

Supplementary written evidence submitted by the Home Office

Letter from Rt Hon Mike Penning MP, Minister for Policing, Crime and Criminal Justice and Victims, Home Office, to the Chair of the Committee, 28 September 2015

Home Affairs Select Committee Evidence: Psychoactive Substances Bill and Police Funding

Following my appearance before the Home Affairs Committee on 15 September, I am writing to follow up some of the points raised both on the Psychoactive Substances Bill and on police funding, including those you raised in your letter of 16 September.

During my evidence, you asked (0124) "Is it possible to have that list of legal and harmless substances that are exempt from the Bill, because laughing gas is one of the other substances that is mentioned?" There are, in practice, two separate issues addressed by this question. The approach taken by the Bill is to create a blanket ban on the production and supply of psychoactive substances unless they are exempted. Schedule 1 to the Bill already contains the list of exempted substances, namely controlled drugs, medicinal products, alcohol or alcohol products, nicotine and tobacco products, caffeine or caffeine products, and food. In response to the debates in the Lords we are looking further at the scope of the definition of medicinal products and intend to table appropriate amendments for Committee stage.

We also intend to amend the Bill to strengthen the exclusion for psychoactive substances used in bona fide research. (Clause 3 provides the Secretary of State with the power by regulations to add further substances to the list in Schedule 1, following consultation with the Advisory Council on the Misuse of Drugs and others.) Any other substance falling within the definition of a psychoactive substance in clause 2 of the Bill would be caught by the blanket ban. By definition, it is not feasible to produce a comprehensive and stable list of all affected psychoactive substances, but as I indicated in my evidence the Bill will capture nitrous oxide ('laughing gas') and substances within the alkyl nitrites group (commonly known as 'poppers') when consumed for their psychoactive effect; neither of these substances are harm free.

I should add that the Bill only covers psychoactive substances (as defined in clause 2) consumed for their psychoactive effect. As you will have seen from my recent letter to the Churches' Legislation Advisory Service in response to their written evidence to the Committee, the use of incense in religious services (or the production or supply of incense for such purposes) will not therefore be covered by the Bill.

It may also assist if I provide some further context to my evidence on the offences within the Bill. Whilst the Bill does not mention the act of purchasing itself, it creates the offence of importing a psychoactive substance, which will effectively make it illegal to buy online from foreign-based websites where the product is then imported into the UK. This is a proportionate way to prevent the flow of harmful substances into the UK.

Sir Keir Starmer QC separately questioned the lack of a harm assessment in the Bill and the impact this might have on sentencing offenders for one of the offences in clauses 4 to 8 of the Bill.

One of the pitfalls of the current arrangements for controlling psychoactive substances under the Misuse of Drugs Act 1971 is that it is necessary to show that the misuse of a given substance is having, or is capable of having, a harmful effect. The Bill intentionally adopts the precautionary approach of banning the trade in all psychoactive substances (save for the exempted substances in Schedule 1).

I do not believe that the absence of a harm threshold will present difficulties for the courts when

sentencing offenders convicted for an offence under the Bill. It is important to recognize that the mix of criminal offences and civil sanctions in the Bill enables the police and other law enforcement agencies to adopt a proportionate response to offending behaviour. For low level offences, it will be open to the relevant enforcement agencies to issue a prohibition notice or premises notice or apply for a prohibition order or premises order as an alternative to a criminal prosecution. These flexible civil powers will enable law enforcement agencies to nip problems in the bud as they emerge.

For those cases where a prosecution is appropriate and a conviction is secured, the sentencing court will, in the normal way, be guided by the relevant sentencing guidelines and weigh up all relevant factors to determining the appropriate sentence (subject to the statutory maximum of seven years' imprisonment). Whilst the Sentencing Council's existing drug offences definitive guidelines currently only deal with offences under the Misuse of Drugs Act 1971, many of the considerations set out in those guidelines will be equally applicable to sentencing for offences under the Bill, for example the quantity of psychoactive substances supplied, the extent of the offender's role in the offence, whether there are any statutory (as specified in clause 6 of the Bill) or other aggravating factors and whether there are any mitigating factors.

The Psychoactive Substances Bill is by no means a replacement for the Misuse of Drugs Act 1971. If it becomes clear that the harms caused by a particular psychoactive substance are such that it warrants control under the Misuse of Drugs Act 1971 (with all that entails in terms of the higher maximum penalties and an offence of simple possession), it will be open to the Government, in consultation with the ACMD, to do so.

Turning to reform of police funding arrangements, you have requested a timetable of when the new funding model will be implemented. You have also asked if the Home Office will be providing further clarification to forces to help them understand the model.

The consultation closed on 15 September. We are now analysing the 1,700 consultation responses and are refining the model in light of this feedback. Once this work has been completed, I will write to Police and Crime Commissioners (PCCs) and Chief Constables in October (copying you in) setting out our proposed refinements to the model, including force-level impacts based on the 2015/16 resource envelope. There will then be a further opportunity for PCCs and Chiefs to provide comments on the specifics of the proposed model, supported by a programme of official level engagement. Working collaboratively together in this way will enable us to finalise a model in time for implementation in 2016/17, the first year of the next Spending Review period.

A Government response to the consultation and the 2016/17 Provisional Police Grant Report, setting out 2016/17 provisional funding allocations for police force areas, will be published before Christmas. This will be followed by the usual consultation period until late January, before the Final Police Grant Report is laid in the House.

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