

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT MISUSE OF DRUGS ACT 1971
(AMENDMENT) ORDER 2022

Thursday 27 January 2022

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The Committee consisted of the following Members:

Chair: MR PHILIP HOLLOBONE

Abbott, Ms Diane (*Hackney North and Stoke Newington*) (Lab)

† Andrew, Stuart (*Treasurer of Her Majesty's Household*)

† Baldwin, Harriett (*West Worcestershire*) (Con)

Brennan, Kevin (*Cardiff West*) (Lab)

† Brock, Deidre (*Edinburgh North and Leith*) (SNP)

† Buchan, Felicity (*Kensington*) (Con)

Butler, Dawn (*Brent Central*) (Lab)

Carter, Andy (*Warrington South*) (Con)

† Edwards, Ruth (*Rushcliffe*) (Con)

† Elmore, Chris (*Ogmore*) (Lab)

† Howell, Paul (*Sedgefield*) (Con)

Hunt, Tom (*Ipswich*) (Con)

† Johnson, Dame Diana (*Kingston upon Hull North*) (Lab)

† Malthouse, Kit (*Minister for Crime and Policing*)

† Mohindra, Mr Gagan (*South West Hertfordshire*) (Con)

† Shah, Naz (*Bradford West*) (Lab)

† Stuart, Graham (*Beverley and Holderness*) (Con)

Ffion Morgan; Robi Quigley, *Committee Clerk*

† **attended the Committee**

Sixth Delegated Legislation Committee

Thursday 27 January 2022

[MR PHILIP HOLLOBONE *in the Chair*]

Draft Misuse of Drugs Act 1971 (Amendment) Order 2022

11.25 am

The Chair: Before we begin, I remind Members that they are expected to wear face coverings and maintain distancing as far as possible. This is in line with current guidance from the House of Commons Commission. Please give each other and members of staff space when seated and when entering and leaving the room. I remind Members that they are asked by the House to have a covid lateral flow test twice a week if coming on to the parliamentary estate. This can be done either at the testing centre in the House or at home. Members should send their speaking notes by email to hansardnotes@parliament.uk. Similarly, officials in the Gallery should communicate electronically with Ministers.

11.26 am

The Minister for Crime and Policing (Kit Malthouse): I beg to move,

That the Committee has considered the draft Misuse of Drugs Act 1971 (Amendment) Order 2022.

It is a great pleasure to appear before you, Mr Hollobone, albeit a few minutes early. If you are happy to proceed and it is orderly to do so, I am also happy with that. The order was laid before the House on 15 December 2021. I start by thanking the Advisory Council on the Misuse of Drugs for its advice on this matter, which helped to inform the order. That advice, published on 20 November 2020, recommended that three drugs be moved from class C to class B of the Misuse of Drugs Act 1971. The drugs are: gamma-hydroxybutyric acid, which is known as GHB; gamma-butyrolactone, which is known as GBL; and 1,4-butanediol, which is known as 1,4-BD. I will refer to them collectively as GHB and related substances—or GHBRs. The Advisory Council on the Misuse of Drugs recommended that all three substances be controlled under class B of the 1971 Act because of their potential harm and the evidence of the prevalence of these drugs in the UK.

GHBRs are central nervous system depressants. While they have been used as recreational drugs, they have also been weaponised to commit drug-facilitated sexual assault and other crimes. Although this is a misnomer, they are commonly referred to as date rape drugs. The Advisory Council on the Misuse of Drugs provided wide-ranging advice on these substances. Prevalence of use increased steadily from 2005 to 2015 and has plateaued since. Gamma-butyrolactone and 1,4-butanediol are converted to gamma-hydroxybutyric acid on ingestion and are therefore similar in effect.

The ACMD found that there was evidence of an increasing number of deaths associated with GHBRs since it had last considered the harms, including 27 recorded

deaths in 2018. It was found that these compounds can cause profound unconsciousness and that there is a high risk of overdose and death to users. Other severe effects include the loss of emotional control, depression, paranoia, anxiety, aggression and persistent cognitive impairment. There is strong evidence of GHBRs being used to facilitate crime, including in high-profile cases. They were used by the serial rapist Reynhard Sinaga and the murderers Stephen Port and Gerald Matovu to incapacitate their victims.

Clearly, it is right that we follow the advice of independent experts and tighten controls on these substances. Moving the drugs to class B will increase the maximum penalty for unlawful possession from two years' imprisonment or a fine, or both, to five years' imprisonment or a fine, or both. This will signal to the public that offences involving these substances are treated seriously and are subject to appropriate penalties, acting as a deterrent for their possession and supply. It will ensure that sufficient punitive measures are available to the courts, and will mean that the police place a higher priority on action against offences involving these substances.

The ACMD report recommended not only the control of these three drugs under class B of the 1971 Act, but also that gamma-butyrolactone and 1,4-butanediol be placed in schedule 1 to the Misuse of Drugs Regulations 2001. This is the most restrictive schedule, which is applied to substances without recognised therapeutic use in the UK. Currently, GBL and 1,4-BD have a unique status. Although they have no therapeutic use, it is lawful to import, export, produce, supply or possess them in circumstances where they are not intended to be used for human ingestion. That exceptional status was intended to enable the legitimate industrial use of these substances. However, the exemption has been exploited to enable illicit supply. The Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2021, which were also laid before the House on 15 December, will therefore abolish the exemption for GBL and 1,4-BD, meaning that industrial users will need to obtain a Home Office-controlled drugs licence for their use.

Although the 2021 regulations are subject to the negative resolution procedure and therefore the rescheduling of GBL and 1,4-BD is not under debate, it is a crucial part of the package. Taken together, the two measures will deter illicit possession and supply and reduce the availability of GHBRs, thereby preventing crime. We all know the destructive effect that illegal drugs have on the lives of not only those who take them, but their families and wider society. That is demonstrably the case for GHBRs, which have been weaponised to enable crime. The advice from the independent experts makes it clear that these substances are harmful, so it follows that they must be subject to stricter controls. I commend the order to the Committee.

11.30 am

Naz Shah (Bradford West) (Lab): It is a pleasure to serve under your chairmanship, Mr Hollobone. I thank the Minister for his remarks. The Opposition supports the proposals in this statutory instrument, which will introduce restrictions around the drug GHB and related substances by moving them from class C to class B, following recommendations by the independent Advisory Council on the Misuse of Drugs. The instrument will

also bring forward measures on two substances—GBL and 1,4-butanediol—that can be converted to GHB on ingestion, as the Minister suggested, so that those wishing to possess them for legitimate industrial purposes will require a licence. GHB causes profound unconsciousness and has been used to facilitate some appalling crimes, such as those committed by Stephen Port, who used GHB to incapacitate his victims, and Reynhard Sinaga, who was found guilty of 136 counts of rape.

We are committed to working with the Government, the police and other public bodies to tackle drug misuse, strengthen controls on dangerous substances and widen the availability of treatments to prevent overdose deaths and get drug users clean. Clearly, where drugs cause harm, they must be classified and enforcement action must be taken to better protect victims from criminal abuse. In recent years, GHBRs have been used by prolific serial rapists, but rapists are more likely to get away with their crimes than to be prosecuted. The Government should be working much harder to reduce the prevalence of sexual violence and improve the shockingly low charge rate for rape. I have to remind the Minister of the context of the statutory instrument—that rapists are getting away with it—to show that this welcome change is just one part of the solution.

The impact assessment for the statutory instrument states that

“statistical experiments cannot conclusively state whether reclassification causes an increase or decrease in consumption/prevalence of a drug. The evidence base for the effects of reclassification is mixed.”

Can the Minister set out how he expects the reclassification to decrease the prevalence of GHB? We absolutely support the change to reschedule GBL and 1,4-BD from a bespoke status to schedule 1. The impact assessment tells us that the change

“will correspond to a reduction in the supply of these drugs because, in practice, the current legislation allows for unimpeded access to these drugs via the clear web.”

Does the Minister have any plans to tackle the sale of GHBRs on the dark web?

According to the Office for National Statistics, between 2008 and 2017 there were, on average, 19 deaths related to GHB per year. The ACMD tells us:

“There is evidence of increasing mortality associated with GHBRs use”,

and:

“Although the overall number of deaths is relatively low there was a steep rise in deaths between 2008 and 2015...However, mortality figures are likely to be an underestimate due to the challenges in testing for and identifying GHBRs in post-mortem samples”.

That makes it hard to make pronouncements in criminal cases, as does the fact that victims sometimes do not remember that they have been the victim of a crime, or they remember very little about it.

The withdrawal symptoms of GHBRs are severe and can be life-threatening, with high relapse rates. The ACMD says that

“more research is needed to investigate effective clinical management of withdrawal, and effective relapse prevention.”

Survivors of a drug-facilitated sexual assault will experience a complex combination of harms and require support from various different services. There are concerns that the reclassification may make people less likely to

ask for help or for an ambulance. I ask the Minister for some assurances about those who purchase GHB to use consensually, many of whom are LGBTQ+. How will their safety be ensured? The ACMD report states that

“there is significant evidence of stigma experienced by LGBT GHBRs users, which is a barrier to service access. The complex harms—both physical, mental and social—experienced by MSM require specialist sexual assault support, and it is reported that users believe that current services do not meet these needs.”

Will the Government introduce any increased harm reduction services or victim support alongside the measures in the statutory instrument?

As the Minister will know, the ACMD made eight recommendations in its report. Some are reflected in the SI, but some really important recommendations are not reflected. Clearly, the control of substances and drugs is extremely important, but people’s safety and the reduction of harm will not be addressed by tighter controls alone. As the report’s recommendations suggest, better data collection and reporting of GHBRs use is vital. We need more routine testing for it in cases of unexplained sudden death, better integration of drug treatment and sexual health services, and better education for frontline staff in the health and social care system who come into contact with GHBRs users, as well as improved treatment interventions and more information and support for those at the highest risk of harms associated with GHBRs. Will the Minister set out the Government’s response to the other recommendations in the ACMD report?

We welcome the statutory instrument. It is absolutely right to update the controls and classification of drugs that are dangerous and that are sometimes used for sickening sexual crimes, but we must also acknowledge that this is a small part of what is needed. So much more needs to be done to reduce the prevalence of these crimes, to increase prosecutions for rape and to tackle the perpetrators of sexual violence. We all know the terrible impact that drugs can have on individuals, families and communities. Increasing enforcement of drug misuse, and stamping out the organised criminals and drug gangs that profit from it, is incredibly important, but it is one part of the solution. The other part must be drug treatment and preventive services, in order to properly break the cycle of drug misuse.

11.37 am

Deidre Brock (Edinburgh North and Leith) (SNP): It is a pleasure to serve under your chairship, Mr Hollobone.

It continues to be the view of the Scottish Government that, 50 years on, the Misuse of Drugs Act is not fit for purpose and all aspects of drug policy should be devolved to the Scottish Parliament—something that even former Prime Minister Gordon Brown apparently now agrees with. The Scottish Government are providing additional funding of £250 million over the next five years to support residential rehab and better near-fatal overdose pathways, and to get better outreach, so that more people are helped into treatment and more people with lived experience are involved in all aspects of decision making.

The Scottish National party continues to lobby the UK Government to adopt a public health approach to drugs, to amend legislation away from criminalisation and, as I have mentioned, to devolve powers to the Scottish Parliament if the UK Government refuse to

[Deidre Brock]

act. However, the statutory instrument implements the ACMD's independent recommendations to upgrade the classification of GHB and related substances, which, as the Minister outlined, have some legitimate uses but are often used in extremely serious crimes. In fact, I believe that in the Home Affairs Committee hearing on spiking, the senior police officer witness specifically requested that this be hurried up and done, as has been promised for months. Ultimately, the SNP does not object to the statutory instrument.

11.39 am

Dame Diana Johnson (Kingston upon Hull North) (Lab): I think it is a very good move to reclassify GHBRs, and I want to refer to Deputy Chief Constable Jason Harwin, who gave evidence to the Home Affairs Committee yesterday calling for this reclassification. The Minister will know that we are conducting an inquiry into spiking. Can he comment on spiking and on how the measure will lead to the putting together of a toolkit for dealing with it, so that it is taken much more seriously by all, including the police? On sentencing, will the reclassification give the police added impetus to investigate and take complaints more seriously? Finally, will there be additional forensic capacity for dealing with a rise in spiking complaints, particularly around the drugs that we are talking about today? That is an ongoing issue, which was raised with the Home Affairs Committee yesterday.

11.40 am

Kit Malthouse: I am grateful to Members from across the Committee—particularly Opposition Members and the incoming Chair of the Select Committee, the right hon. Member for Kingston upon Hull North—for their support of the measure. As I hope people have understood, the draft order is part of a suite of tools that we are putting together as a general push against illicit drug use and the use of drugs in crime across the whole United Kingdom. Just before Christmas, we launched our 10-year drugs strategy, whose entire being is about driving down the pernicious effects of illicit drugs in the UK and the concomitant crime. This is a particularly pernicious and unpleasant area of business, on which we have become more focused recently—not least because, as a couple of Members pointed out, there has been a rise in the prevalence of the use of such drugs, and indeed in the number of deaths from it.

To answer the first question asked by the hon. Member for Bradford West, we do believe that the reclassification will reduce the use of the drugs, not least because the greater sentencing indicates a greater sense of priority, which will therefore attract greater police resource. The police prioritise their capacity on offences that we in this House deem to result in the highest harm, and they generally attract the highest amount of attention. For example, most murder squads will have 20 or 30 officers, while most burglary investigations will have one or two. By giving the matter such a level of importance, we think that greater attention will be paid to it. That includes, for example, sales of the compounds on the dark web, where we do enormous amounts of work, mostly through our National Crime Agency colleagues, on policing access to illicit equipment—guns, knives,

chemicals or whatever it may be. Obviously, the draft order will help with that effort in directing them to where we think the most harm is emanating from.

The hon. Lady raised an interesting question about the use of the drugs consensually. Although there might be people who do that, I hope that everybody would agree that it is profoundly undesirable for their own health that they should use the drugs, whether they consent or not, given the effects that such compounds can have. They are effectively industrial solvents. They are not fit for human consumption. If we can discourage even that kind of use, we should.

Nevertheless, as the hon. Lady said, it is incumbent upon us to ensure that we have the right capacity and facilities in place for those who are victims of these kinds of sexually motivated crimes. As I hope she knows, just in the last couple of years we have expanded the number of independent sexual violence advisers and the support mechanisms available for people who are targeted by sexually motivated crime. On the wider response to the ACMD's report, I would be more than happy to share that with her in due course.

I turn to the overall spiking strategy, although I am anxious not to expand beyond the general remit of the debate. The right hon. Member for Kingston upon Hull North identified spiking as a specific issue, and she is right that it is an area of concern. Last autumn, there was a significant rise in the number of reports of individuals who thought that they had been injected with these chemicals, rather than just consuming them in a drink. As she will know, given that she has spoken to Jason Harwin, a national gold group is looking at the evidence to ensure that we have right the capacity, and that we are linking up the right patterns and looking for the right clues about what might be happening with that phenomenon. It is widely the case that the number of convictions for spiking across the country, against the number of reports, has not been satisfactory over the last two or three years. I think that we would all admit that. I hope that the work that Jason is doing, alongside the wider drugs strategy, into which enormous resource is being pumped, particularly on health and rehabilitation, will start to drive down the usage.

The other effect that I ought to outline is that the raising of the classification of the drugs means that the proprietors of premises where they may be deployed, such as nightclubs, will need to be much more on their guard for such compounds as they arrive through the doors, as they are at the moment for cocaine, heroin and other drugs that sadly make their way into the night-time economy. We hope that the raising of the classification, and of the seriousness with which we take the issue, will be reflected in the law enforcement effort more generally across the country, and therefore we will see a reduction in the pernicious use of the chemicals. I commend the draft order to the Committee.

Question put and agreed to.

The Treasurer of Her Majesty's Household (Stuart Andrew): On a point of order, Mr Hollobone. I will not detain the Committee for too long, but I bring it to your attention that the notifications that were sent out said that the start time of the meeting would be 11.30 am, not 11.25 am. Also, my hon. Friend the Member for Aylesbury (Rob Butler) received notification to be on

the Committee, but is not a member of it. I wonder whether there has been some confusion with the hon. Member for Brent Central, who shares the same surname.

The Chair: On the first point, Mr Andrew, the fault is entirely mine. I started five minutes early because, in mitigation, quite a lot of delegated legislation Committees start at 9.25 am or 11.25 am. However, no decision was

taken on the order until well past the start time. I admit 100% responsibility for starting five minutes early, but I do not think that the legislation is in danger. The Clerks will have made a note of your second point. If there has been an error in notification, I hope that it can be rectified in future.

11.46 am

Committee rose.

