:

"We are … committed to ensuring that there are mechanisms in place to determine the psychoactivity of seized substances in a timely and effective way".

That seems to be for the efficient operation of the Bill and to cover the concerns that the advisory committee has about the provability of psychoactivity—it is a commitment from the Government to do something about it. On the next page of the letter, they set out the mechanisms that are being set up and offer three views of how psychoactivity might be proved,

"using existing data … identifying a substance's chemical structure … and … in vitro neurochemical profiling".

They seem persuadable. But I now go on to quote the letter directly, because I would like a response from the Minister. In the middle of that page, it says:

"Ordinarily, it can take between 9-12 months for a drug to be brought under the control of the Misuse of Drugs Act 1971, following the advisory and parliamentary process. Until a drug is listed in Schedule 2 to the 1971 Act, no offence can be committed under the Act in relation to that substance".

Since the essence of the letter is that analogous procedures are going to be used for the proof that a substance is psychoactive, how long do the Government envisage the new processes will take, particularly the parliamentary processes?

The next paragraph of the letter is crucial in securing that appropriate level of proof before somebody is either fined or committed to prison for an offence under the legislation. It says:

"By contrast, under the Bill, substances are not required to be tested, assessed and/or then listed in order for enforcement officers to make use of the enforcement powers conferred by the Bill. As described above, the Bill gives enforcement officers the tools to be able to search for and seize any substance they reasonably believe to be psychoactive. The same 'reasonably believes' test applies to the issue of a prohibition notice or premises notice and applications for prohibition orders and premises orders are determined on the basis of the balance of probabilities".

However—that is my however; it is not in the letter—the key sentence is the one that follows, which says:

"In the case of a prosecution for an offence under clauses 4 to 8 or (depending on the nature of the failure to comply with an order) 25 of the Bill, it will be for the prosecuting authorities to establish beyond reasonable doubt the psychoactivity of the substance in the order to secure a conviction".

In other words, as I read it, the prosecuting authorities must meet the criminal test of evidence before an individual can go to prison or be fined for an offence under the Bill. I am concerned by the words in parenthesis,

"depending on the nature of the failure to comply with an order",

and I would like the Minister to assure me that it means the general point that I have made. The letter goes on to say that various mechanisms will be set up, and I hope it implies that there are going to be adequate resources.

Given an affirmation by the Minister that I have accurately quoted his letter, some response on the time issue and an assurance that nobody will be sent to prison or fined unless the psychoactivity of the substance has been proved by the criminal test of beyond reasonable doubt, we are content with the definition in the Bill and will not be supporting any of the amendments.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, I thank the noble Baroness, Lady Meacher, for giving us the opportunity for this debate on Report. We have had a busy period between Committee finishing and Report commencing. It has been a very productive time. We have had many meetings, which were promised in Committee, about different aspects. We have had a rapid flow—a flood, even—of correspondence, which has been two-way, as it has been with the ACMD as well. This is, in a sense, how the process of legislation should work: Committee is a meaningful process, the Government reflect on it and then come to Report having considered further.

The noble Baroness, Lady Meacher, speaks with great authority and insight on these issues. Although there are a number of points which I need to address in my speech, I want to make sure that, as in an examination essay, when you try to answer the question that is put early on, just in case the examiner is not quite following the depth of your analysis, I put it on record that we are not ruling out the term "synthetic". We are not saying that it is not adequate; it is within the complex of debate. The ACMD did not offer an opinion on "synthetic". It suggested "novel" and we responded with "new". I will come back to this, but I do not want to let the moment go by without saying that this is a genuine process by which we want to consider all the options and weigh the very signification contributions from Members of this House. We have benefited from the legal expertise that the noble and learned Lord, Lord Hope, and my noble and learned friend Lord Mackay offered us on how this may be viewed. This is a significant matter which we will want to reflect upon very carefully as we go through.

I was also grateful to the noble Lord, Lord Ramsbotham, for his intervention; he mentioned Her Majesty's Inspectorate of Prisons, which has talked about the seriousness of this problem in the prison estate. It has been a growing problem. That observation came after Committee.

We also had the intervention from the Prisons and Probation Ombudsman, who reflected on the number of deaths in custody that had been due to this. He had examined 19 fatalities in prison between April 2012 and September 2014 where the inmate was known or strongly suspected to have been taking drugs, and this

was a relevant factor in their death. We will be coming to responses to that in later groups of amendments, but I appreciate that point being made.

If the House will bear with me, I shall put some remarks on the record while I seek to address the points made particularly by the noble Lord, Lord Tunnicliffe, and mentioned by other noble Lords during the debate. The Government take seriously the views of the advisory council. The noble Lord, Lord Kirkwood, asked if there was a difference here. There should be a sort of tension between anyone who has a statutory duty to advise and, whoever are the Government of the day, I am sure that that tension is there.

We recognise that there were members of the ACMD who were on the expert panel. The ACMD advised particularly on the science while the expert panel, which was set up and asked to undertake the particular report by Norman Baker under the previous coalition Government—I am not going down that route—included people from a wider group, including law enforcement officers and various drug treatment organisations. They were the ones who came forward with a recommendation for a ban. Again, though, I want to make it clear that any reading of the report would show that it was hardly obvious what needed to happen; it was not a no-brainer. The expert panel wrestled with the question; they saw a number of disadvantages and advantages, but on balance they came down on the side of a ban.

As the House is all too aware, the Bill is designed to capture substances supplied for human consumption that have psychoactive effects. Its aim is to cover substances that are not currently controlled under the Misuse of Drugs Act 1971 but, as with any drug when misused, carry risks. The definition has been deliberately drawn widely, as the noble Lord, Lord Tunnicliffe, said, and is a necessary move away from the approach taken in the Misuse of Drugs Act. Potentially, this is the equivalent of the "Whac-A-Mole" problem—I am desperately in search of a more elegant legal term—where a substance is banned under a temporary banning order, but then up it pops again a few days later with a slightly changed molecule to get around the legislation. It is not accidental that we have drawn this widely; it was deliberately done to recognise that there is a particular problem here.

As my noble and learned friend Lord Mackay pointed out, this is a dynamic, fast-moving and fast-changing market. The market in psychoactive substances has dramatically changed over the last few years and shows no signs of abating. In fact it seems to be getting worse: we had an excellent session with Public Health England, to which all interested Peers were invited. One of the points that that body made was that a lot of clinics say that the ease of access to these drugs is fuelling a particular problem. The noble Lord, Lord Kirkwood, and others, such as the right reverend Prelate the Bishop of Portsmouth, also had the opportunity to meet a children's organisation. We will come back to that later, but that organisation talked about how these so-called legal highs are used as part of the grooming process for vulnerable young people. These are very serious problems.

Amendments 1, 3 and 4 suggest ways in which the definition might be adjusted to restrict the scope of the Bill and its offences to those substances that are synthetic or are "novel". We have previously debated the merits or otherwise of including a reference to "synthetic" in the definition of a psychoactive substance. As I indicated in Committee, there are a number of naturally occurring substances, known in years past as "herbal highs", that are of concern and are far from safe. The noble Baronesses, Lady Meacher and Lady Hamwee, referred to those.

4.15 pm

Salvia divinorum, or salvia, is a Mexican plant, with leaves that contain psychoactive chemicals that produce hallucinations when chewed or when dried and smoked. There is concern that salvia can trigger psychotic episodes, particularly in young people and people with a history of mental health problems. Other plant-based psychoactive substances include Kratom, which is sold as a psychoactive ingredient in "branded" products such as Palm Wine and Dutch Haze. Kratom acts as a sedative at higher doses and carries the risk of physical dependency. A further example is fly agaric mushrooms, which are used for their hallucinogenic LSD-type properties. Our view is that while these may not warrant control under the 1971 Act, the Bill provides a legal framework, subordinate to the 1971 Act, which should be deployed to restrict their availability. To do otherwise would arguably be arbitrary and would leave a loophole for those looking to maintain their profits from this trade.

The noble Lord, Lord Paddick, has taken up the advisory council's recommendation that we should amend the definition to cover only "novel" psychoactive substances. I have already referred to our policy rationale in capturing some long-standing intoxicating substances in the context of natural products. This reasoning applies equally to products synthetic in nature such as nitrous oxide, which the noble Lord, Lord Howarth, mentioned, and alkyl nitrites, or "poppers", which were tolerated for many years when control under the 1971 Act was the only option.

The other side of the coin is one of legal clarity. As the Home Secretary set out in her response to the advisory council, the inclusion of the term "novel" to describe psychoactive substances in legislation was considered unworkable. To make an amendment of this kind to the Bill would suggest that Parliament intended to exclude from its ambit psychoactive substances in existence before the enactment of the Bill. The psychoactive substances market that exists just prior to the Bill's enactment would not be covered. That is clearly not our intention or an acceptable outcome, as the point we are getting at is that every time we redraw the rules too tightly, these very devious and sophisticated drug operations simply change their terms to fit the new criteria.

Fixing a point in time to the definition was also considered unworkable. Do we take the date when a substance was first discovered, manufactured or identified in the recreational market? Or, perhaps, we should identify the date on which a substance became widely used—a term which itself would be challenging to define. Of course, we are looking for a general approach to all these substances, not a substance-by-substance one. It is our view that this market is so fluid that to specify a specific cut-off date, either for the generality

[LORD BATES]
of psychoactive substances or for particular substances would be impractical, open to misunderstanding and abuse. The advisory council has helpfully clarified that the term "novel" should not be taken as introducing the concept of timing, which is just as well given the difficulties I have highlighted.

The UK is not unique in framing its legislation, where the predominant target is psychoactive substances generally, in the way set out in the Bill. Neither Ireland, New Zealand nor Australia—at both federal and state level—have used the terms "new" or "novel" and refer to psychoactive substances generally.

Amendments 2 and 5 to 8 seek to define a psychoactive substance—

Lord Tunnicliffe: My Lords, I am, albeit temporarily, on the same side as the Minister, and I am now confused. I think he said—some minutes ago, I grant you—that the Government had not ruled out the use of the word "synthetic", but then he went on to rule it out. Can he be clear: are the Government thinking about adopting the word "synthetic", and if so, in what timescale? If I misheard him, he now has the opportunity to be absolutely clear.

Lord Bates: I ask the noble Lord please not to go to the other side just yet but to stay with me a little longer. I was referring to the amendment of the noble Lord, Lord Paddick, and was talking about the use of the term "novel" in this context. That was the ACMD point, as opposed to the point about the use of "synthetic", which I shall come to later and have already touched upon. Now the noble Lord, Lord Paddick, looks puzzled; perhaps I have lost him in gaining the noble Lord, Lord Tunnicliffe. Perhaps I may continue with what I was saying and then I will come to the specific point raised by the noble Lord.

I accept that while our target in this Bill is substances that are harmful when misused, or which have the potential to cause harm, the Bill seeks to define the effect of these substances rather than to make any explicit reference to their harms. Of course, the advisory council has a considerable and impressive track record in making these harm assessments. It is a scientific body of experts which for the last 40 years has been advising successive Governments. These amendments would require assessments of individual substances, or even groups of substances, for the purpose of bringing them within the scope of the Bill and its offences.

Our fundamental issue with that is that it would perpetuate the inadequacies and frustrations of our current approach under the 1971 Act. As the expert panel found, a substance-by-substance approach would not meet our core objective to get fully ahead of the market and scientific developments. It would allow the suppliers to adapt their range of substances on sale in response to new controls. That is exactly what has happened in the past and is behind the purpose of this legislation. Indeed, by driving innovation in the market, the current approach adds to the harms caused by these substances, as each new generation of psychoactive substances is more potent than the last. We need a change in gear—that is what the blanket ban will deliver.

Finally, Amendment 9 adopts a different approach again to how we define a psychoactive substance for the purposes of the Bill. Clause 3 enables the Home Secretary to make regulations, subject to the affirmative procedure, which add to or vary the list of exempted substances in Schedule 1. As we have previously debated, the regulation-making power in Clause 3 has been designed to future-proof the list of exempted substances and ensure that, for example, medicinal products are not inadvertently caught by the blanket ban provided for in the Bill. Schedule 1 contains broad categories of established substances and products that we want to exclude from this regime, mostly because they are already regulated by other legislation.

I turn to the specific point put to me by the noble Lord, Lord Tunnicliffe. He pointed to the advisory council's concerns about proving psychoactivity as a point of law. I wrote to the noble Lord on this very issue, and he quoted my letter, in which I said:

> "The Government is committed to supporting the law enforcement community in the exercise of their powers under the Bill. We will work with the national policing lead and College of Policing on the development of policing guidance".

It is important to recognise that different powers in the Bill apply to different standards of proof. For example, the powers of seizure in Clause 42 operate to a "reasonable belief" test. An officer's reasonable belief that a substance is psychoactive could be based on a number of factors, including the substance's packaging, its markings or even whether the individual from whom it was seized appeared intoxicated and the officer could infer that the substance found might be responsible. The same "reasonable belief" test applies to the issuing of a prohibition notice or a premises notice. Applications for prohibition orders and premises orders are determined on the basis of the balance of probabilities.

In the case of a prosecution for an offence under Clauses 4 to 8—I think that this comes to the point that the noble Lord invited us to look at—we have the criminal test of "beyond reasonable doubt". Clause 25, which is referred to in my letter, deals with the offence of failing to comply with a prohibition order or premises order. That clearly involves the civil test of the balance of probabilities. However, failure to comply with the order can involve a criminal sanction. Therefore, quite rightly the noble Lord came back and asked whether it was possible that we could end up with someone being caught between the two tests—the civil and the criminal—and facing a criminal sanction on the balance of probabilities test. As I understand it, that is at the heart of his concern. I can certainly give him the assurance that before any criminal sanction could be made under Clause 25, there would need to be proof to the criminal standard of "beyond reasonable doubt" that the substance involved was indeed psychoactive.

I hope that that clarification will help the noble Lord, Lord Tunnicliffe, with his concerns. I also hope that the point that I made right at the beginning to the noble Baroness, Lady Meacher, that we are continuing in a genuine dialogue with the Advisory Committee on the Misuse of Drugs, will allow her to—

Baroness Meacher: Before the Minister sits down, I would like to put one question to him on that issue. He said at the beginning that he was not ruling out the term "synthetic", but I then became very confused

when he started talking about a number of botanicals. Does he agree that there is in fact great value in separating the machinery for botanical substances, which are developed over many years and which can be brought under the Misuse of Drugs Act if they are dangerous—harmful—from synthetic substances, which need a rather different kind of machinery? I think that the Minister was indicating that there are botanical substances that may be to some degree harmful.

Of course the police are able to use common sense. They tend not to arrest and criminalise the possession of herbal cannabis. They will know that it is infinitely less dangerous than something such as alcohol. The same would apply to other botanical substances developed over many years. If they were brought under the Misuse of Drugs Act, which the Minister referred to as rather draconian, that Act also could be used with a degree of common sense. I want to be clear whether the Minister accepts the great value of separating these two completely different sets of substances.

Lord Bates: The noble Baroness goes to the heart of the issue; we have a problem with that. We are just not convinced. There are botanicals, to which we have referred. There are other substances, such as nitrous oxide. Does "synthetic" as a term cover what we want it to cover, or will we be reassembled back here at some future date trying to clamp down on another loophole which has been exploited? That is the difficulty. When I say that I am not ruling out the term "synthetic", that is absolutely correct, but we want to make sure that if the term is used, it is understood in a legal context as achieving the intention of the Bill, which is to uphold a blanket ban. I hope that, with that, I have provided some clarification.

Lord Howarth of Newport: I am grateful to the Minister for giving way. What is his difficulty about using the apparatus already available to the Home Secretary under the Misuse of Drugs Act 1971 to deal with botanical substances and, I think, nitrous oxide—natural substances about which the Government are concerned? It is open to them to classify them perhaps as class C drugs and deal with the problem in that way, distinguishing between natural substances and the synthetic substances that constitute this huge social threat by being barraged into our society week after week to the great danger of our young people.

Lord Bates: That was the point that I was trying to address in response to my noble and learned friend Lord Mackay, who talked about the speed of this: the cumbersome process that existed before to categorise something, the period of time, and the agility of the criminal gangs behind the production of these substances. That goes to the heart of the purpose of the blanket ban. I know that we may not necessarily agree on that point, but I hope he will understand that that is where we are genuinely resolute: how do we uphold the blanket ban—which is the advice that we received from the expert panel, what similar panels in Wales and Scotland believe to be the way forward and what operates in Ireland—in a way that recognises the nuances we have but does not allow people to escape through loopholes? That is the challenge we are wrestling with. It is a dialogue that we are committed to continuing, both with your Lordships in the remaining process of the Bill and as it goes to another place, should it be your Lordships' will that it does. That dialogue will continue; it is genuine and we are continually listening to views on this.

4.30 pm

Lord Tunnicliffe: Listening to the Minister, one might almost interpret him as saying that this is a balanced issue on which he needs more time to think and on which he wants to involve noble Lords. However, the only time when noble Lords will get another chance to debate this will be at Third Reading. Is the Minister saying that he may be able to take this away and shed more light on his conclusions at Third Reading?

Lord Bates: Look at the pace of events over the past week and the exchanges of correspondence that there have been. This is moving because we are genuinely exploring what the definition should be. Of course we will keep it under review for Third Reading and, should the Bill go to the other place, it is likely that, as a result of deliberations in your Lordships' House, government amendments will be tabled in other areas dealing with other clauses. Therefore, through the normal process, we will get an opportunity to consider those Commons amendments should they be made. There will be opportunities for this discussion to continue with the ACMD in the proper way. However, I come back to the basic principle on which the noble Lord and I agree absolutely: we cannot have any more loopholes popping up so that people can exploit the gaps in the legislation. That is the whole point. We might as well not have the Bill if it will simply open up a number of new areas—be it botanicals or some other derivative—that can be used for the purposes that the Bill is intended to clamp down on.

Lord Mackay of Clashfern: Before the noble Lord sits down, let me make clear that the present difficulty is that botanical substances could be used as a basis for some form of psychoactive substance that would be dangerous in a way that was not shown hitherto. The Government's present position is that "synthetic" should not be inserted but that further considerations may help clarify that problem. Therefore, the safe thing to do at the moment is leave out "synthetic" and use the general definition, which is what the group set up specially for this purpose advised.

Lord Bates: That would seem an elegant solution.

Lord Tunnicliffe: Is the Minister saying—I think he is about to get an answer from the Box—that he may well further consider this issue before Third Reading and that we should debate further at that point? That is very important to the noble Baroness in deciding whether to press her amendment.

Lord Bates: In responding on the Bill, I gave a number of examples of particular botanical substances that would fail the test of "synthetic". Therefore, it is very much as my noble and learned friend has said. Those substances do not meet the harm threshold of the 1971 Act, but some natural substances are controlled under it. This is part of the confusion and discussion that is still to be resolved, but we believe that what we have at the moment is clear in terms of the intent of

[Lord Bates]
the Bill and that to insert "synthetic" at this stage would unnecessarily limit the scope of the Bill and potentially open up new loopholes, which would need to be closed down legislatively on another occasion.

Baroness Meacher: My Lords, I thank all noble Lords who have contributed to this debate. It has turned into an incredibly wide-ranging, constructive and interesting debate, so I am most grateful to all noble Lords. I want to pick up in particular on the comments made by the noble and learned Lord, Lord Mackay. His initial comment was that he had no problem with the word "synthetic" and then introduced a very interesting point: that the intention behind a substance is very pertinent. Interestingly, he raised a similar point in writing to the chairman of the ACMD, saying that this would be a helpful addition to the definition of a synthetic psychoactive substance. If you bring in the intention behind the substance, then you have really got it. I am very grateful to the noble and learned Lord for that contribution.

Things became a bit more confused a little later, because if a botanical substance is treated and becomes a psychoactive substance it would automatically come within the definition of synthetic psychoactive substance. That is the purpose of the amendment: to keep a separation between genuinely botanical products, which take years to develop and produce and which can very properly be controlled under the Misuse of Drugs Act, and those substances which are treated, and can be treated rather quickly, to create another synthetic psychoactive substance. Those latter should be brought under the control of this legislation. It seems to me that we can produce two sets of very logical, useful legislation to deal with those two completely different types of substance. They might have similar effects, but their production and its timeframe are entirely different. They have to be treated differently under the law. I wanted to make that position clear bearing in mind the points made by the Minister, who said that he was not ruling out the use of "synthetic" but then raised some rather serious questions about whether he could introduce "synthetic" to define psychoactive substances covered by this Bill.

The crucial point here is that the Irish experience shows that you cannot assess whether a substance is psychoactive without using human beings to test it. It has not worked in Ireland. Dealing with the matter in the way that we have suggested in the amendment is a great deal better than they have managed to do in Ireland.

I hope I have managed to thank everybody adequately. I also thank the Minister for his meetings with me and, in particular, for the very helpful meeting we had yesterday. Only because I know that the ACMD supports us in this amendment and now feel confident that the Government will have serious discussions with the council about this issue, and because I am therefore confident that the Government will find their way to doing the sensible thing and having this clear division between botanicals and synthetics, I am prepared to withdraw my amendment.

Amendment 1 withdrawn.

Amendment 2 not moved.

Clause 2: Meaning of "psychoactive substance" etc

Amendments 3 and 4 not moved.

Amendment 5

Moved by ***Baroness Hamwee***

5: Clause 2, page 1, line 15, leave out paragraph (a) and insert—

"(a) in the opinion of the Advisory Council on the Misuse of Drugs is capable of producing a psychoactive effect in a person who consumes it, and

(aa) is, or appears to the Advisory Council on the Misuse of Drugs likely to be, misused and of which the misuse is having, or appears to them capable of having, harmful effects sufficient to constitute a social problem, and"

Baroness Hamwee: My Lords, before I speak to Amendment 5, perhaps I should say to noble Lords who are wondering what is happening, "Do not go away". I did not wish to abuse the House by too much toing and froing during the exchange on the first group of amendments but some points came out in that debate that are relevant to Amendment 5.

The noble Lord, Lord Tunnicliffe, made some interesting points and analysis of the situation in regard to harm. I shall quote again from the ACMD's letter of 2 July on the concept of harm. It stated:

"Without the inclusion of the words 'harmful' or 'potentially harmful', the ACMD can envisage situations whereby the supplier of benign or beneficial substances could be prosecuted under the Bill".

It also stated that the expert panel set up to consider this issue,

"recommended the inclusion of the concept of harm and a 'safety clause'"—

as it called it—

"whereby substances of low or no harm—

and we know the difficulties of setting a threshold—

"would be excluded from such a Bill".

Self-harm has been raised. It is a social problem within the terminology I have used, which, as I have said, is lifted from the Misuse of Drugs Act.

Without wishing to expand on this, to think now of using this Bill to ban botanical substances—types of sage and mushroom have been mentioned—which have been legal for centuries raises questions about propriety and whether it is too authoritarian and so on. Perhaps that is not an issue for now.

I accept the point about the time taken to show harmful effects causing social problems but we have to put this in the context of the substance producing a psychoactive effect and the time and difficulty involved with that. My amendment would deal with the question of harm without sabotaging the direction of the Bill.

If amendments are made in the Commons, we may welcome them. However, if amendments are not made in the Commons, we will not have the basis for further discussion because at that stage we cannot reintroduce issues that are unrelated to amendments that the Commons have made. I therefore beg to move and I wish to test the opinion of the House.

4.43 pm

Division on Amendment 5

Contents 95; Not-Contents 314.

Amendment 5 disagreed.

Division No. 1

CONTENTS

Addington, L.
Alderdice, L.
Allan of Hallam, L.
Ashdown of Norton-sub-Hamdon, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bonham-Carter of Yarnbury, B.
Bradshaw, L.
Brinton, B.
Burnett, L.
Chidgey, L.
Clancarty, E.
Clement-Jones, L.
Dholakia, L.
Doocey, B.
Dykes, L.
Erroll, E.
Fearn, L.
Glasgow, E.
Greaves, L.
Grender, B.
Hamwee, B.
Harris of Richmond, B.
Haworth, L.
Humphreys, B. [Teller]
Hussain, L.
Hussein-Ece, B.
Hylton, L.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Kerr of Kinlochard, L.
Kinnoull, E.
Kirkwood of Kirkhope, L.
Kramer, B.
Layard, L.
Lee of Trafford, L.
Loomba, L.
Low of Dalston, L.
Luce, L.
Ludford, B.
Macdonald of River Glaven, L.
Maclennan of Rogart, L.
McNally, L.
Maddock, B.
Manzoor, B.
Maxton, L.
May of Oxford, L.
Meacher, B.
Miller of Chilthorne Domer, B.
Neuberger, B.
Newby, L. [Teller]
Nicholson of Winterbourne, B.
Northover, B.
O'Neill of Bengarve, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Pinnock, B.
Purvis of Tweed, L.
Rea, L.
Redesdale, L.
Rennard, L.
Roberts of Llandudno, L.
Scott of Needham Market, B.
Sharkey, L.
Sharp of Guildford, B.
Shipley, L.
Shutt of Greetland, L.
Smith of Clifton, L.
Smith of Finsbury, L.
Smith of Newnham, B.
Steel of Aikwood, L.
Stern, B.
Stoneham of Droxford, L.
Strasburger, L.
Suttie, B.
Taverne, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Tope, L.
Tordoff, L.
Turnberg, L.
Tyler, L.
Tyler of Enfield, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Walpole, L.
Wigley, L.
Williams of Crosby, B.
Willis of Knaresborough, L.
Wrigglesworth, L.
Young of Hornsey, B.

NOT CONTENTS

Aberdare, L.
Adonis, L.
Ahmad of Wimbledon, L.
Altmann, B.
Alton of Liverpool, L.
Anderson of Swansea, L.
Anelay of St Johns, B.
Armstrong of Hill Top, B.
Armstrong of Ilminster, L.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Bach, L.
Baker of Dorking, L.
Balfe, L.
Bassam of Brighton, L.
Bates, L.
Beecham, L.
Berkeley, L.
Berridge, B.
Best, L.
Bew, L.
Bichard, L.
Bilimoria, L.
Billingham, B.
Black of Brentwood, L.
Blair of Boughton, L.
Blencathra, L.
Blood, B.
Boateng, L.
Borrie, L.
Bowness, L.
Brabazon of Tara, L.
Bradley, L.
Bridgeman, V.
Bridges of Headley, L.
Bristol, Bp.
Brooke of Alverthorpe, L.
Brooke of Sutton Mandeville, L.
Brookman, L.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Buscombe, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Byford, B.
Caithness, E.
Callanan, L.
Cameron of Dillington, L.
Campbell-Savours, L.
Carrington of Fulham, L.
Cathcart, E.
Cavendish of Furness, L.
Chadlington, L.
Chandos, V.
Chisholm of Owlpen, B.
Christopher, L.
Clark of Windermere, L.
Clarke of Hampstead, L.
Clinton-Davis, L.
Cohen of Pimlico, B.
Collins of Highbury, L.
Condon, L.
Cope of Berkeley, L.
Corston, B.
Courtown, E.
Cox, B.
Craig of Radley, L.
Crickhowell, L.
Crisp, L.
Cumberlege, B.
Curry of Kirkharle, L.
Davies of Oldham, L.
Davies of Stamford, L.
De Mauley, L.
Dear, L.
Deben, L.
Deech, B.
Denham, L.
Dixon-Smith, L.
Donaghy, B.
Donoughue, L.
Drake, B.
Drayson, L.
Dubs, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Elder, L.
Elton, L.
Elystan-Morgan, L.
Evans of Bowes Park, B.
Evans of Temple Guiting, L.
Evans of Weardale, L.
Farmer, L.
Farrington of Ribbleton, B.
Fellowes, L.
Fellowes of West Stafford, L.
Fink, L.
Finkelstein, L.
Finlay of Llandaff, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Foulkes of Cumnock, L.
Fowler, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gale, B.
Gardiner of Kimble, L. [Teller]
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Giddens, L.
Glendonbrook, L.
Goldie, B.
Golding, B.
Goodlad, L.
Gordon of Strathblane, L.
Grade of Yarmouth, L.
Grantchester, L.
Green of Hurstpierpoint, L.
Greenway, L.
Griffiths of Fforestfach, L.
Hannay of Chiswick, L.
Harries of Pentregarth, L.
Harris of Haringey, L.
Harrison, L.
Hart of Chilton, L.
Haskel, L.
Haughey, L.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Helic, B.
Higgins, L.
Hilton of Eggardon, B.
Hodgson of Abinger, B.
Hollick, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howe of Idlicote, B.
Howell of Guildford, L.
Howie of Troon, L.
Hoyle, L.
Hughes of Woodside, L.
Hunt of Kings Heath, L.
Hunt of Wirral, L.
Inglewood, L.
Irvine of Lairg, L.
James of Blackheath, L.
Janvrin, L.
Jay of Paddington, B.
Jenkin of Kennington, B.
Jones, L.
Jones of Whitchurch, B.
Jopling, L.
Judd, L.
Kakkar, L.
Keen of Elie, L.
Kennedy of Southwark, L.
Kilclooney, L.
King of Bridgwater, L.
Kingsmill, B.
Kirkham, L.
Kirkhill, L.
Laming, L.
Lamont of Lerwick, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lennie, L.
Lexden, L.
Liddle, L.
Lingfield, L.

Liverpool, E.
Livingston of Parkhead, L.
Lyell, L.
Lytton, E.
McAvoy, L.
McColl of Dulwich, L.
McDonagh, B.
McFall of Alcluith, L.
MacGregor of Pulham Market, L.
Mackay of Clashfern, L.
MacKenzie of Culkein, L.
Mackenzie of Framwellgate, L.
Mandelson, L.
Mar, C.
Marlesford, L.
Massey of Darwen, B.
Mawhinney, L.
Mawson, L.
Mendelsohn, L.
Mitchell, L.
Mobarik, B.
Monks, L.
Montrose, D.
Moore of Lower Marsh, L.
Morgan of Ely, B.
Morris of Aberavon, L.
Morris of Bolton, B.
Morris of Handsworth, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Noakes, B.
Northbrook, L.
Nye, B.
O'Cathain, B.
O'Neill of Gatley, L.
Palmer, L.
Pannick, L.
Patel, L.
Patel of Blackburn, L.
Patten of Barnes, L.
Pendry, L.
Perry of Southwark, B.
Pitkeathley, B.
Plant of Highfield, L.
Plumb, L.
Popat, L.
Prescott, L.
Prosser, B.
Puttnam, L.
Quin, B.
Ramsay of Cartvale, B.
Ramsbotham, L.
Rawlings, B.
Rebuck, B.
Rees of Ludlow, L.
Reid of Cardowan, L.
Renfrew of Kaimsthorn, L.
Robertson of Port Ellen, L.
Rogan, L.
Rooker, L.
Rosser, L.
Rowe-Beddoe, L.
Rowlands, L.
Ryder of Wensum, L.
St John of Bletso, L.
Sanderson of Bowden, L.
Sassoon, L.
Scotland of Asthal, B.
Seccombe, B.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Sherlock, B.
Shields, B.
Shrewsbury, E.
Simon, V.
Singh of Wimbledon, L.
Skelmersdale, L.
Slim, V.
Smith of Basildon, B.
Smith of Gilmorehill, B.
Spicer, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stirrup, L.
Stoddart of Swindon, L.
Stowell of Beeston, B.
Strathclyde, L.
Suri, L.
Sutherland of Houndwood, L.
Swinfen, L.
Symons of Vernham Dean, B.
Taylor of Bolton, B.
Taylor of Holbeach, L. [Teller]
Thomas of Swynnerton, L.
Tomlinson, L.
Touhig, L.
Trees, L.
Trefgarne, L.
Triesman, L.
True, L.
Trumpington, B.
Truscott, L.
Tugendhat, L.
Tunnicliffe, L.
Turner of Camden, B.
Uddin, B.
Ullswater, V.
Verma, B.
Wakeham, L.
Wall of New Barnet, B.
Warner, L.
Warsi, B.
Warwick of Undercliffe, B.
Wasserman, L.
Watson of Invergowrie, L.
West of Spithead, L.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitby, L.
Wilcox, B.
Wilkins, B.
Williams of Trafford, B.
Woolmer of Leeds, L.
Young of Norwood Green, L.
Younger of Leckie, V.

5 pm

Amendments 6 to 8 not moved.

Clause 3: Exempted substances

Amendment 9 not moved.

Amendment 10

Moved by ***Lord Rosser***

10: Clause 3, page 2, line 14, leave out "such" and insert "—
(a) the Advisory Council on the Misuse of Drugs, and
(b) such other"

Lord Rosser (Lab): I do not wish to speculate on whether it was my eloquence and that of the noble Baroness, Lady Hamwee, in Committee or the letter of 2 July from the Advisory Council on the Misuse of Drugs that carried more weight with the Government, who have now put their name to an amendment providing for the Secretary of State to consult the Advisory Council on the Misuse of Drugs in specific circumstances. I hope it might be the former explanation but I fear it is probably the latter.

The letter from the Advisory Council on the Misuse of Drugs stated that the Home Office should amend the Bill so that:

"In keeping with our role in the Misuse of Drugs Act, there should be a statutory duty to consult ACMD".

Nevertheless, it is one for the record when the Minister responsible for the Bill adds his name to an amendment moved by the Opposition. I thank the Minister for that and for delivering so handsomely, in my opinion, on his undertaking in the debate in Committee on this issue to consider the matter further in advance of Report.

I do not think there is really any need for me to say any more, although the noble Baroness, Lady Hamwee, or the noble Lord, Lord Paddick, may wish to contribute. But on the basis that the Minister's name is on this amendment and that therefore he will not be opposing it but supporting it, I beg to move.

Lord Paddick (LD): My Lords, my name is on this amendment. We moved a similar amendment in Committee. Obviously, we are very pleased that, for whatever reason, the Minister has added his name to what is now the Labour Party amendment.

The noble Lord, Lord Rosser, has raised a concern about whether it was consultation and the debate in Committee that persuaded the Government to change their mind on this or whether it was the letter from the Advisory Council on the Misuse of Drugs. It is very disappointing that the consultation with the Advisory Council on the Misuse of Drugs did not take place at a much earlier stage in the preparation of the Bill, rather than after its publication. It certainly would have saved a lot of time and debate if that had happened. Even now, from the latest letter in the correspondence between the Home Secretary and the Advisory Council on the Misuse of Drugs, which we saw yesterday, it appears that the advisory council wants further changes and amendments. It is not right that we should have a half-baked Bill presented to this House on the understanding that it does not really matter because, if any deficiencies are highlighted as a result of this late consultation, they can be put right in the other place. We in this House have the right to amend Bills to make them worthy of being passed into law. We should not rely on amendments made by either the Government or the Opposition in the other place when the Bill is first presented to this Chamber.

Lord Howarth of Newport: My Lords, in supporting the amendment tabled by my noble friend Lord Rosser, I express my welcome to the amendment tabled by the Government. It gives me particular pleasure to support my noble friend but it also gives me pleasure to support the Minister in his tabling of that amendment. It is never really profitable in politics to seek to take credit; it is much more important that there should be results. But there has been pressure from all quarters for the Government to make it clear—and make it clear in the Bill—that they were going to involve the Advisory Council on the Misuse of Drugs in carrying forward the policy for which the Bill would legislate, so this can be nothing but good. If any credit is due to this House, because the issue has been emphatically raised in our proceedings, then it is one more instance of how the Minister has been the most honest of brokers between this House and his department. The integrity, good will and energy with which he has mediated these debates through to his colleagues in the Home Office is something which I think we all very much appreciate. I would like to place that on the record.

Lord Bates: My Lords, this may be a short group as we, too, welcome this amendment. I do not think I have ever known an occasion before where all three main parties have put their names to the same amendment. It is a matter of semantics as to whether we have all come around to Amendment 10 or everybody has come around to government Amendment 22. What matters most is that we are all on the same page. In the context of the previous debate, that same page very much underscores the importance which the Government place and should place on the advice which they receive from the advisory council.

The Explanatory Notes made it clear that we expected to consult fully the council on Clauses 3 and 10. However, in bringing forward these amendments to turn such an expectation into a statutory duty, we have been mindful not just of those views and its opinion but of the deliberations and the views expressed in your Lordships' House. These amendments reaffirm the value we place on the independent expert advice from the advisory council and our commitment to a constructive working relationship with it on the provisions of the Bill and the Misuse of Drugs Act 1971. We will continue to work with the council to achieve our common purpose of reducing and preventing harms caused by psychoactive substances to individuals, especially young people, families and communities. For these reasons, I am happy to support Amendment 10 and similarly to commend Amendment 22 to the House.

Amendment 10 agreed.

Schedule 1: Exempted substances

Amendment 11

Moved by ***Baroness Meacher***

11: Schedule 1, page 37, 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, in moving Amendment 11 I shall also speak to Amendment 12, both of which we debated in Committee. I intend not to repeat anything of the arguments we used then but rather to reflect on developments since. The intention of the amendments is to ensure that all legitimate medicines and substances used for any form of legitimate research are exempted from the scope of this legislation.

I am most grateful for the Minister's letter to the noble Lord, Lord Rosser, in which he says that the Government are looking again at the definition of medicinal products in Schedule 1 to ensure that it is fully aligned with existing medicines legislation. The question is what exactly that means. I seek only an assurance from the Minister that the definition will include all medicines prescribed on a named-patient basis and all unlicensed—or any other—psychoactive substances prescribed by a doctor on the basis that the prescription is believed by that doctor to be in the best interests of the patient. My clear understanding is that a doctor can prescribe any medication, even if it is unlicensed or not recognised, so long as they believe that it will help the patient. Many medicines come on to the market which may have been tested in other countries or in other ways but which have not been through UK systems.

Amendment 12 deals with research. It would be helpful to have an assurance that all legitimate research, including laboratory research, involving psychoactive substances in academic institutions or undertaken by industry will be fully exempted from the scope of the Bill. Alternatively, perhaps the Minister could assure the House that the Government will seek an assurance from the ACMD that whatever wording is used will achieve that objective. We just want all noble Lords to be completely satisfied that these two objectives will be achieved.

I have added my name to Amendment 24, tabled by the noble Lord, Lord Paddick. The aim here, as I understand it, would be to ensure that the regulations exempting medicines and research are in place by the implementation date of the legislation. The wording in the amendment itself is slightly different, but I am sure that that is the intention. No doubt the Minister will comment on this in her response to this group of amendments.

Baroness Hamwee: My Lords, Amendment 24, to which the noble Baroness has added her name, comes from my noble friend Lord Paddick and me. Like the noble Baroness, I will not spend long on this, because I am optimistic about where the Government are going with it. I was concerned that the current provisions of the Bill are too limited, because they are limited to medicines. However, I will repeat one comment that I made at the last stage. Professor Val Curran, in her report for the all-party parliamentary group that the noble Baroness chairs on regulating cannabis for medicinal use, referred to a "stranglehold on research". She sets out, quite pithily, the "costly obstacle course" involved in undertaking any research, because of the time taken by licence applications. Import licences are being granted for so short a time that they expire before the arrangements for the research can be made, so I welcome the Government's further consideration of this. As Professor Curran says, at the moment, UK research into this area is a "massive uphill struggle".

Lord Howarth of Newport: My Lords, I am not sure that the issue of the medicinal use of cannabis is germane to this particular Bill—

Baroness Hamwee: I would just make it clear that I am talking about research. It happens to be in that context, but it is research.

Lord Howarth of Newport: I was not meaning in any way to attempt to refute or reject something that the noble Baroness had just said—I was apologising to the House for being about to mention the medicinal use of cannabis, because it is somewhat marginal to the Bill. However, ensuring that research for medical purposes, or indeed for other legitimate industrial purposes, is not inhibited by the provisions of this Bill certainly is germane, and it is rendered all the more important because of the difficulties that the Misuse of Drugs Act 1971 already places, in practice, on certain sorts of research that it is highly desirable should be pursued. I also have the report by Professor Val Curran and Mr Frank Warburton in my hands, and I was going to draw to the attention of the House the observations made by the authors of that report that there is what Professor Curran calls a "stranglehold on research". She says in the report:

"Carrying out research into cannabis in the UK is a costly obstacle course. It involves a minimum outlay of £5,000 to cover licensing and security; licence applications take about a year".

She broadens out what she says to deal with other substances in Schedule 1, saying:

"As a result of its Schedule 1 status in the UK only four hospitals have been granted a licence to hold stocks of cannabis although all of them are able to hold heroin".

So it is a somewhat confused situation. I was encouraged to read in the Home Secretary's letter to Professor Iverson of 11 July that the,

"Government's intention is for all bona fide medical and other scientific research to be untouched by the provisions of this Bill".

I simply draw to the attention of the Minister and the House that the provisions of the 1971 legislation already make for very considerable difficulty in pursuing bona fide research into certain substances in Schedule 1. I am very happy to know that the Government are consulting and looking to amend the provisions of this Bill in the House of Commons, and I hope that they take fully into account when they do the difficulties that the 1971 Act has already created.

5.15 pm

Lord Rosser: I shall be brief, but we have an amendment in this group, which states:

"Regulations under this section providing for medical research activity to be excluded from the application of the offences under this Act shall be laid before each House of Parliament within one week of sections 4 to 10 coming into effect".

Something that has been referred to already is the letter that was received from the Advisory Council on the Misuse of Drugs. One point made in that letter was that the Bill could,

"seriously inhibit medical and scientific research on psychoactive substances".

We have had the response from the Government in a letter to me, in which they referred to the views of the Advisory Council on the Misuse of Drugs. I take it that that includes the views of the advisory council on the Bill's potentially seriously inhibiting medical and scientific research on these substances. The Government's letter said:

"So that we can properly consider the ACMD's advice, we now propose to defer tabling Government amendments on these issues until the Commons stages".

On the basis that that is still the position—and I hope that the Minister will be able to confirm that the Government are still looking at the matter of the impact on research with a view to tabling amendments in the Commons—that would certainly suffice with regard to our Amendment 23, if the Minister can give that assurance.

Baroness Chisholm of Owlpen (Con): I thank noble Lords for all their points. As discussed in Committee, there is common ground between these amendments and the Government's position. As I said in Committee, it is the Government's absolute and determined objective that bona fide medical and scientific research should be untouched by the provisions of the Bill. We will deal with the issue of research on cannabis when we reach Amendment 25.

It is already the case that broad swathes of research involving psychoactive substances fall outside the blanket ban. If a substance is not intended for human consumption for its psychoactive effects, it will not be caught by the Bill. Paragraph 3 of Schedule 1 exempts investigational medicinal products used in clinical trials. However, I understand, and the Government fully accept, that this exemption does not go far enough. This is an issue of some concern for the academic and scientific community. The noble Baroness, Lady Meacher, referred in Committee and again today to the letter in support of her Amendment 12 sent to my right honourable friend the Home Secretary by the Academy of Medical Sciences and five other leading scientific institutions. My noble friend Lord Bates responded to that letter yesterday. I shall read out the critical paragraph in that response:

"We have now had some further discussions with the Department of Health and the Medical Research Council. In going forward, we need to ensure that any amendment to the Bill satisfies the scientific community as represented by the Academy of Medical Sciences and your co-signatories, as well as our own policy and legislative requirements. For this reason, we intend to develop this work in the coming weeks with a view to introducing an amendment when the Bill is considered by the House of Commons. To help achieve this I would value engagement between your representatives and officials from both the Home Office and the Department of Health to reach a common understanding and satisfactory outcome in the next few weeks".

I hope that that will reassure noble Lords that we are firmly committed to bringing forward an appropriate amendment on this issue, but it will take more time to get it right in consultation with the Academy of Medical Sciences, the Advisory Council on the Misuse of Drugs and others. We need to ensure that bona fide medical and scientific research is excluded from the ambit of the Bill, while not creating a loophole for others, whose only purpose is the recreational use of psychoactive substances, to exploit.

Amendment 11 is on a different point raised by the noble Baroness, Lady Meacher, in seeking to expand the definition of medicinal products, and therefore the exemption for such products, in paragraph 2 of Schedule 1. The noble Baroness is pushing at an open door here.

As I also indicated in Committee, this is another area we are considering further with the Department of Health and the Medicines and Healthcare Products Regulatory Agency.

We are conscious that the Bill as drafted does not include unlicensed medicines for human use known as "specials". 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. As such, they need to be taken out of scope of the definition of a psychoactive substance.

In its letter to the Home Secretary, the Advisory Council on the Misuse of Drugs specifically raised concerns about the scope of exemption for herbal medicines. The European Herbal & Traditional Medicine Practitioners Association has also flagged a need to ensure that the exemption for medicines includes herbal medicines used by practitioners on a named-patient basis. This is another area where we are actively reviewing whether we need to adjust the current definitions in the Bill.

Medicines legislation is a complex area, as I know noble Lords are aware, and defining bona fide research is not as straightforward as one might imagine. We have certainly not so far been able to identify an off-the-shelf definition in existing legislation which we can readily apply. It is regrettable that we have not been able to table amendments in time for the House today, and I fear we will not be in a position to do so for Third Reading next Monday. I ask noble Lords to bear with us. We will use the time over the Summer Recess—no holidays for us—to bring forward appropriate amendments in the Commons. I will ensure that noble Lords taking part in this debate have sight of those amendments. Your Lordships' House will then have an opportunity to consider the issue further when the Bill returns from the Commons in the autumn.

I hope that, in the light of that commitment, the noble Baroness, Lady Meacher, will be content to withdraw her amendment.

Baroness Meacher: My Lords, I thank noble Lords who have spoken in this debate. I thank the Minister for her reassuring comments, her assurance about the Government's commitment to ensuring that all bona fide medicines and research will fall outside the scope of the Bill, and her assurance that the Government will consult key experts to ensure that the Bill is right in this respect. On that basis, I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Amendment 12 not moved.

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

Amendment 13

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

13: Clause 5, page 2, line 36, at end insert "for the purpose of financial gain"

Lord Howarth of Newport: My Lords, this amendment is intended to avoid a situation in which we may find ourselves criminalising rather large numbers of young people. I am not sure that that is what the Government really want to do, and I myself would not at all like to see it happen. The Bill provides that it is not an offence to possess a psychoactive substance, but all means whereby people might obtain psychoactive substances would be made illegal. I do not know whether Ministers expect people to come into possession of psychoactive substances rather as if they had descended like manna from heaven—or perhaps, as some people would see it, surfaced from hell.

At all events, very many young people use psychoactive substances. I do not think anyone knows what the scale of use is in this country. The report on new psychoactive substances that the Home Office commissioned and published last year indicated that the data are extremely thin and inadequate. That is no one's fault; it is a very widespread problem and it is hard to monitor the reality of it. Still, a lot of people are using psychoactive substances, just as a lot of students are using substances that they think will enhance their cognitive powers, and I do not think that a ban is going to stop them doing so.

The question is this: if a group of people club together, in the words of the Advisory Committee on the Misuse of Drugs in its letter of 2 July, and one of them supplies a psychoactive substance to a circle of friends but does not do so for the purpose of financial gain—it is a shared social activity that they have agreed to undertake—should that become a criminal offence? I suggest that it should not. More significant than my suggestion is the urging of the ACMD in its letter to the Secretary of State, in which it says:

> "The Bill has the potential to both criminalise and apply disproportionate penalties to many otherwise law abiding young people and adults…An example is a young person being prosecuted for 'supply and importation' in a case of 'social supply' where a young adult has bought small quantities of Novel Psychoactive Substances on-line on behalf of a group of friends who have 'clubbed together'. The ACMD believes that criminal justice sanctions would be disproportionate to the harm caused by such acts",

and I think the ACMD is right. In her reply to Professor Iversen's letter, the Home Secretary offered some reassurance when she said that,

> "the Bill contains both criminal and civil sanctions which will enable law enforcement agencies to adopt a proportionate response to offending behaviour. In addition, the police and Crown Prosecution Service will exercise their professional discretion taking into"—

I think the next word is "account" but it has been missed out—

> "all the circumstances of the offence and the offender".

So that is good.

Oddly, she also says in the preceding paragraph that the expert panel,

> "did not suggest excluding social supply".

That is not how I read the expert panel's report. Page 33 of that report, at the beginning of the section entitled "General prohibition on the distribution of non-controlled NPS", in which the expert group set out to state the principles that should apply, said:

> "Legislation of this type … can exclude … social supply".

It did not recommend that it should exclude social supply, but contemplated that it should. I hope that the Government, in the light of that, might be prepared to think a little further about this issue.

5.30 pm

Why do young people use psychoactive substances? Young people are better able to answer that question than perhaps your Lordships are. However, there is an attempt to answer that question in the wholly admirable resource pack for informal educators that the Home Office produced just recently. In a section headed "Do we know why young people use NPS?", the group that put the document together said that,

"curiosity is one of the reasons that young people might be tempted to use NPS. Of course, for some people, we can't ignore that the enjoyment of the effects of NPS products will be a key motivation for use. They can offer escapism, relaxation, shared social experiences and adventure".

If those are the motives, we have to be very careful that we do not end up criminalising people, because they look like pretty innocent motives. Very often we are talking about social rituals that groups of young people perform. There is of course also the reality that teenagers and people a bit older often feel the temptation to rebel against authority. If you ban them from doing something that they enjoy and think is fun, and they do not understand why it should be criminalised, it is quite likely that they will rebel against the ban. People experiment as they grow up and mature, and some people continue to use such substances through the decades of their life that follow, holding the view as they do—and as many highly competent scientists do—that the effects of individual controlled drugs and many new psychoactive substances are no worse than the effects of alcohol or tobacco.

That is one of the reasons why, as the House knows, I have taken the view that the safer course would have been to legalise and regulate a selection of such substances rather than to attempt to ban the lot. I am not at all saying to the House that we should encourage anybody to consume psychoactive substances; I am saying that we should not criminalise young people in the circumstances that I have quite narrowly defined in this amendment. We should not damage their education, their careers, or their prospects of obtaining credit or jobs. We should be careful not to alienate people who believe that their activities are innocent and should not be prohibited, and certainly we should be careful not to discriminate unwittingly against members of black and ethnic-minority groups. Again, I was encouraged that the Home Secretary in her letter to Professor Iversen said:

"I share the Council's desire to ensure that the enforcement powers in the Bill do not result in discriminatory impact on members of black and ethnic minority … groups".

Therefore I think that we are at one in recognising the risks there may be here.

I will repeat a figure I quoted at Second Reading. It seems tremendously undesirable that between 2009 and 2013, under the existing drug legislation, 60,000 young people were criminalised simply for possession, and there is a danger that this legislation will add to those numbers. It would therefore be helpful if the Minister could say if the Government will reconsider the question of whether someone who provides a new psychoactive substance to a circle of friends, not dealing and seeking to make money out of it, should be subject to the same penalties as an organised criminal or a street dealer. Would it be a statutory defence that an individual obtained the psychoactive substances for themselves and their friends and not for sale or profit? Does the Minister envisage that there would be prosecutions in such a circumstance, and does he see that as being in the public interest? I beg to move.

Lord Paddick: My Lords, my noble friend Lady Hamwee and I have Amendment 16 in this group, which approaches the issue from a slightly different position. Our amendment suggests that:

"It shall be a defence that the person did not supply the substance for gain".

The difference here is that as I understand it, the amendment in the name of the noble Lord, Lord Howarth, would mean that the prosecution would have to prove that this was the case, whereas in our case, if it was a defence, it would be a matter for the accused person to prove that they did not supply the substance for gain. As the noble Lord, Lord Howarth, said, on page 3, point 5, of the ACMD's letter of 2 July, for very similar reasons it is not only concerned that this will criminalise,

"otherwise law abiding young people and adults",

but concerned with regard to the discriminatory impact.

The Secretary of State is encouraging in her response to the letter, saying that,

"the police and Crown Prosecution Service will exercise their professional discretion taking into all the circumstances of the offence and the offender".

However, the concern—which is not addressed by the Secretary of State, but is expressed by the advisory council—is that it is not simply a case of members of the black and minority-ethnic community being disproportionately stopped and searched by the police, which the Secretary of State addresses in her response, but that members of the black and minority-ethnic community are disproportionally more likely to be charged rather than cautioned for an offence. They are also disproportionally likely to have a formal disposal of their case rather than no further action being taken.

Therefore, while the Secretary of State's efforts to improve the police's use of stop and search is to be applauded, she does not address the other issues regarding the fact that members of that group are disproportionately more likely to face a form of sanction, be it a caution rather than no further action, and more likely to be charged with an offence rather than given a caution, bearing in mind that the Secretary of State says that out-of-court disposals would be used in "appropriate cases". Our concern is that without it being a statutory defence, with the burden of proof lying on the accused, there is regrettably—to judge by evidence of what has happened in the past—a danger that the powers in the Bill will disproportionately affect black and minority-ethnic communities and will therefore discriminate against them, as the advisory council's letter points out.

Baroness Meacher: My Lords, all that needs to be said has been said. I will simply express my support for these amendments, on the grounds that for a child of 14 to get a criminal record will be far more serious for them than any damage that might be done by some rather dubious psychoactive substance. That is not to say that I in any way support young people taking these things, but we know that they do. All the literature—

certainly that from Portugal—suggests that avoiding a criminal record is an enormous plus for a young person; they are much more likely to remain with their studies and get a job when they leave school. It is therefore a very serious matter to include these activities, whether it is sharing a substance with a group of friends or some such activity. The Government designate such an activity as a criminal offence at their peril in terms of the longer-term consequences, as well as the probable long-term costs to the Government, of dysfunctional young people, unemployed people and people getting into a criminal lifestyle.

Lord Ramsbotham: My Lords, I, too, support these amendments but for a slightly different reason. I have a Private Member's Bill, which I hope will come forward, to amend the Rehabilitation of Offenders Act. In it is something that I found when inspecting the prisons in Barbados. I found that at the age of 18 everyone's criminal record was examined and everything except for violent and sexual offences was expunged so that a child did not take forward a criminal record after that age. I mention this merely because I think we ought to take very seriously the matter of people—particularly young people—taking forward into later life an early criminal record.

Lord Hardie (CB): My Lords, I certainly sympathise with the observations of the noble Lord, Lord Ramsbotham, about the desirability of avoiding young people having convictions. However, I should like to take issue with the comment of the noble Baroness, Lady Meacher, about the prosecution of a 14 year-old. As a former Lord Advocate, I know that the prosecution will always take into account the circumstances of an offence. If we are faced with a 14 year-old who has supplied a psychoactive substance or cannabis to his friends, it is likely that there will be no prosecution—whatever his ethnic background,as far as the prosecution service in Scotland is concerned, I can assure the noble Lord, Lord Paddick, and I would be very surprised if the English prosecution service took a different view.

However, I am concerned about the introduction of the defence proposed by the noble Lord, Lord Paddick, because one has to have regard to all the circumstances of the offence. I speak having, about 18 months ago, received a communication from a mother who was separated from her husband. Her teenager son had gone to stay with his father for a weekend and he went to a head shop. He obtained a psychoactive substance and, sadly, as a result of that he died.

I am concerned about this amendment. Suppose someone supplies a psychoactive substance to his friend, the consequence of which is death—are we to say that there should always be a defence that he should not accept responsibility for the consequences of his act? I am not thinking of a 14 year-old. What about a 20, 30 or 40 year-old who supplies such a substance to a younger person who happens to be his friend and the consequence is death?

I share the view of the Home Secretary that this is a matter that ought to be left to the discretion of the prosecutor, taking into account all the circumstances. If a defence is open to an individual in any circumstances, that may mean that people who cause very serious damage to a family do not face up to the consequences. Therefore, I am against the amendment.

5.45 pm

Lord Bates: My Lords, it is very fitting that we come to the consideration of this amendment moved by the noble Lord, Lord Howarth, who put, as he always does, a very persuasive case. The noble and learned Lord, Lord Hardie, then spoke about the consequences of the ease of access to and availability of these very dangerous drugs in our society. That, in a sense, represents the parameters of our debate. This, in the whole list of recommendations in the letter from the ACMD to the Home Secretary, was probably the one to which we were most strongly opposed. I understand that, when preparing such legislation, there is a need for people with great expertise in science but there is also a need for people who focus on the legal aspects and how the legislation will be interpreted.

We are very mindful of the danger of creating a loophole effectively around the social supply of such substances. Later, we will debate what might constitute personal possession. We have said that people would not be prosecuted for the personal possession of substances but a lot of people have said that that is very difficult to define. There have been lots of attempts at doing so. In the Drugs Act it was specified as an absolute quantity. That was then felt to be unworkable and it was left to the judgment of the constable on the ground.

You could provide a defence for carrying a large quantity of psychoactive substances by saying that they were for social purposes, but the people behind these drugs have proved to be incredibly adept at finding their way around legislation. They are very savvy, being aware of the descriptions in the legislation to the letter, and they organise their activities around that. We feel that this would be a very wide loophole that would be exploited in ways that we did not intend.

The Bill seeks to tackle the trade in psychoactive substances, and social supply is central to how the trade operates. Social supply by friends was identified by the expert panel as the most common source for acquiring psychoactive substances. Therefore, it is clear that social supply, alongside sales from head shops and purchases online, is critical to sustaining the market in these substances. In its recommendation to create a general prohibition, the expert panel did not suggest excluding social supply, nor has this approach been taken in other jurisdictions. Moreover, in this respect the Bill mirrors the position taken towards substances that are subject to a temporary-class drug order.

We need to tackle the supply routes to remove these potentially dangerous substances from our communities. Excluding social supply from the scope of the Clause 5 offences would significantly weaken the framework of the Bill, not least by creating a loophole that could easily be exploited. Excluding social supply would also send out a confusing message. If a group of friends were poly-drug users and bought drugs on behalf of each other, they would be committing an offence if they supplied, say, cannabis to one another but not if they supplied a psychoactive substance.

[LORD BATES]

The approach taken in the Bill—this is a point that the Home Secretary underscored in her response to the ACMD—does not mean that enforcement action will focus on social supply networks. Nor does it follow that someone arrested for a social supply offence will necessarily face prosecution. We are simply saying, as did the noble and learned Lord, Lord Hardie, that that ought to be a matter for the prosecutors to decide. We are very conscious of the impact of criminalising young people—a point raised by the noble Lord, Lord Ramsbotham. That is why we have not made personal possession an offence, but social supply would be such a wide area that it would be too open to exploitation.

The Bill contains both criminal and civil sanctions, which will enable law enforcement agencies to adopt a proportionate response to offending behaviour. In addition, the police and the Crown Prosecution Service will exercise their professional discretion, taking into account all the circumstances of the offence and the offender. The public interest test will apply to any prosecution, and there will be an option of pursuing an out-of-court disposal in appropriate cases. I take the point that the noble Lord, Lord Paddick, made, particularly in relation to BME communities, which I shall come to in a moment.

Ultimately, however, if the circumstances justify a prosecution, that option should remain open. Moreover, these amendments would make the task of the police and prosecutors in tackling commercial suppliers that much harder. The amendments, if made, would add another element to these offences which would need to be proven, with drug dealers attempting to evade justice by seeking to argue that they received no payment for the transaction in question.

I know that the advisory council was particularly concerned to ensure that the enforcement powers in the Bill did not result in a discriminatory impact on members of black and ethnic minority groups. The Government fully share these concerns. In Committee, we had a good debate on the stop-and-search powers in the Bill, and I subsequently wrote to the noble Lord, Lord Paddick, to explain the necessity for these and how they would avoid the need for the exercise of more intrusive powers of arrest. In addition, my right honourable friend the Home Secretary made it clear that we must reform the way stop-and-search powers are used and we are committed to legislate to mandate changes in police practices if the exercise of these powers does not become more targeted and stop to arrest ratios do not improve.

As was said during debate on the previous group of amendments, we greatly value the advice from the advisory council on the provisions of the Bill. This is the one recommendation that it made which we are unable wholly or partly to accept. To exclude social supply would create a significant loophole in the framework of the Bill, and I therefore ask the noble Lord to withdraw his amendment.

Lord Paddick: The noble Lord does not appear to have addressed the issue of disproportionate charging of black and minority ethnic suspects or the fact that, in terms of caution rather than no further action being taken, disproportionate action is being taken by the police and the Crown Prosecution Service. This is according to public data; it is not something that I am plucking out of thin air—it is an established fact. This Bill could make that situation worse. The noble Lord has not addressed specifically those issues.

My understanding of what he said was that it would be anomalous if someone who supplied cannabis to their friends would be prosecutable but that, if the amendments went through, the person would not be prosecuted in relation to supply of a psychoactive substance covered by the Bill. However, personal possession of cannabis is a criminal offence but simple possession of a psychoactive substance covered by the Bill is not a criminal offence. That is another anomaly and is not a persuasive argument against these amendments.

Lord Bates: The noble Lord made a good point on stop-and-search powers and I know that a significant body of work is going on in relation to it. I was going to quote some of the reports on it and the actions that the Home Secretary has requested and taken on recording the data on how stop-and-search powers are used, particularly vis-à-vis black and minority ethnic communities. Perhaps I can undertake to write to the noble Lord and set that out in some detail. Because it is such a serious point, the ACMD was right to raise it in its letter, and the Home Secretary was right to acknowledge that point in her response. However, that does not take away from the wider point that allowing a defence or allowing for a provision relating to social supply of new psychoactive substances would provide a loophole that would be open to exploitation. It is for that reason, rather than the other, that I ask the noble Lord, Lord Howarth, to withdraw the amendment.

Lord Howarth of Newport: My Lords, I am grateful to everyone who has spoken. We know and applaud the Home Secretary's drive to reform stop and search, and her desire that its incidence should be greatly reduced, not least in light of the findings that a high proportion of stop-and-search operations have been conducted illegally. However, the noble Lord, Lord Paddick, with all his experience of policing in Brixton, has raised a fresh point in our debates that is exceedingly important. It is that stop and search is producing a disproportionate incidence of cautions and charges among BME communities. I hope that the Home Office will reflect carefully on what the noble Lord had to say.

The noble Baroness, Lady Meacher, put it to us that the charge that a young person might receive for supplying a psychoactive substance to their circle of friends, although not doing so for profit, might actually be more damaging than the effect of the psychoactive substance. That would often be the case. She mentioned Portugal, where the health-led approach is very different from the comprehensive prohibitionist approach that the Government have espoused and are reinforcing in this legislation. It is interesting that the European monitoring centre's statistics show us that Ireland, which has used the approach that the Government are now seeking to legislate to provide in this country, has the highest incidence of consumption of new psychoactive substances among the many European countries covered by this survey; and Portugal has the lowest. There are lessons to be learnt from that.

The noble Lord, Lord Ramsbotham, reminded us of the dangers of a criminal charge getting on to a young person's record and being carried through into adulthood—and what a millstone that is around their neck. I should imagine that that is dangerous psychologically and in all sorts of practical ways.

I take seriously the intervention by the noble and learned Lord, Lord Hardie, who asked us to consider the extreme circumstances in which someone, perhaps with innocent intentions, had provided a substance to a circle of friends but it had all gone horribly wrong and someone had died. The noble and learned Lord said that the right solution was to leave the question of prosecution to the judgment of the prosecutor. I was pleased that the Minister indicated that that, too, would be his view—that discretion, which can be used by the police and the prosecuting authorities, is provided in the Bill. The intervention underlined how important the exercise of that discretion is.

I understand why the Home Secretary would not want to create a large loophole in the coverage of the legislation, and I was pleased that the Minister told us that the Government were seeking as far as they could to minimise the criminalisation of young people through this legislation and that he shares the concerns expressed by the noble Lord, Lord Paddick. I am sure that the House of Commons will want to think further about this issue. In the mean time, I beg leave to withdraw the amendment.

Amendment 13 withdrawn.

Amendment 14 not moved.

Amendment 15

Moved by ***Baroness Hamwee***

15: Clause 5, page 3, line 7, leave out "is reckless as to" and insert "should know"

Baroness Hamwee: My Lords, the amendment is in the name of the noble Lord, Lord Lucas, who cannot be here today. One should perhaps keep one's mouth shut, because when I said to him, "I think you have a point", he said, "Will you move my amendment for me, then?".

The amendment would change the requirement in the clause that the supplier "knows" or is being "reckless" as to whether the recipient would,

"be likely to consume the substance for its psychoactive effects",

to a requirement that he "should know" that that was the case.

I have seen the letter from the Minister to the noble Lord, Lord Lucas. It seems to me that the examples drawn on by the Home Office to defend the recklessness provision are rather different from the situation envisaged by the Bill. Reference is made to two provisions in legislation where retailers are required to consider the age of a purchaser, and I know that the noble Lord is particularly concerned about retail. A third reference is made to the Licensing Act, under which retailers are prohibited from selling alcohol to people over 18 who are drunk—fair enough.

6 pm

However, there is a clear distinction between being reckless as to something and whether one ought to know. In my reading of it, "reckless" means heedless of the danger, although I am sure that there is relevant case law. Examples also used in the letter are about the recklessness test covering whom a product is being sold to—for example, whether the individual is known for drug taking or substance abuse; the substance's intended use, which I think is quite difficult; and whether it would be unusual for a particular individual to purchase such a substance. Again, age is referred to. I do not think that it is quite that easy. I wonder whether a retailer would be more or less reckless if I, a usually well-dressed, middle-class woman, went to buy building materials that could be consumed in some way. My reason for doing so would be that I did not want the builder to break off from his work. Would that be different from the builder, in a dirty T-shirt and torn jeans, going to buy the same materials for the same purpose?

I make one important request of the Minister. I know that the Home Office is considering guidelines for retailers and is working with the Association of Convenience Stores and the British Retail Consortium. I am very sympathetic to their concerns. Will those guidelines have been advanced to a stage that will be helpful to Parliament by the time the Bill reaches the Commons so that the debate on the points that the noble Lord, Lord Lucas, is concerned about can be addressed in the context of the draft guidelines? I beg to move.

Lord Bates: I thank the noble Baroness for presenting this amendment on behalf of the noble Lord, Lord Lucas, who clearly thought that discretion was the greater part of valour, being temporarily absent from your Lordships' House. This is a subject that he feels very strongly about and one that he raised in Committee. We took that very seriously and it resulted in another letter, on 8 July, to which the noble Baroness has referred.

I signal to officials who may be listening to the debate that I want to respond particularly to the point about the guidance that will be developed as a result of the dialogue that is taking place with the Association of Convenience Stores. I say in parentheses that those stores are very supportive of what we are trying to do because a lot of criminal disruptive activity congregates in areas where there are head shops. That is of concern to their members who are in the vicinity of those shops from a public order point of view. I am therefore keen to be able to provide an answer to the question of when guidance might be available.

For a prosecution to be brought for the supply offence in clause 5(1), the prosecution must show, among other things, that the defendant knew, or was reckless as to whether, the psychoactive substance supplied was likely to be consumed by the person to whom it was supplied, or by another person, for its psychoactive effects. The mental element of the offer to supply offence in Clause 5(2) requires that the defendant knew, or was reckless as to whether, the substance that was being offered was likely to be consumed by the person to whom it was supplied, or by some other person, for its psychoactive effects. In formulating these offences, the mental elements

[LORD BATES]
were carefully considered. 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 supplying was a psychoactive substance and likely to be consumed for its psychoactive effects. The Government settled on including the recklessness threshold. A test of "knows or is reckless" is commonly used in criminal law, both in the United Kingdom and other common law jurisdictions. Indeed, the formula is used in Ireland's Criminal Justice (Psychoactive Substances) Act 2010.

Recklessness is where a person is aware of a risk that a result may occur and unreasonably decides to run that risk anyway. As recklessness involves an actual awareness of the risk, the person's degree of knowledge, or at least understanding, would be relevant. For example, the degree of knowledge a supermarket worker would have about psychoactive products would be less than a member of staff in a household store used to selling solvents, and less still than a member of staff in a head shop, whose trade is predominately in these substances. The mental state of each would be considered separately.

In seeking to substitute a "should know" test, as the amendment proposes, my noble friend is intending to set a higher bar for prosecution and conviction. We need to bear in mind that the Bill is, in part, directed at stamping out the reckless retail trade in these potentially harmful substances. We know that head shops use a variety of ruses in order to stay on the right side of the law, including labelling their products as "plant food" or "not for human consumption" when they are fully aware that their customers are consuming these substances for their psychoactive effect. The recklessness test is directed at such ruses and, for that reason, we would not want to lose it.

This does not mean that everyone on a checkout at Tesco or Homebase needs to subject all customers buying tubes of glue to a full-on interrogation. But they will need to think twice if two or three young people attempt to buy multiple tubes of glue and nothing else or they are making repeated purchases. The Intoxicating Substances (Supply) Act 1985 already requires a retailer to be alert to such cases, and although that legislation applies only where the supply is to persons under 18, we do not envisage that this Bill will significantly change the burden on retailers. If that were the case, the Association of Convenience Stores would not be among those welcoming the Bill.

At this point I should make it clear that the Home Office intends to work with retail trade associations, such as the Association of Convenience Stores and the British Retail Consortium, on the legislation in the run-up to its implementation. We need to provide simple messaging to ensure that the requirements of the law are clear. As to the timing, we are working with the retail trade associations to produce guidance that meets their requirements. That work is ongoing and we need to see the final form of the Bill. I regret that I cannot commit to having draft guidance ready in time to share with noble Lords while the Bill is still going through its parliamentary stages.

Once retailers have knowledge of the law, we would expect them to consider whom they are selling the product to and make an assessment. For example, what product are they selling, what is its primary use, does it fit the profile of the customer and are there any wider considerations that the retailer can infer from the transaction? The guidance will illustrate the grounds that should be considered.

We need to be reasonable. If a retailer genuinely did not know the law, they need to be educated—the civil sanctions in the Bill allow for this, providing for a graduated response where appropriate—but where retailers either know or are reckless as to the consequences of their actions, they cannot be absolved of responsibility and action can and should be taken.

In any event, the proposed substitution of a "should know" test would be likely to capture some people who would not be caught by the recklessness test. This is because the "should know" test would capture someone who did not appreciate the risk but ought to have known that the substance was likely to be consumed for its psychoactive effects. Such a person would not be caught by the current recklessness test. This would appear to be contrary to the objectives of my noble friend and the noble Baroness who moved the amendment.

I hope that I have been able to satisfy noble Lords on the provisions of the Bill as it relates to retailers and therefore ask the noble Baroness to withdraw the amendment at this stage.

Baroness Hamwee: My Lords, it would be inappropriate for me to take the matter any further. I am sorry that the guidance—or guidelines; I am not quite sure which I should have said—will not be ready. I realised that it would not be ready before Third Reading, but I had hoped that it might be ready for the Commons to take some cognizance of it. I remain a little concerned, but, in the circumstances, I beg leave to withdraw the amendment.

Amendment 15 withdrawn.

Amendment 16 not moved.

Clause 6: Aggravation of offence under section 5

Amendment 17

Moved by ***Lord Rosser***

17: Clause 6, page 3, line 20, leave out "or B" and insert ", B or C"

Lord Rosser: The purpose of this group of amendments relating to prison premises is to make supplying or offering to supply new psychoactive substances on prison premises an aggravating feature affecting the seriousness of the offence. It was the Secretary of State for Justice who said in the Commons just three weeks ago that,

"there is an unacceptable level of drug use, both of illegal drugs and so-called legal highs, in our prisons".

In the same exchange, the chairman of the Home Affairs Committee in the other place said:

"Thirty-five per cent. of prisoners have a drug addiction and 6% acquire that addiction while in prison".—[*Official Report*, Commons, 23/6/15; col. 737.]

A succession of inspection reports produced by the prisons inspectorate, covering Highpoint, Bristol, Liverpool and Deerbolt prisons among others, has shown high levels of use of synthetic cannabis.

There is a market in drugs in at least some prisons, and it can lead as well to incidents of bullying, harassment and debt. The taking of psychoactive substances can undermine safety in our prisons. It may exacerbate unpredictable behaviour and the threat of violence and, in certain instances, increase the risk of suicide and self-harm. In a bulletin this month, the Prisons and Probation Ombudsman wrote:

"The use of New Psychoactive Substances … is a source of increasing concern, not least in prison. As these substances are not allowed in prison, and also because they are difficult to test for, it is possible that in addition to the cases in this bulletin there were other prisoners who had used such drugs before their death".

The bulletin goes on to look at 19 deaths in prison between April 2012 and September 2014 where the prisoner was known or strongly suspected to have been using NPS-type drugs before their death. Continuing, the ombudsman wrote:

"NPS cover a range of substances, and the precise health risks are difficult to establish. However, there is emerging evidence that there are dangers to both physical and mental health, and there may in some cases be links to suicide or self-harm. Staff and other prisoners may be at risk from users reacting violently to the effects of NPS … Trading of these substances in prison can also lead to debt, violence and intimidation. Once again, this creates the potential to increase self-harm or suicide among the vulnerable, as well as adding to the security and control problems facing staff".

Drug addiction is a key factor that leads to individuals committing crimes, and if some end up in prison as a result of the crimes that they have committed, they ought at the very least to be in a safe and constructive environment where action can be taken to wean them off drugs and be one part of the process of reducing the prospect of them reoffending when they are released from prison. However, that is not always the case. The prison environment is potentially profitable for a dealer because of the vulnerability of many of the people inside and the fact that it is literally a captive market.

6.15 pm

The Government have rightly made it an aggravating feature of the offence of supplying psychoactive substances if it is carried out within the vicinity of a school where young people are present at the time of the offence. Young people can be vulnerable; so, too, are many in prisons. People who have already committed offences in part or in whole because of drugs may be vulnerable again when they finish their sentence, particularly if they have continued to take such substances in prison. It is the height of irresponsibility, callousness and indifference to vulnerable people, as well as the height of greed, to be willingly involved in the supply of psychoactive substances on prison premises and in the financial rewards that result, whether through doing it during a visit to the prison as a visitor, or as a rogue member of the prison staff, or as a contractor, subcontractor or supplier working at or in the prison, or as the sender of parcels or letters to the prison containing such substances, or through being a prisoner directly involved in the supply chain of such substances, or by whatever other means. For such people, the penalties for the offence need normally to be greater, because they know, and we know, that they are deliberately targeting with drugs very vulnerable people in a captive location to make money for themselves, and in so doing defeating the objectives of trying to get such vulnerable people off drugs and thus reducing the likelihood of their reoffending once they have served their sentence, to the benefit of society as a whole. There may of course be some involved who have been coerced against their wishes into playing a minor and unwilling role in the supply chain, but if that is shown to be the case, this would need to be taken into account.

In some cases, the prison authorities may feel that such an offence should be dealt with through internal prison disciplinary procedures; but particularly for those who are not prisoners, playing a very minor role, the courts should be the place for such an offence of supply or offering supply to be heard and dealt with, with the statutory requirement to regard supplying psychoactive substances on prison premises as an aggravating factor when determining the seriousness of the offence.

Obviously, court proceedings are not the whole answer or even the main answer to the problem of new psychoactive substances in our prisons. The ombudsman's report to which I have already referred called for more training and education about the substances for both prisoners and prison staff. This is an issue that I understand the National Offender Management Service has been and is seeking to address.

The level of seriousness of the offence and the likely associated sentence send a message about how a particular kind of offence is regarded and will be dealt with both now and in the future. I hope that the Government will feel able to accept the amendment, which does not weaken but strengthens the Bill and identifies a further area of particularly serious concern where psychoactive substances are supplied in addition to the vicinity of a school already covered in the Bill; namely, on prison premises. I beg to move.

Lord Kirkwood of Kirkhope: My Lords, Amendments 18 and 20 in this group are in my name and that of the right reverend Prelate the Bishop of Bristol. The theme is the same as that of the other amendments: we are talking about the aggravation clauses in the Bill. Our amendments would enhance the protection available to children under the aggravation clauses in two simple respects: first, by making it a statutory aggravating factor where children live in supported accommodation and are being importuned by potential offenders pushing drugs outside that accommodation; and, secondly, for "vulnerable child" to mean young adults under the age of 18, particularly 16 and 17 year-olds.

I am grateful to the Minister and his officials for their time. Together with the Children's Society we had a productive exchange, which I found encouraging. I am also grateful for the amount of work done by the church because I know that it has first-hand experience and works closely with the Children's Society. I hope that the right reverend Prelate will add some of his wise counsel and experience to this amendment.

Two points were fairly made in the course of the meeting yesterday and I shall summarise them quickly. The Minister's view is that the non-statutory Sentencing

[Lord Kirkwood of Kirkhope]
Council's guidelines as currently cast are sufficient. Having reflected on that—it is a fair point to make—I think the House would need to bear in mind that sentencing guidelines are, after all, merely additional factual elements that the courts are not obliged to consider when they weigh in the balance whether to upgrade or downgrade the severity of the sentence in the context of the facts and circumstances of the case in front of them. I do not think we are in agreement on the relative value of non-statutory versus statutory aggravating circumstances and I hope the Minister will reflect on that.

The evidence available to me is that young, vulnerable children are a magnet for drug-pushing offenders. Drug pushers know how to target them and there is evidence that that is happening. There is evidence from the Children's Society, which I had not seen before—it makes sense when you think about it—that there is an unjustified, assumed prejudice that the hoodie image of a 16 to 17 year-old equates to young people being the authors of their own misfortune. In an insidious way, that plays into some elements of the criminal justice system which think that they are not in need of protection. That is wrong. We need to be clear that many of these 16 and 17 year-olds, although they may present publicly in a threatening or quasi-threatening way, are vulnerable and that some of their behaviour is a result of the damage they have experienced in earlier stages of their lives. We need to discount the negative attitude to younger people when we are considering the protection that they need. They are specifically targeted, both sexually and criminally, by the criminal fraternity. They are very vulnerable and protecting them by making the aggravating factor a statutory protection would help them.

At the meeting yesterday, the Minister again fairly made the point that it is quite tough—the noble and learned Lord, Lord Mackay of Clashfern, made a valuable contribution against me—to define an area outside sheltered accommodation because how would the potential offender, the drug pusher, know that he was outside such a premises? The evidence from the Children's Society that I saw was compelling. I am not saying that the noble and learned Lord, Lord Mackay of Clashfern, is naive, but in this day and age it is naive to think that people who are about this kind of nefarious business do not know precisely where the 16 and 17 year-olds who are most vulnerable can be found. It would only take you 10 minutes in any local community to find out information of that kind. However, it is difficult to define in statute. When you are trying to prove mens rea beyond reasonable doubt, that is not a defence. It is too easily available to offenders who are arraigned at the bar on a charge of that kind.

My response to that would be that for that reason there is not a great deal of difference between that and being outside a school. The definition of being outside a school in the sentencing guideline is broadly drawn. It includes bus stops on the way to school and places where children gather an hour before and an hour after school. It is not only standing at the school gate that would be a bang-to-rights aggravating factor in the circumstances of any case. The context of supported accommodation is pari passu with the school provision that already exists in the 1971 Act. Indeed, these amendments seek to create a parity and similarity. They are modelled on the provisions of the Misuse of Drugs Act 1971.

These amendments seek to send a strong signal to members of the criminal fraternity that if they do this they cannot avoid the consequences of an aggravating factor being introduced into their sentencing. They will ensure consistency with the provisions of the 1971 Act, oblige courts to take such circumstances into account and increase protection for vulnerable 16 and 17 year-olds.

Again I thank the Minister and the right reverend Prelate for their support for these amendments. These may be narrow points but for the young people for whom we are trying to provide additional protection they are extremely important. I am grateful for the careful consideration the Minister has given to these points and I look forward to hearing what his attitude is now that he has had the chance to reflect further overnight on the useful meeting we had yesterday.

The Lord Bishop of Bristol: My Lords, I was glad to add my name to the amendments in the name of the noble Lord, Lord Kirkwood, and I thank him for his clear exposition of why they are important. They are intended to strengthen the legislation although, as a result of the conversations with the Minister yesterday, we recognise that there might be some practical difficulties around them. Nevertheless, I hope the Minister will listen carefully and continue the exemplary way in which he has been prepared to engage with colleagues on this issue. I thank him for that.

These amendments are important for a number of reasons. First, those of us who have any kind of jurisdiction around our cities at this time know full well that there are ruthless men and women who will go to any ends to exploit whoever is exploitable—and, of course, children and young adults are a very exploitable group.

Secondly, the Children's Society—I am grateful for its briefing around this subject—recently polled some 16 and 17 year-olds who had felt the pressure to take drugs and to misuse alcohol. Those who have been able to withstand that pressure made it very clear that the reason they were able to do so was the positive impact of their families on the decisions that they might or might not have made. The flip side of that is that children who have no family in their immediate vicinity are made even more vulnerable by the fact that they may not be living with their family or may have lost contact with them altogether. This is a strong reason for the Minister to give careful consideration to these amendments. As I say, they are meant to strengthen this legislation.

Drugs in general but alcohol and psychoactive substances in particular are supplied not as an end in themselves but as a tool to groom children. Last year in my city 13 men were imprisoned for giving alcohol and drugs to young women and girls, some as young as 13. In return for supplying them with drugs, the girls were expected to have sex randomly with older men. I am sure that all noble Lords are repelled by such things.

6.30 pm

I am told that in the north-east a group of young men in so-called supported accommodation was targeted by older men looking to exploit them through criminal activity. The giving of psychoactive substances for free gave these ruthless men the opportunity to say to the young men, "You are now indebted to us and you will pay back your debt with interest". The result was that they were deployed in aggressive begging and criminal activity. In a way, "supported accommodation" is a bit of a misnomer. These premises are not regulated in the same way as children's homes. Some 16 and 17 year-olds can be in the company of people who are being rehabilitated from drug addiction or have come out of prison.

I am concerned that careful consideration is given by the Minister and your Lordships' House to these important amendments. I realise that there is an issue of whether these amendments should be put in legislation or whether they can be dealt with by sentencing guidelines. I believe that there is a problem and would not want to quell any discussion. If this may be a way forward, a note of caution needs to be sounded. There is some anxiety that these older children, to whom the noble Lord, Lord Kirkwood, drew attention, might be overlooked. There is some feeling that, by the age of 16 or 17, a young person might be able to make up their own mind. Therefore, I am not quite sure whether covering this in the sentencing guidelines will give the protection that the noble Lord and I would like.

Let me end where I began, by expressing the firm hope that the Minister, who has been excellent in his engagement over these amendments, might be willing to continue to further discuss these matters. I should be grateful to hear what he has to say this evening.

Lord Paddick: My Lords, I have put my name to the amendments of the noble Lord, Lord Rosser, in relation to prisoners. In Committee, I was not convinced but what I have learned subsequently has made me very much a supporter of these amendments. Earlier today, we heard the noble Lord, Lord Ramsbotham, talk about the report by the Chief Inspector of Prisons and how it highlights the problems caused by new psychoactive substances in prisons. This morning on the BBC Radio 4 "Today" programme, a prison governors' representative put new psychoactive substances at the top of the list in terms of what was causing more deaths and violence in prisons. He put it above overcrowding and lack of staffing.

A friend who is a doctor told me that he has to commit people to mental hospitals because of psychosis caused by new psychoactive substances. When one thinks of the increased dangers for people who have psychotic episodes as a result of taking these substances in a confined space such as a prison, the potential consequences clearly make this a serious issue.

The clincher for me is that prisoners are using these substances because they are not detectable in the routine drug testing of prisoners. A deterrent for prisoners who might want to use controlled substances under the Misuse of Drugs Act is that they would show up under those tests. The fact that prisoners are being pushed into using new psychoactive substances because they do not show up in these tests requires an additional sanction against those who supply these substances in prisons. That is why I very much support the amendments tabled by the noble Lord, Lord Rosser.

I turn to the amendments spoken to by my noble friend Lord Kirkwood of Kirkhope and the right reverend Prelate the Bishop of Bristol. The Minister talked about an anomaly when we discussed an earlier group. The anomaly is that selling these substances in the vicinity of schools is covered but that selling in the vicinity of other premises where there are vulnerable young people is not. Supplying these substances to people under the age of 18 again should be an aggravating factor.

I think that in Committee there was a discussion about this amendment not being reflected in the Misuse of Drugs Act, which is why there now is a further amendment tabled by my noble friend Lord Kirkwood to amend the Misuse of Drugs Act in a similar way. I would welcome hearing the Minister's response as to why it is not an anomaly that schools are covered but other types of premises are not.

Lord Blencathra (Con): My Lords, I apologise that I have not been able to be here for the whole debate. I had meetings earlier and I have others tonight. I thank my noble friend the Minister for the amount of information he has supplied. Indeed, I have not had enough hours in the day to read all the PDF attachments in my email inbox. I am sympathetic to one of the amendments; namely, that relating to children's homes or places which hold vulnerable children, or whatever is the current correct terminology. Clause 6 creates an aggravated offence for selling drugs outside a school. It seems to me an anomaly if we do not include places which hold even more vulnerable children than those in schools.

I think that in Committee my noble friend said that one of the difficulties would be that everyone can see where a school is—there are big signs and lots of children—but that drug dealers might not know when they are selling drugs in the vicinity of a children's home. I do not think that that will wash. The bad guys selling drugs know every potential outlet better than anyone else. They will know when there is a children's home and a potential outlet nearby, and they will target it. I would like to hear from my noble friend the practical difficulties about including children's homes or places which hold vulnerable children. It seems to me that they are even more important than ordinary schools.

For a few reasons, I am not so sympathetic on the point about prisoners. Drugs are a problem in prison but they should not be. There is no excuse for drugs being in prisons but certain excuses are used. We have, in my view, the ridiculous situation of completely free association. Wives and girlfriends can freely mingle with the prisoners, most of whom are male. They can hug, kiss and cuddle, and they have every opportunity to pass on drugs. I have never understood why we do not have a system where there is a glass screen between the visiting friends and relatives, and the prisoners, so that drugs cannot be so easily passed on.

In 1993, my noble friend Lord Howard of Lympne went to the Home Office. He decided to crack down on drugs and introduced springer spaniel sniffer dogs to some prisons. Two things were immediately noticeable.

[Lord Blencathra]
First, as soon as the relatives saw the dogs, they had to return to their cars to deposit the goodies that they were about to take into the prison. Secondly, there was resistance from a large number of prison officers and governors about the policy. I apologise to that very trendy trade union, the Prison Officers Association, if I misquote it. However, I was told at the time by prison officers that, if you are looking after 700 men in prison, you have to reduce the tension level. The way to reduce the tension level then was to let them have illegal access to drink, drugs and pornography. That reduced the tension levels, they said. Therefore, I do not have much sympathy for prison governors who say that there is a problem with drugs in prisons and the Government should do something about it. They have it in their own hands to tightly control drugs in prisons. However, if the noble Lord, Lord Paddick, is right that it is impossible to test for some of these psychoactive substances, we need to make sure that visiting relatives are not able to pass them on. I would be amazed if little sniffer dogs were unable to detect them. It may be difficult to do so with a blood test, but we now read in the press about sniffer dogs which can detect almost anything. Some dogs can detect whether you are about to have an epileptic fit and it should be possible to have a tighter control regime.

Finally, why stop at prisons? I consider nightclubs to be an even bigger problem. If we are to have an aggravated offence of selling drugs outside schools, what about an aggravated offence of selling them in nightclubs, or near nightclubs where young people hang out? Again, that is a large captive audience. Perhaps we should have an aggravated offence for people in positions of responsibility who commit this offence. A tiny minority of military officers or police officers may be tempted to commit this offence, but perhaps it could be an aggravated offence. Off the top of my head, I can think of a few areas where I would like to see an aggravated offence introduced, but it may be best to restrict it to schools, with the possible addition of children's homes.

Lord Howarth of Newport: My Lords, whatever I may think about the general principle of the legislation, if we are to have it, I am sure it is right that there should be aggravated offences where the interests and protection of children are concerned. I support the extension of that principle to prisoners. I applaud my noble friends for tabling their amendments and other noble Lords for their amendments, and for supporting the various amendments in this group.

I say to the noble Lord, Lord Blencathra, who is set fair to close down the whole country, as far as I can see, that I understand that one of the difficulties that prison governors now face is that it has become a not uncommon practice for family members to send letters to prisoners on paper which they have previously soaked in a psychoactive substance. When the prisoner receives the letter, the thing to do is to smoke it. Therefore, this is not as straightforward an issue, as the noble Lord, of course, with his experience, very well knows. However, these are good amendments and should be supported.

6.45 pm

Lord Harris of Haringey (Lab): My Lords, I support the amendment of my noble friend Lord Rosser. As some of your Lordships know, I have spent a certain amount of time in the last year or so visiting prisons in respect of the review that I have carried out for the Ministry of Justice on self-inflicted deaths of young people in prison. Psychoactive substances were not a prime element of our report, although the Prisons and Probation Ombudsman's report issued in the last few days highlighted their increasing significance. I was struck by a discussion with the head of healthcare in an establishment who, when I asked about the level of drug use in the prison, said instantly one word, "Rife", to the embarrassment of the deputy governor accompanying us. That goes to the point made by the noble Lord, Lord Blencathra, about the prevalence of drugs in prisons, and the growing proportion of them which are these new psychoactive substances. The reason they are a growing proportion is because of their undetectability and the fact that it becomes more difficult to identify and prevent them. That is why it is important to have an aggravating factor with regard to the supply of these substances in prisons.

The Government have already legislated to prevent people throwing things over the prison wall. Although that has been reported to me as a significant problem, I am not convinced that it is the main source of drugs in prisons, nor do I think that it is the most difficult source of drugs in prisons to deal with because it is pretty obvious where things have been thrown over the wall and no doubt somebody could pick them up before the prisoners do so. However, drugs brought in from outside are often brought in by individuals. The noble Lord, Lord Blencathra, talked about issues with visiting families and friends. I think that we should also examine the possible role of prison officers in this regard. Although this is not relevant to the report I was doing, I noticed the very different search regimes that exist in prisons for visiting dignitaries such as myself and those who are visiting because they are friends or family of prisoners, all of whom are subjected to fairly rigorous search regimes these days, and the apparent complete absence of similar search regimes for prison staff. These things should be examined as there is clearly a mismatch in that area.

Again, it was right for the noble Lord, Lord Blencathra, to highlight the fact that there seems to be an underlying current of people saying, "The only way that you can maintain good order in prisons is for there to be a certain level of availability of these things". That is not the right approach—the right approach is to ensure that there is sufficient staffing, purposeful activity and focus on education and rehabilitation in the prison to ensure that availability of these things is no longer the mechanism to deliver good order. In the context of the report from the Prisons and Probation Ombudsman in the last few days and the report issued today by the Chief Inspector of Prisons, and given the level of the problem that exists in prisons, I hope that the Minister will feel able to accept my noble friend's amendment.

Lord Mackay of Clashfern: My Lords, there is no doubt that one can think of serious aggravating factors in relation to these offences. In Committee I supported the amendment tabled by the noble Lord, Lord Rosser, and the amendments proposed by the noble Lord, Lord Kirkwood. However, I understand the difficulty that there are so many possible aggravating factors

that it is very difficult to cover them all adequately, and that as they change and the circumstances change, the description of these aggravating factors may change. One of the problems is that, if you specify aggravating factors, the courts are apt to proceed on the basis that these are the aggravating factors that Parliament thought were important. Therefore, when the judge comes to pass sentence, he is inclined to give these full emphasis and possibly place less emphasis on other aggravating factors that may occur in a particular case.

At the time of the introduction of the Misuse of Drugs Act, when provision was made for aggravation, the statutory system of sentencing guidelines which has since been introduced did not exist with its statutory authority, which is binding to a substantial extent on the discretion of judges. That system has the great advantage of flexibility. To take the example of children's homes, let us suppose it emerged that the people who were seeking to take advantage of vulnerable children had changed their method and, instead of trying to give these drugs out near the children's home, found some way to get them into the children's home so that they were possibly given to the children by others. I do not know exactly how this sort of thing might happen, but these situations can develop. These people are set on trying to overcome any obstacle to distributing their drugs to all who will take them, and to a greater and greater extent, if possible. I wonder whether it would be best no longer to have a provision for particular aggravation in the individual statute, but to rely on—and if necessary make reference to in the individual statute—the sentencing guidelines system, which is a flexible, influential and effective system within the criminal justice system as a whole. That has certain advantages, but it certainly would not work against a background in which a new Bill had other aggravating factors. Then, the question is: are the sentencing guidelines' aggravating factors more or less important than those in the statute, if they happen to be different?

As I have said, I support the theory behind the amendments, but I wonder whether the more effective way of operating this within the criminal justice system is to make these amendments references to the sentencing guidelines. Instead of having a list of aggravating circumstances—conditions A, B and C—perhaps the statute before us should refer to the fact that aggravating circumstances are set out under the sentencing guidelines, for which the Coroners Act has statutory authority. That might be a more effective way of dealing with this matter—focusing on individual circumstances that are important and may change. Both the circumstances referred to—involving children, and prisons—are vital in the fight against the damage caused by such substances. Therefore, whatever happens, I want an effective method of treating these circumstances as aggravating circumstances to be before the courts on all occasions.

Lord Bassam of Brighton (Lab): Minister.

Lord Bates: Thank you. I always get a little bit worried when the opposition Chief Whip appears in the Chamber towards the end of a debate on an opposition amendment. Anyway, I am sure that it has not pre-empted my response.

I want to put on the record that the noble Lords, Lord Rosser and Lord Kirkwood, are raising matters of enormous importance. That is why when they were raised in Committee, we undertook to reflect deeply on what was said. We organised a meeting with the Children's Society, and there have been conversations since.

It would be helpful for those who picked up on the point made by my noble and learned friend Lord Mackay to be aware of the context in which we have to consider these amendments, because it is not immediately straightforward—or at least, it was not to me. The Misuse of Drugs Act 1971 contains no aggravating factors—the point that my noble and learned friend referred to. They were introduced in the Drugs Act 2005, which amended the 1971 Act and introduced an aggravated offence of supplying a controlled drug in the vicinity of school premises. The Coroners and Justice Act 2009, which was introduced under the previous Labour Government, stipulated that the courts must have regard to the sentencing guidelines. So, we moved from having nothing to having several statutory aggravating factors, and then to the commitment that the courts must not only pay due regard to but follow the sentencing guidelines. In February 2012, the Sentencing Council issued drugs offences definitive guidelines, which are the ones the courts are currently working from.

The guidelines describe the statutory aggravating factor:

"Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when the school is in use as such or at a time between one hour before and one hour after they are to be used".

Because that was put in the 2005 Act, which amended the 1971 Act, we, in preparing the Psychoactive Substances Bill, decided to follow through with that statutory provision. That is how we have arrived at this point. It was not a case of wanting to include some things and not others; we were simply following through in a consistent way the existing statutory amendments to the Act.

However, the sentencing guidelines provide other aggravating factors, for example:

"Targeting of any premises intended to locate vulnerable individuals or supply to such individuals and/or supply to those under 18".

That is very clear guidance. As a result of the 2009 Act, the courts have to follow that guidance.

Some particularly powerful examples have been given in the debate, for example by the right reverend Prelate the Bishop of Bristol. Others were drawn from the Children's Society, a meeting with which the noble Lord, Lord Kirkwood, and the right reverend Prelate the Bishop of Portsmouth attended yesterday. We listened to examples whereby new psychoactive substances are used as a tool to groom young vulnerable children and to lure them into a dependency on criminal gangs. It was reminiscent of the debate we had during consideration of the Modern Slavery Bill, when we heard about the use of such tools to elicit dependency. However, it is clear that the sentencing guidelines refer to premises in which the intention was to locate vulnerable individuals.

Essentially, the debate on these amendments distils down to whether we deal with everything in statute—in other words, we turn the clock back to before the

[LORD BATES]
Sentencing Council, before the guidelines, before the coroners' board and before the 2005 Act—or we take robust action to ensure that the guidelines are updated and reformed to reflect the concerns that have been drawn to our attention, not least by Her Majesty's Inspectorate of Prisons, as we heard this morning, by the Prisons and Probation Ombudsman, by the Children's Society and by others. Of course, the report of the noble Lord, Lord Harris, on deaths in custody, was published a couple of weeks ago, and I am sure the Justice Secretary is considering it.

All these things have to be taken into account, and I undertook to explore this issue with my right honourable friend Mike Penning, who leads on this policy area and is a Minister not only in the Home Office but in the Ministry of Justice. In the days when the Home Office used to deal with everything to do with prisons, some of these decisions were slightly easier to make; however, in Mike Penning we have someone who is a Minister in both departments.

We had a long discussion this morning about this. The view was that we wanted to listen carefully to what has been said. It was drawn to our attention immediately, particularly with the potential targeting of children's homes and accommodation, and the examples that we have heard from the Children's Society and the church, that action needed to be taken. My right honourable friend the Minister for Policing, Crime and Criminal Justice will therefore be writing to the chair of the council, the Right Honourable Lord Justice Treacy, to draw this debate to his attention and to invite the council to take your Lordships' views into account when considering what changes to the guidelines on drugs may be required as a consequence of the enactment of this legislation. That is going to happen.

I think and I hope that that might go some way to addressing the amendment of the noble Lord, Lord Kirkwood, in particular, and with the promise that we want to continue the dialogue with the Children's Society, which I thought was immensely helpful, as this legislation goes through—

7 pm

Lord Kirkwood of Kirkhope: I am grateful to the Minister for that very helpful suggestion. For the avoidance of doubt, the intention of our amendments is to treat school environments and supported accommodation environments pari passu within the legislation so that they are on a par. I am agnostic about where the provision lies as long as they are treated equally across the legislative platform.

The other thing, of course, is that there is a different set-up in Scotland. I hope that the offer the Minister has made to write would be to other jurisdictions and criminal justice systems within the United Kingdom—if he has that power.

Lord Bates: I am looking for counsel from the noble and learned Lord, Lord Hardie, as a former Lord Advocate, as to whether we have that power. We talked about that yesterday. I think Scotland is in the process of establishing a sentencing council—

Lord Hardie: Perhaps I might assist the House. Of course, this is a devolved matter and it would be for the Scottish Parliament to deal with the question of sentencing. But the reality is that the courts in Scotland take into account aggravating factors such as drug offences committed in prison, and it is a matter of practice in Scotland that judges will impose a higher sentence on someone who has introduced drugs into prison. I am pretty confident that that would follow in Scotland if this Act comes into being.

Lord Bates: I am very grateful for that. Perhaps we should take a little bit more time over this. There are some provisions in the current statutory guidance; for example, if the offence occurs in the vicinity of a school one hour before or one hour after—so the vicinity of a school is defined. My first instinct—this is not our official position because we are discussing this—is that the terminology should be something around targeting any premises intended to locate vulnerable individuals or the supply to such individuals, so perhaps a broader range might be helpful in this regard. That will certainly be contained in that provision. We are going to write to the Sentencing Council. We will wait to see whether the Sentencing Council responds as quickly as the ACMD to letters from the Home Office, but we may have some responses in the latter stages of the Bill as to what its thinking is.

Whether we use the sentencing guidelines or statute to tackle these issues, particularly prisons—and I am very mindful of the examples that were given and, of course, the remarks of my noble friend Lord Blencathra about anomalies—in the current statutory sentencing guidelines aggravating factors include an offence committed while on bail or licence, but there does not seem to be reference to an offence committed while being detained in prison. Of course, that is because the argument is that these are covered by prison regulations but there is no doubt, just as the Children's Society said, that over the past few years new psychoactive substances have gone from being an issue that was barely ever mentioned to now being its top concern. To have that example given this morning on the "Today" programme, with someone saying that this comes ahead of many other pressures—top of the list of concerns—shows that it is clearly growing in importance. Of course, the intervention of the ombudsman adds to that.

In the light of that and the letter that my right honourable friend Mike Penning will write to the Sentencing Council to ask it to take into account the views expressed in your Lordships' House in this debate, including on this amendment, about the problem of these new psychoactive substances in prisons and on the prison estate, it may be that there is scope to go further on this issue. But I would be very happy to continue a discussion with the noble Lord, Lord Rosser, about how we might go further, particularly on whether the personal possession of new psychoactive substances in prison should be an offence. I am very happy to look at whether we could go further on that and perhaps look at an amendment that could be introduced later on.

I should also make the point that going down the route of the sentencing guidelines we have laid out here is probably more likely, because it goes with the grain

of the current process of advising on sentences and for the courts to have regard to that. We should wait to see the Sentencing Council's response to my right honourable friend Mike Penning's letter, which has either gone today or will go tomorrow, and see if there is more that can be done at a later stage. I believe that we are travelling in the same direction here. We recognise that this is a growing problem. We want to deal with it and it is a question of what is the most effective way to ensure that yet again we do not create unintentional loopholes, which are exploited by the people who are the very target of this legislation. In that spirit, perhaps the noble Lord might consider withdrawing his amendment.

Lord Rosser: Before I respond, could I be clear about what the Minister is or is not offering? Is he offering to come back at Third Reading on this issue? I sense that he is not, but he is the one who has to tell me if he is talking in those terms, which obviously would influence my decision. He has not, as I understand it, made any commitment to provide amendments along the lines we have suggested when the Bill reaches the Commons either. If I have understood him correctly—that he is not offering to come back at Third Reading on this issue of prisons and he is not offering to table amendments along the lines of our amendment in relation to prisons when the Bill is in the Commons—that will influence what I have to say. But I am asking the Minister to say whether he is offering to come back at Third Reading or to table amendments along the lines of our amendment to the Bill when it gets to the Commons.

Lord Bates: The principal point, which is about dealing with the issue of prisoners, is partially dealt with by the action that is being taken today or tomorrow—we do not have to wait until Third Reading—which is the letter from the Minister for Policing, Crime and Criminal Justice to the chair of the Sentencing Council, asking him to take into account the views of your Lordships' House expressed in these two areas.

The noble Lord will know, from when he was in government, that a certain process needs to be gone through before formal amendments can be laid. To be entirely frank, I doubt whether I can go through all that process of the communication with the different departments and get the clearance to lay an amendment in time for Third Reading. It is likely to be when the Bill arrives in another place. None the less, I hope that the noble Lord might feel that there is enough there, along with our good will in supporting the thrust of what he is seeking to do, for him to withdraw his amendment at this stage.

Lord Rosser: The Minister has not given me a commitment to come back at Third Reading, and I am not surprised. Neither is there a commitment that when the Bill gets to the Commons, amendments along the lines that I am proposing will be put into the Bill by the Government. I think that is a fair summary of what the noble Lord has said.

Lord Bates: I am sorry to intervene on the noble Lord, but he may end up with something better for tackling the problem in the response of the Sentencing Council to the concerns raised in this debate by him and by others.

Lord Rosser: I am also reflecting on some of the arguments that have been made. There is an argument in relation to the 2005 Act; there have been others as if to say, "We don't want to put things in the Bill because circumstances may change". In thanking all noble Lords who have spoken in this debate, I say that the reality is that—for the reasons that the Minister explained—the Bill contains a provision that it will be an aggravating feature to supply or offer to supply such substances in the vicinity of a school. Indeed, as I understand the Minister to have said, that has been in legislation for some time. In other words, this issue has not arisen and then suddenly moved on or disappeared.

Likewise, the issue of drugs in prison is not particularly new. We have an issue with new psychoactive substances because they are relatively recent. We are also in a situation where the issue is clearly significant in prisons. It has been commented on by the Chief Inspector of Prisons and by the ombudsman. It has even been commented on by the Secretary of State for Justice. I do not think that the Minister is going to come to the Dispatch Box and tell me that he has any reason for believing that the issue of drugs in prisons is going to disappear in a short time.

This is an issue which needs addressing, and in the same way as the issue of supplying or offering to supply in the vicinity of schools has been addressed—namely, by making it a statutory aggravating feature reflecting the seriousness of the offence. It is of course then for the court to determine what the sentence will be in the light of that aggravating feature. The Minister has said that this is an opportunity and that we can express our views. The best way to do that would be by taking a vote to see whether the House is of the view that such an offence—of supplying or offering to supply new psychoactive substances on prison premises—should be an aggravating factor increasing the seriousness of the offence, as it will continue to be under the Bill for supplying in the vicinity of a school.

We already have that continuing provision in the Bill about supplying or offering to supply in the vicinity of a school. In the light of that, the argument has been made that there is an equally serious issue in relation to our prisons—and frankly, there is no evidence that it is about to disappear. The problem in relation to drugs has been there for some time. The issue of the new psychoactive substances is an opportunity for the House to express its view that it should be an aggravating feature affecting the seriousness of the offence. The court would then have to decide what the sentence will be by taking that into account. I wish to test the opinion of the House to see whether it agrees with me on that.

Lord Bates: Before the noble Lord sits down, just to be clear to those who are listening to this point in the debate, we are not arguing about whether it will be an aggravating factor. The Minister has written to the chair of the Sentencing Council, so it is not in doubt that we are looking at ways in which it will be an aggravating matter. The question is whether it should be a statutory one on the face of the Bill or one which, as a result of legislation which his Government passed in 2005 and 2009, now rests within the responsibility of the Sentencing Council to determine. That is really what is at issue.

Lord Rosser: When it comes to being a statutory aggravating feature affecting the seriousness of the offence, the issue is whether it will be on a par with supplying in the vicinity of a school. I wish to test the opinion of the House on that.

Division on Amendment 17

7.15 pm

Contents 178; Not-Contents 139.

[The Tellers for the Contents reported 178 votes; the Clerks recorded 177 names.]

Amendment 17 agreed.

Division No. 2

CONTENTS

Adams of Craigielea, B.
Addington, L.
Allan of Hallam, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L. [Teller]
Beecham, L.
Berkeley of Knighton, L.
Birt, L.
Blair of Boughton, L.
Blood, B.
Bonham-Carter of Yarnbury, B.
Borrie, L.
Bradley, L.
Brooke of Alverthorpe, L.
Brookman, L.
Browne of Belmont, L.
Burnett, L.
Campbell-Savours, L.
Carter of Coles, L.
Clark of Windermere, L.
Clement-Jones, L.
Collins of Highbury, L.
Corston, B.
Coussins, B.
Crawley, B.
Davies of Oldham, L.
Desai, L.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
Dubs, L.
Falkland, V.
Farrington of Ribbleton, B.
Faulkner of Worcester, L.
Fearn, L.
Foster of Bishop Auckland, L.
Foulkes of Cumnock, L.
Gale, B.
German, L.
Giddens, L.
Glasgow, E.
Golding, B.
Grantchester, L.
Greaves, L.
Hamwee, B.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Haworth, L.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hollins, B.
Hollis of Heigham, B.
Hope of Craighead, L.
Howarth of Newport, L.
Howells of St Davids, B.
Howie of Troon, L.
Hughes of Woodside, L.
Humphreys, B.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jolly, B.
Jones, L.
Jones of Whitchurch, B.
Judd, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kinnock, L.
Kinnock of Holyhead, B.
Kirkhill, L.
Kramer, B.
Layard, L.
Lea of Crondall, L.
Lee of Trafford, L.
Lennie, L.
Lester of Herne Hill, L.
Liddell of Coatdyke, B.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Ludford, B.
McAvoy, L.
McDonagh, B.
Macdonald of River Glaven, L.
McFall of Alcluith, L.
McIntosh of Hudnall, B.
MacKenzie of Culkein, L.
McNally, L.
Maddock, B.
Mallalieu, B.
Manzoor, B.
Marks of Henley-on-Thames, L.
Massey of Darwen, B.
Mawson, L.
Maxton, L.
Mendelsohn, L.
Miller of Chilthorne Domer, B.
Morgan of Ely, B.
Morris of Handsworth, L.
Newby, L.
Northover, B.
Nye, B.
O'Loan, B.
O'Neill of Clackmannan, L.
Paddick, L.
Patel of Bradford, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prescott, L.
Purvis of Tweed, L.
Randerson, B.
Rea, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Roberts of Llandudno, L.
Rodgers of Quarry Bank, L.
Rooker, L.
Rosser, L.
Rowlands, L.
Sawyer, L.
Scott of Needham Market, B.
Sharkey, L.
Sharp of Guildford, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Smith of Basildon, B.
Smith of Clifton, L.
Smith of Gilmorehill, B.
Smith of Newnham, B.
Stephen, L.
Stevenson of Balmacara, L.
Stoddart of Swindon, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Suttie, B.
Symons of Vernham Dean, B.
Taylor of Blackburn, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornton, B.
Tope, L.
Tordoff, L.
Touhig, L.
Tunnicliffe, L. [Teller]
Tyler, L.
Tyler of Enfield, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Walpole, L.
Watson of Invergowrie, L.
West of Spithead, L.
Wheeler, B.
Whitaker, B.
Wilkins, B.
Woolmer of Leeds, L.
Wrigglesworth, L.
Young of Norwood Green, L.

NOT CONTENTS

Aberdare, L.
Ahmad of Wimbledon, L.
Altmann, B.
Anelay of St Johns, B.
Ashton of Hyde, L.
Astor of Hever, L.
Balfe, L.
Bates, L.
Bew, L.
Black of Brentwood, L.
Blencathra, L.
Brabazon of Tara, L.
Bridgeman, V.
Bridges of Headley, L.
Bristol, Bp.
Brooke of Sutton Mandeville, L.
Brougham and Vaux, L.
Byford, B.
Caithness, E.
Callanan, L.
Canterbury, Abp.
Carrington of Fulham, L.
Cathcart, E.
Chadlington, L.
Chisholm of Owlpen, B.
Colville of Culross, V.
Cope of Berkeley, L.
Cormack, L.
Courtown, E.
Crickhowell, L.
Cumberlege, B.
De Mauley, L.
Dixon-Smith, L.
Dunlop, L.
Eaton, B.
Elton, L.
Evans of Bowes Park, B.
Farmer, L.
Fellowes of West Stafford, L.
Fink, L.
Fookes, B.
Forsyth of Drumlean, L.
Fowler, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gardiner of Kimble, L. [Teller]
Garel-Jones, L.
Geddes, L.
Glendonbrook, L.
Gold, L.
Goldie, B.
Goodlad, L.
Goschen, V.
Grade of Yarmouth, L.
Greenway, L.
Hardie, L.
Helic, B.
Higgins, L.
Hodgson of Abinger, B.
Holmes of Richmond, L.
Horam, L.
Howard of Rising, L.
Howe, E.
Howe of Idlicote, B.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Jopling, L.
Kakkar, L.
Keen of Elie, L.
Kilclooney, L.
Knight of Collingtree, B.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lexden, L.

Liverpool, E.
Lyell, L.
McColl of Dulwich, L.
MacGregor of Pulham Market, L.
Mackay of Clashfern, L.
Marland, L.
Mobarik, B.
Montrose, D.
Moore of Lower Marsh, L.
Morris of Bolton, B.
Naseby, L.
Nash, L.
Neville-Rolfe, B.
Newlove, B.
Northbrook, L.
Norton of Louth, L.
Norwich, Bp.
O'Cathain, B.
O'Neill of Gatley, L.
Oppenheim-Barnes, B.
Patel, L.
Patten, L.
Patten of Barnes, L.
Perry of Southwark, B.
Plumb, L.
Popat, L.
Prior of Brampton, L.
Renfrew of Kaimsthorn, L.
Rogan, L.
Ryder of Wensum, L.
Sanderson of Bowden, L.
Seccombe, B.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shrewsbury, E.
Skelmersdale, L.
Spicer, L.
Stedman-Scott, B.
Stowell of Beeston, B.
Strathclyde, L.
Suri, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Trefgarne, L.
True, L.
Ullswater, V.
Verma, B.
Wakeham, L.
Waldegrave of North Hill, L.
Wasserman, L.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Williams of Trafford, B.
Younger of Leckie, V.

7.27 pm

Consideration on Report adjourned until not before 8.27 pm.

Future of the BBC

Question for Short Debate

7.28 pm

Asked by ***Lord Fowler***

To ask Her Majesty's Government what plans they have for the future of the BBC.

Lord Fowler (Con): My Lords, the number of noble Lords speaking in this very short one-hour debate on the BBC shows the interest and concern that there is around the House on this issue. Contributions in the debate are obviously very limited in terms of time, but it is to the credit of a former chairman of the BBC, a former chairman of the BBC Trust, a former director-general of the BBC and a range of other experts that they have thought it worth while to speak in it. The hope must be that the Government will take note of the great concern that I think there is in this area and, I might add, organise a much fuller debate than the one we have at the moment.

Even in these black days of policy on the BBC, there are moments of humour. After the Minister's Statement last week on the transfer to the BBC of the cost of free television licences for the over-75s, I was puzzled why it was impossible to find the usual copy of the Statement from the Printed Paper Office. A little later, I found out what the reason was. The copies had been withdrawn after it had been discovered that the Minister's briefing had been mistakenly published with the Statement. So, unfortunately, we have been sadly deprived of the lines to take and the "if pressed" answers to questions, but I gather that it did not include the famous advice given to one Minister, "This is not a very strong case, but probably good enough for Parliament".

I remember back in 1986, when Margaret Thatcher personally cancelled a ministerial broadcast that I was about to make on AIDS. We had no reply whatever to the charge that the Prime Minister had vetoed the whole plan; that was exactly what she had done. Later, I saw the less than useful instruction given to our press office—if challenged, it was to say, "Don't get drawn". For current Ministers, there are a number of "don't get drawn" issues on the over-75s Statement. Ministers would be well advised not to get drawn on the conflict between what the Secretary of State said in his previous incarnation as chairman of a Select Committee that the charter process should be open and transparent and that licence fee payers should be consulted about the part that was carried out, in this case, in complete secrecy and behind closed doors. Ministers would be well advised not to get drawn on why the process was carried out without full consultation with the BBC Trust, which we are told is there to represent the licence fee payer. And Ministers would certainly be well advised not to get drawn on why a cut in the social security budget can be passed on to the BBC. As a former Social Services Secretary, I simply wonder at the ingenuity of it all.

It is easy enough to lampoon what has been taking place over the last few weeks, but in fact it is a deadly serious issue. Various colleagues have complimented me on the timing of this debate, but the truth is that I put down the subject some weeks ago, not because of the over-75s or the imminence of the so-called Green Paper but because of stories that had appeared in every newspaper in the land that the Government had declared war on the BBC. As the *Daily Telegraph* reported on 12 May:

> "Tories go to war with the BBC … David Cameron, infuriated by the corporation's election coverage, appoints BBC critic to 'sort out the BBC' ahead of the royal charter review next year".

My noble friend is a very bright Minister who I know will not try to palm us off with claims that this was just newspaper talk. It was clearly briefing from the top, from No. 10, and it is that which makes it all the more concerning. Frankly, briefings and leaks have been the characteristic so far of what is billed as an open and transparent process. If you want to know what is going on in the discussion on the future of the BBC, do not ask the BBC Trust, read the *Sunday Times*, which on Sunday had the friendly headline "Taming the BBC Beast", with a picture of King Kong being attacked over Broadcasting House by aircraft.

I should make my position clear. In my experience, the BBC is under unprecedented attack, but of course I believe that there are changes that can be made. No organisation in the world is beyond that. The BBC Trust itself must come under question and, frankly, had the Government listened to the Lords Select Committee report last time round it would not have been created. The future of BBC Worldwide is also an entirely legitimate area for debate. But changes must take place with the aim of improving the corporation, not undermining it, and I am afraid to say that at the moment that does not appear remotely to be the case.

[Lord Fowler]

I am not going to set out what I see as the merits of the whole vast expanse of the BBC—the drama and music, the television but also Radio 3 and Radio 4. As an ex-journalist, what I find most objectionable is the charge that the BBC is in some way biased. It is not exactly a new charge. Having fought elections with Margaret Thatcher and John Major, I have heard it before. I recall Margaret Thatcher's comment that, if ever she was tempted to say something nice about the BBC, Denis persuaded her not to. But what never seems to be understood is that the role of journalists and politicians is fundamentally different. One is to report and expose the truth, the other is to persuade and win support. Of course, I recognise that in the heat of an election campaign feelings run high. But the real complaint is not that the BBC is impartial; the real complaint is that the BBC is not following to the letter the very partial guidance given to it by the army of advisers that now inhabits Whitehall.

In my journalistic days, I was taught to be accurate and to be fair. My editor at the *Times* was William Haley, a former BBC director-general. This has been the hallmark of BBC reporting over the years, whether it is about the complications of Middle East or the rival passions of party politics. If you go abroad, the reputation of the BBC is entirely built on its objective reporting. That is why it is trusted so widely around the world and why so many overseas broadcasters see it as the best in the world. That is why the BBC World Service is so respected; it is trusted to report objectively on what is taking place—it is not the opinionated editorialising of Fox News and, frankly, thank God for that.

However, I fear that I must warn those who support the BBC that we have something of a fight on our hands. The cards are marked and somewhat stacked against us. The advisory group advising the Secretary of State clanks with special interests and past opinions. Even more, the charter process leaves decisions in the hands of the Government, who make much of their Green Paper—but the fact is that, at the end of the day the royal charter process means that they do not have to listen to anyone. They can draw up a new charter and agreement as they please; it does not go to Parliament or come under parliamentary scrutiny. Decisions rest with the Government, and anyone who doubts that should look back to the last time. The BBC Trust was set up against the advice of a whole range of organisations, including my committee.

Fundamentally, what causes me such concern about what is taking place at present is that the BBC is a British corporation rated by most people as a world leader. It is not an organisation badged as British but with control elsewhere. We do not have that number of British-owned world beaters to be careless about our position. I would have thought that, if we had any sense at all, we would want to support the BBC, to improve it certainly but, equally, not to undermine it. I hope that the Government will now do all they can to regain the trust that I fear they have lost in the past few weeks.

The Earl of Courtown (Con): My Lords, I just make the point that there is a two-minute limit on speeches from remaining Peers, apart from the Minister. Once the timer gets to three minutes, a speaker has gone too far and I will interrupt them.

7.38 pm

Lord Lipsey (Lab): That took up a few minutes, didn't it?

No director-general of the BBC should ever again be put in the position that the good Tony Hall has been placed in over the past few weeks but, sadly, the form book suggests that it will happen again. In 2010, the licence fee was used to pay for British foreign policy by paying for the World Service. Now, in 2015, the same licence fee payer is being asked to pay for a particularly silly piece of British welfare policy—free licences for the over-75s—with £725 million of it falling on the BBC and licence fee payers. Next time, I expect that the BBC will start paying for the NHS. After all, the NHS provides free specs and enables people to look at the television better. It is that kind of logic—or illogic—that pervades what the Government are doing.

The noble Lord, Lord Hall, is absolutely right to say that the funding of the BBC should be taken out of politics, as it partly was when I sat on the Davies committee on the licence fee back in 1999. After all, keeping politics at a distance from the BBC was one of the main logical reasons for having a licence fee in the first place—it was felt to be a payment for services and therefore out of politics—but I fear that in the corrupted politics of today, it will not happen, not while the licence fee places the hands of politicians firmly around the gonads of a body whose programmes they believe help to determine their electoral fate.

The licence fee has had a good run as a good way of funding, but maybe, just maybe, this will be the end of the road. It would be more honest to replace it with a television tax paid to the Exchequer and have five-year settlements on funding between the BBC and the Government, with the Culture Secretary thus incentivised to fight for the corporation within government rather than, as John Whittingdale has comprehensively done this time—

The Earl of Courtown: The noble Lord is in the third minute.

Lord Lipsey: The noble Earl said we had three minutes.

The Earl of Courtown: I made an error in that.

Lord Lipsey: If the noble Earl made an error, perhaps he will let me finish my speech.

The Earl of Courtown: No, I cannot.

Lord Lipsey: My Lords—

Noble Lords: Order!

The Earl of Courtown: My Lords, I made an error when I said that. It is quite plain from the speakers list that there is a two-minute limit. The noble Lord has exceeded that time.

Lord Lipsey: The Culture Secretary would be thus incentivised to fight for the corporation within government, rather than screwing it as John Whittingdale has comprehensively done.

7.42 pm

Lord Clement-Jones (LD): My Lords, I entirely agree. I congratulate the noble Lord, Lord Fowler. We have just witnessed a smash-and-grab raid. As five years ago, the Chancellor has treated the licence fee as a piggy bank. The director-general has had no alternative but to look cheerful about it, and all the while the Murdoch press gleefully gets government exclusives. I share the disappointment expressed by Rona Fairhead in her letter to the Chancellor last week about there having been no public debate at all about the licence fee. I think the CMS Secretary's former colleagues on the Select Committee will be astonished, too.

Despite this, there are still major uncertainties. A Perry report recommendation to decriminalise could have an impact of £200 million. The CPI settlement now also appears conditional. We now at least have a debate going forward about the scope of activity of the BBC and the appropriate form of governance for the BBC, but the Secretary of State for CMS and the Chancellor seem to be in disagreement about whether the BBC should continue with popular programming. There is much talk of the BBC's online presence but, as the example of Channel 4 shows, younger audiences are increasingly migrating to the internet, catch-up and streaming for television consumption.

There are issues to be discussed, in particular whether the BBC should or could move to a publisher broadcaster model. On the trust, my colleagues and I have never felt that the current structure properly resolves the issues of responsibility for the regulation, governance and management of the BBC. Like the CMS Select Committee, I would favour handing responsibility for regulation, including service licences, to Ofcom, as well as the existing responsibility for the public value test. We must have an open debate, and I ask the Minister: is the Green Paper on track for this week?

7.43 pm

Lord Birt (CB): My Lords, we look to government to be at its wisest when the challenge is at its greatest, yet twice in five years we have seen not wisdom but opportunistic, expedient and unprincipled diktats issued to the BBC in the dead of night, a pistol to its head, absent any democratic debate—diktats that have sidelined the licence fee payers, the trust that represents them, the department concerned and Parliament itself. Above all, these diktats have trampled on the independence of the BBC.

Twice in five years, neither the trust nor the executive but the Treasury has determined how an enormous slice of licence funding—25% in total—should be spent, earmarked for a long string of obligations to which the BBC Trust would never voluntarily have agreed.

This year we celebrate the 800th anniversary of Runnymede, when the arbitrary use of power was first curtailed. It is plain that we now need a Magna Carta for the BBC itself. We need a framework, enshrined in statute and agreed by Parliament, which ensures that nothing like this can ever happen again; which sets out the proper roles of government, the BBC's regulators and its executive; which outlines a considered, involving and transparent process for settling the level of the licence fee or for amending the BBC's remit; and which enshrines the independence of an institution that is never, ever perfect, but which we should all safeguard and cherish.

7.45 pm

The Lord Bishop of Norwich: My Lords, it seems odd that a Government so keen to promote British values in our schools appear intent on reducing the capacity of a world-renowned British institution. The BBC is increasingly referred to as though it were part of the public sector. It is not. It is an organisation financed not from the public purse but by those who use it. The fact that many of them are also taxpayers is no more relevant than the fact that those who pay their energy bills are also taxpayers. Perhaps the winter fuel allowance will now be transferred to the energy companies. The logic seems impeccable given the precedent established last week.

The BBC has plenty of the faults to be found in all large institutions, including government departments. It has a capacity to waste money on IT projects, but no more so than successive Governments. It can be complacent and bureaucratic, but so can the Church of England and the trade unions. What seems to irritate its opponents is its very success. If it inhibits commercial opportunities, it is only because the BBC is giving licence fee payers what they want.The BBC's online presence was reduced by 25% following the last charter renewal. Now it seems that the popularity of BBC News online is its very undoing. In what other area of national life is doing something well so disliked? I believe there has been much greater animus against the BBC in successive Governments than there is in the population at large, and it is disturbing that the leadership of the BBC should have been so acquiescent earlier this month for fear of something worse, but I do not blame them.

There need to be changes in the BBC, not least in relation to the BBC Trust, which is now seen as a failed experiment, but what has been revealed of the direction of travel thus far gives little confidence that the BBC will emerge the stronger from it.

7.48 pm

Lord Patten of Barnes (Con): I declare a past interest: for three years, I was chairman of the BBC Trust, to which reference has just been made. I think the BBC is the greatest public service broadcaster in the world. It is not without its faults, and I wish I felt confident that its future was safe in the hands of the present Administration. I do not think that the Prime Minister or the Chancellor want to have as part of their legacy that they began the destruction of this great broadcaster, but I wish I could say the same about my confidence in some of their colleagues and I wish I had a little more confidence in some the adolescent ideologues who dominate so much of this debate with the encouragement of News International and Mr Murdoch's empire.

The deal that was done last week was appalling—trying to turn the BBC into a branch office of the Department for Work and Pensions is completely ridiculous—and it has left the BBC with £400 million less each year over the next few years. There is no way in which this can be found by cutting the amount spent on digital

[Lord Patten of Barnes]
broadcasting. That is impossible. It will have to be found by cutting services and getting out of sports. It is very important that when that happens the Government recognise that it is not the BBC's fault, it is their fault that that is happening.

I wish I could feel a bit more confident about what is going to happen in future. The Secretary of State has appointed a team of assistant gravediggers, presumably to help him to bury the BBC that we love. The only surprise is that, despite the collection of vested interests to which my noble friend Lord Fowler referred, Mr Murdoch is not actually on the committee. That would have made the future complete.

I very much hope that we will be able to come back to this debate again and again in future. The BBC is a great international and British institution, and we should defend it à l'outrance.

7.50 pm

Lord Haskel (Lab): My Lords, the BBC should be congratulated, but instead it is under attack. Why? Because some accuse it of reporting the news on the bias. Bias is in the eye of the beholder. It is an impossible task to appear unbiased in this world of political ideology. As the noble Lord, Lord Fowler, said, what really matters is the truth, accuracy and timeliness.

The BBC is under attack by right-wing politicians and the right-wing press. Their ideology says that the market ought to offer better value, but in this case it does not. At £12 a month, the licence fee is about one-third or one-quarter of the cost of a subscription to Sky. Its finances are also under attack, and the cost of the pensions exemption is only the latest example. Some mischievously encourage people not to pay their licence fee because they watch via the internet, and that is wrong. Of course there are things to put right. Of course we need to make changes, but openly, not in the recent shoddy, bullying manner described by the noble Lord.

This Government—any Government—should be careful about attacking the BBC. They would do better to work with it and take pride in its success. Why? Because the BBC is part of our DNA, part of the glue that holds us together. It is perhaps the most important cultural organisation in this country and it is our overseas calling card. By attacking the BBC, the Government are also attacking the 96% of the population who switch on and tune in every week for their news, sport, entertainment, information and culture—giving the people what they want. That cannot be good politics.

7.52 pm

Lord Teverson (LD): My Lords, I am speaking in this debate because I want to stand up and be counted as someone who feels that the BBC is a crucially important organisation, not just within this country but internationally. I remember, too many years ago, my father assembling with me a small crystal set. I put my earphones on when I went to bed and, although unfortunately it did not get Radio Luxembourg at the time, it got the Home Service and the Light Service—just. From that point, sad to say, as time went on I became an addict of the "Today" programme, both as it was then and later.

As the right reverend Prelate said, the sad and ironic situation is that the BBC has become the victim of its own success. As a parliamentarian, but also as a citizen, I rely hugely on its website, particularly the news website; it is a fantastic resource, nationally and internationally. The World Service, as well as the BBC's reputation for its other services, really increases the soft power of this country.

The over-75 smash and grab, as it has been described, was something that I found quite shocking. It is a reaction by the Government in Treasury management that should never have happened and is a very bad omen for the future. The BBC is a great institution. It is of great service to us in the UK but is also one of the greatest gifts from the UK to world society.

7.54 pm

Lord Berkeley of Knighton (CB): My Lords, the BBC is subjecting itself to the most stringent housekeeping. Outrageous pay-offs have stopped. Middle and upper management, for many years top-heavy, have been pruned, while on the shop floor as it were—in the studios—the programme makers, engineers, producers and presenters have been pushed to the brink by cuts. Travel for a programme is seldom possible and contributors are offered a pittance or nothing. Imagine the consequences of further amplification of this trend: output and quality will suffer.

Are the Government aware of the very considerable savings that have already been made by the corporation, as audited by the National Audit Office? As an example, I mentioned recently that I had accepted a cut of one-third of my fee for the programme that I contribute to Radio 3. I must apologise to noble Lords that this came out, and was taken up by the press, as a cut to one-third rather than by one-third. On hearing this, a colleague suggested that I should declare a disinterest rather than an interest.

However, I remain passionately interested in and devoted to the BBC for the way in which it enriches our lives. Last Saturday, having watched Wimbledon, I turned to Radio 3 to catch, from Manchester, a recording of the first performance of a major new piece by a highly gifted young composer and clarinettist, Mark Simpson, who burst on to the scene when he won the BBC Young Musician of the Year. This is the essence of public service broadcasting and it comes at a relatively cheap price. Will the Minister confirm that the Government do not wish to endanger that and other invaluable work such as the Proms, which are about to start? The Government are coming perilously close. They should not throw out the baby with the bath-water while it is, in fact, in the process of being changed.

7.56 pm

Lord Grade of Yarmouth (Con): My Lords, it would take me two minutes to declare my interests, so I hope that the House will indulge me and allow me to move swiftly on. I shall make three quick points, none of which I think has been made.

We must always remember that the BBC is a fantastic, and the most important, engine for growth in the creative industries in this country. We must not forget how much viewers and listeners value the BBC for its lack of interruption by advertisements, which provides a real alternative; we do not cut away from Centre Court to a break, as they do between overs when one is watching wonderful cricket on Sky. I shall leave noble Lords—I had trouble filling the two minutes when I was writing this—with the question posed to me recently by my good friend, the noble Lord, Lord Puttnam, when he asked me if I had travelled anywhere in the world where anyone had ever said to me, "I love Britain but hate your television". That just never happens.

7.57 pm

Lord Judd (Lab): My Lords, all over the world it would be impossible to think of a profile of Britain without the BBC at the centre of it. It has won loyalty, respect and affection across the whole international community. I can remember, sitting with my father in the war at the age of eight, listening at the end of the day's broadcasting to the national anthems of every occupied country being played. That is the kind of involvement in the world that has made the BBC so successful, and it is the basis on which the excellence and quality of its journalism have been built—a dedication to truth and principle. If truth and principle become seen as an enemy by the Government, we are in dire straits.

I believe that the BBC belongs to the British people, and it is therefore right that the British people should feel a direct sense of responsibility for it and be directly involved in financing it. We meddle with the standing, respect and integrity of the BBC at our peril, because if that begins to happen then we shall begin to see the disintegration of the moral fabric of this country.

7.58 pm

Lord Roberts of Llandudno (LD): My Lords, I would like to say a word about the BBC as it is involved in Wales. Without the BBC's funding of S4C, there would not be an S4C channel today. Until about four years ago it was a government payment from DCMS that kept S4C going. That involvement with the Government was then withdrawn. We get a little money, about £7 million, but the rest of the burden is borne by the BBC licence fee. Without that, there would be no Welsh-language television. The Assembly could not afford it—I do not see where it could get the money—so we have to protect the BBC, not only because of itself.

For many years, from the time of Sir Rhys Hopkin Morris, we in Wales have fought for and achieved radio channels in Welsh and English. We then wanted a television channel, and Gwynfor Evans, who some noble Lords might remember, threatened a fast to the death to get the Government to keep their promise to give us a Welsh-language television service. The result is that we are keeping the Welsh family throughout the world together. I can imagine people in the La Trobe Street chapel in Melbourne saying to each other, "Wasn't that a great Eisteddfod we saw from Llangollen this year?", or possibly, in the Dewi Sant church in Toronto they will say, "There was some wonderful hymn-singing tonight from Llanfairpwllgwyngyll". We are one family, and the BBC makes that possible through its support for S4C. Thank you for what we have had. I hope that the Government will not interfere in any way to make S4C a difficult channel to maintain.

8 pm

Lord Best (CB): My Lords, I thank the noble Lord, Lord Fowler, for his brilliant speech and for his role as the founder chairman of your Lordships' Communications Select Committee, which I now have the honour of chairing. In contributing to Parliament's consideration of renewal of the BBC charter, our committee is now looking at: first, the question of what the BBC is for, including whether its existing six public purposes are still relevant and whether they represent a good way of measuring the BBC's performance; and, secondly, with regard to the BBC's funding, whether the current process is the best way of deciding the level of the licence fee. We are now wondering whether it is sensible to continue to consider this second issue.

It would be helpful if the Minister could answer this question: are the BBC Trust and the BBC management correct in their assumption that, along with the other details they have agreed with the Chancellor and the Secretary of State, the licence fee will be increased on an indexed basis for the next five years with a starting level of the current £145.50? Has this matter now been settled, or is the Government's expectation that, after the wider Green Paper consultation, a new starting point for indexing the licence fee—maybe higher or maybe lower than the present figure—could be substituted for the current £145.50? The answer to this question will greatly help the Select Committee in deciding whether it is worth persisting with the second part of our inquiry.

8.02 pm

Lord Inglewood (Con): My Lords, I begin by explaining to the House that I am chairman of CN Group, a local media company. Two Sundays ago, over my breakfast, I was told by the *Sunday Times* of recent developments that had been agreed between the Government and the BBC, which came as a surprise. The following Sunday, there was a further surprise, with another report of further developments between the Government and the BBC, some of which appeared to be at variance with what I understood were the facts behind the previous week's story.

As my noble friend Lord Fowler has said, the relationship between the media and politics has always been tense, as can be seen most recently from the hacking scandal and the Leveson inquiry. The sensitivity of that relationship is why the BBC has been set up under the charter and agreement, which appears to be the preferred option for the Government once the existing charter and agreement expire in 2016. This is why there is a very important need to keep politicians and the Government and the licence fee-funded public service broadcaster at arm's length from each other. Yet, in this case, it seems that the negotiations between

[LORD INGLEWOOD]
them are being orchestrated through discussions that are taking place behind the arras in the so-called smoke-filled rooms. That is not what was originally envisaged.

When I was Minister responsible for broadcasting some 20 years ago I was subject to pressure for much greater parliamentary involvement around the process of charter renewal. Since then, concern about that has grown and is still growing—and rightly so. For this quasi-clandestine ritual to take place does no favours to either the Government or the BBC and does little to encourage confidence in the wider public, viewers or licence fee payers, albeit a number of aspects of what are being suggested seem quite sensible.

My suggestion to the Minister, to echo the noble Lord, Lord Birt, is that the Government should put on the statute book a BBC charter renewal (procedure) Act 2015, which would set out a road map for this process and for future occasions. Thus, things would become clear. I dare say that the Minister will respond that it is an interesting idea, with all the damning overtones that that entails. Rather, in addition, I suggest that she should write to me, and put a copy in the Library, to give full reasons for the Government's response to the idea.

8.04 pm

Viscount Colville of Culross (CB): My Lords, I am very proud to be a producer at the BBC. I work there because I passionately believe in public service broadcasting. It makes our country a better place—better educated, better informed and with a better understanding of the great political issues that we face. Your Lordships have only to look at America, where there is a very weak public service broadcasting component in television and politics is covered in terms of the drama between the personalities, not the issues. Yet we want to make the BBC smaller. Some 1,000 jobs went last month, and I am told that hundreds more programme-makers will go in the next few months in the run-up to the launch of BBC Studios.

It will also get even smaller. The £750 million that the BBC will have to take on in 2021 will not be cash-flat, as the director-general said. Apparently, the extra money will come from £100 million from the iPlayer licence, but I wonder if that is so, with a generation so good at file-sharing. It is hoped that £100 million will be raised voluntarily from the over-75s. That may be, although it would be very generous, and then, of course, £350 million will come from increasing the licence fee by CPI. However, we know that that will be subject to very harsh negotiations. I fear that this great British institution is threatened as never before, and I am afraid that the vacuum we leave will not be filled with news, information and education.

8.06 pm

Lord Patten (Con): I am concerned about crowding out. Any corporation with a lot of highly intelligent, sparky, creative and commercial types—I speak not just of the noble Viscount, Lord Colville of Culross—is likely to be under continuous pressure to expand into adjacent white spaces. Any corporation with critical strategic foresight, capacity and grip has this under watchful control.

Yet some reasonable complaints about perceived crowding out are coming from various quarters, whether the exalted or the struggling. The Chancellor of the Exchequer—surely in the exalted quarter—says that he has spotted a bit of empire building by the BBC website into "newspaper land" and away from its core mission. Of the more struggling, secondly, there are local and regional news-gatherers who sometimes complain of onerous competition bearing down on them from above, as do some in the internet new media start-up space.

Thirdly, UK independent producers would like to see more independently produced material going into the BBC and not vice versa. This was most vividly illustrated by the BBC announcement on 2 March of its new division, BBC Studios, to which the noble Viscount has just referred, which apparently aims—and it has been said by the director-general, so it must be true—at an eventually unfettered ability to offer productions to anyone, local or worldwide. That is a change that surely will then need change to the royal charter—the ultimate vehicle for the ultimate crowding out, for sure, of this proposal.

Therefore, I urge that any forthcoming review should seek better for the future to draw some boundaries and define what corporate strategy has not perhaps so clearly done of late.

8.07 pm

Baroness Bonham-Carter of Yarnbury (LD): My Lords:

> "The BBC, because of its success … is being constantly attacked … in Parliament … in the press, and the attack is on new and dangerous lines. The aim is suppression. When suppression has been achieved, control may be attempted, but suppression is the immediate objective".

Those are not my words but those of EM Forster in 1931. So it was ever thus. But those on the attack then did not succeed and they must not succeed in 2015.

I am the Prime Minister's trade envoy to Mexico, a country where the federal Government have just given the go-ahead for a new national TV network—it is the BBC that they wish to emulate and it is our TV content and formats they wish to purchase. In a study on soft power published today, the UK is named as global leader and the BBC is cited as central to this. I am therefore bemused by this Government being on the warpath against what is a cornerstone, as the noble Lord, Lord Grade, said, of the UK's creative industries—the fastest-growing sector of the economy—and such a successful ambassador and disseminator of what we believe in across this troubled world.

Then there is the matter of scope and scale. Lord Reith set the rules and they were to inform, educate and entertain. How can the licence fee be justified if the BBC is not allowed to have fun?

The noble Lord, Lord Fowler, made a point about bias. When I sat on his Select Committee, we had Rupert Murdoch as a witness and he told us that he wished Sky News was more like Fox News. Well, it is not, and that is because of the BBC and because of the impartiality of the BBC.

Does the Minister not agree that the BBC is one of this country's greatest achievements, and can she assure us that this Government will listen to the licence fee payer and what they want, and not to the eight random advisers hand-picked by the Secretary of State?

8.10 pm

Lord Stevenson of Balmacara (Lab): My Lords, it makes me proud to be part of a group of such quality that is able to address such a major issue as the BBC in tweet-length speeches. It is an amazing achievement and noble Lords have all done brilliantly. I only hope that I match them, at least in brevity.

I feel that we have delivered a charge sheet, and I look forward to the Minister responding. It seems to have four main components. First, the BBC's future is not safe in the Government's hands, with the two raids in the last five years and the disregard for the process of the charter. Secondly, the charter has been fixed by the establishment of a cod-advisory committee and no guarantees that proper engagement will take place with licence fee payers. Thirdly, setting off the hounds of war on the BBC means that between now and 2017—time that we should be spending improving the BBC and helping it to get better—those of us who care about the BBC will have to put all our efforts into saving it.

Fourthly, and perhaps most seriously, the charge appears to be that the Government do not understand the fundamental point of having the BBC—the cornerstone of the sort of open and accountable society that we want in this country, the gold standard for other broadcasters, the fulcrum for a competition for quality in broadcasting, and the guarantee of impartiality and fair coverage throughout the United Kingdom. As we have heard, you have only to speak to anybody from outside the UK if you disbelieve any of those points.

I hope that the Minister has some words of reassurance for us, and I wonder particularly whether she can give us an advance of what will happen when the Green Paper is announced on Thursday. But, at the very least, she now knows that the way things are going at the moment is simply unacceptable.

8.11 pm

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, this has been an excellent debate and I congratulate my noble friend on securing it. Indeed, I was one of the first to compliment him on his expert timing. As is always the case when we discuss broadcasting in this place, and particularly when the BBC is our focus, noble Lords have left the House in no doubt whatever about how much these issues matter, and they have done so in a very focused, excellent two-minute way. I have listened very carefully to all the concerns, although I did not always agree with everything. However, it has set a very useful backdrop to the discussions that we will be having over the next 18 months.

The BBC is a world-renowned institution. It delivers high quality to 97% of the UK population every week. That is up 1% on last year, the noble Lord, Lord Haskel, will be glad to know. It retains a unique importance in the UK's broadcasting industry and in our collective sense of identity, and it is a brand that is respected and valued around the world—a world beater, indeed. I agree with my noble friend Lord Grade about how much the BBC is valued as one travels around the world.

The noble Lord, Lord Teverson, will have been very glad to hear—from the noble Baroness, Lady Bonham-Carter, in fact—that a report today has put the UK at No. 1 in respect of soft power. I believe that that is partly thanks to the strength and excellence of the BBC.

Let us look at the BBC World Service as a case in point. Kofi Annan referred to the World Service as,

"perhaps Britain's greatest gift to the world".

I am sure noble Lords will agree that it is occasionally able to reach the parts that ambassadors cannot.

Beyond this, the BBC provides a breadth of services and content that we are all able to enjoy. That includes coverage of the Ashes on "Test Match Special"—I agree with my noble friend Lord Patten of Barnes about the importance of sport—high-quality drama such as "Wolf Hall", the recently relaunched children's classic, "The Clangers", and its genuinely pioneering and constantly improving website. As the noble Lord, Lord Berkeley, said, the BBC nourishes musical talent, as well as acting and writing talent—as we were discussing at Question Time today.

The BBC is also unique in the way in which it is funded, and in terms of the level of obligations and expectations placed upon it. A universal licence fee, which must be paid for all viewing of live or nearly live content, brings with it a set of expectations from all licence fee payers—chiefly, delivery on all its public purposes, maintaining the highest quality of original, distinctive content, journalistic independence and integrity, and ensuring value for money for every penny of licence fee spent.

The noble Lord, Lord Berkeley, asked whether the Government are aware of savings already made by the BBC. The noble Viscount, Lord Colville of Culross, gave us an inside track on some of the difficulties. We welcome a BBC that ensures that every penny spent represents good value, and we welcome the work that has been done by the BBC to achieve this, particularly in recent times through its Delivering Quality First efficiency programme.

Clearly, the BBC has faced serious challenges over the 10-year period of the current charter. In all these areas—value for money, governance and accountability, or concerns over quality and balance of coverage—the BBC has on occasion been the subject of some controversy and complaint, not just among parliamentarians but the licence fee paying public more broadly. As my noble friend Lord Fowler acknowledged, change is needed.

One particular area of contention both for noble Lords and in the other place is the extent to which the BBC manages to meet its impartiality obligations, and how best this should be achieved and regulated. Looking ahead to the EU referendum, for example, it will be crucial that the BBC, as with other broadcasters, maintains balance and impartiality in its coverage to ensure the public can make the best-informed choices. We have written to the BBC, other public service broadcasters and Ofcom to say just that.

As we near the end of the current charter, we are also presented with the opportunity, through the charter review, to consider in full the BBC's activities, its appropriate scale and scope, and how it should deliver

[Baroness Neville-Rolfe]
in the future what is expected of it by all licence fee payers. The noble Lord, Lord Clement-Jones, asked if the Green Paper was on track. I am glad to be able to answer positively and say that a charter review consultation document will be published this Thursday. This will provide another opportunity for this House to discuss these matters, and the document will set out a range of important questions about the future of the BBC and almost every aspect of how it operates. The Government are very clear that the charter review process will be as open and consultative as possible. It will be similar in many respects to the previous review—I look forward to discussing this further on Thursday—and will ensure that the views and concerns of all of us who have a stake in the BBC, as well as the views of the panel, are heard and considered in full.

The sort of concerns that have been raised tonight that are relevant to the debate on the review include: the operating model and governance, as the noble Lord, Lord Clement-Jones, said; its boundaries, which were the concern of my noble friend Lord Patten; the process for the future, which was the concern of the noble Lord, Lord Birt; and the future of the BBC Trust, which the right reverend Prelate felt needed change. On the process point, my noble friend Lord Inglewood suggested a charter review procedure Bill to govern future settlements. As I have said, we will run an open consultation and welcome all such proposals, including those on process, and I am of course happy to write to the noble Lord and respond to the points he made.

Although nobody has mentioned it because of the two-minute rule—other than the noble Lord, Lord Best, who spoke most eloquently—the noble Lord, Lord Best, chairs the Lords Communications Committee, which recently began its own inquiry into the BBC. This will be a valuable, in-depth look at the BBC's public purposes, which we will all be interested to see. Given the matchless expertise and experience of that committee's membership, including many Members here tonight, it will undoubtedly be an important piece of work. I hope that we will see the outcomes of some of that work in the spring of next year, and indeed emerging findings, so that those can feed into the review as it progresses.

Last week, we were afforded the opportunity to consider the Government's agreement with the BBC in respect of concessionary TV licences for people aged over 75. As explained by my noble friend Lord Courtown last week, these new arrangements, which have been agreed with the BBC, are firm but fair and will ensure that the BBC, as a publicly financed body, plays its part in carrying the burden of necessary deficit reduction. This is a point that has not been strongly made: in times of financial constraint, as we find ourselves in now, those with the broadest shoulders need to bear a share of the burden.

I am grateful to the noble Lord, Lord Hall—I think he was described as the good Lord Hall—for saying on the "Today" programme, a great BBC institution, that this represents a strong deal for the BBC, giving it financial stability and the ability to plan for the future, which he believes in for what he called, "this wonderful creative organisation". Further, he welcomed the Government's commitment to look specifically at modernising the licence fee for the digital age. This agreement also gives good notice for potential changes coming down the line to address changing consumer trends with the revolution of digital.

I acknowledge the concerns that have been raised by noble Lords tonight about this agreement and the funding of concessionary licences for the over-75s from the licence fee. However, if I stand back for a moment, I believe that there is a good balance between the reduction in funding for free TV licences and the new flexibilities, which will provide growing income from catch-up and a reduction in the contribution to broadband.

Additionally, to respond to the noble Lord, Lord Best, although the licence fee has not been settled, because it will be subject to the outcomes of the charter review, the Government have indicated that it will rise in line with the consumer prices index over the next charter period, starting in January 2017.

The noble Lord, Lord Roberts, spoke as he always does of both the BBC and our Welsh language broadcaster. I am sure he will welcome the news in S4C's annual report that 8.4 million people in the UK have watched S4C in the past year—an increase of around 29% on the previous year. We should be clear that the Government are keenly aware of the importance of S4C and other minority language broadcasters.

In conclusion, I wish to thank once again all who have contributed to tonight's debate and, in particular, my noble friend Lord Fowler for securing it. I am glad to say that the end of the world is not at hand. Given the BBC's importance to our daily life, and the content and services that it provides to the UK and the world, we should be clear that no one is seriously proposing the BBC's abolition. This evening, noble Lords have demonstrated admirably the vital role that this House has to play in the debate on the BBC's future and in the forthcoming charter review. I am sure, as my noble friend Lord Patten of Barnes said, we will come back to the subject again and again.

8.23 pm

Sitting suspended.

Psychoactive Substances Bill [HL]

Report (Continued)

8.27 pm

Amendment 18 not moved.

Amendment 19

Moved by ***Lord Rosser***

19: Clause 6, page 3, line 42, at end insert—

"( ) Condition C is that the offence was committed on prison premises."

Amendment 19 agreed.

Amendment 20 not moved.

Clause 8: Importing or exporting a psychoactive substance

Amendment 21

Moved by ***Lord Paddick***

21: Clause 8, page 5, line 2, at end insert—

"( ) It shall be a defence that the person imported the substance for his own consumption."

Lord Paddick (LD): My Lords, the amendment is in my name and those of my noble friend Lady Hamwee and the noble Lord, Lord Howarth of Newport, and it reflects a debate that we had on a previous amendment. In Committee, we debated whether or not the importation of new psychoactive substances for someone's own consumption should be an exemption and not be included in the Bill as an offence. For reasons similar to those given for the amendment on social supply, we now propose that it should be a defence. However, the burden would be on the accused person to show that they had imported the substance for their own consumption. This would get round many of the problems that the Minister raised in Committee on importation. Those concerns included how the Border Agency would know whether or not the substance was being imported for someone's own use and how we differentiate between the two. This is about arresting people who are importing psychoactive substances but providing a defence if the person can prove that they were being imported for their own consumption. I beg to move.

8.30 pm

Lord Howarth of Newport (Lab): My Lords, I am glad to support the amendment tabled by the noble Lord, Lord Paddick. The Government say that it should not be an offence to be in possession of a substance for your own use. If the consequences of the legislation are similar to those that have been seen in Ireland, the head shops and the UK-based websites will be closed down. We know that the police have been tasked to go after the street dealers zealously. What is most likely to happen is that people will turn to online suppliers based in other countries and will receive packages, at any rate for their personal use, through the mail.

The amendment seems, first, logical. If it is to be legal to possess then you must contemplate some means whereby people can come into possession. Secondly, it seems realistic in the sense that, in practical terms, it will be impossible to close down the online trade. I know that powers are to be taken in an amendment we shall debate later to deal more effectively with packages, but the volume of mail and internet-based business is so huge that it is unrealistic to suppose that more than a tiny fraction of packages containing psychoactive substances will be intercepted. On the grounds of both logic and practicality, this is a sensible amendment and I hope the Government will feel able to accept it.

Baroness Meacher (CB): My Lords, I shall speak to Amendment 56, which refers to Clause 56(2)(a). It is a probing amendment along similar lines to Amendment 21. As there are three different ways in which possession can become a criminal offence, the aim of the amendment is to clarify with Ministers the circumstances in which possession is not a criminal offence and those in which it is. I thank Mr Fortson QC for his briefing on this issue.

The Government have emphasised that the Bill does not make simple possession of a psychoactive substance a criminal offence, and I and many others certainly welcome that important step forward in the Bill. We know from the lengthy experience in Portugal, for example, that decriminalising possession there and investing more resources in treatment and less in prisons has resulted in fewer young people being addicted to drugs. That is surely one of our primary objectives. I find it enormously positive that the Government understand that issue and are taking it forward in the Bill.

As I said, there are three situations in which possession can become a criminal offence. If a person produces a psychoactive substance at home, for example by cooking something up in the kitchen, and they intend to consume it purely by themselves, they will have committed an offence. I want to make clear to your Lordships that I am not suggesting that anyone should cook up a psychoactive substance in their kitchen, albeit I have a number of friends who do just that—they create interesting and highly intoxicating alcoholic beverages in their kitchens. It is very easy to be rather hypocritical about these issues. Nevertheless, I wanted to make the point. It is not that I am promoting the idea of young people getting into the kitchen and creating these things. However, one has to think about the inconsistency.

If a young person is thinking about getting hold of a psychoactive substance and goes out to a dealer, buys a substance and goes home, they will not be committing a criminal offence if they are found with the substance in their hand. If they are found to have created, or are creating, the substance at home, they will be committing a criminal offence. It is possible to say that it could be very much safer for a young person to take a substance when they know its ingredients, rather than go to a crack dealer. I gather that that is what has happened in Ireland. As the head shops have closed, young people have gone to the crack dealers, who are doing a nice business with these psychoactive substances. One has to think of the incentive effect of these kinds of inconsistencies.

It is not only a criminal offence to create a substance in your kitchen. It is also a criminal offence, as the noble Lord, Lord Paddick, said, to import a substance for your own consumption. It is also a criminal offence if you export a substance for your own consumption—which might seem a slightly peculiar idea, but it is in the Bill. To illustrate the point, if someone has a psychoactive substance in their pocket, they are not committing an offence if they are at home. However, if they go on holiday with the substance tucked away in their pocket because they have forgotten it is there, and if it is still in their pocket when they come back, they will have committed two offences: importing and exporting a psychoactive substance. I know that that sounds a ludicrous example but one has to be conscious of the kinds of things that arise out of inconsistencies in legislation.

[Baroness Meacher]

I understand from Mr Fortson QC—I would not have been aware of it otherwise—that this issue is of some importance. The offences to which I have referred are apparently described as lifestyle offences. Therefore, they trigger the most draconian provisions of the Proceeds of Crime Act 2002. Either the prosecutor or the court could initiate confiscation proceedings under POCA for one of these offences of possession of a psychoactive substance. That would seem, certainly to Mr Fortson QC, to be an entirely disproportionate response to what appears to be a rather insignificant offence. It was he who suggested that I should at least raise this matter in the House and seek the agreement of the Minister to ask her officials to look into these inconsistencies and to explore whether there is a way of finding a resolution that would feel somewhat more comfortable.

Baroness Chisholm of Owlpen (Con): My Lords, as the noble Lord, Lord Paddick, has indicated, Amendment 21 seeks to exclude from the importation offence in Clause 8, the importation of a psychoactive substance by a person for their own personal consumption. Amendment 56, in the name of the noble Baroness, Lady Meacher, aims to do something similar in that it seeks to exclude production for personal consumption from the scope of the offence in Clause 4.

The Government do not accept that there is an inherent contradiction between, on the one hand, making it an offence to import or produce a psychoactive substance for personal use and, on the other, not criminalising personal possession. The Bill is about tackling the trade in psychoactive substances, whatever form it may take, both domestically and internationally. The importation of psychoactive substances, particularly by post, is indisputably a key form of supply. To exclude importation for personal consumption, even assuming you could neatly carve such conduct out of the importation offence, has the potential to drive a coach and horses through the ban on importation. It would be an open invitation for individuals to import numerous small quantities, which they could then combine together for onward supply.

It is also important to mention that the proposal would impose a near impossible task on Border Force customs officials and National Crime Agency officers in policing the importation ban. It is obvious that it would be very difficult and time consuming for them to determine whether a particular consignment of psychoactive substances was for onward supply or for personal use. For example, a person could import a significant quantity of psychoactive substances at one time, claiming that it was a year's worth of supplies for their personal use.

With a blanket ban, the Border Force will have a clear mandate to seize any substance likely to be consumed by any individual for its psychoactive effects, and where the importation is not for an exempted activity. This will enable it to stop these potentially dangerous substances entering the country. In fact, between 2014 and 2015, more than 3.5 tonnes of new psychoactive substances were seized by Border Force officers. This was a 75% increase on the previous year.

Once the Border Force has identified a consignment, it can then simply invoke its seizure powers and the substances will be subject to a forfeiture process. In appropriate circumstances, the National Crime Agency will wish to investigate further and seek prosecution of an individual for a Clause 8 offence.

I can assure noble Lords that, as for any offence, a prosecution for an offence under Clause 8 would be pursued only if the public interest test is met. This is clearly set out in the Crown Prosecution Service's Code for Crown Prosecutors. The sort of questions that the prosecutor must ask him or herself when considering the public interest test include: "Is prosecution a proportionate response?", "What is the impact on the community?", and, "Was the suspect under the age of 18 at the time of the offence?". I hope this reassures noble Lords that decisions to prosecute for any offence in the Bill will not be taken lightly and a number of factors will be considered.

Interestingly, the national policing lead has advised that the long-term focus of enforcement action will be on those sources of supply which caused the most harm to communities in terms of crime and disorder, or where they are connected with organised crime. Some of these considerations apply equally to Amendment 56, to the extent that it could open up a significant loophole which could be exploited. More to the point, I put it to the noble Baroness, Lady Meacher: do we really want to encourage people to manufacture psychoactive substances in their garden shed, or, indeed, their bath? I suggest not. Production is clearly a critical link in the supply chain and we should not tolerate it on any level, whether it is on an industrial or cottage-industry scale.

The purpose of the Bill is to clamp down on the supply of NPS, not to criminalise young people. A range of civil sanctions is available to law enforcement agencies which offer an alternative route to criminal proceedings as a means of tackling the production and supply of psychoactive substances. The use of these sanctions will enable law enforcement officers to take action swiftly to nip a problem in the bud or to adopt a more proportionate approach to low-level offending. It will be a matter for the relevant law enforcement officer to determine the most appropriate course of action.

I hope that has reassured noble Lords—

Lord Howarth of Newport: I just wonder whether the noble Baroness is not sending a rather confusing signal to people. She is saying, on the one hand, that it must be illegal to import a substance; on the other, she is saying—and I am glad she is, in a way—that the public interest consideration will come into play when decisions about the prosecution are to be made. She is saying that it will be illegal to do it, but she is dropping the very broadest of hints that you are not going to get prosecuted for it. Is that not rather confusing for people?

8.45 pm

Baroness Chisholm of Owlpen: I did not mean to be confusing. People certainly will be prosecuted for it, but as I said, the use of these sanctions will enable law enforcement officers to take action swiftly to nip a

problem in the bud or to adopt a more proportionate approach to low-level offending. So it will be a matter for the relevant law enforcement officer to determine the most appropriate course of action.

While Border Force will seek to intercept, seize and forfeit any consignment of psychoactive substances coming into the UK, the focus of any criminal justice response will be on cases in which there is evidence of greatest harm. Similar considerations would apply to the enforcement of the production offence. Given this, I trust that the noble Lord feels able to withdraw his amendment.

Lord Paddick: I am very grateful to the Minister for her response. Like the noble Lord, Lord Howarth, I am slightly confused. Clearly, the Bill is aimed at tackling the trade, but whether you buy your psychoactive substance from a website abroad or from a drug dealer on the street, it would seem that the Bill is aimed at tackling one part of the trade but not the other—unless I am confused about that, as I see the Minister and the expressions on people's faces.

Of course Border Force needs to intercept these packages, which is why we are saying that this should be a defence rather than an exemption or not be an offence in itself. Clearly, if somebody is importing a large quantity and saying that it is a year's supply, they would have great difficulty in convincing the courts that that defence was available to them.

There are two reasons for raising this issue. First, the Advisory Council on the Misuse of Drugs raised it. In point 5 of its letter, it states:

"The Bill has the potential to both criminalise and apply disproportionate penalties to many otherwise law abiding young people and adults",

and it specifically mentions importation. Secondly, we wanted to get on the record, which we have achieved, the fact that the public interest test will be applied and that, hopefully, not many young people will end up with a criminal record as a consequence of these measures. On that basis, I beg leave to withdraw the amendment.

Amendment 21 withdrawn.

Clause 10: Power to provide for exceptions to offences

Amendment 22

Moved by ***Lord Bates***

22: Clause 10, page 5, line 33, leave out "such" and insert "—

(a) the Advisory Council on the Misuse of Drugs, and

(b) such other"

Amendment 22 agreed.

Amendments 23 and 24 not moved.

Amendment 25

Moved by ***Baroness Hamwee***

25: After Clause 10, insert the following new Clause—

"Control of cannabis

(1) Within six months of the passing of this Act, the Secretary of State shall consult the Advisory Council on the Misuse of Drugs pursuant to the Misuse of Drugs Act 1971 with regard to the use of her powers to make regulations under sections 7, 10, 22 and 31 of that Act—

(a) to delete from Schedule 1 to the Misuse of Drugs Regulations 2001 the substances listed in subsection (2), and

(b) to add those substances to Schedule 2 to the 2001 Regulations.

(2) The substances referred to in subsection (1) are—

(a) cannabis, and

(b) cannabis resin."

Baroness Hamwee (LD): My Lords, this takes us back to the control of cannabis for medicinal use. In Committee, there was some interest in, and I would say some sympathy for, the proposal that medicinal use should be permitted through some means or other. I am using those terms extremely loosely but there was certainly recognition of the difficulties and publicly expressed concerns. Very appropriately, concern was also expressed in the Chamber about the need for controlled trials, and a recognition of the difficulties around trials and of the paradox that medicinal herbal cannabis is widely available elsewhere in Europe, either produced in certain countries or imported from them, and in the United States, and that those medicines are much less expensive than Sativex, which is the medicine available—that is quite a wide definition—in this country on limited prescriptions.

I do not want to repeat that debate but I am mindful of the list of conditions we are aware of, and the severity of many of those conditions, which cannabis seems to alleviate—not for everyone, perhaps, but for an awful lot of people, and with very dramatic effects—so I did not feel that I could let the matter rest there. I was also aware that the Labour Front Bench did not feel able to support the amendment at that stage, possibly because of its defective form. The noble Lord, Lord Rosser—as I heard him and as I read in *Hansard*—was non-committal on the principle of the issue on that occasion. I hope that this evening the Opposition will be able to take the opportunity to indicate their position.

The noble and learned Lord, Lord Mackay, pointed out that there was already a procedure which would allow for cannabis to be moved from Schedule 1 to Schedule 2 to the Misuse of Drugs Regulations 2001 by regulations made under the Misuse of Drugs Act 1971. The amendment places the proposals squarely within the existing provisions of the Misuse of Drugs Act to allow for that change in the regulations to place cannabis among those drugs which may be illegal for recreational use but can be available via prescription. I am proposing the very much more tentative step—a preliminary step, perhaps; I hope so, at any rate—of consultation with the ACMD under the 1971 Act with regard to the use of the Secretary of State's powers under the regulations to achieve the alteration that I am speaking of with regard to both cannabis and cannabis resin. I beg to move.

Lord Howarth of Newport: My Lords, I hope indeed that, as the amendment proposes, the Government will consult in the relatively near future with the ACMD about the desirability of rescheduling cannabis from Schedule 1 to Schedule 2 to facilitate the use of cannabis-based medications. I draw great encouragement from the fact that the noble Baroness, Lady Hollins, has added her name to the amendment. She is an extremely distinguished psychologist and a very senior figure in

[Lord Howarth of Newport]
the BMA. If Ministers are less than impressed by any contribution on scientific or medical subjects that I may be able to make, they should be fully aware that the noble Baroness is in support of the amendment.

Perhaps I may refer again to the pamphlet published under the auspices of the All-Party Parliamentary Group on Drug Policy Reform, *Regulating Cannabis for Medical Use in the UK*, authored by Professor Val Curran and Mr Frank Warburton. I remind the House that at the outset of that document, the authors state:

"Based on a review of the research literature, the most established uses of medicinal herbal cannabis in places where it is most widely available such as in the Netherlands include: The relief of pain and muscle spasms or cramps associated with multiple sclerosis or spinal cord damage; chronic neuropathic pain (mainly pain associated with the nervous system, e.g. caused by a damaged nerve, phantom pain, facial neuralgia or chronic pain which remains after the recovery from shingles); nausea, loss of appetite, weight loss and debilitation due to cancer or AIDS; nausea and vomiting associated with chemotherapy or radiotherapy used in the treatment of cancer, hepatitis C or HIV infection and AIDS; Gilles de la Tourette syndrome; therapy-resistant glaucoma".

That is a significant list of conditions and diseases which good scientific evidence indicates are alleviated by cannabis-based medication. Yet we have a state of affairs in this country, in contrast to others, in which such alleviation and medical benefit is hardly available to people. That contrasts strongly with the countries which regulate the medical use of cannabis and cannabis derivatives, including Canada, the Netherlands, Israel, Spain, Uruguay and some 20 or more states within the United States of America. These are all mature societies which have thought deeply about the practicalities of drug control. They have come to a variety of policy conclusions but none of them has taken the decision flippantly or negligently to ensure that medical cannabis can be available in appropriate circumstances for patients who would benefit from it.

The current situation in the UK is that there are numerous people for whom cannabis would incomparably alleviate chronic pain, for example, but who simply cannot get hold of it. That is because of the rigidity of the regulations, the lottery of prescribing—a small number of doctors are willing to prescribe but very many are not—the cost of research and the consequential additional cost of production, and the inflexibility of the licensing system. This case is thoroughly made out in the document from which I have quoted. It surely must be time that the British authorities thought again about this and made moves at least to reconsider, open-mindedly and in a practical and constructive fashion, whether we should at long last reschedule cannabis from Schedule 1 to Schedule 2.

Baroness Meacher: My Lords, we debated this issue at length in Committee and I will therefore speak only very briefly. I support very strongly the amendment tabled by the noble Lord, Lord Paddick, which was spoken to by the noble Baroness, Lady Hamwee.

The Minister is aware that cannabis medication has proved a literal life-saver for children with Dravet syndrome, an extreme form of childhood epilepsy. If cannabis could be available as soon as Dravet syndrome was diagnosed, very severe brain damage caused by literally hundreds of fits every day could be avoided. The appalling side-effects of benzodiazepines for tiny children could also be done away with. On the basis of that single syndrome, the value of medicinal cannabis for these tiny children seems sufficient to make the case for cannabis to be shifted from Schedule 1 to Schedule 2.

As we know, Schedule 1 has in it only those drugs that are deemed to have no medicinal value at all. One simply cannot say that any longer of medicinal cannabis. The evidence of the medicinal value of cannabis for a range of other severe, long-term illnesses is now also irrefutable. That is a strong word when research is so difficult to undertake and the research studies have therefore been relatively small, but the evidence from countries across the world is now so strong, even on the basis of these small studies, that I do not think we should be questioning it.

9 pm

We know that for many diagnoses, including multiple sclerosis, different medications suit different patients. I was struck by the noble Lord, Lord Blencathra, maintaining that he does not need medicinal cannabis. Maybe certain people have not tried medicinal cannabis and might benefit greatly from it, but the reality is that different drugs suit different people. We know that there are 30,000 people in this country who are in great pain and go to great lengths to go abroad to get hold of medicinal cannabis, which they say makes all the difference to their quality of life.

The noble Lord, Lord Howarth, referred to the report for the all-party parliamentary group by a research officer, Frank Warburton, and Professor Val Curran. I will not repeat the excerpts that the noble Lord quoted from that report, but it sets out very powerfully not only the number of illnesses that can be treated with the drug but the number of countries that are now using it.

A senior Australian politician came to see me yesterday. He has tabled a Bill to legalise medicinal cannabis in Australia which is expected to become law in the autumn. The Bill apparently has a lot of support in Australia and one of the reasons for that is Dravet syndrome. When I mentioned the case that I shared with the Minister, he said, "Oh yes, we have a number of those cases in Australia". They have made a very big impact. I am very happy to make the Australian Bill, which I am assured will be sent to me, available to the Minister. That could cut a few corners and enable us to make some progress on this incredibly important matter sooner rather than later.

Baroness Hollins (CB): My Lords, I have added my name to this amendment. I refer to my interests in the register but make it clear that I am speaking in a personal capacity. As a doctor, I think this amendment provides quite an elegant solution to the clear need to make cannabis available for medicinal purposes. That is the point of it. Such a law could address a need that has clearly been there for quite some time and could be used to find a solution to a problem that has found a solution in other countries. I strongly support that. It could facilitate access to cannabis for so many people with long-term conditions such as multiple sclerosis, many of whom might benefit from such provision. I am pleased to support it.

Lord Tunnicliffe (Lab): My Lords, as many noble Lords have pointed out, we had a wide debate on this issue in Committee. We were unconvinced by the argument at that time. We are unconvinced that an amendment to this Bill is an appropriate vehicle but, as ever, we await the government response with interest.

The Minister of State, Home Office (Lord Bates) (Con): First, I thank the noble Baroness for moving this amendment and giving us the opportunity to return to this issue. I feel we will be returning to it often, as we have considered it often in the past. During the dinner break, I reread the Committee debate and used the time to look at the video that the noble Baroness, Lady Meacher, and the noble Lord, Lord Howarth, pointed me to when we met yesterday. It is a very moving story featuring testimony from a young boy in the United States with epilepsy who was taking medicinal cannabis to very helpful effect. No parent or grandparent would ever want to decry such examples, but of course they are individual stories or cases, and the duty in considering this is to look at the totality of the evidence. That is the duty of the Advisory Council on the Misuse of Drugs, which we have talked about a great deal, and of the Medicines and Healthcare Products Regulatory Agency, which needs to license and approve products for sale and use in the UK.

This amendment brings us back to some familiar territory. In responding to this amendment, I remind noble Lords that cannabis is a controlled drug under the Misuse of Drugs Act 1971 and listed in Schedule 1 to the Misuse of Drugs Regulations 2001. The 1971 Act will continue to regulate the availability of controlled drugs, and Schedule 1 to this Bill specifically excludes drugs controlled under the 1971 Act. The Government are already under a statutory duty under provisions set out in the 1971 Act to consult the Advisory Council on the Misuse of Drugs prior to implementing any changes to the classification of controlled drugs. Provisions in the 1971 Act also enable the advisory council, acting on its own initiative, to keep under review the situation with respect to controlled or dangerous drugs in the UK and to provide advice to the Government. To place a further statutory requirement on the Home Secretary to consult the advisory council in respect of the rescheduling of cannabis, as proposed in this amendment, will in the Government's view amount to an unnecessary duplication. Moreover, by setting an arbitrary timetable, it would entail an unjustified diversion of the advisory council's resources from more pressing tasks, particularly as the issue has relatively recently been examined by the council. Indeed, the advisory council has reviewed the evidence on the misuse and harms of cannabis twice in recent years. Its most recent report, published in 2008, confirmed its previous view that,

"the use of cannabis is a significant public health issue. Cannabis can unquestionably cause harm to individuals and society".

As I highlighted in Committee, no compelling body of evidence has since been put forward to the Government to challenge the advisory council's view or the Government's position on cannabis. However, we have listened to the experiences of the noble Baronesses, Lady Hollins and Lady Meacher, and continue to listen very carefully to that evidence, as I am sure that the advisory council continues to do as well. Of course, we continue to monitor the evidence, but it is the Government's view that the available evidence does not warrant a specific commission of the advisory council at this time. This position does not prevent the advisory council from reviewing the available evidence and providing further advice to Government on its own volition, if it considers that there is enough scientific evidence to warrant the legislative change proposed in the amendment.

In Committee, concerns were raised around the impact of the legislative framework on cannabis research, which was also raised in the meeting that I had with officials, along with my noble friend Lady Chisholm, on the issue of medical research. We were talking particularly about the difficulties involved in research. I said at that point, and I hold by it, that we remain very much open to receiving further evidence of the difficulties that might be there in conducting medical research. Certainly, if Professor Curran or other groups want to provide evidence—we have received a report prepared by the all-party parliamentary group—that will be considered very carefully. The Government attach the highest priority to bona fide scientific research, especially that which will lead to improvements to the future health and well-being of the people of this country. They are committed to removing unnecessary regulatory barriers that impede research.

The Government's view is that the Misuse of Drugs Act 1971 and the regulations made under the Act already facilitate research in this area. It is therefore not necessary to move cannabis from Schedule 1 to Schedule 2 prior to its use in research or medicinal trials. Schedule 1 drugs are already used in research or medicinal trials. Where wider human trials are necessary, the Home Office can issue a general licence under the 1971 Act to enable prescribers to prescribe on a named-patient basis, pharmacists to dispense and patients to possess, as happened during the development of the cannabis-based medicine Sativex, to which the noble Baroness, Lady Hamwee, referred.

The Home Office licensing regime is aimed at enabling access to drugs under a framework that prevents diversion and misuse. The regime is not intended to create unnecessary barriers to research, nor do we believe that that is how it operates in practice. Where there is clear evidence that such barriers exist and that removing them will not increase the risk of diversion to the illicit market, we are open to reviewing them.

Indeed, the formalities for obtaining a Schedule 1 licence and the requirements that would normally apply to prevent diversion and misuse, such as safe custody, are in fact similar to those applicable to Schedule 2 drugs and most Schedule 3 drugs. A decision to grant a Schedule 1 licence will be based on an assessment of risk, which is specific to each individual application. This principle is no different from drugs in the other schedules under the 2001 regulations. It is also worth noting that controlled drug licences are not drug-specific and a Schedule 1 research licence enables an organisation to undertake research with all drugs listed in that schedule, subject to any ethical approvals where human trials are proposed.

Lord Howarth of Newport: The Minister will know from reading the report that some of the very significant practical difficulties for research arising from the fact that cannabis is in Schedule 1 are described in that report. He will also be aware that whereas cannabis is in Schedule 1 and is that much more tightly controlled, heroin is in Schedule 2 and is also very tightly controlled. The Minister said he had looked at the totality of the evidence. Does he have any evidence of leakage of heroin from hospitals, which are allowed to hold it because it is a Schedule 2 drug, into the illicit market? It is no more likely that cannabis would leak from its proper medical research uses into the illicit market than that heroin would. Heroin does not, I believe, so why would cannabis?

Lord Bates: That is an interesting point which will, of course, be considered by those committees which advise the Government on these important issues. I would imagine that that factor has been considered, and if it has not, I am sure that the noble Lord will ensure that in future it should be considered in making decisions on this issue.

Home Office records confirm that no university that has applied for a Schedule 1 licence has so far been refused one, and we have not seen any evidence that licensees have been unable to comply with the Schedule 1 licence requirements. About 70 Schedule 1 licences are currently held by universities and hospitals enabling them to undertake research with all substances in Schedule 1 under the terms of that licence, as opposed to being limited to a single drug.

Where that research involves live human subjects, there are other, non-Home Office requirements, such as ethics approval, and I think there is some anecdotal evidence that the ethical demands, processes and commitments that must be gone through are more onerous than the licensing ones and may in practice present greater challenges to researchers than the requirements of the 1971 Act.

I have no doubt the debate on the legal status of cannabis, including its scheduling, is one we will return to from time to time as the evidence develops. For now, I hope I have been able to present some evidence to the noble Baroness that while we carefully considered her proposal, we do not regard it as necessary and do not see the case for there being a change in the Government's position at this time.

Baroness Hamwee: My Lords, I apologise to the noble Baroness, Lady Hollins; I had not realised that she had added her name. I am very grateful for her support, as I am to other noble Lords who have supported this amendment. I note that the Labour Party is unconvinced that this is the appropriate vehicle, and I am still unclear whether it is convinced of the need to deal with the issue and therefore perhaps to find another vehicle. I saw the video as well—I picked it up online—but I am mindful of the point made by the noble Lord, Lord Ribeiro, at the previous stage about individual cases and the need for clinical trials.

9.15 pm

I shall pick up three points. I am told that there is no evidence of diversionary misuse in other countries where cannabis is available for medicinal use. We will not get the scientific evidence without taking account of the issues raised, including changes in other countries, embarking on trials and addressing the ethical issues. As to there being no compelling body of evidence, I refer to almost the noble Lord's last point: the passage of time and the accumulation of demand in themselves are proving compelling. Still, we are where we are—or rather, where we are not—today. I beg leave to withdraw the amendment.

Amendment 25 withdrawn.

Clause 11: Meaning of "prohibited activity"

Amendment 26

Moved by ***Lord Bates***

26: Clause 11, page 6, line 10, leave out "an" and insert "a prohibited"

Lord Bates: My Lords, I wonder if it would be helpful to the House if I were to move the rest of this large group of largely minor and technical government amendments, Amendments 27 to 50, formally. I flagged up these amendments in Committee and have written explaining the basis of them. There is one significant change in Amendment 50, which provides a new clause to ensure that Border Force officers can access relevant provisions in the Customs and Excise Management Act 1979 when they intercept psychoactive substances being imported into or exported from the UK, particularly by post. Unless noble Lords want clarification—

Lord Tunnicliffe: I am sorry. I was going to interrupt the Minister to indicate that we would be content if the amendments were moved formally. We are indeed content.

Lord Bates: I beg to move Amendment 26.

Amendment 26 agreed.

Amendment 27

Moved by ***Lord Bates***

27: Clause 11, page 6, line 12, after "in" insert "any of paragraphs (a) to (e) of"

Amendment 27 agreed.

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

Amendments 28 to 31

Moved by ***Lord Bates***

28: Clause 15, page 7, line 37, at end insert—

"( ) A notice takes effect when it is given."

29: Clause 15, page 8, line 27, at end insert—

"( ) A notice sent to a person by electronic means is, unless the contrary is proved, to be treated as having been given at 9 am on the working day immediately following the day on which it was sent."

30: Clause 15, page 8, line 28, leave out "subsection (8)" and insert "this section—"

31: Clause 15, page 8, line 30, at end insert—

""working day" means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom."

Amendments 28 to 31 agreed.

Clause 27: Variation and discharge on application

Amendments 32 to 36

Moved by ***Lord Bates***

32: Clause 27, page 16, line 11, at end insert "or the chief constable of the British Transport Police Force"

33: Clause 27, page 16, line 12, leave out from "Scotland," to end of line 13 and insert "the Lord Advocate or a procurator fiscal;"

34: Clause 27, page 16, line 16, leave out paragraph (d)

35: Clause 27, page 16, line 18, at beginning insert "in the case of an order made in England and Wales or Northern Ireland,"

36: Clause 27, page 16, line 19, at beginning insert "in the case of an order made in England and Wales or Northern Ireland,"

Amendments 32 to 36 agreed.

Clause 29: Appeals against making of prohibition orders and premises orders

Amendments 37 to 39

Moved by ***Lord Bates***

37: Clause 29, page 18, line 2, leave out from "18" to "may" in line 3

38: Clause 29, page 18, line 5, at end insert "(to the extent it would not otherwise be so appealable)."

39: Clause 29, page 18, leave out lines 6 and 7

Amendments 37 to 39 agreed.

Clause 30: Appeals about variation and discharge

Amendments 40 to 45

Moved by ***Lord Bates***

40: Clause 30, page 18, line 18, column 2, at beginning insert "High Court of Justiciary sitting as the Court of Criminal Appeal, in a case where the relevant order was made under section 18 and the person against whom it was made had been convicted in proceedings on indictment"

41: Clause 30, page 18, line 18, column 2, at end insert ", in any other case"

42: Clause 30, page 18, line 30, leave out "subsection (2)" and insert "subsections (1) and (2)"

43: Clause 30, page 19, line 6, leave out from "28" to "as" in line 7

44: Clause 30, page 19, line 8, at end insert "(to the extent it would not otherwise be so appealable)."

45: Clause 30, page 19, leave out lines 9 and 10

Amendments 40 to 45 agreed.

Clause 49: Power of police, etc to dispose of seized psychoactive substances

Amendment 46

Moved by ***Lord Bates***

46: Clause 49, page 28, line 34, leave out "is a psychoactive substance but" and insert "—

(i) is a psychoactive substance which, if it had not been seized, was likely to be consumed by an individual for its psychoactive effects, but

(ii) "

Amendment 46 agreed.

Clause 50: Forfeiture of seized items by court on application

Amendments 47 and 48

Moved by ***Lord Bates***

47: Clause 50, page 29, line 21, after "substance" insert "which, if it had not been seized, was likely to be consumed by an individual for its psychoactive effects"

48: Clause 50, page 30, line 3, after "that" insert "—

(i) if the item had not been seized, it was not likely to be consumed by any individual for its psychoactive effects, or

(ii) "

Amendments 47 and 48 agreed.

Clause 51: Appeal against decision under section 50

Amendment 49

Moved by ***Lord Bates***

49: Clause 51, page 31, line 2, leave out "30" and insert "28"

Amendment 49 agreed.

Amendment 50

Moved by ***Lord Bates***

50: Before Clause 54, insert the following new Clause—

"Application of Customs and Excise Management Act 1979

(1) Section 164 of the Customs and Excise Management Act 1979 (power to search persons) applies in relation to a psychoactive substance as it applies in relation to an article with respect to the importation or exportation of which any prohibition or restriction is for the time being in force under or by virtue of any enactment.

(2) A psychoactive substance is liable to forfeiture under the Customs and Excise Management Act 1979 if—

(a) the psychoactive substance—

(i) is imported or exported, or

(ii) is entered for exportation or brought to any place in the United Kingdom for exportation,

(b) the psychoactive substance is likely to be consumed by any individual for its psychoactive effects, and

(c) the importation or (as the case may be) exportation of the psychoactive substance is not an exempted activity.

(3) For the purposes of subsection (2) the importation or exportation of a psychoactive substance is an "exempted activity" if it would not be an offence under this Act by virtue of regulations under section 10.

(4) Section 5 of the Customs and Excise Management Act 1979 (time of importation, exportation, etc) applies for the purposes of subsection (2) as it applies for the purposes of that Act."

Amendment 50 agreed.

Amendment 51

Moved by ***Lord Rosser***

51: Before Clause 54, insert the following new Clause—

"Secretary of State's duty to increase public awareness of new psychoactive substances

(1) The Secretary of State must establish a scheme to promote public awareness of new psychoactive substances, including the dangers these substances may pose.

(2) The duty referred to in subsection (1) includes, but is not limited to, the requirement to introduce measures to—

(a) increase public awareness of new psychoactive substances; and

(b) assist schools in educating pupils about the dangers associated with new psychoactive substances.

(3) The Secretary of State must publish, and lay before each House of Parliament, a report on the actions undertaken in pursuance of this section, within six months of sections 4 and 5 of this Act coming into effect, and annually thereafter.

(4) The report shall include, but need not be limited to—

(a) measures that have been taken to increase public awareness, including the cost of such measures;

(b) measures that have been taken to assist schools in educating their pupils;

(c) a subsequent review of the effectiveness of the measures taken; and

(d) any further measures that the Secretary of State plans to undertake in the future."

Lord Rosser: In Committee, we discussed an amendment providing for the Secretary of State to establish a scheme to promote public awareness of new psychoactive substances, including the dangers that these substances may pose, and to provide an annual report to Parliament. Amendment 51, which I am moving, is in a similar vein. In his response in Committee, the Minister referred to a meeting that was to take place with Public Health England and the Department for Education earlier this month. He said:

"The Bill is primarily a law enforcement measure, setting out definitions et cetera, although it is part of a wider context that includes education. As to whether we should have references to education or treatment programmes in the Bill, I personally favour things that are very clear and focused about what they want to do. What we hope to achieve through education is a very important part of the context. I undertake to reflect on that between now and Report".—[*Official Report*, 23/6/15; col. 1570.]

Since the discussion in Committee, we have had the letter of 2 July to the Home Secretary from the chair of the Advisory Council on the Misuse of Drugs, which set out the ACMD's views on the Bill. That letter says:

"The ACMD would like to help the Government in refining the Bill by making recommendations".

It goes on:

"The ACMD is willing to suggest detailed amendments … helping develop an implementation strategy including information, education, treatment and harm reduction services which may be required for users of Novel Psychoactive Substances".

The ACMD then includes in its recommendations that the Government should,

"ensure adequate resources are in place to support education, prevention, acute health interventions, treatment and harm reduction services to prevent and to gather evidence of Novel Psychoactive Substance-related harms".

Therefore, the ACMD was talking with regard to amendments to the Bill on information, education and treatment, and clearly had some doubts about whether adequate resources were available. In her reply, the Home Secretary made no response to the ACMD offer to "suggest detailed amendments", including on the issues of education, treatment and harm reduction. Perhaps the Minister could fill in that gap when he responds.

On the ACMD recommendation in respect to the provision of adequate resources, the Home Secretary referred to,

"a comprehensive action plan on psychoactive substances to further enhance",

the Government's,

"response to prevention, treatment and information sharing",

and to refreshing the Government's,

"over-arching approach to reducing the demand for drugs … enabling … a broad approach to prevention",

to be taken.

I believe the Home Secretary may also have received a letter from a number of organisations involved in this field which expressed concern about the educational and preventive response from the Government about the risks to young people from new psychoactive substances. The organisations said that the current approach to preventing young people coming to harm from NPS is insufficient to meet the scale of the problem and have asked the Government to consider the proposals recommended by the Welsh Government's Health and Social Care Committee. That committee, of course, recommended a targeted public awareness campaign for young people, as well as one specifically for parents, an evaluation of current education programmes, investment more generally in drugs education in schools, and NPS training for front-line staff. In addition, we have already had the report of the Government's expert panel, which also included recommendations on education and awareness.

I am not sure what the difficulty was with the amendment in Committee, and I hope that the outcome of the Minister's reflection since Committee, which he said he would undertake, will prove to have been positive. After all, he said in his recent undated letter to my noble friend Lord Howarth of Newport:

"I feel strongly that prevention is at the core of how we tackle the misuse of drugs and keep our young people safe from drug related harms".

What we do not want is government—any Government—maintaining that it has comprehensive action plans and is refreshing overarching approaches to address the issues arising from the use of new psychoactive substances, as the Home Secretary has done in her reply to the ACMD, when there is no requirement on government to then report to Parliament regularly on what those measures are that have been introduced and implemented and how successful or otherwise they have been in resolving the problems they were designed to address.

I have already referred to the Minister's comment in Committee:

"What we hope to achieve through education is a very important part of the context".—[*Official Report*, 23/6/15; col. 1570.]

That is fine. But what, in detail, do the Government hope to achieve through education, and how and when will they update us on the progress they are or are not making towards whatever it is they have decided they are seeking to achieve through education? Can the Minister give some specific answers to those specific questions I have just posed, or, alternatively, accept this amendment, which provides the framework through which the Government could report regularly to Parliament on their objectives with regard to the use of and public awareness about NPS, and the extent to which the measures they have taken have been effective?

One thing appears clear and that is that any education, treatment and prevention programmes in respect of new psychoactive substances to date have been less than fully effective. If they had been, presumably we would not have felt the need for this Bill. Legislation, law enforcement and criminal sanctions are important but so, too, are education, training and prevention programmes and measures if we are to address fully the use and supply of psychoactive substances. A Bill that deals with only the former aspect and makes no reference to the latter, and which lays no duty on the Secretary of State to report on the measures taken and their effectiveness, is surely incomplete and does not recognise the equal importance of education, information and prevention.

I simply conclude with one further point and question. In his recent—again, undated—letter to me setting out the Government's amendments for Report, the Minister referred to the fact that the Government already report annually on their drug strategy. If the Minister can confirm that that is a report to Parliament and that it will in future contain information on the matters in respect of new psychoactive substances referred to in my amendment, it may be that my amendment is no longer needed. I beg to move.

Lord Howarth of Newport: My Lords, the amendment which has just been moved by my noble friend Lord Rosser ranges more widely, and very valuably, by comparison to my more limited Amendment 53 in this group, which is confined to the question of education and would require the Secretary of State to,

"require that all secondary schools report annually on their drug education programmes",

and requires that Ofsted and the equivalent agencies in Scotland, Wales and Northern Ireland,

"when reporting on the performance of secondary schools, include an assessment of the extent and quality of drug education provided by the school".

It goes on to require that:

"The Secretary of State shall request that each further and higher education institution publish annually a report on its programme to reduce harms caused by the use of drugs by its students".

The noble Lord, Lord Bates, with characteristic helpfulness, organised a meeting on the theme of education and prevention which a number of us were able to attend. We met people from Public Health England, and also present was an official from the Department for Education. It was a very interesting and very useful meeting, and I am most grateful to the noble Lord and the noble Baroness, Lady Chisholm, for making that possible. I was particularly impressed by the thoughtfulness, energy, commitment and good sense of the representatives from Public Health England. I was also very encouraged by the work that they have in train, which they described. They have been somewhat limited by their lack of resources. Our meeting was on the eve of the Budget. I expressed the hope—in semi-jocular fashion—at the end of the meeting that the next day would see their budget quadrupled. They smiled a little wryly. In fact, the next day the Chancellor announced a £200 million cut to the public health grant to local authorities. That must be highly problematic for other departments—the Home Office, the Department of Health and, I dare say, the Department for Education.

The Home Office's annual review sketches out—as is its fashion; it does not deal with anything other than sketchily—some of the educational approaches that are being undertaken. It talks about the Rise Above project; it talks about the government-sponsored website Talk to FRANK; it talks about communications campaigns that have been undertaken in 2013 and 2014; and it refers to the *New Psychoactive Substances (NPS) Resource Pack for Informal Educators and Practitioners*, which I have read and which I admire very much. It is full of good sense and gets the tone exactly right. So, to that extent, there is some modest encouragement.

The annual review also talks about the Government's:

"Promotion of good practice in demand reduction in NPS at EU and international level, led by the UK".

I found that assertion to be a trifle unconvincing. If we consider the work that has preceded it in Portugal, the Netherlands, Denmark, Germany and Switzerland, it is difficult to see that the United Kingdom Government are in the lead in this process of developing preventive and educational strategies.

9.30 pm

However, it is good that the ADEPIS programme—the Alcohol and Drug Education and Prevention Information Service—is being run by Mentor UK, which, the House will remember, was particularly critical of the Government's educational efforts in its evidence to the Home Affairs Select Committee in the report published in 2012. The ADEPIS programme was launched in 2013, and we are told in the Home Office's annual review that it will,

"continue to be funded for another year to ensure their resources are fully embedded in local practice".

That further year is 2015-16. Does the Minister want us to believe that the job will then have been done and that we can seriously hope that the good practices recommended by Mentor and promulgated through the ADEPIS programme will be fully embedded in local practice as a result of one more year's funding? I do not think that it will.

There is extensive evidence which has been discussed by the Advisory Council on the Misuse of Drugs and presented to the department, and which has also been discussed in other documents, that the present provision for drugs education in the national curriculum is not only minimal but, in practical terms, useless—useless in terms at least of strengthening resilience and helping

[LORD HOWARTH OF NEWPORT]
young people develop the capacity and the will to resist the blandishments of the drug culture. It has been a matter of great controversy in this House that personal, social and health education has not been made a statutory subject in the curriculum. We know from other evidence from at least a year or two back that drug education was provided in many schools once a year or less. I have very little reason to think that Ofsted has this among its most seriously held concerns. The ACMD has said that provision within the curriculum simply does not work. The report of the expert panel, which lies behind the presentation to the House of this legislation, talks in chapter 5 about the need for drug education to take its place within a whole array of preventive strategies. By simply leaving it to occasional moments in the school day or year, one does not get anything useful done.

I have therefore tabled my amendment and am speaking now because I want to make a serious plea, through the good offices of the Minister, to the Department for Education to pull its weight in this regard. I simply do not see that it has taken the responsibilities that it ought to accept in terms of drug education with the seriousness that is required. On the other hand, I have hopes of the new Secretary of State for Education, Nicky Morgan, because she has had much to say about the importance of schools developing character. She is right about that. What I look for from her is a speech, using all the authority of the office she holds, in which she urges schools across the length and breadth of the land—all schools, whether they are free schools, academies or state schools of one kind or another—to commit themselves with true seriousness to a sustained drive in this direction, and for the Secretary of State to maintain that drive.

That has to be continued through the later stages of education, in further education and higher education, as my amendment proposes. I hope that the Secretary of State for Business, who has lead responsibility for higher education, will have conversations with Universities UK and the vice-chancellors to impress upon them that we expect a seamless continuity of serious, intelligent and strategic education throughout the education system to support children and young people to develop the resilience and capacity for independent, critical decision that they need. I will quote from the resource pack:

"A common goal in working with young people at risk from the choices they may make is to build their emotional resilience and to provide them with the skills and confidence they need to reject pressures they face".

I very much hope that we will see the Home Office supported by the Education Department and a coherent strategy across the whole of government to turn this into a worthwhile reality.

Lord Paddick: My Lords, my noble friend Lady Hamwee and I have added our names to Amendment 51 in the name of the noble Lord, Lord Rosser. I want to add two things to the debate. First, I point out again that this is covered not just in the letter from the Advisory Council on the Misuse of Drugs but in one of its recommendations, which asks that the Government,

"ensure adequate resources are in place to support education, prevention, acute health interventions, treatment and harm reduction services".

Clearly, as the noble Lord, Lord Rosser, said, that indicates that the ACMD's assessment is that those resources are not sufficient at this time. I do not feel that the Secretary of State's response—simply outlining what the Government are doing at the moment—addresses the point that the Advisory Council on the Misuse of Drugs makes. The reason the ACMD speaks in those terms is that the budget available for law enforcement around drugs and the budget for education around drugs are completely out of kilter. This Bill will incur more costs on the law enforcement front without adding any additional resources for education and prevention.

I ask the Minister to reassure us that adequate resources will be addressed to education and prevention and agree that if we are to hold the Government to account for any promises they make, we need to hear exactly what the Government are doing and what the impact of those efforts is, as the noble Lord, Lord Rosser, has already said.

Lord Bates: I am grateful to the noble Lord, Lord Rosser, for moving this amendment and for the debate that we have had. Education is a critical element of this. It is right that we focus on education programmes, and I will come to those in a minute.

Probably the worst impact on a child's education is what happens in places such as Canterbury, where there is a head shop across the road from a school. Young people can wander past that shop and obtain new psychoactive substances without any production of proof of age. Those substances are easily available and accessible. I cannot think of a worse signal to send to young people about what the Government's position is. They may have had the most wonderful, textbook PSHE lesson from an inspiring teacher but, if that is their experience when they walk out the door, it is significantly undermined. Therefore, we need to keep this in context, and I will respond to the point made by the noble Lord, Lord Rosser. Although education clearly needs to be robust and measured in its effectiveness, the overall purpose of the action being taken—with support from the Official Opposition—will have a far greater effect, particularly in relation to NPSs.

Prevention and education is a key strand of our balanced drug strategy, and it is vital that we prevent people, especially young people, using drugs in the first place and intervene early with those who start to develop problems. We have recently refreshed our approach to reducing the demand for drugs, enabling us to take a broad approach to prevention. The approach combines universal action with targeted action for those most at risk or already misusing drugs. It includes investing in a range of evidence-based programmes which have a positive impact on young people, giving them the confidence, resilience and risk-management skills to resist drug use. This refreshed approach is very much in line with the goal of building character, which was referred to by the noble Lord, Lord Howarth. Nicky Morgan had raised this.

While good practice is highlighted, the advisory council report also acknowledges strong evidence that some prevention approaches are ineffective in reducing drug misuse. These include stand-alone, school-based curricula designed only to increase knowledge about illegal drugs, fear arousal approaches, and stand-alone

mass media campaigns. That was backed up by the evidence that we received in the all-interested-Peers meeting.

It is therefore vital that we ensure that our young people are equipped with the best possible tools and skills to make positive choices about their health. We have implemented a range of activity to support this approach—for example, a new online resilience-building resource, Rise Above, aimed at 11 to 16 year-olds; developing the role of Public Health England to support local areas; sharing evidence to support commissioning and delivery of effective public health prevention activities; and launching toolkits. I was grateful for the support of the noble Lord, Lord Howarth, for the tone and content of the toolkit which is available in the pack and on the website.

The Government have also invested in resources to support schools; for example, the development of the Alcohol and Drug Education and Prevention Information Service, which provides practical advice and tools based on the best international evidence, including briefing sheets for teachers. In addition, Mentor UK, which runs the service, manages the Centre for the Analysis of Youth Transitions database, which hosts evaluations of education programmes aimed at improving outcomes for young people.

As part of its inspections programme, Ofsted will from September make a judgment about the quality of a school's provision for pupils' personal development, behaviour and welfare. The criteria for an outstanding judgment in this area include: that pupils are safe and feel safe at all times; that they understand how to keep themselves and others safe in different situations and settings; and that they can explain accurately and confidently how to keep themselves healthy. As part of judging the quality of leadership and management, Ofsted also evaluates the effectiveness and impact of provision for pupils' spiritual, moral, social and cultural development, which includes understanding the consequences of their behaviour and actions and recognising legal boundaries.

We have also taken specific action to address the threat of psychoactive substances by publishing a resource pack, which I have referred to already.

As we will come to in a later debate, the Government already review annually their activities and progress under the *Drug Strategy 2010*, with the most recent review published in February this year. That is a cross-government, cross-departmental approach; it is published on the Home Office website. I am happy to undertake to write to colleagues who are in charge of that process drawing attention to this debate and the interest taken in monitoring the effectiveness of education on new psychoactive substances, because, as we have heard, be it in prisons or in children's homes, the problem is growing.

Lord Howarth of Newport: I am very grateful to the Minister for giving that undertaking. When he writes to his colleagues, will he broaden out the remit, or the request, so that he invites them to respond across the whole field of drug education and not simply in relation to new psychoactive substances?

Lord Bates: I am trying to be helpful by responding particularly to the point made by the noble Lord, Lord Rosser, who asked what we were doing on evaluation. I have not consulted officials—perhaps they will be waiting for me in the corridor afterwards to tell me—but it seems to me sensible and appropriate to reflect the concerns expressed in this debate on how we evaluate.

9.45 pm

As to more effective evaluation, we have again listened to comments made in Committee and have committed to post-legislative scrutiny after 30 months. I am sure the noble Lord, Lord Rosser, will accept that one of the problems—we heard this at the meeting we had—is the quality of data as to what works and what does not. It is like the old argument, whoever it was that said it, that half their advertising budget was wasted—the only problem was that they could not work out which half. It is one of the challenges that we have. We will have post-legislative scrutiny of the effect of the Bill after 30 months and we hope to draw some conclusions about the level of usage.

The noble Lord, Lord Rosser, was uncharacteristically a little uncharitable about the Home Secretary's response, which was sent within a matter of days. It was a substantive response which included the additional element that,

"we have recently refreshed our over-arching approach to reducing the demand for drugs, in line with the evidence-base set out by the ACMD, enabling us to take a broad approach to prevention".

This is reflected in the wider use of social media and questioning, which allows young people to go online, raise questions themselves and have them answered by others. It has been found on the evidence that that tends to be a more effective way of communicating with young people, rather than figures of authority telling them, "This is the way that it should be", or even former drug users talking about the dangers for them. From the evidence that was presented at the meeting and in the response, this kind of peer-to-peer interaction on social media, which FRANK does very well—FRANK being the website—might provide a way forward for the future.

Given the two undertakings—post-legislative scrutiny in 30 months and a significant section addressing the effectiveness of prevention and education—and the commitment to write to the cross-government group asking it to reflect on the debate we are having here about new psychoactive substances in its future annual report, I hope the noble Lord will feel able to withdraw his amendment.

Lord Rosser: I thank the Minister for his response and all noble Lords who have spoken in the debate. I certainly did not intend to be less than complimentary about the Home Secretary's reply. I made the comment that the Home Secretary had made no response to the ACMD offer to suggest detailed amendments, including on the issue of education, treatment and harm reduction. I do not think there was a response on that aspect in the Home Secretary's reply.

The Minister has hit the nail on the head: the issue is not what the programmes are and what the Government have but what it is they wish to achieve. The Minister said that what we hope to achieve through education is a very important part of the context, but I do not know where it is laid down what the Government have decided they want to achieve through education. What is the

[LORD ROSSER]

goal? What is the objective we are aiming for? We have a lot of programmes but I am not sure how we will know whether those programmes have achieved anything if we do not know what goal the programmes are designed to achieve. In any review or examination, which was one of the main purposes of the amendment, we will need to know how effective the measures have been. That is one of the issues raised in the amendment where it refers to,

"a subsequent review of the effectiveness of the measures taken".

I appreciate that the Minister has moved some way, both with the proposal in his letter to me of a review of,

"the operation of the Act",

and with what he said this evening about writing to those responsible for the annual report on the Government's drug strategy and inviting them to consider including information about new psychoactive substances. I am very grateful to the Minister for that response and for coming some way towards meeting us on this amendment, albeit that he does not feel able to accept the amendment as it is. I beg leave to withdraw the amendment.

Amendment 51 withdrawn.

Amendment 52

Moved by ***Lord Rosser***

52: Before Clause 54, insert the following new Clause—

"Annual reporting

(1) The Secretary of State must publish an annual report on new psychoactive substances.

(2) The report under subsection (1) must be published, and a copy laid before each House of Parliament, within six months of the passing of this Act and annually thereafter.

(3) The report under subsection (1) shall include—

(a) the number of prosecutions, and convictions for sentences, for offences under sections 4 to 8 of this Act;

(b) the operation of powers created under sections 12, 13 and 32 to 35 of this Act;

(c) the number of new psychoactive substances identified in the UK;

(d) the number of hospital admissions linked to new psychoactive substances which were—

(i) poisonings;

(ii) mental health related; and

(iii) other;

(e) the number of new psychoactive substances controlled under the Misuse of Drugs Act 1971; and

(f) the number of exemptions for psychoactive substances granted under section 3."

Lord Rosser: We had an amendment in Committee that called for the Secretary of State to publish an annual report on new psychoactive substances. We then set out some of the information that should be included in that report. This amendment basically seeks the same. The lack of basic data and information was an issue identified by the Government's expert panel. These issues included the difficulty for any one agency of keeping abreast of all the new developments. The acknowledgement that the Misuse of Drugs Acts 1971 needs to be supplemented by other legislation has meant that more professional networks, including trading standards, require information. The current time lags between data collection and publication of data obtained by current networks mean that the systems cannot be employed in the service of providing more timely early warning-type information. Finally, there is a need to collect, analyse and distribute information in a more systematic and timely fashion to help inform policy and practice at both a national and local level.

In his recent letter to me on the government amendments for Report, the Minister said that the Government were not persuaded of the need,

"to produce an annual report on the operation of the Act",

but that they,

"agree that … there is a case for a one-off duty to review the operation of the Act and to lay a report on the review before Parliament".

Accordingly, government Amendment 55,

"requires such a report to be prepared and laid before Parliament within 30 months of the coming into force of Clauses 4 to 8 of the Bill".

In his letter, the Minister continued:

"This timetable would allow for the collection of two years' worth of data on the operation of the Act",

and that data were,

"of the kind set out in your amendment 105 at Committee stage",

which would help to inform the review.

Is the noble Baroness able to say a little more about the information that will be provided in the review referred to in government Amendment 55 and the extent to which it will include the kind of issues referred to in my amendment on annual reporting? Surely, after the first review of the operation of the Act, which the government amendment says will be within 30 months of Clauses 4 to 8 coming into force, there should be regular updates since the facts about the effectiveness of the operation of the Act and the measures taken may change.

Alternatively—what I ask comes back to what the Minister said on the previous amendment—will the information that we have called for in our amendment also be covered in the annual report on the Government's drugs strategy, to which, as I have said, the Minister made reference in relation to the previous amendment on education, training and prevention? I beg to move.

Lord Howarth of Newport: My Lords, my Amendment 54 in this group ranges more widely than that of my noble friend, and might indeed be regarded as somewhat clunky. However, it is intended to be illustrative of the range of issues that I think ought to be covered in a proper annual review or annual report issued by the Home Office.

I have looked at the three annual reviews issued since 2013. The February 2015 review of the progress of the *Drug Strategy 2010* consists of all of 28 pages of text. It covers some of the issues indicated in my amendment which I think ought to be covered in an annual review, but far from all of them. I am afraid to say that it seems to me a thin and superficial document which is simply not commensurate with the importance and complexity of the issue and the major social challenge that drug abuse presents. It is also an inadequate form of accountability to Parliament, being as flimsy

as it is. It contrasts with the *European Drug Report*, which is produced annually by the European Monitoring Centre for Drugs and Drug Addiction, which is a much more substantial document, containing tables, graphs, citations and footnotes—an altogether more serious and substantial report. We do not find that kind of material in the Home Office's annual review.

The Minister said in her foreword to the latest annual review, "We are not complacent". That is good. However, on page 10, she spoke about:

"Promotion of good practice in demand reduction in NPS at EU and international level, led by the UK".

That is a fine assertion but, as I said in the previous debate, not to me a convincing one. Regrettably, the annual review does not go on to tell us what this promotion has meant or what the good practice in demand reduction should be.

The expert panel's report said on page 53 that adequate monitoring of whatever the policy proves to be,

"needs to be in place".

I think that it was looking for a substantial annual review. It also seems to me that the implication of the letter from Professor Iversen to the Home Secretary of 2 July is that a whole range of issues need to be kept under solid and informative review.

The expert panel report contains a very important section on pages 35 to 36, in which it sets out the key opportunities and the key risks of the policy that the Government have embarked upon in this legislation. Among the key risks are those of supply, demand, enforcement, harms, forensic science, legal issues and communications. Among the opportunities are, again, supply, demand, enforcement, harms, forensic science, legal issues, communications and costs, so, according to the expert panel, there are both opportunities and risks entailed in the Government's policy. I suggest that certainly the Government's initial report, which they have promised to issue within 30 months, but also the annual review issued by the Home Office, ought to deal in very substantial measure with all those opportunities and risks that have been found.

The section of the European Monitoring Centre report on prevention tells us that the use of NPSs by young adults ranged from a high of 9.7% in Ireland to a low of 0.2% in Portugal. It also tells us that Sweden, which practises a draconian prohibitionist policy, has the second-highest drug-induced mortality among 15 to 64 year-olds. These are among the sorts of pieces of information that ought also to appear in the Home Office's annual review.

Page 15 of the last edition of the annual review, in the section discussing restricting supply, referred briefly to liaison with Pakistan, Afghanistan and West Africa, but had nothing whatever to say about liaison with China and India, which are the key countries in terms of NPSs. On page 19, we are told that the UK,

"chaired a G7+ country Expert Meeting … in Berlin in November 2014",

which led to agreement on a "set of actions", but we are not told what the actions were. On page 23, we are told that there is a strategy of:

"Transferring the responsibility for developing locally led, integrated, recovery orientated treatment systems to local authorities",

but there is no discussion of the funding situation for local authorities—the very large cuts there have already been, followed, of course, by the cuts just announced to the funding for Public Health England.

10 pm

On page 7 of the annual review, we are told that a final evaluation will be made of the 2010 strategy, but it is a hesitant commitment to a cost-benefit analysis. We are told that:

"Where there is sufficient data the evaluation will also provide cost-benefit estimates".

A cost-benefit analysis is one of the requirements in my amendment. On page 6, the review tells us with apparent confidence that,

"we have taken a comprehensive and evidence-based approach".

But later on, we are told that we will get this cost-benefit analysis:

"Where there is sufficient data".

On page 8, it says there will be a section in the evaluation,

"clearly setting out the barriers to undertaking a full cost-benefit analysis".

We need to know what the barriers in the way of the cost-benefit analysis may be. It is Parliament's classic function—not of this House but the other place—to vote resources to make possible the realisation of government policy. I submit that Parliament needs to have the information on the effectiveness of policies before it votes a further instalment of funding. Is the barrier in the way of a full cost-benefit analysis going to be that there are simply insufficient resources, or a failure of co-ordination across Whitehall; or will it be due in part to the past difficulties in co-operation between the Home Office and the ACMD?

The section on prisons, which was the subject of considerable debate in your Lordships' House earlier today, is utterly perfunctory. In the light of yesterday's report from Her Majesty's Inspectorate of Prisons, the ombudsman's report, the interview with a prison governor on the "Today" programme this morning, and the speech made by my noble friend Lord Harris of Haringey, in which he said that, according to one prison governor, the use of NPS in prisons was rife, we need a much more candid and fuller account in the annual review of the difficulties that there clearly are within the prison system.

Welcome as it is, as far as it goes, the annual review does not go nearly far enough. It is an inadequate report and it should include responses from across the range of government, including in particular the Department for Education, which, as I suggested earlier, I do not believe is pulling its weight to support the Home Office in addressing some of the gravest social problems that this country faces.

We will have a report, as promised, from the Government within 30 months of certain clauses coming into effect, and that will feed usefully into post-legislative scrutiny. But as my noble friend Lord Rosser said, we will need in addition regular annual reports that are adequate in range and depth.

Lord Norton of Louth (Con): My Lords, I would not dissent from the points that have been made about what should go into an annual report. I rise very briefly to comment on Amendment 55 and to commend

[Lord Norton of Louth]
my noble friend Lord Bates for tabling it; it is extremely helpful. He has already touched on it and the reasons for it, and I just reinforce that. The noble Lord, Lord Rosser, did not I think disagree with having the review, but suggested that there should be a second one later on. The point I would make is that there will be: most Acts are now subject to review four to five years after enactment, so this measure would come up for review at that point in the normal course of events. What we have here is an early review, which is eminently sensible in the context of this measure, and it is being done on a statutory basis. I have long advocated post-legislative review. I think it is an excellent thing and now, as I say, it has been brought in as a matter of course. But, where necessary, it is very valuable for it to be made on a statutory basis, for it to be included in a measure so that it is a firm provision. It will be reviewed within 30 months, which, in the context of the measure, is an appropriate period. I commend the Government for bringing this amendment forward.

Baroness Chisholm of Owlpen: My Lords, I undertook to reflect on the various amendments that were tabled in Committee. Having reflected, as the noble Lord, Lord Rosser, stated, we have brought forward Amendment 55 in this group.

As I indicated in Committee, post-legislative scrutiny of all primary legislation takes place three to five years after Royal Assent. We accept that there is a case here for special treatment. The Government are bringing forward their post-legislative scrutiny of this particular piece of legislation and will place a review of the operation of the Act on a statutory footing.

We remain firmly of the view that that the duty to undertake a review should be a one-off requirement, rather than a continuing annual requirement with all the costs that that would entail. We are not persuaded of the benefit of undertaking a bespoke review of this legislation year after year. I appreciate that the amendment in the name of the noble Lord, Lord Howarth, is not confined to a review of this legislation, but my point about the resource constraints carries ever more weight when one looks down the list of matters to be addressed in the noble Lord's annual review of the Government's drugs strategy.

Given these considerations, the Government's amendment simply requires a review of the operation of the Act and places a duty on the Home Secretary to prepare a report on the review and lay a copy of the report before both Houses of Parliament within 30 months of the Bill coming into force. As noble Lords know, a period of 30 months has been specified in order to allow for the collection of up to two years' worth of data post implementation.

The need for a review of the Bill was one of the issues raised by the Advisory Council on the Misuse of Drugs in its letter of 2 July to the Home Secretary. In the Home Secretary's response, published yesterday, she said:

"The Home Office is keen to work with the ACMD and would welcome the opportunity to have an early discussion on both the scale and scope of the review having regard to resource constraints, and how to make best use of existing data and evidence".

Until we have had those discussions with the advisory council, it would be wrong to commit now to the review taking a particular form. I can say that I would expect the review to cover much of the ground identified in the amendment moved by the noble Lord, Lord Rosser.

Turning to Amendment 54 in the name of the noble Lord, Lord Howarth, I agree that many of the issues he raises need to be looked at from time to time. That is why we already produce an annual review of our 2010 drugs strategy. The most recent annual review was published in February and highlighted the progress made across the three strands of the strategy—namely, reducing demand, restricting supply and building recovery. The report also set out our future commitments, including new initiatives and actions to respond to emerging evidence and the changing nature of the drugs market.

I recognise that substance misuse is not an issue that government can tackle alone. We value contributions made by our key partners to support the delivery of the 2010 strategy, including: our independent experts, the Advisory Council on the Misuse of Drugs; law enforcement agencies, including the National Crime Agency; international partners; and those working within the prevention, treatment and recovery sector. We are also committed to ensuring that, where possible, we assess the effectiveness and value for money of the 2010 strategy. Furthermore, our action to restrict the supply of illicit drugs is complemented by activity through the serious and organised crime strategy, which was launched in 2013 and which has been the subject of its own annual report. Together, the strategies are making significant steps forward in tackling the supply of drugs by organised criminals in the UK and overseas.

We recognise that drugs are a complex and evolving issue, so we will continue to develop the strategy and consider other approaches to help us respond to emerging threats and challenges. We will also continue to report in a proportionate way on progress in tackling these threats and meeting these challenges. I hope that noble Lords will agree that on reflection the approach taken in Amendment 55, coupled with the existing reporting on the 2010 drugs strategy, is the right way forward and, on that basis, that the noble Lord, Lord Rosser, will be prepared to withdraw his amendment.

Lord Rosser: I thank noble Lords who have spoken in the debate and the Minister for her response and for addressing government Amendment 55. I am obviously a little disappointed that there is apparently to be a one-off review, with no further review, although I note the observation made by the noble Lord, Lord Norton of Louth. It rather begs the question: if the Government are determined that it will be a one-off review and no more, what happens if the report that comes out is rather negative in respect of the operation of the Act? Surely if that were so, there would be a strong case for a further review within a fairly short time to see whether the situation had improved, and perhaps to set out what had happened in relation to any recommendations there might be in the review of the operation of the Act. There is presumably not much point in having such a review if problems are found and no recommendations are made as to how they might be addressed.

That issue will probably have to be left for another day, but I am not sure that it is necessarily wise for the Government to shut the door on any further review of the operation of the Act when that very review might make a case for one within a short time, particularly if it finds that the situation is not as satisfactory as one might have hoped. However, I appreciate that the Government have made some movement with their Amendment 55. I also note the noble Baroness's comments that much of the information set out in our Amendment 52 is likely to be covered in the review of the operation of the Act under government Amendment 55. In the light of that, I beg leave to withdraw my amendment.

Amendment 52 withdrawn.

Amendments 53 and 54 not moved.

Amendment 55

Moved by ***Lord Bates***

55: After Clause 55, insert the following new Clause—

"Review

(1) Before the end of the period mentioned in subsection (2), the Secretary of State must—

(a) review the operation of this Act,

(b) prepare a report of the review, and

(c) lay a copy of the report before Parliament.

(2) The period referred to in subsection (1) is the period of 30 months beginning with the day on which sections 4 to 8 come into force."

Amendment 55 agreed.

Clause 56: Interpretation

Amendment 56 not moved.

Schedule 4: Consequential amendments

Amendment 57 not moved.

Statutory Instruments Committee

Message from the Commons

A message was brought from the Commons that they have appointed a Select Committee of four Members to join with the Committee appointed by the Lords as the Joint Committee on Statutory Instruments.

House adjourned at 10.13 pm.

Volume 764
No. 31

Tuesday
14 July 2015

CONTENTS

Tuesday 14 July 2015