

Lord Rosser
House of Lords
London
SW1A 0PW

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Psychoactive Substances Bill

I wanted to take this opportunity to follow up the Second Reading debate on the Psychoactive Substances Bill on 9 June. We had a thorough debate on the Bill and the Government's wider drugs policy and I am grateful to you and others who made such thoughtful contributions. I addressed a number of the points raised in my wind up speech, but I thought that it would be helpful to write to address some of the other points.

In advance of Committee stage, I have arranged a drop in session to enable all interested Peers to raise any questions they may have. The session will be on Wednesday 17 June at 17:30-18:30 in Committee Room 1.

Consultation with the Advisory Council on the Misuse of Drugs (ACMD)

You, together with Lord Rea, Lord Patel of Bradford, and Lord Howarth of Newport, asked about the role of the ACMD in relation to the Bill. The Government greatly values the scientific advice provided by the ACMD. The ACMD is required by statute to be consulted before any amendment by Order in Council is made to Schedule 2 to the Misuse of Drugs Act 1971 (the 1971 Act). Following this process, the ACMD's advice over the last few years has led to the control of over 500 new psychoactive substances under the 1971 Act. The 1971 Act will continue to be the main legislative response to dangerous drugs. The ACMD will continue to have its central role in assessing the harms of specific drugs (including new psychoactive substances) for control under the 1971 Act and providing advice to Ministers.

An ACMD report in 2011 called on the Government to explore new legislation in relation to the control of new psychoactive substances. Further to the ACMD's recommendation and the ongoing challenges to our current legislative approach, the then Minister for Crime Prevention, Norman Baker, set up the Expert Panel. Whereas the ACMD has continued to provide advice on individual substances, the primary focus of the Expert Panel's review was to look at how law enforcement powers could be strengthened in general. Since October 2014, when the Government published its response to the Expert Panel's report and Ministers wrote to the ACMD, we have been open and transparent about our plans to develop the blanket ban approach, now encapsulated in the Bill. The Home Secretary has written again to the ACMD and we look forward to receiving its views on how we can strengthen the UK's forensic capacity and capability to support the implementation of the legislation. We also remain ready to consider carefully any recommendations the ACMD may have about other aspects of the Bill.

Engagement with the Department of Health and Public Health England

You asked about consultation with the Department of Health, and Lord Patel of Bradford reiterated this point, as well as asking about consultation with Public Health England. This is a Government Bill and we have, in the normal way, consulted all relevant Government Departments and as appropriate, their agencies. Specifically, we have worked closely with the Department of Health in relation to the definition of medicinal products in Schedule 1 to the Bill. Public Health England are a key partner in the delivery of the Government's wider Drugs Strategy and our fact sheet on prevention, treatment and interventions (copy attached) sets out some of the important initiatives taken by Public health England in tackling new psychoactive substances.

Impact on EU law

I can assure you that the Bill's importation and exportation offences, and indeed the other provisions of the Bill, are compliant with our obligations under EU law. The Republic of Ireland has, of course, had similar controls in force since 2010. Lord Tunnicliffe was right to point to the importance of international cooperation on this issue. We continue to work closely with our European partners, for example, on information exchange, but will continue to judge any legislative proposals emanating from Brussels on the basis of whether they meet the tests of the UK's national interest. In this regard, the Government opted out of the EU Directives on the trafficking of illicit drugs and new psychoactive substances as part of the Protocol 36 negotiations (the December 2014 opt-out of EU police and criminal justice measures adopted before the Lisbon Treaty came into force that do not benefit the UK). Nonetheless, the Bill is aligned to the Directives' objective of ensuring participating EU Member States impose criminal controls on the trafficking of harmful drugs.

The Government does not, as Baroness Meacher advocated, support opting in to the draft EU Regulation on new psychoactive substances. As the European Union Committee concluded in its sixth report of the 2013/14 session, the Commission's proposals are not compliant with the principle of subsidiarity. Nor does the Government support EU action on illicit drugs under an internal market legal base, or with a low/medium/high risk categorisation. The approach currently taken in the draft EU Regulation risk sending the dangerous message that new psychoactive substances are safe, would fetter action by national Parliaments and would be vulnerable to legal challenge.

Engagement with other countries

Lord Mancroft, Lord Howarth of Newport and yourself asked what is being done to engage with other countries to tackle the international trade in new psychoactive substances. The UK Government is the global leader driving

action on new psychoactive substances, working bilaterally and through the UN and G7. Amongst other UK successes to date has been the introduction of international controls on mephedrone, the first new psychoactive substance to be banned at an international level. We have also funded the UN Global Early Warning Advisory system, which ensures that the UK and our countries have access to the latest international forensic and public health evidence.

We are working to encourage enhanced international law enforcement cooperation. This includes pressing source countries, such as China and India, to crack down on the production of these substances, and to improve their interception of new psychoactive substance exports. A key forum for engaging with India, China and other partners on this issue is the International Narcotic Control Board's Project - ION (International Operations on NPS), an international law enforcement task force which tackles the trafficking of new psychoactive substances.

We are also sharing the lessons the UK has learnt on the need for a balanced and evidence-based approach to these substances, including delivering targeted prevention campaigns and supporting clinical treatment.

NPS in prisons

You, Lord Farmer and the Earl of Sandwich raised the issue of the use of new psychoactive substances in prisons. There is currently a wide ranging programme of work within the National Offender Management Service, including clear and unequivocal guidance to prison Governors and staff about the dangers of new psychoactive substances. The aim is to allay some of the common misconceptions around their legality and health risks they pose.

There is a widespread prison media campaign, including the use of prison radio, to ensure that all prisoners are aware of the very serious risks associated with using new psychoactive substances. Alongside this, the National Offender Management Service continues to work with science partners to introduce testing for new psychoactive substances as soon as the technology allows. The National Offender Management Service has and will continue to work very closely with Home Office on this Bill, which we expect to have a profound effect on tackling the supply and use of new psychoactive substances in prisons.

What will success look like?

Lord Kirkwood of Kirkhope suggested that he would find it helpful to have some insight into what I would consider success to look like over the next five or 10 years, following the enactment of the legislation. To put it quite simply success would mean reducing the harms caused by new psychoactive substances through tackling their supply and sending the clearest possible message that these are not safe. The act of banning production and supply will mean that those who profit from supplying others with these dangerous substances, will no longer be able to do so without the risk of criminal or civil sanctions.

Professor Paul Hayes, a former chief executive of the National Treatment Agency, put the case for this Bill very succinctly in a recent article. He said:

“Closing down the visible points of sale will tend to deter novice users and, just as importantly, will prevent the normalisation of NPS use which the presence of open sale promotes.”

I wholeheartedly agree with this statement and believe one of the most important impacts that the Bill will have is to dismantle the perception once and for all that so called ‘legal highs’ are safe because they are legal.

Of course, we do not expect that banning the production and supply of these substances will of itself wholly eradicate the trade, which is why we are implementing a wider non-legislative action plan across prevention and treatment.

In the normal way, the provisions of the Bill will be subject to post-legislative scrutiny some three to five years after Royal Assent.

Medical use of cannabis

Lord Winston asked about the medicinal use of cannabis with reference to the work of the House’s 1998 Science and Technology Committee Report. Baroness Hamwee also welcomed the opportunity to discuss the medical use of cannabis to deal with neurological conditions. Cannabis is a controlled drug under the 1971 Act 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 the Bill specifically excludes drugs controlled under the 1971 Act (thereby ensuring that there are not overlapping regulatory regimes in relation to controlled drugs). In line with the Science and Technology Committee’s recommendations, clinical trials to test cannabis based medicines were undertaken. This resulted, in 2010, to Sativex being granted a marketing authorisation by the Medicines and Healthcare products Regulatory Agency (MHRA) as an oral spray. It is authorised for use as add-on treatment, for symptom improvement in patients with moderate to severe spasticity due to multiple sclerosis. Subsequently, Sativex was rescheduled under the 1971 Act to enable it to be prescribed as a medicine. It is open to pharmaceutical companies to apply to the MHRA for other cannabis-based medicines to be introduced in UK healthcare.

Alcohol abuse

Baroness Hollins, Baroness Browning, Lord Kirkwood of Kirkhope, Baroness Meacher, Baroness Bakewell, the Earl of Sandwich and Lord Tunncliffe all expressed concerns about alcohol abuse. I would, therefore, like to take this opportunity to set out what is being done to tackle this issue. Indeed, with alcohol-related harms estimated to cost society £21bn per year of which £11bn is alcohol-related crime, this problem should not be underestimated.

In response, the Government is continuing to build on the Alcohol Strategy launched in 2012 to support people to stay healthy and tackle alcohol as a driver of crime. Actions that came out of the strategy include the introduction of an alcohol risk assessment in the NHS Healthcheck which was introduced in April 2013 and has the potential to reach three million adults per year. Another action is that the Government's Chief Medical Officer, Dame Sally Davies, is overseeing a UK-wide review of all alcohol guidelines so that people can make informed choices about their drinking at all stages of their lives. We expect to be able to consult on new guidelines by summer 2015.

Local areas have been given more powers and responsibilities to help them tackle harm to their local population, in recognition that they are best placed to tackle alcohol-related issues in ways that suit local needs. Public health ring-fenced budgets for local authorities include funding for alcohol prevention and treatment.

Addiction to prescription medication

The Earl of Sandwich, Lord Patel of Bradford and Lord Mancroft raised the issue of prescription drugs addiction. Support for people who are dependent on prescription or over-the-counter medicines is provided by a variety of services across a range of settings including GP surgeries, specialist drug treatment, and voluntary support groups and services.

The Department of Health has supported the development of a Consensus Statement by professional organisations to prevent and treat addiction to medicines. It has commissioned two specialist reports on benzodiazepines and other prescription or over-the-counter medicines which could give rise to dependence. This will inform policy and service planning. The National Institute for Health and Care Excellence, the Medicines and Healthcare Products Regulatory Agency and Public Health England have published advice to clinicians and commissioners on how to assess the need for specialist services and help people withdraw from medicines to which they are addicted. There is ongoing continuing professional development for GPs, supported by the Royal College of General Practitioners, which has run a number of training courses for GPs on addiction to medicine and how to support patients to withdraw from long-term use.

In addition, the Home Secretary has commissioned the Advisory Council on the Misuse of Drugs to explore the potential for health and social harms arising from the diversion and illicit supply of medicines, predominantly controlled drugs, to inform further Government action.

Scottish Expert Panel

Lord Kirkwood of Kirkhope mentioned the importance of taking into account the views of the devolved administrations, mentioning specifically the Scottish

Government's Expert Group. The Group reviewed the Irish model and concluded that:

“The Group agreed that there are a number of benefits to the Irish model, which could strengthen the tools that are currently available and being used by agencies to tackle NPS supply in Scotland. The Irish Act provides a number of ways to tackle the issues that arise out of the sale of NPS, from headshops, police powers as well as prosecution.

The effectiveness of this model can be demonstrated numerically, as Ireland has seen a reduction in the number of headshops, from 102 in 2010, to less than 10.”

The Expert Group recommended that the Home Office should work with the Scottish Government to create legislation to tackle psychoactive substances in Scotland, which is exactly what we have done with the introduction of this Bill. The provisions of the Bill will extend to the whole of the UK and relate to matters which are not within the legislative competence of the Scottish Parliament; nonetheless, we have and continue to work closely with the Scottish Government to ensure that the detailed provisions of the Bill properly reflect the distinctive nature of Scots law and policing and judicial practice.

Penalties

Lord Paddick and Baroness Meacher spoke about penalties and the importance of them being proportionate to the risks associated with a given substance. The Bill adopts just such an approach. As I indicated in my opening speech at Second Reading, we have purposefully not provided for an offence in relation to simple possession and, in terms of tackling the trade in psychoactive substances, we have provided for both criminal and civil sanctions so that law enforcement agencies can adopt a flexible, proportionate response to any criminal conduct under the Bill. Moreover, the maximum penalty for the main offences in the Bill is seven years' imprisonment, compared to life imprisonment for the importation or supply of a Class A drug and 14 years' imprisonment for the importation or supply of a Class B or C drug. This approach reflects the fact that drugs controlled under the 1971 Act have had their medical and social harms assessed and so, we believe, should be treated differently - and more severely - than unassessed psychoactive substances. If a substance is causing sufficient concern to warrant higher penalties it can then go on to be controlled under the 1971 Act as appropriate.

'Not for consumption' loophole

Lord Tunnicliffe asked how the Bill will close the possible loophole of mis-advertising a psychoactive substance. The Bill will cover the supply of all psychoactive substances, regardless of whether they are advertised “not for human consumption” or as “plant food” or other such ruse. Clause 5(1) provides the offence of supplying a psychoactive substance. For an offence to be committed the person must intentionally supply a substance; the

substance must be a psychoactive substance; the person must know or suspect, or ought to know or suspect, that the substance is psychoactive; and finally, that they know, or are reckless as to whether, the psychoactive substance is likely to be consumed by the person to whom it is supplied, or to some other person, for its psychoactive effects. Whilst the circumstances of each case will differ, the offence has been deliberately framed to address the ruses employed by the trade. If, on the facts of the case, it is evident from the marketing or supply of the substance that it is intended for human consumption for its psychoactive effects, simply labelling the product as “plant food” or similar will be no defence.

Irish definition

Baroness Hamwee asked why the definition of a psychoactive substance in this Bill does not mirror that used by the Republic of Ireland. The definition of a psychoactive substance used by the Republic of Ireland in their Criminal Justice (Psychoactive Substances) Act 2010 was our starting point. During the drafting of the Bill, we discussed the definition with counterparts in Ireland, as well in Australia and New Zealand, and also with scientific and law enforcement experts. Following this advice, we have retained core elements of the Irish definition but sought to refine it so as to make it more concise, for example by removing reference to different substances and behaviour changes, and remove the element of subjectivity inherent in the use of the word “significant”. We also concluded that we should remove the second limb of Ireland’s definition, namely that of the substance causing “a state of dependence”, as we concluded that this was captured as part of affecting a person’s mental functioning or emotional state and was unnecessary duplication.

Impact Assessment

I would like to take this opportunity to apologise to Lord Kirkwood of Kirkhope who did not receive our impact assessment ahead of Second Reading. A copy of this has now been sent to him and it is also available on the Psychoactive Substances Bill page in the overarching documents library, or by following this link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433151/NPSGBImpactAssessment.pdf

While I have sought to address the main issues brought up in debate, this letter is necessarily a summary. If any Peer would like further clarification of the provisions in the Bill, I hope they will not hesitate to write to me.

I am copying this to all Peers who spoke at Second Reading and to Lord Laming. I am also placing a copy in the library of the House and on the Bill page of the Government website.

Lord Bates