

Psychoactive Substances Bill [HL]

COMMONS AMENDMENTS

[The page and line references are to Bill 63, the bill as first printed for the Commons.]

Clause 1

- 1 Page 1, line 5, after “9” insert “and (*Possession of a psychoactive substance in a custodial institution*)
- 2 Page 1, line 7, leave out “Section 10” and insert “Section (*Exceptions to offences*)”

Clause 4

- 3 Page 2, line 32, leave out from “subject to” to end of line 33 and insert “section (*Exceptions to offences*) (exceptions to offences).”

Clause 5

- 4 Page 3, line 14, leave out from “subject to” to end of line 15 and insert “section (*Exceptions to offences*) (exceptions to offences).”

Clause 6

- 5 Page 3, line 43, leave out “on prison premises.” and insert “in a custodial institution.
() In this section—
“custodial institution” means any of the following—
 - (a) a prison;
 - (b) a young offender institution, secure training centre, secure college, young offenders institution, young offenders centre, juvenile justice centre or remand centre;
 - (c) a removal centre, a short-term holding facility or pre-departure accommodation;
 - (d) service custody premises;

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

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

6 Page 3, transfer subsection (9) to the end of line 29 on page 3

Clause 7

7 Page 4, line 18, leave out from “subject to” to end of line 19 and insert “section (*Exceptions to offences*) (exceptions to offences).”

Clause 8

8 Page 5, line 6, leave out from “subject to” to end of line 7 and insert “section (*Exceptions to offences*) (exceptions to offences).”

After Clause 8

9 Insert the following new Clause –

“Possession of a psychoactive substance in a custodial institution

- (1) A person commits an offence if –
 - (a) the person is in possession of a psychoactive substance in a custodial institution,
 - (b) the person knows or suspects that the substance is a psychoactive substance, and
 - (c) the person intends to consume the psychoactive substance for its psychoactive effects.
- (2) In this section “custodial institution” has the same meaning as in section 6.
- (3) This section is subject to section (*Exceptions to offences*) (exceptions to offences).”

Clause 9

10 Page 5, line 26, at end insert –

- “() A person guilty of an offence under section (*Possession of a psychoactive substance in a custodial institution*) is liable –
 - (a) on summary conviction in England and Wales –
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine,or both;
 - (b) on summary conviction in Scotland –
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,

- or both;
- (c) on summary conviction in Northern Ireland –
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or both;
- (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.”

After Clause 9

11 Insert the following new Clause –

“Exceptions to offences

- (1) It is not an offence under this Act for a person to carry on any activity listed in subsection (3) if, in the circumstances in which it is carried on by that person, the activity is an exempted activity.
- (2) In this section “exempted activity” means an activity listed in Schedule (*Exempted activities*).
- (3) The activities referred to in subsection (1) are –
 - (a) producing a psychoactive substance;
 - (b) supplying such a substance;
 - (c) offering to supply such a substance;
 - (d) possessing such a substance with intent to supply it;
 - (e) importing or exporting such a substance;
 - (f) possessing such a substance in a custodial institution (within the meaning of section (*Possession of a psychoactive substance in a custodial institution*)).
- (4) The Secretary of State may by regulations amend Schedule (*Exempted activities*) in order to –
 - (a) add or vary any description of activity;
 - (b) remove any description of activity added under paragraph (a).
- (5) Before making any regulations under this section the Secretary of State must consult –
 - (a) the Advisory Council on the Misuse of Drugs, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (6) The power to make regulations under this section is exercisable by statutory instrument.
- (7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Clause 10

12 Page 5, line 27, leave out Clause 10

Clause 11

- 13 Page 6, line 16, leave out “regulations under section 10.” and insert “section (*Exceptions to offences*).”

Clause 23

- 14 Page 14, line 34, leave out from beginning to “except” in line 35 and insert “in a case where the prohibition order or the premises order imposing the access prohibition was made by a court in England and Wales or Northern Ireland, the court that made the order,”

- 15 Page 14, line 42, at end insert –
“() in a case where the prohibition order or the premises order imposing the access prohibition was made by a court in Scotland, the sheriff.”

Clause 27

- 16 Page 17, line 3, leave out paragraph (b) and insert –
“(b) where –
(i) the order was made under section 18 on an appeal in relation to a person’s conviction or sentence for an offence, or
(ii) the order was made by a court under that section against a person committed or remitted to that court for sentencing for an offence,
the court by or before which the person was convicted (but see subsection (6A));”

- 17 Page 17, line 8, at end insert –
“(6A) Where the person mentioned in subsection (6)(b) –
(a) was convicted by a youth court, but
(b) is aged 18 or over at the time of the application,
the reference in subsection (6)(b) to the court by or before which the person was convicted is to be read as a reference to a magistrates’ court or, in Northern Ireland, a court of summary jurisdiction.”

Clause 31

- 18 Page 19, line 32, leave out “arising by virtue of” and insert “under”

- 19 Page 20, line 1, leave out subsection (5) and insert –
“() An Act of Adjournal under section 305 of the Criminal Procedure (Scotland) Act 1995 (Acts of Adjournal) may be made in relation to proceedings before the High Court of Justiciary, the sheriff or the Sheriff Appeal Court –
(a) arising by virtue of section 18 or 28;
(b) under section 27, where the application relates to a prohibition order made under section 18;
(c) under section 29(5);

- (d) under subsection (1) of section 30, where the relevant order (as defined in subsection (3) of that section) was made under section 18;
- (e) under section 30(7)."

20 Page 20, line 13, leave out subsection (7)

Clause 35

21 Page 22, line 5, leave out "8" and insert "*(Possession of a psychoactive substance in a custodial institution)*"

22 Page 22, line 21, leave out "8" and insert "*(Possession of a psychoactive substance in a custodial institution)*"

Clause 38

23 Page 24, leave out lines 1 to 4 and insert –

- “() a warrant that relates only to premises specified in the warrant (a “specific-premises warrant”), or
- () in the case of a warrant issued in England and Wales or Northern Ireland, a warrant that relates to any premises occupied or controlled by a person specified in the warrant (an “all-premises warrant”).”

Clause 39

24 Page 24, line 23, at end insert –

- “() An application for a search warrant may be made without notice being given to persons who might be affected by the warrant.
- () The application must be supported –
 - (a) in England and Wales, by an information in writing;
 - (b) in Scotland, by evidence on oath;
 - (c) in Northern Ireland, by a complaint on oath.
- () A person applying for a search warrant must answer on oath any question that the justice hearing the application asks the person.
In the case of an application made by a procurator fiscal, that requirement may be met by a relevant enforcement officer.”

25 Page 24, line 32, leave out “search warrants.” and insert “ –

- (a) applications for search warrants made in England and Wales or Northern Ireland, and
- (b) search warrants issued in England and Wales or Northern Ireland.”

26 Page 24, line 33, after “warrant” insert “issued in England and Wales or Northern Ireland”

Clause 42

27 Page 26, line 9, leave out “8” and insert "*(Possession of a psychoactive substance in a custodial institution)*"

Clause 47

- 28 Page 28, line 37, leave out subsection (5)

Clause 49

- 29 Page 29, line 28, leave out “regulations under section 10” and insert “section (*Exceptions to offences*)”

Clause 50

- 30 Page 31, line 12, leave out “regulations under section 10” and insert “section (*Exceptions to offences*)”

Clause 53

- 31 Page 32, line 43, leave out “8” and insert “(*Possession of a psychoactive substance in a custodial institution*)”

- 32 Page 33, line 2, leave out second “or” and insert “except where paragraph (b) or (c) applies;”

- 33 Page 33, line 4, at end insert –
“(c) if the person is remitted to the High Court of Justiciary to be dealt with for that offence, the High Court of Justiciary.”

- 34 Page 33, line 26, leave out “8” and insert “(*Possession of a psychoactive substance in a custodial institution*)”

- 35 Page 33, line 28, leave out “8” and insert “(*Possession of a psychoactive substance in a custodial institution*)”

- 36 Page 33, line 30, leave out “8” and insert “(*Possession of a psychoactive substance in a custodial institution*)”

- 37 Page 33, line 32, leave out “8” and insert “(*Possession of a psychoactive substance in a custodial institution*)”

Clause 54

- 38 Page 34, line 9, leave out “regulations under section 10.” and insert “section (*Exceptions to offences*).”

Clause 58

- 39 Page 36, line 23, after “Court” insert “, other than the reference in section 30(1) in relation to a prohibition order made under section 18,”

Clause 61

- 40 Page 37, line 9, at end insert –
“() The power under section 384(1) of the Armed Forces Act 2006 (“the 2006 Act”) may be exercised so as to extend to any of the Channel Islands (with or without modifications) any amendment or repeal made by or under this Act of any part of the 2006 Act.

- () The power under section 384(2) of the 2006 Act may be exercised so as to modify any provision of that Act as amended by or under this Act as it extends to the Isle of Man or a British overseas territory.”

Schedule 1

- 41 Page 38, line 7, leave out from “products” to end of line 12 and insert –
 “In this paragraph “Medicinal product” has the same meaning as in the Human Medicines Regulations 2012 (S.I. 2012/1916) (see regulation 2 of those Regulations).”

- 42 Page 38, line 13, leave out paragraphs 3 to 5

After Schedule 1

- 43 Insert the following new Schedule –

“EXEMPTED ACTIVITIES

Healthcare-related activities

- 1 Any activity carried on by a person who is a health care professional and is acting in the course of his or her profession.

In this paragraph “health care professional” has the same meaning as in the Human Medicines Regulations 2012 (S.I. 2012/1916) (see regulation 8 of those Regulations).

- 2 Any activity carried on for the purpose of, or in connection with –
 (a) the supply to, or the consumption by, any person of a substance prescribed for that person by a health care professional acting in the course of his or her profession, or
 (b) the supply to, or the consumption by, any person of a substance in accordance with the directions of a health care professional acting in the course of his or her profession.

In this paragraph “health care professional” has the same meaning as in the Human Medicines Regulations 2012 (see regulation 8 of those Regulations).

- 3 Any activity carried on in respect of an active substance by a person who –
 (a) is registered in accordance with regulation 45N of the Human Medicines Regulations 2012, or
 (b) is exempt from any requirement to be so registered by virtue of regulation 45M(2) or (3) of those Regulations.

In this paragraph “active substance” has the same meaning as in the Human Medicines Regulations 2012 (see regulation 8 of those Regulations).

Research

- 4 Any activity carried on in the course of, or in connection with, approved scientific research.

In this paragraph—

“approved scientific research” means scientific research carried out by a person who has approval from a relevant ethics review body to carry out that research;

“relevant ethics review body” means—

- (a) a research ethics committee recognised or established by the Health Research Authority under Chapter 2 of Part 3 of the Care Act 2014, or
- (b) a body appointed by any of the following for the purpose of assessing the ethics of research involving individuals—
 - (i) the Secretary of State, the Scottish Ministers, the Welsh Ministers, or a Northern Ireland department;
 - (ii) a relevant NHS body;
 - (iii) a body that is a Research Council for the purposes of the Science and Technology Act 1965;
 - (iv) an institution that is a research institution for the purposes of Chapter 4A of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (see section 457 of that Act);
 - (v) a charity which has as its charitable purpose (or one of its charitable purposes) the advancement of health or the saving of lives;

“charity” means—

- (a) a charity as defined by section 1(1) of the Charities Act 2011,
- (b) a body entered in the Scottish Charity Register, or
- (c) a charity as defined by section 1(1) of the Charities Act (Northern Ireland) 2008;

“relevant NHS body” means—

- (a) an NHS trust or NHS foundation trust in England,
- (b) an NHS trust or Local Health Board in Wales,
- (c) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978,
- (d) the Common Services Agency for the Scottish Health Service, or
- (e) any of the health and social care bodies in Northern Ireland falling within paragraphs (a) to (d) of section 1(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009.”

Schedule 2

44 Page 39, line 25, at end insert—

“PART A1

APPLICATION OF THIS SCHEDULE

This Schedule applies to—

- (a) applications for search warrants made in England and Wales or Northern Ireland, and

(b) search warrants issued in England and Wales or Northern Ireland.”

45 Page 39, line 29, leave out paragraph 1

46 Page 42, line 27, leave out “issued in England and Wales or Northern Ireland”

Schedule 4

47 Page 48, line 16, at end insert—

“Intoxicating Substances (Supply) Act 1985

(1) The Intoxicating Substances (Supply) Act 1985 is repealed.

(2) In consequence of the repeal made by sub-paragraph (1), in Schedules 3 and 6 to the Regulatory Enforcement and Sanctions Act 2008, omit the entry relating to the Intoxicating Substances (Supply) Act 1985.”

48 Page 53, line 40, at end insert—

“Regulatory Enforcement and Sanctions Act 2008

In Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008 (enactments specified for the purposes of Part 1 of that Act), at the appropriate place insert—

“Psychoactive Substances Act 2016”.”

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20th January 2016

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