

**PSYCHOACTIVE SUBSTANCES BILL**  
**SUPPLEMENTARY DELEGATED POWERS MEMORANDUM**  
**MEMORANDUM BY THE HOME OFFICE**

**Introduction**

The Government has tabled amendments to the Psychoactive Substances Bill for Commons Committee stage. These include one new delegated power. This supplementary memorandum explains why the power has been taken and the reason for the procedure selected.

**New clause *Exceptions to offence* (4): Power to add or vary any description of exempted activities**

*Power conferred on:* Secretary of State

*Power exercisable by:* Regulations made by statutory instrument

*Parliamentary procedure:* Affirmative procedure

2. Clauses 4 to 8 of the Bill make it an offence to produce, supply, offer to supply, possess with intent to supply, import or export a psychoactive substance. In each case, the relevant clause provides that it is subject to regulations made under clause 10. That clause provides that regulations may provide that it is not an offence under the Bill for any person, or any person of a specified description, to do an act, or an act of a specified description, in specified circumstances or if specified conditions are met. In effect, any such regulations would make lawful conduct which would otherwise be unlawful under clauses 4 to 8. This exemption mechanism will complement that provided for in Schedule 1 in respect of exempted substances. As indicated in the Department's original Delegated Powers Memorandum, this regulation-making power could be used, amongst other things, to make provision "to enable those who are conducting or supporting legitimate research into psychoactive substances to carry out their work".

3. At Lords Report stage, Baroness Chisholm indicated, in response to an amendment from Lord Rosser, that the Government would bring forward amendments to ensure that *bona fide* research would be unaffected by the provision of the Bill (Official Report, 14 July 2015, column 492). The Government's approach is now to specify certain "exempted activities", including research, on the face of the Bill, and to accompany this with a power to add to or vary this list of exempted activities. This new delegated power will replace that in clause 10.

4. New clause "*Exceptions to offences*" provides that it is not an offence under the Bill for a person to produce, supply, offer to supply, possess with intent to supply, import or export a psychoactive substance, or possess such a substance in a custodial institution (see new clause *Possession of a psychoactive substance in a custodial institution*) if, in the circumstances in which it is carried on by that person,

the activity is an exempted activity as listed in new Schedule “*Exempted activities*”. The new Schedule lists two categories of exempted activities, namely research and healthcare-related activities. New clause “*Exceptions to offences*” also provides, at subsection (4), a power to add or vary any description of activity specified in the new Schedule and to remove any description of activity added through the regulation-making power (in this regard, the new clause mirrors the power to amend Schedule 1 in clause 3 of the Bill).

5. The power is most likely to be used to vary an existing entry, for example, if the regulations mentioned in paragraphs 1 to 3 of the new Schedule were revoked and replaced with new regulations or the definition of a “relevant NHS body” in paragraph 4 of the Schedule needed to be amended to reflect changes in the organisation of the NHS in any part of the UK. However, it may also prove necessary, in the light of experience in operating the legislation, to add a new activity to the list of exempted substance. The regulation-making power cannot be exercised so as to remove one of the activities specified in the new Schedule to the Bill as enacted, but the new clause allows for the possibility that it might be necessary to remove from the Schedule an activity which had previously been added to the new Schedule by means of the delegated power.

6. As with the existing regulation-making power in clause 10, subsection (5) of the new clause requires the Secretary of State, before exercising the power, to consult the Advisory Council on the Misuse of Drugs and such other persons as she considers appropriate. Such persons might, for example, include regulatory bodies or other relevant experts as well as persons likely to be affected by the proposed regulations.

7. Given that the scope of the offences in clauses 4 to 8 is central to the scheme in the Bill, it is considered appropriate that the exemption of any activities from the ambit of these offences should be subject to Parliamentary debate and approval and that accordingly, the affirmative procedure should apply (as provided for in subsection (7) of the new clause. The affirmative procedure also recognises that this is a Henry VIII power.

**Home Office**  
**22 October 2015**