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

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

The amendments are of a technical or drafting nature and cover the following matters -

Withdrawal of prohibition notices and premises notices (amendment to clause 14)

This amendment clarifies that a prohibition notice or premises notice may be withdrawn either by the senior officer who issued the notice or by another senior officer within the same law enforcement agency.

Means of giving a prohibition notice or premises notice (amendments to clauses 15)

Clause 15 currently provides that a prohibition notice or premises notice may be served by giving it to the respondent, leaving it at the respondent's proper address or by posting it to that address. These amendments additionally provide for service by electronic means where the respondent has indicated that the notice may be served by such means.

Provision that may be made by prohibition orders and premises orders (amendments to clause 21)

The amendment to clause 21(1) makes it explicit on the face of the Bill that a court varying a prohibition order or a premises order may impose any prohibitions, restrictions or requirements that the court considers appropriate in the same way as a court making such an order.

Amongst the requirements that may be attached to a prohibition order is a requirement on the respondent to hand over an item belonging to the respondent that the court is satisfied is a psychoactive substance or has been, or likely to be, used in carrying out prohibited activity (as defined in clause 11). The new subsection to be inserted into clause 21 after subsection (4) provides that any item handed over in compliance with such a requirement may not be disposed of until the time for lodging an appeal against the prohibition order has expired and, where an in-time appeal is lodged, until the outcome of the appeal is determined.

The new subsection to be inserted at the end of clause 21 simply imports the definition of “owns” in clause 13(6).

Enforcement of access prohibitions (amendment to clause 22)

Clause 22 confers powers on an “authorised person” to enter premises in respect of which an access prohibition is in effect and to do anything necessary to secure the premises after entry. Clause 22(2) defines an authorised person. This amendment ensures that where an access prohibition is included in a prohibition order made on conviction the definition of an authorised person is sufficiently comprehensive.

Access prohibitions: further provisions (new clauses “*Access prohibitions: reimbursement of costs*”, “*Access prohibitions: exemption from liability*” and “*Offence of failing to comply with an access prohibition, etc*” and amendment to clauses 24, 25, 26, 27, 28 and 31)

Clause 21 enables a prohibition order or premises order to include an access prohibition barring or restricting access to specified premises; such a provision would, for example, enable the closure of a head shop selling psychoactive substances, initially for up to three months. These new clauses make further provision in respect of an access prohibition, in particular: to make it an offence for a person, without reasonable excuse, to remain on or enter premises in contravention of an access prohibition or to obstruct an authorised person exercising powers under clause 22(1) (these offences will be summary only with a maximum penalty, in England and Wales, of six months imprisonment); provision to enable the relevant law enforcement agency to apply to the court for the reimburse of costs incurred in relating to the clearing, securing or maintenance of premises; and provision to exempt the relevant law enforcement agency from liability for anything done or omitted to be done in the exercise of a power in relation to an access prohibition (the exemption does not apply where the act or omission was committed in bad faith or where the conduct was unlawful by virtue of section 6(1) of the Human Rights Act 1998 (acting incompatibly with the Convention rights)). In each case these new clauses closely follow the provisions in the Anti-social Behaviour, Crime and Policing Act 2014 in relation to anti-social behaviour closure powers (see sections 86, 88 and 89 of that Act). The amendments to clauses 24 to 28 and 31 are consequential on new clause “*Access prohibitions: reimbursement of costs*”.

Appeals against making of, or about variation or discharge of, prohibition orders and premises orders (amendments to clauses 26 and 27)

These amendments provide for a 28 day time limit for lodging an appeal against the making of a prohibition order or premises order or against the decision of a court about the variation or discharge of an order.

The amendments to clauses 26(2) and 27(4) ensures that all appellate courts, when determining an appeal against a decision made under clauses 17, 19 or 24, have the necessary power to make such orders as may be necessary to give effect to the determination of the appeal.

Applications for search warrants in Scotland (amendments to clause 35 and paragraph 1 of Schedule 2)

In accordance with standard practice in Scotland, clause 35(2) provides for applications for a search warrant in Scotland to be made by a procurator fiscal. The Crown Office in Scotland has advised, however, that there may be exceptional circumstances when a procurator fiscal is not available to make an application for a warrant. Whilst the default position will be that it will generally be a fiscal who will make an application for a warrant, the amendment to clause 35 also enables a relevant enforcement officer to make such an application in appropriate cases.

Paragraph 1(3) of Schedule 2 provides that the person who makes an application for a search warrant should be required to provide evidence on oath. The Crown Office in Scotland has advised that it is operational practice that a procurator fiscal will never go and provide evidence on oath. This is a role which is carried out by the police in Scotland (or other relevant law enforcement agency). The amendment to paragraph 1 of Schedule 2 ensures that the Bill reflects this operational practice in Scotland.

Forfeiture of seized items by court on application (amendments to clause 47)

Revised subsections (3) and (4) (with new subsection (12)) simplify the drafting of these provisions; the intention is that the duty on the court to order forfeiture of seized items applies where the court is satisfied that the item is a psychoactive substance.

Forfeiture by court following conviction (amendments to clause 50)

Clause 50 provides for the forfeiture of seized items where a person has been convicted of an offence under clauses 4 to 8 or 23 of the Bill (or an associated secondary offence). The intention is that a forfeiture order is made as an adjunct to sentencing and, as such, will be made by the sentencing court rather than the convicting court. Usually these are one and the same, but there will be occasions where a magistrates' court in England and Wales will commit an offender to the Crown Court for sentencing. These amendments, by defining "the court" for the purpose of this clause, make the position clear.

Search warrants (amendments to Schedule 2)

Paragraphs 1 and 2 of Schedule 2 make provision in respect of applications for search warrants. The amendments to paragraph 2 add a definition of a “specified-premises warrant” (see clause 35(3)).

Paragraph 13 of Schedule 2 provides for the return of search warrants once executed to the issuing court. In Scotland, the usual practice is for an executed warrant to be retained by the police or other law enforcement agency and given to the procurator fiscal for production in any criminal trial. To reflect such practice, the amendments to paragraph 13 restrict the application of that paragraph to England, Wales and Northern Ireland.

Consequential amendments (amendments to Schedule 4)

Paragraph 2 of Schedule 4 amends Schedule 4 to the Police Reform Act 2002 so as to extend the powers of police community support officers in England and Wales in relation to psychoactive substances. New paragraph 2A of Schedule 4 to the Bill would similarly extend the powers of police community support officers in Northern Ireland.

Paragraph 5 of Schedule 4 amends sections 75 and 76 of the Armed Forces Act 2006 (the 2006 Act). Section 75 of the 2006 Act confers powers on service police officers to stop certain persons and vehicles to search for specified things, including controlled drugs. Where there are grounds to believe that a criminal offence would be committed or that a person who has committed such an offence would escape before a police officer could be available, section 76 of the 2006 Act empowers a commanding officer to authorise a person under his or her command to exercise powers similar to those under section 75. Sections 75 and 76 also confer powers on service police officers (and in limited circumstances other persons who are ordered or authorised by a commanding officer) to seize certain items (including controlled drugs) found on a person or in vehicle. The amendments to section 75 and 76 of the 2006 Act extend these powers so that persons and vehicles may be searched for psychoactive substances. Paragraph 5(2)(c) amends section 75(4) of the 2006 Act so as to enable a service police officer to seize any article he or she discovers in the course of a search that he or she has reasonable grounds for suspecting to be evidence of: (a) conduct that amounts to an offence under the Bill, or (b) a psychoactive substance (whether or not it is evidence of such an offence). Following further consultation with the Ministry of Defence, we have concluded, on reflection, that the powers of seizure should operate only where there is evidence that an offence has been committed. This ensures that the seizure powers under the 2006 Act of service police officers and others who are authorised or ordered by a commanding officer remain in alignment and also mirrors the position in relation to drugs subject to a temporary class drug order.

The other amendments make minor drafting improvements.

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