



BRIEFING PAPER

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The Psychoactive Substances Bill 2015-16: Report on Committee Stage

By Sarah Barber

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Contributing Authors:

Jacqueline Beard
Robert Long

Summary

The *Psychoactive Substances Bill 2015-16* was introduced in the House of Commons on 21 July 2015. It received its Second Reading on 19 October 2015.

The Bill was debated in Committee on 27 and 29 October 2015, there were three sittings. It is tabled for Report Stage on 20 January 2016.

A background to the Bill, a summary of Lords consideration and an overview of the bill as introduced to the House of Commons is provided in the Commons Library briefing paper, [Psychoactive Substances Bill 2015](#).

The Psychoactive Substances Bill intends to introduce a blanket ban on the production, supply, possession with the intent to supply, and import and export, of psychoactive substances. Simple possession is not an offence under the Bill. A number of substances will be explicitly exempted from the controls in the Bill and the Bill provides order-making powers for the Secretary of State to add substances to this list. It includes a range of civil and criminal sanctions.

The Bill was introduced in the Queen's Speech in May 2015 after recommendations from the Home Office appointed expert panel report on new psychoactive substances.

Government amendments

Government amendments tabled at Committee Stage included:

- To introduce a new offence of possession of a psychoactive substance in a custodial institution;
- To add exemptions to offences under the Bill for healthcare professionals acting in the course of their work, and for activity conducted in the course of approved scientific research;
- To change the definition of medicinal product under the list of exempted substances to that in the Human Medicines Regulations 2012;
- To repeal the *Intoxicating Substances Act 1985*.

These were all agreed and added to the Bill without division.

Other amendments

Opposition and other amendments tabled at Committee Stage included:

- To change the definition of psychoactive substances under the Bill;
- To add Alkyl Nitrites to the list of exempted substances;
- To exclude social supply of psychoactive substances from the controls under the Bill;
- To add statutory aggravating factors to the offence of supply, or offer to supply:
 - To aggravate the offence if the person knew, or had reason to believe the substance would cause harm

- To aggravate the offence if the supply was in the vicinity of a premises intended to accommodate vulnerable children;
- To introduce a new clause to make personal, social and health education a foundation subject in the National Curriculum in England;
- To add a requirement that the review of the implementation of the Bill include a report on progress made in improving the education about new psychoactive substances (NPS);
- To give powers to police officers and local authority officers to require a premises to cease trading where a premises notice had been breached.

None of these amendments were added to the Bill, but it was indicated that a number may be tabled again at Report Stage.

This paper summarises the Committee debate, following a short summary of debate during Second Reading. It will also provide some information about the Home Affairs Committee Report on psychoactive substances that was published before Committee Stage.

1. Second Reading

The Commons Second Reading of the Bill took place on the 19 October. The Policing, Fire and Criminal Justice and Victims, Mike Penning, introduced the Bill. He said that it was a broad piece of legislation that introduced a blanket ban to tackle substances that were not controlled under existing legislation. He said that the purpose of the Bill was to save lives.¹

There was broad support for the principles of the Bill, but concerns were expressed about parts of the Bill by a number of Members.

The Shadow Minister for the Home Office, Lyn Brown, reported that the Labour 2015 General Election manifesto had included a commitment to ban psychoactive substances, and they supported the principles of the Bill.²

However, she had concerns about elements of the Bill that were echoed by others in the debate. She raised the issue of proportionality of sentencing under the Bill, noting that this differed from the existing misuse of drugs legislation because there was no link between the harm caused by the substance and the sentencing:

It is because this Bill suggests such a radical change that we need carefully to consider the impact it will have when implemented. I am worried that we might end up in a situation where someone who is prosecuted for selling a weak psychoactive substance faces the possibility of the same seven-year custodial sentence as someone who sells a very dangerous substance. The Bill contains no classification system to differentiate between those two crimes. I fear that the proposed laws could lose the confidence of the public and the judicial system if the issue of proportionality is not looked at carefully.³

Lyn Brown also raised concerns about the how the authorities may assess the psychoactivity of a substance under the Bill. She highlighted warnings from the Chair of the Advisory Council on the Misuse of Drugs (ACMD) that proxy measures such as in vitro tests may need to be used, but these may not stand up in court. David Burrowes also raised the difficulties with proving psychoactivity and problems reported from the Republic of Ireland (where similar legislation is in place) regarding this.⁴

Ann McLaughlin, speaking for the Scottish National Party, expressed “*tentative*” support for the Bill but said that fundamental questions about the Bill still needed to be addressed.⁵ She raised, as did a number of Members from both sides of the House, the difficulties regarding the definition of psychoactive substances under the Bill:

It is crucial to ensure that we get the definition of NPS [new psychoactive substances] right in this Bill. Speaking as a new Member, I often wonder whether it is just the way things are done here, but I am quite certain that most Members would agree

¹ HC Deb 19 October 2015 c736

² HC Deb 19 October 2015 c740

³ HC Deb 19 October 2015 c744

⁴ HC Deb 19 October 2015 c764

⁵ HC Deb 19 October 2015 c751

it is not acceptable to have reached this stage of legislation while still not having a definition with which everyone can agree. Most alarmingly, the chair of the Advisory Council on the Misuse of Drugs has said that the definition we are being asked to agree to is unworkable. I urge the Bill Committee to consider the evidence of the ACMD and find a workable definition.⁶

Several members raised the subject of the use of new psychoactive substances (NPS) in prisons. Steve Brine highlighted a conversation he had with the Governor of Winchester prison about the measures needed in prisons:

This trend in our prisons is worrying on many levels, but it is another reason why we need a social revolution in this country about how we use prisons. As the governor of Winchester prison said to me, today's debate is not just about making NPSs illegal; it is about looking at the effects that that will have on the prison economy and behaviours. He said:

*"Prisoners will always want to use illegal substances whether they be a class A or B drugs or NPS. There has to be more done to support for those who want to kick the habit. Our services are being stretched. The punishments for those caught with NPS or any other drug have to be substantial. However, the trick is to ensure that this does not then incentivise more bullying and coercion. A total ban will clarify the position, but cannot be done in isolation in my view. There needs to be a range of things available to support vulnerable prisoners who have a drug habit."*⁷

He welcomed the statutory aggravating factor on supply in prisons that had been added to the Bill in the Lords stages, and called on the Government to introduce an amendment to make possession of a NPS an offence in a prison under the Bill at Committee Stage. Mike Penning said he would look carefully at whether an amendment could be proposed.⁸

The importance of education on NPS was raised by a significant number of Members during the debate. Lyn Brown said that education was key and more needed to be invested for a comprehensive education programme in the UK.⁹

Some Members spoke in opposition to the Bill. The former Health Minister, Norman Lamb, said that whilst he was hostile to drugs and their misuse, he did not believe this was the right approach to take.¹⁰ He said the Bill was flawed and he feared it would not work:

The Bill is flawed and our debate suggests that many Members recognise its flaws. My fear is that it will not work and that it will be brought into disrepute. My preference would be to work on an approach that protects young people, that avoids enriching criminals as well as lawyers, that provides clarity, rather than legal confusion that can be exploited in court by lawyers, and that is based on health and the reduction of harm.¹¹

⁶ HC Deb 19 October 2015 c752

⁷ HC Deb 19 October 2015 c750

⁸ HC Deb 19 October 2015 c737

⁹ HC Deb 19 October 2015 c743

¹⁰ HC Deb 19 October 2015 c758

¹¹ HC Deb 19 October 2015 c760

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There was also some disagreement during the Second Reading debate about how similar pieces of legislation were working internationally. Mike Penning said that the scientists and Ministers in the Republic of Ireland had reported that the legislation there is working well; however, Caroline Lucas reported that the prevalence of the use of novel psychoactive substances in young people had increased over the last three years in Ireland.¹²

¹² HC Deb 19 October 2015 c736

2. Home Affairs Committee Report

The Commons Home Affairs Select Committee held an Inquiry on Psychoactive substances prior to the Committee Stage consideration of the Bill. The Committee heard evidence from a number of witnesses including the Chair of the ACMD, Professor Les Iverson and the Minister for Policing, Fire and Criminal Justice and Victims, Mike Penning.

Submitted written evidence and transcripts of the evidence sessions can be accessed through the [Committee webpage](#).

The Committee published its report, [Psychoactive substances](#), on 23 October 2015. The Committee said that the Government were right to legislate on new psychoactive substances (NPS) but had concerns about the speed at which the Government brought the Bill and a lack of consultation.

Other findings and recommendations in the report included:

- That the Government should reconsider the definition of psychoactive substances under the Bill with the advice of the ACMD;
- That there had been few prosecutions under the legislation in the Republic of Ireland and that this had been blamed on the difficulty proving psychoactivity. The Committee recommended that the Government should assess the approach suggested by the ACMD on this;
- Alkyl Nitrites (Poppers) should not be controlled under the Bill. Professor Iverson, Chair of the ACMD had said in evidence that they were "*not seen to be capable of having harmful effects sufficient to constitute a societal problem*"
- The Sentencing Council should be requested to produce appropriate sentencing guidelines to take account of harms relating to different NPS;
- With regard to the move online of NPS sales, and that the bill does not extend to overseas websites. The Committee recommended that the Government and Police should publish an action plan on how this displacement of sales should be tackled;
- There should be increased investment in education and public awareness campaigns;
- The Government should take a lead role in developing clinical resources to ensure healthcare professionals feel able to tackle harms caused by NPS.

The Chair of the Home Affairs Committee, Keith Vaz, commented on the publication of the report:

"Britain uses more psychoactive substances than any other country in Europe and is at risk of being overwhelmed by the sheer scale of this problem. Legislating on this issue is the right thing to do, however doing so at speed without any consultation may be counterproductive. The concerns expressed have been dealt with in a piecemeal manner and there has been

unsatisfactory communication with the Advisory Council, the very body that the Ministers should rely on for advice.

There should have been an impact assessment of the ban of NPS in Ireland before the Bill was published, which would have given us a complete picture of what was likely to happen in the UK. It is very disappointing that this did not take place.

A young person dying as a result of using these substances on a night out is every parent's worst nightmare. We are dealing with unscrupulous people, often involved in activities thousands of miles away, who care nothing about damaging health and lives and even causing death in the pursuit of profit. We should use every effort to ensure that the sale of NPS does not move en masse from the high street onto the internet. This would be disastrous. The absence of a public education campaign warning young people of the dangers of NPS is lamentable." ¹³

At the time of writing the Government has not published its response to the Report.

¹³ Home Affairs Committee, [Flaws in rushed psychoactive substances legislation](#), 23 October 2015

3. Committee Stage

The Psychoactive Substances Bill was debated in Committee on 27 and 29 October, over three sittings.

Transcripts of the Committee sessions are available here:

- [Public Bill Committee 27 October 2015 First Sitting](#)
- [Public Bill Committee 27 October 2015 Second Sitting](#)
- [Public Bill Committee 29 October 2015 Third Sitting](#)

A tracked changes version of the Bill as amended in Committee is available [here](#).

Links to all Bill stages and Bill documents can be found on the [Psychoactive Substances Bill page](#).

This section will provide a summary of the Committee consideration of the Bill.

On 17 November 2015, following Committee Stage consideration of the Bill, Mike Penning wrote to the Shadow Minister and other members of the Bill Committee regarding some of the issues raised and providing further explanation of the Government's position on these.¹⁴ Further information in the letter on the amendments discussed is included in the sections below.

3.1 Possession of psychoactive substances in a custodial institution

A Government amendment was tabled to add a new offence of possession of a psychoactive substance in a custodial institution under **Clause 1** of the Bill.¹⁵

The Bill was amended at Report stage in the House of Lords by an Opposition amendment to make the supply, and offer to supply of psychoactive substances on prison premises a statutory aggravating factor. The Minister for Policing, Crime, and Criminal Justice, Mike Penning reported that the Government was content with this amendment, but had decided that it needed to go further.¹⁶

The Shadow Minister for the Home Office, Lyn Brown, highlighted concerns from both within the Prisons and Probation Ombudsman's most recent report¹⁷ and the annual report of Her Majesty's Inspectorate of Prisons¹⁸ about new psychoactive substances (NPS) in prisons but said that she was not convinced that the addition of a new offence on top of the new aggravating factor was necessary.¹⁹

¹⁴ Letter, [Psychoactive Substances Bill: Committee Stage](#), 17 November 2015

¹⁵ Amendment 1 and new clause 2

¹⁶ [Psychoactive Substances Bill PBC 27 October 2015 c4](#)

¹⁷ Prison and Probation Ombudsman, [Learning Lessons Bulletin, New psychoactive Substances](#), July 2015

¹⁸ Her Majesty's Inspectorate of Prisons, [Annual Report 2014-15](#), July 2015

¹⁹ PBC 27 October 2015 c6

Lyn Brown pointed out that the Prison service already has the powers to discipline prisoners.²⁰ She said that there should be more emphasis on better detection methods in prisons, drug testing, and education programmes.²¹

Owen Thompson, responding for the Scottish National Party (SNP), also spoke in opposition to the amendment, he said he was not convinced that the measure proposed would have the desired outcomes.²²

The Minister agreed that NPS in prisons was a complex matter and that action needed to be taken in detection and education. He said that this new offence was not a silver bullet but he said that the people on the front line needed this measure.²³

The amendment was agreed and added to the Bill.

3.2 Definition of Psychoactive substance and proving psychoactivity

Since the introduction of the Bill there has been ongoing debate regarding the definition of psychoactive substances under the Bill. Amendments have been tabled at various stages during the Bill's progress but the Government have confirmed throughout that they believe the existing definition is robust and the right one.²⁴

Background

Clause 2 of the Bill, as introduced, defined the term psychoactive substance for the purpose of the Bill as *any substance that is capable of producing a psychoactive effect in a person who consumes it, where that substance is not an exempted one.*

Psychoactive effect is defined further as one that has an effect on the central nervous system:

[...] a substance produces a psychoactive effect in a person if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state; and references to a substance's psychoactive effects are to be read accordingly.⁶⁰

Lords stages

At Second Reading in the Lords, the Minister for the Home Office, Lord Bates, said that the purpose of this definition was to ensure the scope of the Bill was broad enough to cover new substances that are being created:

In defining what we mean by a psychoactive effect, our definition draws on scientific advice and international precedents, including the 1971 UN Convention on Psychotropic Substances. As I have indicated, we make no apologies for the breadth of the definition.

²⁰ [The appropriate handling of crimes in prison, Protocol between: National Offender Management Service, Association of Chief Police Officers, Crown prosecution Service](#), February 2015

²¹ PBC 27 October 2015 c6

²² PBC 27 October 2015 c10

²³ PBC 27 October 2015 c11

²⁴ PBC 27 October 2015 c24

If we were to adopt too narrow a definition, we could, in a few months' or years' time, find ourselves having to bring forward further legislation because we were faced with a new generation of harmful substances that escaped the controls provided for in this Bill.⁷

A number of amendments had been tabled at both Committee and Report Stages in the House of Lords to amend the definition. These included, using the word "synthetic" within the definition²⁵ and using the definition as suggested by the Advisory Council on the Misuse of Drugs (ACMD) in correspondence with the Home Secretary.²⁶

ACMD and psychoactive substances

The [Advisory Council on the Misuse of Drugs](#) (ACMD) is an independent expert advisory body that makes recommendations to the Government on the control of harmful drugs. It has had an ongoing correspondence regarding the Psychoactive Substances Bill with the Home Secretary since the Bill's introduction.

The ACMD has expressed support for the move to prevent harms and deaths from NPS and has stated there are positive aspects to the Bill but has expressed concerns - that the Bill may have unintended consequences and not achieve its aims. One of the main concerns expressed has related to the definition of psychoactive substances under the Bill. The ACMD have suggested a number of amendments to this definition.

Links to all the correspondence are included in a later section in this briefing paper, more information on the role of the ACMD is provided in the Library [Second Reading briefing paper](#).

The Home Affairs Select Committee took evidence on the definition of psychoactive substances during its Inquiry on this subject, including from the Chair of the ACMD, Professor Les Iversen. The Committee [Report](#) summarised some of the ACMD concerns and made a recommendation that the Government reconsidered the definition within the Bill:

Professor Iversen told us:

In a Bill to ban psychoactive substances, you must have some means of defining what a psychoactive substance is. Just to say that a psychoactive substance is something that causes psychoactivity in human beings is really not adequate. We have tried to address that issue and tried to be helpful in coming up with an alternative definition.

He explained that the ACMD had recommended including the word 'novel' but this had been rejected by the Government on the basis that it could not be defined legally with sufficient precision. The ACMD had therefore offered further alternative definitions "which might provide a legally defensible 'meaning of psychoactive substance'", recommending the following definition because it retains the concept of the assessment of harm, and it is also closest to that used by the Expert Panel

²⁵ [HL Deb 23 June 2015 c1529](#)

²⁶ [HL Deb 14 July 2015 c484](#)

Psychoactive substances which are not prohibited by the United Nations Drug Conventions of 1961 and 1971, or by the Misuse of Drugs Act 1971, but which may pose a public health threat comparable to that posed by substances listed in these conventions.

Professor Iversen told us “We would stand by our belief that the existing definition of psychoactivity in the draft Bill that we have seen is not workable”. He believed that the definition that the ACMD had come up with was “an improvement” on the existing “very loose definition of what is meant by psychoactivity”.

The terminology used to describe substances of this nature has long been ill-defined. The use of the term ‘legal highs’ is both misleading and inappropriate. It sends out a message to young people that these substances are both ‘legal’ and will have a ‘desirable’ effect. This has tempted people to experiment with these substances, sometimes with disastrous consequences.

Regarding the terminology contained in the Bill, there has been no consultation on the definition of psychoactive substances. We recommend that the Government reconsider the definition of a psychoactive substance, with the benefit of the advice the ACMD have provided.²⁷

Commons Committee stage amendments

The Opposition and the SNP both tabled amendments to **Clause 2** at Committee Stage on the definition of psychoactive substances. These were similar amendments that both sought to change the definition under the Bill to one proposed by the ACMD.

The Opposition tabled amendments²⁸ used a definition very similar to a recommendation provided in a letter from the ACMD to the Home Secretary in August 2015:

Recommendation 1: that the following statement and definitions are incorporated within the Psychoactive Substances Bill:

For the purposes of this Bill the following definitions are used:

a) psychoactive substance - “Psychoactive substance” means any compound, which is capable of producing a pharmacological response on the central nervous system or which produces a chemical response *in vitro*, identical or pharmacologically similar to substances controlled under the Misuse of Drugs Act 1971.

(b) substance - any compound, irrespective of chemical state, produced by synthesis, or metabolites thereof.

(c) synthesis - the process of producing a compound by human instigation of at least one chemical reaction.

(d) compound - any chemical species that is formed when two or more atoms join together chemically.²⁹

Within the same August 2015 letter the ACMD also provide three alternative definitions that it considered could provide a more legally

²⁷ Commons Home Affairs Select Committee, [First report of 2015-16 session, Psychoactive Substances](#), 23 October 2015

²⁸ Amendments 43 and 44

²⁹ ACMD, [Letter to the Home Secretary, Re: Definitions for Psychoactive Substances Bill](#), 17 August 2015

defensible meaning of psychoactive substance. The third one of these suggestions was the preferred option of the ACMD, and was used in the SNP tabled amendment to **Clause 2:**

...in clause 2, page 1, line 14, leave out subsection (1) and insert—

(a) is not prohibited by the United Nations Drug Conventions of 1961 and 1971, or by the Misuse of Drugs Act 1971, but which may pose a public health threat comparable to that posed by substances listed in these conventions and

(b) is not an exempted substance (see section 3)³⁰

In introducing the Opposition amendment, Lyn Brown acknowledged that during Lords consideration of the Bill, and in correspondence with the ACMD, the Government had said that the inclusion of the word 'synthetic' would be inappropriate as there are natural substances that are harmful and should be controlled. However, she highlighted that the ACMD did not seem to be worried about the use of this word, and that the small number of natural products could be controlled by the [Misuse of Drugs Act 1971](#).³¹

She said that unless the definition in the Bill is strengthened, and underpinned with ways of testing psychoactivity, it may not result in successful prosecutions or controls.³²

Lyn Brown also highlighted the ACMD concerns relating to proving that a substance is psychoactive, and reports that proving psychoactivity had been difficult in the Republic of Ireland. Opposition amendment 43 sought to introduce another element of the ACMD suggested definition of psychoactive substances:

Amendment 43, which I remind the Committee is based on an ACMD recommendation, would define a psychoactive substance as

“a compound capable of producing a pharmacological response on the central nervous system or which produces a chemical response in vitro, identical or pharmacologically similar to substances controlled under the Misuse of Drugs Act 1971”.

It is my understanding that one of the benefits of this definition is that it would be harder for defendants to challenge proxy evidence of a substance's psychoactivity, because legally psychoactivity would be defined by proxy indicators. It is important that the Minister outlines why this wording would not be more legally robust than the current wording, because psychoactivity is, after all, right at the heart of the Bill.

If the definition of psychoactivity is limited to the known drug groups, we know that the resources required would be more manageable, and a series of simple biological tests could be done on known targets to indicate the drug group of a substance. According to chemists and toxicologists, this is

“run of the mill profiling”.

³⁰ Amendment 51

³¹ PBC 27 October 2015 c17

³² PBC 27 October 2015 c18

Thus, a library of known compounds could be built up and additional testing would only be required where the law was challenged. Leading chemists, including Professor Les Iversen, assure us that it is highly unlikely that new substances will be found that fall outside the known drug groups.

Lyn Brown also highlighted the most recent letter from the ACMD to the Home Secretary. The letter said that the Council still had concerns about the definition in the Bill- "*it is too unspecific and does not adequately define a psychoactive substance.*"³³

Owen Thompson, moving the SNP amendment, said that he felt there was a weakness in the Bill around the definition of psychoactive substances, and that it was important to make sure that the definition was as strong as possible to ensure action was taken.³⁴ He also highlighted that even with a stronger definition in place, there are difficulties proving psychoactivity:

Our amendment moves forward some of the issues on definition that the Advisory Council on the Misuse of Drugs raised at the Home Affairs Committee. We accept that the Opposition Front Bench also has amendments on similar lines which do likewise. However, questions remain on how action can be taken because, even with a stronger definition, how can prosecutors prove that something is capable of having a psychoactive effect? This point was commented on in relation to prisoner status. How are tests done? What are the tests, and who carries them out? Would expert evidence be required in every instance where a substance is being looked at? Would that be considered under the definition and who would carry out that function?³⁵

Mike Penning responded to the amendments. He said that they went against the idea of a blanket ban. He said that when he had enquired about the small number of prosecutions in Ireland, the Irish Minister had reported that this was due to the wide range of civil and criminal sanctions under the Bill- local authorities had used their powers and changed communities.³⁶

He said that he would be able to give more information about bringing forward scientific and forensic capability at Report Stage. He accepted that there were concerns about not being able to prosecute but that this would not be the case.³⁷

In response to questions from Lyn Brown, the Minister said that he was confident that the definition within the Bill was robust enough to provide provability in a court.³⁸

The amendments were withdrawn.

³³ ACMD, [ACMD's final advice on definitions of Psychoactive substances](#), 23 October 2015

³⁴ PBC 27 October 2015 c15

³⁵ PBC 27 October 2015 c15

³⁶ PBC 27 October 2015 c22

³⁷ PBC 27 October 2015

³⁸ PBC 27 October 2015 c24

3.3 Importation for personal use

An Opposition amendment sought to amend clause 8 to make it an exception to the offence of importing a psychoactive substances if it was for personal use.³⁹ A very similar amendment was also tabled by the SNP.⁴⁰

Lyn Brown explained that, as the Bill stood, a person buying a substance for personal use from a UK based website would not be committing an offence but if they were purchasing from an overseas based website they would be importing a psychoactive substance and therefore committing an offence under the Bill.⁴¹ She said that users may not know if a website is UK based or not and this clause went against the Bill's intention to not criminalise users.

Mike Penning said that if the Government accepted this amendment, there would be a debate around what constituted personal use and it would make it difficult for the Border Force to do their job.⁴² He said that this was a difficult area; he could not accept the amendment but the chance of a prosecution in these cases was very small.

The amendment was withdrawn.

In a letter sent to the Shadow Minister after Committee Stage in November 2015, the Minister provided more information about the Government's position on importation for personal use. He said that he did not believe there was a contradiction between criminalising the purchase from foreign website but not for UK based ones. He said that the *Misuse of Drugs Act* does not make a distinctions between importation for personal use and other reasons, and this bill shouldn't either because this could be open to exploitation. He also said a change in the Bill would make it difficult to police the border.⁴³

3.4 Alkyl Nitrites (Poppers)

Owen Thompson introduced a probing amendment to **Schedule 1** at Committee Stage to exempt Alkyl Nitrites, or poppers, from the controls under the Bill.⁴⁴ He highlighted the evidence taken during the Home Affairs Select Committee Inquiry on psychoactive substances, and its recommendations on this issue.

In its October 2015 report, [Psychoactive substances](#), the Home Affairs Committee recommended that alkyl nitrites should not be banned under the Psychoactive Substances Bill. It highlighted evidence from the Chair of the ACMD about the effects of these substances:

We accept the evidence given by Professor Iversen, the National Aids Trust, and the Gay Men's Health Collective on alkyl nitrites, also known as 'poppers'. Professor Iversen said 'poppers' were "not seen to be capable of having harmful effects sufficient to

³⁹ Amendment 50

⁴⁰ Amendment 53

⁴¹ PBC 27 October 2015 c60

⁴² PBC 27 October 2015 c62

⁴³ Letter, [Psychoactive Substances Bill: Committee Stage](#), 17 November 2015

⁴⁴ Amendment 56

constitute a societal problem” and therefore we recommend they should not be banned. If in the future there is any evidence produced to the contrary, then ‘poppers’ should be removed from the exempted list or controlled under the Misuse of Drugs Act.⁴⁵

Mr Thompson said that the amendment was tabled to avoid the unintended consequences of banning poppers, such as driving supply underground or a transfer to using more harmful substances.⁴⁶

Lyn Brown said that she was sympathetic to the SNP’s amendment.⁴⁷ She quoted evidence from the Chair of the ACMD to the Committee that the ACMD had not seen sufficient evidence in the case of poppers to justify a ban under the *Misuse of Drugs Act 1971*. She did report that there was emerging evidence on a link between alkyl nitrites and vision loss; that this example demonstrated the need for a mechanism for approving exemptions under the Bill through the ACMD.⁴⁸ She wanted action to be taken on those selling really harmful substances and asked the Minister if he would consider publishing the evidence he has on harms caused by poppers.

The Minister said there were concerns about harms caused by poppers, especially regarding new products coming on to the market.⁴⁹ He said that the Government response to the Committee report, to be published prior to Report Stage of the Bill, would provide information on the harms from Alkyl Nitrites.⁵⁰

He said that the Government was looking to introduce a blanket ban very similar to that in place in the Republic of Ireland which has included poppers. He explained that the principle of the approach was to not have exemptions and this would be affected if this amendment was accepted.⁵¹ He also said that the evidence from Ireland has not shown there has been unintended consequences from the ban on poppers, such as moving purchasing underground or a move towards using harder drugs. The issue could be discussed further at report stage.

The amendment was withdrawn but Owen Thompson said that he would look to take it forward on Report stage.

3.5 Exempted activity

As introduced, **clause 10** of the Psychoactive Substances Bill provided regulation-making powers for the Secretary of State to specify exceptions to the offences. These regulations could provide exemptions to make conduct that would usually be considered an offence under the Bill, lawful. For example, the explanatory notes suggested that these powers could be used to introduce regulations to exclude medical

⁴⁵ Commons Home Affairs Select Committee, [First report of 2015-16 session, Psychoactive Substances](#), 23 October 2015

⁴⁶ PBO 27 October 2015 c35

⁴⁷ PBO 27 October 2015 c35

⁴⁸ PBC 27 October 2015 c36

⁴⁹ PBC 27 October 2015 c37

⁵⁰ PBC 27 October 2015 c41

⁵¹ PBC 27 October 2015 c38

research activity from being covered by the Bill.⁵² This is similar to the powers provided by Section 7 of the *Misuse of Drugs Act*.

During the Lords consideration of the Bill, a Government amendment was added to require the Secretary of State to consult the ACMD when considering making regulations under **clause 10**.

Amendments were also tabled at this time to include an exemption for the use of psychoactive substances in medical research in the Bill or to require the Secretary of State to make regulations to ensure that exemption. This followed concern expressed by a number of scientific organisations, such as Academy of Medical Sciences, the British Pharmacological Society, the Royal College of Psychiatrists that the Bill as it stood would affect important medical research.⁵³ These were not added to the Bill.

Following a Government commitment during the Lords Stages of the Bill to bring forward amendments on exemptions to offences for research activities, Mike Penning moved amendments to introduce **New clause 3** and **New Schedule 1** and further related amendments.⁵⁴

New clause 3 would state that it was not an offence under the Bill for a person to conduct an activity if it is under the circumstances that are an exempted activity, listed in a Schedule to the Bill. It also includes regulation-making power for the Secretary of State to add or vary activities on the list and remove those that have been added subsequent to the Bill coming into force. These amendments were all agreed to in Committee.

New Schedule one included exemptions for activities under the Bill. The Minister said that the Government had been in consultation with the Academy of Medical Sciences regarding an exemption for research activities and it was happy that the exemption was robust and necessary.⁵⁵ An exemption for healthcare activities was also included in the new schedule.

Lyn Brown supported the new amendments but stated that she thought there should have been more consultation with the Advisory Council on the Misuse of Drugs (ACMD) when drafting the original Bill, noting that the progress of the Bill had been very quick.⁵⁶

The Minister accepted that the Bill had been rushed to some extent but that it was right that it should be expedited whilst making amendments during its progress:

This should have been done years ago under previous Administrations—I think we all know that. For every day that we do not do this, people are dying. I accept that it is rushed, to a degree—there was a huge gap between the Bill being in the Lords and coming to us—but it is right and proper for this House to expedite the Bill, while doing everything possible about any anomalies that generally concern groups of people, in particular

⁵² [Psychoactive Substances Bill: Explanatory Notes](#), 22 July 2015

⁵³ The Academy of Medical Sciences, [Letter to the Home Secretary](#), 29 June 2015

⁵⁴ Amendments 5,6,8,9,12,28,29,37

⁵⁵ PBC 27 October 2015 c11

⁵⁶ PBC 27 October 2015 c13

on the research side. If there were any such anomalies in the legislation, I would let no one prevent us from changing things. That is why we have tabled the amendments. Unashamedly, I have already mentioned belt and braces. If we need to amend things further as we go on, we will do so, so that we do not prevent research in such an important area.⁵⁷

3.6 Exempted substances

Government amendments 3 and 4 changed the definition of a medicinal product in **Schedule 1**. This made the definition under the Bill the same as that included in the [Human Medicines Regulations 2012](#). The Minister said that the Home Office and Department of Health were confident that this definition will exclude medicines from the scope of the Bill.⁵⁸

Both Lyn Brown and Andrew Gwynne expressed concerns that the medicines definition that it might allow for people to misuse medicines that had psychoactive effects under this exemption.

The Minister provided further reassurance about the definition of medicines under the Bill in the letter sent to Committee members in November 2015. He said that if a psychoactive substance was classified as a medicine under the Bill, it would be controlled by the *Human Medicines Regulations 2012*.⁵⁹

Role of the ACMD

Opposition amendment 45 sought to amend **clause 3** to require the Secretary of State to consider making regulations to add a substance to the exemption list if she received a recommendation from the ACMD.

Lyn Brown explained that the amendment would allow the ACMD to proactively request that a substance be added to the list of exempted substances. She said that this would be one way of ensuring that harmless substances are excluded from the controls under the Bill.⁶⁰

The Minister responded, reassuring the Shadow Minister that the Home Office values the work of the ACMD. Although **clause 3** only provided that the ACMD could be requested to give advice, in reality the relationship is two way. He highlighted Section 1 of the *Misuse of Drugs Act 1971* which allows the ACMD to provide advice to Ministers.⁶¹ However, the Minister agreed to consider the issue further between Committee and Report Stages.

The amendment was withdrawn.

3.7 Social supply

Opposition amendments to **clause 5** and **clause 7** intended to restrict the offences of supply and intent to supply to situations where the

⁵⁷ PBC 27 October 2015 c13

⁵⁸ PBC 27 October 2015 c29

⁵⁹ Letter, [Psychoactive Substances Bill: Committee Stage](#), 17 November 2015

⁶⁰ PBC 27 October 2015 c25

⁶¹ PBC 27 October 2015 c27

person supplying was doing so for personal gain.⁶² An amendment to **clause 5** on this issue was also tabled by the SNP.

Lyn Brown, introducing the amendments, reported that the ACMD had recommended that social supply be excluded from the remit of the Bill and that the new psychoactive substances expert panel report also stated that social supply could be excluded from the blanket ban.

She said that there was a difference between a young adult purchasing drugs on behalf of a group of friends on a night out and a drug dealer. The clause as drafted made no distinction between social suppliers and large scale commercial dealers. She said that if the Minister could not accept the amendments she hoped he could provide assurances that sentencing guidelines will be drawn up to make a distinction between these situations:

As I have stated, a similar notion to the one I have been expounding already exists in the guidelines for sentencing under the 1971 Act. I would like to be assured that the Minister will work with the Director of Public Prosecutions to ensure that prosecutions are brought only when there is a clear public interest, which I would suggest there is not in the case of many social suppliers. I would find some reassurance in knowing that the Government will do what they can to ensure that the Bill is intelligently enforced⁶³

David Burrowes said that discretion in these cases should be a matter for enforcement, rather than in the legislation where there could be unintended consequences.⁶⁴

Mike Penning said that he had concerns that the amendments would open up a significant loophole in the Bill. He said that proof of payment is considered in sentencing for offences under the Misuse of Drugs Act and that this was what the Government were looking for with this Bill. He had already committed to writing to the Sentencing Council to advise it on the will of the House. He also said that the range of civil and criminal sanction under the Bill would help to distinguish between those caught under the offences of the Bill.⁶⁵

The amendment was withdrawn.

In the letter to Committee Members from the Minister in November 2015, he responded again to the amendment on social supply. He said that the Government did not wish to criminalise young people but the Bill aimed to tackle psychoactive substances, and social supply was part of that. He said that social supply being included in the Bill did not mean that enforcement action would be taken in these cases:

The approach taken in the Bill does not mean that enforcement action will focus on social supply networks, nor does it follow that someone arrested for a social supply offence would necessarily face prosecution.

⁶² Amendments 46 and 49

⁶³ PBC 27 October 2015 c46

⁶⁴ PBC 27 October 2015 c43

⁶⁵ PBC 27 October 2015 c48

The police and Crown Prosecution Service will exercise their professional discretion when considering whether to arrest, warn or prosecute, taking into account all the circumstances of the offence and offender and the public interest. Ultimately, however, if the circumstances justify a prosecution, that option should remain open.

Importantly, the Bill contains both criminal and civil sanctions which enable law enforcement agencies to adopt a proportionate response to each offence.

Rather than a criminal prosecution, cases of social supply could be disposed of by simple forfeiture of the substance coupled with a warning to the individual about their behaviour, or by the use of civil sanctions. I anticipate that criminal prosecutions will be reserved for cases of persistent offending or for higher end supply cases involving significant quantities.⁶⁶

3.8 Aggravation of the offence of supplying, or offering to supply, a psychoactive substance

Harm

Lyn Brown spoke to amendments⁶⁷ which would provide, in **clause 6**, for an additional aggravating factor to the offence of supplying, or offering to supply a psychoactive substance (provided for in **clause 5**).

The offence would be aggravated where the person committing the offence knew, or had reason to believe, that the consumption of the psychoactive substance would cause the person consuming the substance harm.

She said that:

The Bill represents a radical departure from previous attempts to control drugs because it legally decouples controlled substances from an independent and objective assessment of the harm they cause.⁶⁸

She explained that the benefit of the amendments would be to formally recognise that someone ought not to receive the same sort of punishment for supplying a relatively harmless substance as someone supplying a substance which they ought to know could be very dangerous.⁶⁹

Owen Thompson spoke to an SNP amendment⁷⁰ which would provide that when an offender was sentenced, account should be taken of the relative harm associated with the psychoactive substance supplied.

David Burrowes, a member of the Home Affairs Committee, drew attention to the section of the [Committee's report](#) concerning the

⁶⁶ Letter, [Psychoactive Substances Bill: Committee Stage](#), 17 November 2015

⁶⁷ Amendments 48 and 49

⁶⁸ PBC 27 October 2015 c49

⁶⁹ PBC 27 October 2015 c50

⁷⁰ Amendment 55

concept of harm.⁷¹ He referred to the evidence of Rudi Fortson QC who had stated that:

...in the absence of drug classification, or an expert's opinion (if accepted) as to harm, the courts will have little option but to assume that all psychoactive substances are equally harmful.⁷²

David Burrowes called on the Minister, when writing to the Sentencing Council (as he had already agreed to do); to seek assurances that it would consider the matter quickly. He also questioned how quickly the Sentencing Council would be able to provide appropriate guidance to the courts as new psychoactive substances were created.⁷³

The Minister, Mike Penning, said that whilst he supported the principles behind the amendments, he felt it was a matter for the independent Sentencing Council. He said he was committed to writing to the Sentencing Council and would say that he expected it to take into consideration not only what the Committee and both Houses decide, but also the relevant part of the Home Affairs Committee report. He said moving into the "territory of harm" would "completely damage the principle" of the thinking behind the Bill.⁷⁴

Lyn Brown withdrew the amendment.

Supply in the vicinity of premises intended to accommodate vulnerable children

David Burrowes spoke to amendments⁷⁵ that would provide for a statutory aggravating factor where psychoactive substances were supplied in the vicinity of premises intended to accommodate vulnerable children.⁷⁶ He said that the amendments sought to put this circumstance on the same footing as supplying in the vicinity of a school (which under the Bill as drafted would be a statutory aggravating factor). The amendments, he said, sought to tease out from the Minister why there should be a distinction, with supply in the vicinity of a school requiring a statutory aggravating factor but the targeting of premises intended to locate vulnerable individuals and those under 18 being left to non-statutory guidance from the Sentencing Council.⁷⁷

Lyn Brown noted that the Children's Society had highlighted the relationship between psychoactive substances and exploitation.⁷⁸

Mike Penning explained that **clause 6** in its original form had been included in the Bill for the sake of consistency, to replicate identical provisions in the *Misuse of Drugs Act 1971* which was created before the Sentencing Council existed. He said that he had thought long and

⁷¹ Home Affairs Committee, [Psychoactive substances: First Report of Session 2015–16](#), HC 361, Chapter 5

⁷² PBC 27 October 2015 c51

⁷³ PBC 27 October 2015 c51-52

⁷⁴ PBC 27 October 2015 c53-54

⁷⁵ Amendments 40, 41 and 42

⁷⁶ Amendment 42 would have amended the *Misuse of Drugs Act 1971* so that it provided for the aggravation of the offence of supply of a controlled drug where the offence was committed on, or in the vicinity of, any premises intended to locate any vulnerable child

⁷⁷ PBC 27 October 2015 c55

⁷⁸ PBC 27 October 2015 c56

hard about replicating the provisions in the Bill as it would go completely against what the Government had been trying to achieve with the Sentencing Council. He said he would continue to look at the issue and it would form part of his submission to the Sentencing Council.⁷⁹

David Burrowes conceded that the Sentencing Council has non-statutory guidelines but said that Parliament has a duty to vulnerable people where there is a power imbalance and so Parliament should have “tramlines, not guidelines”. He withdrew the amendment, stating that he looked forward to the Minister considering the matter further at a later stage.⁸⁰

The Minister provided further response to the amendments that had been tabled on statutory aggravating factors in his letter to the Shadow Minister in November 2015. He said that he would be writing to the Sentencing Council to draw its attention to what had been said in the Public Bill Committee. On the proposal to make it an aggravating factor to supply a psychoactive substance which the accused knew or suspected to be harmful, he referred the Shadow Minister to the Government’s response to the Home Affairs Committee Report.⁸¹

3.9 Education

Drugs Education in the NPS review

Opposition amendment 57 would have amended clause 57 of the Bill, which was added by Government amendment at Report Stage in the House of Lords. The Clause provided that the Secretary of State must, within a period of 30 months from when sections 4-8 of the Bill come into force, review the operation of the Act, publish a report of the review and lay this before Parliament. Amendment 57 intended to add a requirement for this review to include information on the progress made in improving the reach and quality of education about NPS.

Lyn Brown moved amendment 57 and it was considered alongside New Clause 4, also tabled by the Opposition, which would make personal, social and health education a foundation subject in the National Curriculum in England. As education is a devolved subject, the changes would not apply elsewhere in the UK. The provision for compulsory personal, social and health education would ensure drugs education, including on NPS, would be included in the curriculum.

The National Curriculum is required to be taught in all local authority maintained schools in England. Academies (including free schools) do not have to teach the National Curriculum, although they are required to teach a broad and balanced curriculum.

⁷⁹ PBC 27 October 2015 c58

⁸⁰ PBC 27 October 2015 c59

⁸¹ Letter, [Psychoactive Substances Bill: Committee Stage](#), 17 November 2015

PSHE in England: background

Currently, personal, social, health and economic education (PSHE)⁸² is a non-statutory subject, but the Government expects all schools to make provision for it.

The PSHE Association defines PSHE as:

...a planned programme of learning through which children and young people acquire the knowledge, understanding and skills they need to manage their lives, now and in the future.⁸³

In September 2013, the Department for Education issued [new guidance on PSHE](#), which makes clear that it is largely up to schools to determine what is taught.⁸⁴ The Government provides funding to various bodies, principally the PSHE Association, to support the teaching of PSHE.

The PSHE Association has published its own [programme of study](#) for PSHE, covering Key Stages 1-4. The programme has three core themes:

- Health and Wellbeing
- Relationships
- Living in the Wider World

Under these headings, the programme focuses on a variety of areas, including drugs education.⁸⁵

There have been regular calls for PSHE to be made statutory, often driven by the belief that this greater priority would improve the quality of PSHE provision. The last Labour Government had planned to make PSHE statutory, but the relevant measures were not passed ahead of the 2010 General Election.

The House of Commons Education Select Committee published a [report](#) in February 2015 recommending that PSHE be made statutory.⁸⁶ The [Government response](#) published in July 2015 did not take forward this recommendation, although it stated that the Department for Education would be giving further consideration to the Committee's arguments later in 2015.⁸⁷

In November 2015, the Chair of the Committee [wrote](#) to the Education Secretary to stress that the Committee expected an update on statutory status, and urging that the arguments in favour of statutory status should be considered carefully.⁸⁸

⁸² New Clause 4 refers to 'personal, social and health education' rather than 'personal, social, health and economic education'.

⁸³ PSHE Association, [What is PSHE and why is it important?](#) [accessed 15 September 2015]

⁸⁴ Department for Education, [Personal, social, health and economic education](#), 11 September 2013

⁸⁵ PSHE Association, [PSHE programme of study \(Key stages 1-4\)](#), October 2014

⁸⁶ House of Commons Education Select Committee, [All schools should have to provide PSHE and SRE](#), 17 February 2015

⁸⁷ Department for Education, [Government response: Life lessons: PSHE and SRE in schools](#), Cm 9121, July 2015, p9

⁸⁸ Education Committee, [Letter from Neil Carmichael MP to Rt Hon Nicky Morgan MP](#), 25 November 2015

Joint letter from Select Committee Chairs

In January 2016, the Chairs of four Commons Select Committees – Education, Health, Home Affairs and Business, Innovation and Skills – [wrote](#) to the Education Secretary, citing committee reports and statements from the Children’s Commissioner and the Chief Medical Officer, in support of statutory PSHE and sex and relationships education (SRE).

The letter stated that it was “clear to the four of us that there is a need to work towards PSHE and SRE becoming statutory in all schools.”⁸⁹

A Library briefing, [Personal, social, health and economic education in schools \(England\)](#), CBP 07303, provides more detail.

Discussion of amendment and new clause

Lyn Brown spoke to the amendment, and also the new clause. She was critical of PSHE provision in England, citing an Ofsted [report](#) published in 2013⁹⁰:

Ofsted...found that in 60% of schools PSHE training was not good enough and certainly needed to improve, and the evidence from the Government’s own inspectors suggests that the Government’s approach to PSHE just is not working. And all this is happening while the presence of NPS has begun to grow in our communities.⁹¹

Lyn Brown criticised a lack of “comprehensive drug education” in England, arguing that a better approach was taken in Wales, where education was “at the forefront” of drugs prevention policy.⁹² Ms Brown supported statutory PSHE as “an important tool in our fight against psychoactive drugs and those who push them”⁹³ and said that the amendment for progress on education to be included in the review of the Act “would focus minds in the Home Office and compel it to put in place the most effective and comprehensive awareness campaign possible.”⁹⁴

Owen Thompson, speaking for the SNP, supported the principles behind amendment 57, emphasising the importance of education and prevention in drugs policy.⁹⁵

Speaking for the Government, Mike Penning emphasised the importance of education about drugs for both young and older people, and in relation to the new clause stated that the Department for Education would be writing to the Education Committee by the end of the year on the status of PSHE.⁹⁶ Regarding the amendment, he stated that the Government had:

⁸⁹ Education Committee, [Letter from Neil Carmichael MP, Dr Sarah Wollaston MP, Rt Hon Keith Vaz MP, and Iain Wright MP, to Rt Hon Nicky Morgan MP](#), 8 January 2016

⁹⁰ Ofsted, [Not yet good enough: personal, social, health and economic education in schools](#), May 2013

⁹¹ [PBC 29 Oct 2015 c76](#)

⁹² PBC 29 Oct 2015 c76

⁹³ PBC 29 Oct 2015 c79

⁹⁴ PBC 29 Oct 2015 c81

⁹⁵ PBC 29 Oct 2015 c83

⁹⁶ PBC 29 Oct 2015 c84

...deliberately put in the review [in the Bill] and made it as open as possible. That will ensure that when the review takes place, we will gather as much information as possible, because we need to get things right. If we are getting things wrong at review time, we can sort that. If we need to tweak things in the run-up, that is fine. The legislation specifically allows those powers to move things around.⁹⁷

Lyn Brown withdrew the amendment, but said she would probably return to these issues at Report Stage.⁹⁸

The Minister provided further [response](#) to the amendments tabled in Committee in his letter to the Shadow Minister in November 2015, including details of the preventative measures implemented by the Government, aimed at providing young people and others with the “resilience and life skills” to address vulnerability to drugs misuse.⁹⁹

The Minister also reiterated the Government’s commitment to report on progress in improving PSHE to the Education Committee by the end of 2015, and stated that it would not be appropriate to legislate while PSHE was being considered in this way.¹⁰⁰ At the time of writing, this report had not been published. In January 2016, as previously mentioned, four Committee Chairs [wrote](#) to the Education Secretary in support of statutory PSHE.¹⁰¹

3.10 Breach of a premises notice

John Woodcock (Labour), tabled **new clause 1** which would give new powers to senior police officers and local authority officers to make an order to require a premises to cease trading in the situation where a premises order had been breached.¹⁰²

Under the Bill as introduced there are a range of civil sanctions available that can be used in a progressive approach to tackle prohibited activity. A premises notice can be issued by a police officer or local authority and can require the owner of a premises to take reasonable steps to prevent prohibited activity at the premises stated in the notice. Where a premises notice has not been complied with or a senior police officer or local authority officer believes the person will not comply with the premises notice, they can apply to the Court for a premises order. A premises order requires the owner of a premises to prevent prohibited activity at these premises. It is an offence not to comply with a premises order.

The new clause, which was supported by the Local Government Association, intended to address concerns about potential delays between the point at which the police believe a premises notice has been breached and the time when the court can impose a premises

⁹⁷ PBC 29 Oct 2015 c84

⁹⁸ PBC 29 Oct 2015 c85-86

⁹⁹ Letter, [Psychoactive Substances Bill: Committee Stage](#), 17 November 2015

¹⁰⁰ Ibid.

¹⁰¹ Education Committee, [Letter from Neil Carmichael MP, Dr Sarah Wollaston MP, Rt Hon Keith Vaz MP, and Iain Wright MP, to Rt Hon Nicky Morgan MP](#), 8 January 2016

¹⁰² PBC 29 October 2015 c89

order. Lyn Brown, in introducing the new clause, explained that the new clause would allow police officers or local authority officers the powers to require a premises to cease trading whilst waiting for the court to respond to an application for a premises order:

New clause 1 is a modest proposal that would allow senior police or local authority officers to obtain an order to require a premise to cease trading, provided that certain conditions are met. That action would be taken only when a premises order had already been made; when, in the opinion of the officer, the business was in breach of the order; and when the application to a court had already been made. There is also provision for compensation to be paid to businesses if the power is ever used in error.

Of course, we would hope that the power would have to be used only sparingly. The new clause would be a safeguard to ensure that no offenders slipped through the gaps and to give the police the powers they need to take action as soon as possible.¹⁰³

Mike Penning said that he had seen no evidence from the police that they believe this new clause was necessary and said it would weaken judicial oversight.¹⁰⁴ He said that the Ministry of Justice and the Attorney General had provided assurances that there was no problem in this area but it will be part of the review of the implementation of the Bill so can be kept an eye on. Mr Penning did say that he would look at the new clause between Committee and Report Stage where it would probably be discussed again.

The new clause was withdrawn.

In the letter to the Shadow Minister from Mike Penning in November 2015 he said that he sympathised with the aims of the amendment on breach of premises notices.¹⁰⁵ However, he said that the process for obtaining a premises order will not be a lengthy one. The application process will be a simple one and the Home Office are working with the Courts and Tribunals Service to ensure there will be a route to have an application considered quickly.

He also explained that requiring a shop to cease trading is a significant measure, it was important that these decisions were made by the courts and the new clause would remove judicial oversight in these cases.

3.11 Repeal of the *Intoxicating Substances Act 1985*

Government amendment 39 intended to repeal the *Intoxicating Substances Act 1985*. This legislation makes it an offence to sell substances (such as solvents) to children if the person believes it could be misused.

Lyn Brown said that the Government were introducing this amendment because they believed that it was good legal practice to not have overlapping legislation.¹⁰⁶ However, she said she was surprised at the

¹⁰³ PBC 29 October 2015 c90

¹⁰⁴ PBC 29 October 2015 c91

¹⁰⁵ Letter, [Psychoactive Substances Bill: Committee Stage](#), 17 November 2015

¹⁰⁶ PBC 29 October 2015 c86

amendment, she highlighted the differences in sentences between the 1985 Act (maximum 6 months custodial sentence) and the new legislation (maximum 7 years custodial sentence). She also questioned whether the Minister was happy that solvents were covered by the Bill. She said she did not want the law to be weakened and there to be unintended consequences.¹⁰⁷

The Minister responded saying that there are now few prosecutions under the 1985 Act and although the maximum sentence under the new Bill is seven years, he envisaged that a lot of the work under the Bill will be done by trading standards using non legislative measures. He reported that the Government were working with the British Retail Consortium and the Association of Convenience Stores and that the Bill will not penalise shopkeepers.¹⁰⁸

The amendment was withdrawn.

In the letter to the Shadow Minister in November 2015, the Minister responded to concerns expressed about the effect of the repeal on retailers. He said that the provisions of the 1985 Act are replicated by the new Bill so it can be repealed.¹⁰⁹ He said that the Home Office were working with a number of stakeholders on this and were committed to ensuring retailers were aware of the provisions within the Bill.

¹⁰⁷ PBC 29 October 2015 c87

¹⁰⁸ PBC 29 October 2015 c88

¹⁰⁹ Letter, [Psychoactive Substances Bill: Committee Stage](#), 17 November 2015

4. Further reading

Correspondence between Home Secretary and ACMD on the Psychoactive Substances Bill

- [Letter from Home Secretary to ACMD regarding the Psychoactive substances Bill](#), 26 May 2015
- [Letter from ACMD to Home Secretary](#), 2 July 2015
- [Letter from Home Secretary to ACMD](#), 11 July 2015
- [ACMD letter to Home Secretary](#), 13 July 2015
- [ACMD Report on definitions for Psychoactive Substances Bill](#), 17 August 2015
- [ACMD's final advice on definitions for Psychoactive Substances Bill](#), 23 October 2015
- [Letter from the Home Secretary to the ACMD regarding the Psychoactive Substances Bill](#), 27 October 2015

Home Office Documents

- [Overview of the Bill](#), August 2015
- [Overview of the Misuse of Drugs Act 1971](#), August 2015
- [Background to the Bill](#), August 2015
- [Prevention, treatment and intervention response to psychoactive substances](#), August 2015
- [International Comparators](#), August 2015
- [Impact assessment: creation of a blanket ban on new psychoactive substances in the UK](#), May 2015
- [New Psychoactive Substances review: Report of the expert panel](#), September 2014
- [Government response to New Psychoactive Substances Review Expert Panel Report](#), October 2014
- [New psychoactive substances in England: a review of the evidence](#), October 2014

Other sources

- EMCDDA, [New psychoactive substances in Europe, an update from the EU Early warning System](#), March 2014
- EMCDDA, [European Drug Report 2015](#), June 2015
- EMCDDA, [Best practice in drug interventions: New Psychoactive drugs](#)
- EMCDDA, [Drug Report 2014: Trends and developments](#), May 2014
- Drugscope, [Not for human consumption: An updated and amended report on new psychoactive substances \(NPS\) and 'club drugs' in the UK](#), 2015
- [New Psychoactive substances review: Report of the Expert panel](#), September 2014
- HM Government, [Government response to New Psychoactive Substances review Expert panel report](#), October 2014
- ACMD, [Consideration of the Novel Psychoactive Substances \('legal highs'\)](#), October 2011

- Frank, [Legal highs](#).
- Royal College of Psychiatrists, [One new drug a week, Why novel psychoactive substances and club drugs need a different response from UK treatment providers](#), 2014
- Philippa Watkins, [No to 'legal highs'! Tackling new psychoactive substances](#), In Brief, National Assembly for Wales Research service, 12 May 2015
- House of Commons Home Affairs Select Committee, [Drugs: new psychoactive substances and prescription drugs](#), December 2013

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