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House of Lords
London
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PSYCHOACTIVE SUBSTANCES BILL: GOVERNMENT AMENDMENTS FOR LORDS COMMITTEE STAGE

I am writing to let you have details of further Government amendments for Committee stage that I have tabled yesterday (copy attached).

These amendments are again of a technical nature and cover the following matters -

Powers of National Crime Agency officers (amendments to clauses 22, 32 and 53)

The Bill confers various powers on law enforcement officers including, in clause 32, powers on a “police and customs officer” to stop and search powers. This term is defined in clause 32(4) to include a designated National Crime Agency (NCA) officer, a term that is further defined in clause 53. The policy intention is that NCA officers designated with the powers and privileges of a constable and/or the powers of an officer of Revenue and Customs (under section 10(1) and/or (2) of the Crime and Courts Act 2013), will have access to the powers contained in the Bill.

The scheme in the Crime and Courts Act 2013 is designed in such a way that an NCA officer designated with the powers of a constable, officer of Revenue and Customs, or both would automatically be able to exercise the powers of a constable and/or Revenue and Customs officer (as the case may be), as conferred under statute or common law. These amendments ensure that the references in the Bill to NCA officers are consistent with that general approach.

The amendments to clause 32 adopt revised terminology to describe the relevant NCA officers who can exercise the stop and search powers, namely “a designated NCA Officer authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a police or customs officer under this Act”. This will have the effect of narrowing which NCA Officers will be able to use these powers by providing that a designated NCA officer (that is, those designated under section 10(1) and (2) of the Crime and Courts Act 2013)

must be authorised to exercise the powers conferred, by this clause, on a police or customs officer.

The effect of the amendment to clause 53 is that the Director General of the NCA will no longer be able to exercise these powers. The Director General is unlikely to exercise such powers conferred in this Bill, therefore, the Director General will not be able to authorise himself as a “designated NCA Officer”.

Finally, the amendments to clause 22 (which replace amendment 74 on the first marshalled list), which relates to enforcement of the access prohibitions, remove the now otiose references to a designated NCA officer (such officers will continue to be able to exercise the powers in clause 22 by virtue of being authorised by the Director General).

Providers of information society services (amendments to Schedule 3)

Schedule 3 ensures that the provisions of the Bill are compatible with the UK’s obligations under the E-Commerce Directive. Part 2 of Schedule 3 relates to the application of prohibition notices and prohibition orders to information service providers. Such a notice or order may restrict the freedom of an information service provider to provide information society services in relation to an EEA state only where two conditions (Conditions A and B) are satisfied as set out in paragraph 7(3) to (6). The amendments to paragraphs 7(1) and (2) clarify the circumstances in which the requirements in paragraph 7 apply. The effect of the amendments is to exclude prohibition orders made or varied on conviction (under clauses 18 and 25) and any prohibition orders varied on appeal under clauses 26 and 27, this is because the E-Commerce Directive operates “without prejudice to court proceedings, including preliminary proceedings, and acts carried out in the framework of a criminal investigation”. The amendment to paragraph 7(4) ensures that a court in varying the terms of a prohibition notice, as well as a court making such a notice, would need to apply the public interest test in Condition A. Condition B requires that before a prohibition notice or prohibition order is issued to an information service provider established in another EEA state, the relevant EEA state must be afforded an opportunity to take equivalent measures of their own against the service provider. As drafted, the duty to make a request to the relevant EEA state falls on the appropriate law enforcement officer issuing a prohibition notice or applying for a prohibition order, the amendments to paragraph 7(5) and (6) instead place this duty on the relevant enforcement authority where it more appropriately sits.

Meaning of “justice” in Scotland (amendment to clause 53)

Clause 35 confers powers on a “justice” to issue a search warrant authorising a relevant enforcement officer to enter and search premises for relevant evidence. A justice is defined in clause 53. In Scotland, the term means a sheriff. The amendment to clause 53 ensures that an application for a warrant in Scotland under clause 35 may be made before a sheriff or a justice of the peace. This accords with general practice when the police in Scotland apply for a warrant under section 134 or 135 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). Section 7 of the 1995 Act provides that a justice of the peace court can hear applications for warrants and any other matters which a sheriff sitting summarily can hear.

I am copying this letter 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.

The Right Honourable Lord Bates