

PSYCHOACTIVE SUBSTANCES BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Commons Amendments to the Psychoactive Substances Bill [HL] as brought from the House of Commons on 20 January 2016.
- 2 These Explanatory Notes have been prepared by the Home Office in order to assist the reader of the Bill and the Commons amendments, and to help inform debate on the Commons amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Commons amendments themselves, refer to Bill 63, the Bill as first printed for the Commons.
- 4 These Explanatory Notes need to be read in conjunction with the Commons amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Commons amendments.
- 5 All of the Commons Amendments were tabled in the name of the Minister.

Commentary on Commons amendments

Commons Amendments 1, 9, 10, 21, 22, 27, 31 and 34 to 37: Possession of a psychoactive substance in a custodial institution

- 6 **Commons Amendment 9** would provide for a new offence of possession of a psychoactive substance in a custodial institution. This would cover prisoners, visitors and staff in prisons, young offenders' institutions, the immigration detention estate (namely, pre-departure accommodation, removal centres and short-term holding facilities), and service custody premises.
- 7 **Commons Amendment 10** would provide for the maximum penalty for this new offence namely, on conviction on indictment, two years' imprisonment, an unlimited fine, or both.
- 8 **Commons Amendments 1, 21, 22, 27, 31 and 34 to 37** are consequential on Commons Amendment 9.

Commons Amendments 2, 3, 4, 7, 8, 11 to 13, 29, 30, 38 and 43: Exceptions to offences

- 9 **Commons Amendment 11** would insert a new clause to provide for exemptions to the offences under Clauses 4 to 8 and the new clause inserted by Commons Amendment 9 for a person to carry on an "exempted activity" listed in the new Schedule inserted by Commons Amendment 43. Commons Amendment 11 would also confer on the Home Secretary a power, by regulations (subject to the affirmative procedure), to add or vary any activity described in the Schedule inserted by Commons Amendment 43. She would also be able to remove exempted activities which had added to the new Schedule by such regulations.
- 10 **Commons Amendment 2** would remove Clause 10. Clause 10 gives the Home Secretary the power to provide for exceptions to offences. Such exceptions would now be provided for in

the new Schedule inserted by Commons Amendment 43 and the regulation-making power provided for by Commons Amendment 11.

- 11 **Commons Amendment 43** would insert a new Schedule which lists the activities exempted from the offences under Clauses 4 to 8 and the clause inserted by Commons Amendment 9. These include activities carried out by health care professionals acting in that capacity, and approved research activities.
- 12 **Commons Amendments 3, 4, 7, 8, 12, 13, 29 and 30** are consequential on Commons Amendment 11.

Commons Amendments 5 and 6: Aggravation of offences under clause 5

- 13 Clause 6 provides for a statutory aggravating factor when sentencing an offender for the offence of supplying, or offering to supply, a psychoactive substance and the supply, or offer to supply, took place at or in the vicinity of a school, involved the use of a courier under the age of 18 or took place on prison premises.
- 14 **Commons Amendment 5** would replace the reference to “prison premises” in Clause 6 with “custodial institution”. It would define “custodial institution” as a prison, young offender institution, secure training centre, removal centre, short-term holding facility, pre-departure accommodation, or service custody premises. In turn, “removal centre”, “short-term holding facility”, and “pre-departure accommodation” would be defined by reference to section 147 of the Immigration and Asylum Act 1999:

“pre-departure accommodation” means a place used solely for the detention of detained children and their families for a period of—

(a) not more than 72 hours, or

(b) not more than seven days in cases where the longer period of detention is authorised personally by a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975);

“removal centre” means a place which is used solely for the detention of detained persons but which is not a short-term holding facility, predeparture accommodation, a prison or part of a prison;

“short-term holding facility” means a place used —

(a) solely for the detention of detained persons for a period of not more than seven days or for such other period as may be prescribed solely for the detention of detained persons for a period of not more than seven days or for such other period as may be prescribed, or

(b) for the detention of—

(i) detained persons for a period of not more than seven days or for such other period as may be prescribed, and

(ii) persons other than detained persons for any period but which is not pre-departure accommodation.

- 15 **Commons Amendment 6** is consequential on Commons Amendment 5.

Commons Amendments 14 to 17, 32, 33 and 39: Relevant court for civil proceedings under the Bill

- 16 Clause 23 allows law enforcement agencies to apply to the court for the reimbursement of costs incurred in relation to premises subject to an access prohibition. **Commons Amendment**

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15 would provide that, in Scotland, the relevant court is the sheriff. **Commons Amendment 14** is consequential on Commons Amendment 15.

- 17 **Commons Amendment 16** would provide that, where a prohibition order is made by a court following conviction, an application to vary or discharge that order should be made to the court that convicted the offender, rather than (if different) the court that sentenced the offender or heard the appeal against the conviction or sentence.
- 18 **Commons Amendment 17** would provide that, where a prohibition order is made in the youth court following conviction and the offender has turned 18, an application to vary or discharge that order should be made, in England and Wales, to a magistrates' court or, in Northern Ireland, to a court of summary jurisdiction.
- 19 **Commons Amendment 33** would provide for the relevant court to make a forfeiture order following the conviction of a person for an offence under any of clauses 4 to 8, 25, and the clause inserted by Commons Amendment 9. Where, in Scotland, a case is remitted to the High Court of Justiciary for sentencing, this amendment would provide for that court to make a forfeiture order. **Commons Amendment 32** is consequential on Commons Amendment 33.
- 20 Clause 58(5) is a transitional provision which requires references to the Sheriff Appeal Court to be read as references to the sheriff principal until section 109 of the Courts Reform (Scotland) Act 2014 is commenced. **Commons Amendment 39** would disapply this transitional provision to the reference to Sheriff Appeal Court in Clause 30(1), which outlines where appeals about variation and discharge lie.

Commons Amendments 18 to 20: Nature of proceedings under clauses 18 and 28 etc

- 21 **Commons Amendment 18** would ensure that the language in clause 31(1) mirrors that in clauses 32(5) and 33(5).
- 22 **Commons Amendment 19** would enable the High Court of Justiciary in Scotland to make an Act of Adjournal (criminal procedure rules) in relation to specified civil proceedings under clauses 18, 27, 28, 29 and 30 before the High Court of Justiciary, the sheriff or the Sheriff Appeal Court.
- 23 **Commons Amendment 20** would delete clause 31(7), which provides that the criminal procedure rules would apply to proceedings under clauses 18 and 28 in the Crown Court in England and Wales. Such rules would apply in any event; accordingly express provision to this end is not required.

Commons Amendments 23 to 26, 44 to 46: Search warrants

- 24 **Commons Amendment 23** would remove the ability to apply for all-premises warrants under clause 38 in Scotland.
- 25 **Commons Amendment 44** would limit the application of Schedule 2 to England, Wales, and Northern Ireland. Schedule 2 makes provision about applications for, and the execution of, search warrants.
- 26 **Commons Amendment 24** would import paragraph 1 of Schedule 2 into Clause 39, which relates to applications for search warrants. Clause 39 applies to England, Wales, Scotland, and Northern Ireland. **Commons Amendment 45** is consequential on Commons Amendment 24.
- 27 **Commons Amendment 25** would limit the application of clause 39(5), which makes it unlawful to search a premises under a search warrant without complying with Part 2 of

Schedule 2, to England, Wales, and Northern Ireland. It is consequential on Commons Amendment 21.

28 **Commons Amendments 26 to 46** are consequential on Commons Amendment 21.

29 These amendments recognise that the provisions in the Bill in relation to search warrants are based on policing practice in England and Wales (and Northern Ireland) which derived from provisions in the Police and Criminal Evidence Act 1984. In Scotland, police powers are not governed by one codified statutory scheme, but by a combination of the Criminal Procedure (Scotland) Act 1995 and common law principles.

Commons Amendment 28: Prosecution of offences in relation to enforcement officers

30 **Commons Amendment 28** would leave out clause 47(5), which enables proceedings for an offence under clause 47 to be taken in any part of the UK.

Commons Amendment 40: Extent

31 **Commons Amendment 40** would amend clause 61 to enable the amendments to the Armed Forces Act 2006, made by paragraph 6 of Schedule 4 to the Bill, to be extended, with or without modifications, to any of the Channel Islands or to apply to the Isle of Man or a British overseas territory with modifications. This would reflect the extent provisions of the Armed Forces Act 2006 as provided for in section 384 of that Act.

Commons Amendments 41 and 42: Exemption for medicinal products

32 **Commons Amendment 41** would replace the definition of “medicinal product” in paragraph 2 of Schedule 1. The new definition comes from regulation 2 of the Human Medicines Regulations 2012 (S.I. 2012/1916), which reads:

(1) *In these Regulations “medicinal product” means—*

(a) any substance or combination of substances presented as having properties of preventing or treating disease in human beings; or

(b) any substance or combination of substances that may be used by or administered to human beings with a view to—

(i) restoring, correcting or modifying a physiological function by exerting a pharmacological, immunological or metabolic action, or

(ii) making a medical diagnosis.

(2) *These Regulations do not apply to—*

(a) whole human blood; or

(b) any human blood component, other than plasma prepared by a method involving an industrial process.

The new definition would include, but is not limited to, medicinal products for which a marketing authorisation or Article 126a authorisation is in force.

33 **Commons Amendment 42** is consequential on Commons Amendment 41. It would remove paragraphs 3 to 5 of Schedule 1, which exempts investigational medicinal products, homeopathic medicinal products, and traditional herbal medicinal products. These products fall within the revised definition of “medicinal product” that would be inserted by that amendment.

Commons Amendments 47 and 48: Consequential amendments

- 34 **Commons Amendment 47** would repeal the Intoxicating Substances (Supply) Act 1985 (“the 1985 Act”) and remove references to it from the Regulatory Enforcement and Sanctions Act 2008 (“the 2008 Act”). The 1985 Act was enacted to tackle the emergence of glue sniffing and covers predominately glues and solvents. The conduct element of the offence in the 1985 Act is covered by the offences of supplying or offering to supply a psychoactive substance in Clause 5 of the Bill.
- 35 **Commons Amendment 48** would add the Psychoactive Substances Act to the list of enactments in Schedule 3 of the 2008 Act, which specifies enactments for the purpose of the Secretary of State’s and Welsh Ministers’ functions under Part 1 of that Act. Those functions relate to the provision of guidance to local authorities about the exercise of their regulatory functions under the enactments listed in Schedule 3 to the 2008 Act. The purpose of these provisions is to support local authorities in carrying out their regulatory functions in a manner that is effective, does not give rise to unnecessary burdens and that complies with the principles of good regulation, namely that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, and consistent and should be targeted only at cases in which action is needed.

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