Public Bill Committee

PSYCHOACTIVE SUBSTANCES BILL

WRITTEN EVIDENCE

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON—THE STATIONERY OFFICE LIMITED

PBC (Bill 063) 2015–2016

© Parliamentary Copyright House of Commons 2015
This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/site-information/copyright/
Enquiries to the Office of Public Sector Information, Kew, Richmond, Surrey TW9 4DU;
e-mail: licensing@opsi.gov.uk

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS
LONDON – TSO (THE STATIONERY OFFICE)
and available from:

Online
www.tsoshop.co.uk

Mail, Telephone Fax & E-mail
TSO
PO Box 29, Norwich NR3 1GN
Telephone orders/General enquiries: 0333 202 5077

Fax orders: 0333 202 5080
Email: customer.services@tso.co.uk
Textphone: 0333 202 5077

The Houses of Parliament Shop
12 Bridge Street, Parliament Square
London SW1A 2JX
Telephone orders 020 7219 3890
General enquiries 020 7219 3890
Fax orders 020 7219 3866
Email: shop@parliament.uk
Internet:
http://www.shop.parliament.uk

TSO@Blackwell and other Accredited Agents

Printed in the United Kingdom by The Stationery Office Ltd

52012

Contents

The Children's Society (PSB 01)

Lyndon Sheppard (PSB 02)

DrugScience (PSB 03)

The Psychedelic Society (PSB 04)

John Martin BA MSc, Substance Misuse Project Worker, Fife (PSB 05)

Simon Topham, Chief Executive, Millivres Prowler Group (PSB 06)

Rt Hon Mike Penning MP, Minister for Policing, Crime, Criminal Justice and Victims, Home Office (PSB 07)

Rt Hon Mike Penning MP, Minister for Policing, Crime, Criminal Justice and Victims, Home Office – further submission (PSB 08)

Chartered Trading Standards Institute (CTSI) (PSB 09)

Daryl Sullivan (PSB 10)

KTR Environmental Solutions Ltd (PSB 11)

Danny Diskin, Inter Faith Alliance UK (PSB 12)

Sandra Heyward JP, Cornwall Councillor for the Gover Division (PSB 13)

International Center for Ethnobotanical Education, Research & Service (ICEERS Foundation) (PSB 14)

Hampshire County Council Trading Standards Service (PSB 15)

Drugs, Alcohol and Justice Cross-Party Parliamentary Group (PSB 16)

Dr Ornella Corazza and Dr Andres Roman Urrestarazu (PSB 17)

Mr Joseph Woollen (PSB 18)

The Law Society of Scotland (PSB 19)

Release and Transform (PSB 20)

Release and Transform: Appendix A (PSB 20A)

Release and Transform: Appendix B (PSB 20B)

Association of the British Pharmaceutical Industry (ABPI) (PSB 21)

Rt Hon Mike Penning MP, Minister for Policing, Crime, Criminal Justice and Victims, Home Office – further submission (PSB 22A)

Rt Hon Mike Penning MP, Minister for Policing, Crime, Criminal Justice and Victims, Home Office – further submission (PSB 22B)

Rt Hon Mike Penning MP, Minister for Policing, Crime, Criminal Justice and Victims, Home Office – further submission (PSB 22C)

Rt Hon Mike Penning MP, Minister for Policing, Crime, Criminal Justice and Victims, Home Office – further submission (PSB 22D)

Royal Society for Public Health (PSB 23)

Addaction (PSB 24)

The Beckley Foundation (PSB 25)

Written evidence

Written evidence submitted by the Children's Society (PSB 01)

Making supply of a psychoactive substance to children or outside accommodation for vulnerable children aggravating factors.

Amendment 1:

Clause 6

Page 3, line 20, leave out "or B" and insert ", B, C or D"

Amendment 2:

Clause 6

Page 3, line 42, at end insert—

"(7A) Condition C is that the offence was committed on or in the vicinity of any premises intended to locate any vulnerable child

(7B) In this section "vulnerable child" means any person aged under 18 who is not living with their family and is

(a) accommodated in regulated residential care or unregulated accommodation under section 17, 20, 25 or 31 of The Children Act 1989, or,

(b) accommodated in accommodation under part 7 of the Housing Act 1996

(7C) The Secretary of State may by order made by statutory instrument specify the circumstances in which paragraph (a) and/or (b) of subsection (7B) apply

(7D) Condition D is that the offender supplies a psychoactive substance to any persons under the age 18

PROTECTING CHILDREN FROM THE CONSEQUENCES OF PSYCHOACTIVE SUBSTANCES

We are asking Parliament to amend the Psychoactive Substances Bill to make the supply of psychoactive substances to children, or in the vicinity of premises where vulnerable children reside, an aggravating factor of the offence. This will put these factors on the same footing as supply in the vicinity of a school, which the Bill already makes an aggravating factor.

Why are these statutory aggravating factors necessary?

'Legal highs' are increasingly becoming a factor in our work with England's most vulnerable children and young people. A recent national poll of 16 and 17 year olds found that 6% said they had taken a 'legal high' and 4% said they had felt pressured to take legal highs.

For the most vulnerable children, however, the consequences of using legal highs can be much more serious, resulting in criminal and sexual exploitation. Evidence from our practitioners suggests that 'legal highs' are increasingly being used by offenders as part of the grooming and exploitation process.

The case study below was reported to us by one of our projects in the North of England:

> A group of 16 and 17 year old boys were living in a hostel where they were targeted by older men looking to exploit them through criminal activity. The men gave them legal highs, seemingly for free, but then claimed the boys must repay them the cost of the legal highs, with interest. Living in a hostel and with little money the boys could not repay their debts. The men forced the boys to start on-street begging and shop-lifting to repay them whilst continuing to provide them with further legal highs.

The Bill already makes the supply of psychoactive substances outside a school an aggravating factor, meaning courts must take this into consideration when deciding the seriousness of the offence. This reflects existing provision related to the supply of controlled drugs in the Misuse of Drugs Act 1971.

We are calling for this to be extended to supply outside residential children's homes and supported accommodation – such as hostels, foyers or night stops – used to house 16 and 17 year old children. We are also calling for supply of substances to any child under the age of 18 to be an aggravating factor.

How do we define 'accommodation for vulnerable children'?

The amendment intends for 'accommodation for vulnerable children' to capture both residential children's homes and supported accommodation in which local authorities place children under the age of 18. There is a growing body of evidence that demonstrates that children in these types of accommodation are more at risk of exploitation than others.

The amendment relates to children accommodated under The Children Act and the Housing Act, in recognition of the fact that local authorities house vulnerable children under both of these Acts. 'Accommodation for vulnerable children' is not intended to cover children living in a family setting.

How does residential care put children at risk?

Children living in residential care often find themselves at high risk of exploitation. The Children's Commissioner has found that a disproportionate number of children who are sexually exploited are living in residential care. Of the 16,500 children that the Commissioner's inquiry into CSE found to be at high risk of sexual exploitation more than a third (35%) were children living in residential care.[1]

Similarly, the APPG on Missing and Runaways Adults inquiry into children missing from care found that perpetrators specifically targeted children's homes[2] because of the high vulnerability of the children in them and how easily they can make contact with the children.

For children in care, their earlier experiences that led to separation from their families – such as abuse, neglect, domestic violence or substance misuse – make them vulnerable to exploitation. Children in care also lack the protective factor of a family to shield them from risks: our recent poll of 16 and 17 year olds found half of those children who said they felt under pressure to take part in drinking or drug use said their family helped them to withstand the pressure.

Why are children in supported accommodation at particular risk?

In addition to children in care, there are many vulnerable 16 and 17 year olds who find themselves homeless or are at risk of homelessness, but do not become looked after children. These children may be accommodated under other provisions, such as the Housing Act 1996.

These young people are often placed in 'supported accommodation'. Supported accommodation is unregulated and can include places like foyers, supported lodgings, night-stops, crash-pads, hostels or training or moving-on flats.

Our recent report, 'Getting the house in order' found that every year around 2,800 16 and 17 year olds who go to their local authority for help with homelessness are placed in unregulated accommodation that leaves them at risk.

Supported accommodation is used by a wide range of people including care leavers, homeless people, those who have recently left the criminal justice system, a rehabilitation facility or a mental health ward, young people out of education, training or employment, or young adults with disabilities who need some additional support as they prepare for adult life.

Each of these groups in isolation may not pose a problem, but when mixed together, this can result in dangerous mixes of highly vulnerable people who may put each other at risk. The case study below is from our practice:

> Five young people were all placed in the same hostel. They had been going missing regularly and were found repeatedly with a group of ten older men who had been supplying them with drugs and then exploiting them sexually. Despite having listened to the concerns of the police, voluntary sector and others the young people did not recognise that they were been exploited as they saw these men as friends. The hostel had failed to take appropriate action to stop the young people running away to these men and whilst the exploitation did not begin in the hostel, access to the hostel allowed the men to expand the group of young people they targeted.

The link between drugs, legal highs and child sexual exploitation

The grooming process involves offenders exploiting a power imbalance between victim and themselves. That power imbalance may be just about age, but often the use of drugs, legal highs and alcohol are used to increase dependency, create debt, stupefy children and increase that power imbalance.

The Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation in Groups and Gangs found drug use is a key vulnerability for abuse, and that 41% of respondents who submitted evidence identified children having drug and alcohol problems as a result of sexual exploitation.

The inquiry heard how children often described being taken to 'parties' involving several older men, where they were intoxicated or drugged, so that they did not know what was happening to them. Other children described being coerced into performing sexual acts in exchange for drugs, often after the abuser introduced them to drugs in the first place.

[1] The Office of the Children's Commissioner's Inquiry into CSE in Gangs and Groups Interim report (November 2012).
[2] The APPG for Runaway and Missing Children and Adults inquiry into children who go missing from care.

Making supply of a controlled drug to a child or outside accommodation for vulnerable children aggravating factors

Amendment:

Schedule 4

Page 47, line 16, at end insert—

"Misuse of Drugs Act 1971

(1) The Misuse of Drugs Act 1971 is amended as follows

(2) In section 4A (Aggravation of offence of supply of controlled drug) after subsection (4) insert –

"(4A) The third condition is that the offence was committed on any premises intended to locate any vulnerable child or in the vicinity of said premises

(4B) in this section "vulnerable child" means any person aged under 18 who is not living with their parents or carers and is

(a) accommodated in residential care under section 17, section 20, section 25 or section 31 of The Children Act 1989, or,

(b) accommodated in a multi-occupant dwelling under part 7 of the Housing Act 1996

(4C) The Secretary of State may by order made by statutory instrument specify the circumstances in which a court must take into account Condition C

(4D) The fourth condition is that the offender supplies a controlled drug to any persons under the age of 18""

Protecting children from other controlled drugs

The Psychoactive Substances Bill is an opportunity to extend this protection to other controlled drugs. As well as the more recent use of 'legal highs', other drugs which are already controlled have been used as part of the grooming and exploitation process of children.

Sentencing Council guidelines on the supply of controlled drugs currently include 'targeting of any premises intended to locate vulnerable individuals or supply to such individuals and/or supply to those under 18" as a non-statutory aggravating factor. But as a non-statutory factor, it is only an "additional factual elements providing context" that courts are not required to consider.

Making these statutory aggravating factors will mean courts must take them into account when considering the seriousness of the offence, putting them on the same footing as supply outside a school. This is particularly important for older children aged 16 and 17. Previous Children's Society research[3] has shown that professionals regularly view older children as less at risk or harm and less in need if support or protection. Older children – including those involved in criminal or sexual exploitation – are often regarded as merely troublesome, streetwise or complicit in their exploitation, rather than as vulnerable victims.

This is despite Department for Education statistics showing 16 and 17 year olds are more likely to be in need because of abuse or neglect than other age groups. Making supply to any children under 18 a statutory aggravating factor will mean the vulnerability of these children is not overlooked by the courts. The following case study is from a high-profile case of child sexual exploitation in Bristol in 2014:

> In Bristol last year, thirteen men were convicted of a string of child sex crimes involving the sexual abuse, trafficking, rape and prostitution of teenage girls. The offenders were from a drug dealing gang and the court heard how at least four of the teenagers they abused were exploited by being given drugs and alcohol in exchange for performing sex acts on older men.
>
> At the centre of the abuse was a 16 year old girl who had been placed in supported accommodation in a deprived inner city area. The judge highlighted how the girl was living alone in the flat with just two hours of supervision a day from care workers. The men began supplying her with cannabis, and it was not long before they were using her flat to sell drugs and also regularly having sex with her, sometimes for money. Another victim, a 15 year old girl, told the court how the men tried to pressurise her into smoking cannabis with them and having sex with men at the property.

About

The Children's Society has helped change children's stories for over a century. We expose injustice and address hard truths, tackling child poverty and neglect head-on. We fight for change based on the experiences of every child we work with and the solid evidence we gather. Through our campaigning, commitment and care, we are determined to give every child in this country the greatest possible chance in life.

October 2015

[3] The Children's Society, NSPCC and Social Policy Research Unit – Safeguarding Young People (2010).

Written evidence submitted by Lyndon Sheppard (PSB 02)

I've worked as a problem-solver in a number of organisations and have been interpreting legislation in advice-giving organisations since 1996.

1. I listened to Niamh Nic Daeid describe her work in connection with psychoactive substances on Radio 4 (21 July) – www.bbc.co.uk/programmes/b062k9zz. This game of cat and mouse is impressive, but exhausting and needless – the onus is on public servants to prove the claims that the marketer of a medicinal product would make for it. I cannot see why the burden of proof should be reversed in this way.

2. I believe the proposed bill could be redrafted as follows, to amend existing legislation and put the onus on the creator or supplier of the product (who will no doubt be in pursuit of financial or other gain) to take steps or produce the necessary documentation to avoid committing an offence:

(a) the definition of 'medicinal product' (www.gov.uk/guidance/decide-if-your-product-is-a-medicine-or-a-medical-device) is altered (if necessary) to clearly catch these substances,

(b) an offence is defined to cover the range of likely situations in which undesirable psychoactive substances (an unauthorised product) are created or supplied, which would not catch the well-intentioned,

(c) the desired penalties already sought will apply pretty much as drafted.

3. I do appreciate that this will require the involvement of the Department of Health as well as the Home Office in support of the bill.

Explanatory Notes – overview

4. Clause 2 defines a "psychoactive substance" for the purposes of the Bill. Schedule 1 lists substances, such as food, alcohol, tobacco, caffeine, medical products and controlled drugs, which are excluded from the definition.

5. Clauses 4 to 9 make it an offence to produce, supply, offer to supply, possess with intent to supply, import or export psychoactive substances. The maximum sentence is seven years' imprisonment. Clause 10 enables regulations to be made to provide for exemptions to these offences.

I'm concerned that this legislation will be ineffective and very wasteful of resources, but I believe that a small change could make it a very powerful tool.

From what I know of Government, if this bill was a Department of Health initiative rather than Home Office sponsored, it would look quite different, and perhaps more like my suggestion.

I hope that as our elected members with no departmental responsibility, you can avoid the waste of effort to pass an ineffective public bill or to commit Governments present and future to endless testing with little resulting protection for the public.

October 2015

Written evidence submitted by DrugScience (PSB 03)

The core purpose of the Psychoactive Substances Bill is to outlaw the *unauthorised* production, supply, importation and exportation of ALL "psychoactive substances" (other than some such as alcohol, tobacco and caffeine that will be exempted).

DrugScience is a charity supported by independent scientific and other experts that reviews significant issues relating to drugs and the harms they cause http://www.drugscience.org.uk The DrugScience experts have now reviewed the proposed Bill and found it flawed in many respects. The major problems fall into five specific headings as discussed below

1. Issues of fact

1.1 The evidence used to pursue the ban – a supposed increase in deaths from legal highs to 129 last year [2014] is fundamentally flawed. Most of the substances reported in these death claims are ALREADY ILLEGAL http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736%2814%2960479-7.pdf. The latest data from ONS survey suggests about 18 at the most in which legal highs are involved http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-406863 , DrugScience experts have estimated that there are less than 5 deaths solely from truly "legal" legal highs each year

1.2 The new psychoactive substances (NPS) leading to the recent increase in deaths are not sold in "head shops". In fact it is possible that "head shops", which tend to sell relatively low risk substances, have contributed to the current situation where there are very few deaths from legal highs.

1.3 The Irish experience shows 9% of their youth have used NPS – the highest rate in Europe. Expert opinion in the UK and current Irish experience suggests the ban of "head shops" will drive the market underground into the arms of dealers and the internet. This will result in more harms and deaths as seen in Ireland. This is a result

of quality control dropping ("head shops" need to ensure their clients are not harmed so they return for more purchases) and the underground use of more dangerous drugs such as heroin that will be sold alongside NPS. Moreover the closure of "head shops" means there will be no source of education on responsible use.

1.4 The main purpose of this new law would appear to be to ban "head shops" for social reasons. Such ends could easily (and have already in some towns) been achieved by other mechanisms such as local trading regulations.

1.5 The proposed penalties are potentially draconian and disproportionate to the real harms of legal highs.

1.6 The Act will force individuals who wish to legally enjoy the recreational effects of drugs to use alcohol or nicotine. We know that at least 85% of the population like to use recreational substances since that proportion drink alcohol. Alcohol is responsible for 22,000 premature deaths per year, and is the leading cause of death in men aged 16-50 www.nwph.net/nwpho/publications/alcoholattributablefractions.pdf so is more harmful than almost all illegal drugs. As well as presenting this major moral dilemma of driving use to alcohol, the proposed law will preclude the development of new safer alternatives to alcohol and other recreational drugs.

1.7 Despite the claims of the Local Government Association that this Bill follows the recommendation of the expert group on NPS https://www.gov.uk/government/publications/new-psychoactive-substances-review-report-of-the-expert-panel in fact it goes much further than their report. This recommended that substances that are not harmful or have minimal harm are NOT drawn into this bill. Not all psychoactive substances are harmful, and some have clear benefits.

2. Issues of principle

2.1 The implementation of a new law with such wide-ranging impact is disproportionate to the challenge of new psychoactive substances, which is a health issue, and a lesser one relative to other drug-related problems. It will surely be a major concern to many citizens.

2.2 The principle of banning any psychoactive substances that might become available in future, with no evidence of their harmfulness, is a fundamental change in the way the UK law works. This sets and extremely worrying precedent for future legislation.

2.3 This Bill makes no discrimination between drugs carrying very different capacities to harm. People will be equally threatened by prosecution in relation to substances with risks equivalent to that of coffee or heroin. This undermines the basic principle of proportionality in UK law.

2.4 We already have the Misuse of Drugs Act 1971 (MDAct1971) that can deal with this issue – and indeed has done so successfully in the past decade as indicated by the fall in deaths from truly "legal" drugs in this period to now probably less than 5 per year at present [see1.1].

2.5 Another set of regulations will be needed that will become conflicted with the Misuse of Drugs Act 1971, leading to confusion in the minds of the public and the police as well as being wasteful of public resources.

2.6 The proposed ban on nitrous oxide (laughing gas) is particularly perverse as it driven by media hysteria. Laughing gas has been used for several centuries by some of the greatest scientists (Priestly, Davy) philosophers (James) and poets (Southey, Coleridge). The ACMD earlier this year reported there is minimal evidence of harm from the recreational use of nitrous oxide balloons https://www.gov.uk/government/publications/acmd-advice-on-nitrous-oxide-abuse The media-generated term "hippy crack" is deliberately pejorative and used for scaremongering purposes, so should not be taken to suggest any true similarity to the risks of cocaine! It is doubtful if nitrous oxide is responsible for the deaths attributed to it though continuous repeated use could cause harms through oxygen deprivation, just as can occur with helium balloons.

3. Specific concerns – Problems with definitions

The Bill, as currently drafted, sweepingly defines a "psychoactive effect" as one that is produced if "….by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state". That describes a huge range of substances we regularly use in medicine or would want to test.

3.1 What does psychoactive cover? Will it include new potential antidepressant and antipsychotic drugs? Will negative psychoactive effects also be caught? (eg opioid receptor antagonists such as naltrexone that are useful medicines but can produce anhedonia and dysphoria).

3.2 How will the exempted substances be defined? e.g. Will alcohol be all ethanol solutions – will coffee be based on chemical caffeine content – tea on having theophylline? (in which case what about herbal teas?). Many popular products contain guarana or ginseng both of which may have mild psychoactive effects. Many other widely-sold drinks contain potentially psychoactive substances, e.g. energy drinks such as Red Bull have taurine along with caffeine. Tonic water has quinine. The amendment tabled by Baroness Meacher to limit the scope of the Bill to "synthetic" psychoactive substances has much merit in removing a vast number of traditional herbal products from control.

3.3 Who will decide whether a drug is psychoactive? At present the Bill makes this the police making the prosecution. And where will the expert guidance come from? The Irish experience tells us that there have been no prosecutions under their Act because proof of psychoactivity of specific compounds has not been possible.

3.4 It is critical that the definition of psychoactive be based on the effects in living humans. Many useful medicines resemble abused psychoactive drugs in the "test tube" but do not have psychoactive activity (e.g. loperamide, a potent opioid agonist that was developed for pain but didn't work as it didn't enter the brain so is now used to treat diarrhoea). Some cathinone preparations are effective antidepressant, anti-smoking and anti-obesity agents, despite not having immediate psychoactive activity. But innovation using newer cathinones has been stifled by the recent control of many new and as-yet to be made under the recent cathinone amendments to the MDAct1971. Similar and potentially worse impediments to innovation can be expected if this new bill is passed.

3.5 Will dosage influence illegality? Will low (non psychoactive) doses be exempt from any controls to allow forensic and other labs to hold standards for assay purposes?

4. Likely perverse and unplanned negative effects of the proposed law

4.1 We welcome the plan to exempt doctors and medicines – but the bill needs modifying to ensure that ALL medicines in the pharmacopeia are exempt – not just those with Marketing Authorisations (MA) as presently construed. Drugs with MA are not the totality of medicines that doctors prescribe (note; a Marketing Authorisation (license) is given by the MHRA to companies to allow them to market (sell, advertise, market) their products, it does not define the use of such drugs, just what claims can be made by the company as part of their marketing. Any doctor working for the benefit of their patients and with adequate knowledge of the efficacy of a drug can use drugs outside their MA. This is because many drugs with established uses are too old to have been through modern testing but are still useful medicines and because this sort of exploratory testing has historically led to much medical innovation). Perusal of one hospital formulary found 16 such substances http://www.nottinghamshireformulary.nhs.uk/chaptersSubDetails.asp?FormularySectionID=20&SubSectionRef=20&SubSectionID=A100#3114

4.2 One DrugScience member has identified at least 10 non-medicine psychoactive substances he has used in used in his own human brain research. These are largely experimental products or potential new medicines, that work on different brain neurotransmitter systems [noradrenaline, GABA-A, imidazoline, 5HT2A, NK1 and dopamine) but also some brain-active amino-acids and the gas carbon dioxide.

4.3 Experience with other drug laws and associated regulations [e.g. the MDAct1971] tells us they have a significant negative impact on research and development activities in universities and pharmaceutical sites [Nutt King Nichols 2013]. It is therefore imperative that ALL research establishments, and suppliers of research chemicals to these, are exempted from this Act.

4.4 Although following pressure from academic societies https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441400/2-7-15-_ACMD_advice_on_PS_Bill.pdf the government has accepted they will need to make an exemption for bona-fide research but has yet to say how this will be achieved.

5. Recommendations

5.1 Delay the Bill until there is good evidence that this approach can work by reviewing the Irish data. In the meantime continue to use the MDAct1971 that has successfully controlled the availability of legal highs in recent years.

5.2 The PSBill be cut down to what it was intended to achieve i.e. control the IMPORTATION and SUPPLY of NEW HARMFUL psychoactive substances by professional drug suppliers and dealers who are set to make large amounts of money from this trade

5.3 if the Bill does progress then there should be specific exemptions for:

5.3.1 all medicines whether they have an Marketing Authorisation or not (see section 4.1 for explanation);

5.3.2 all research pharmaceuticals being used to developed new medicines or progress neuroscience research;

5.3.3 all doctors;

5.3.4 all bone-fide research scientists.

5.3.5 Low (non psychoactive doses) should be exempt from any controls to allow forensic and other labs to hold standards for assay purposes.

5.4 Decisions on whether a drug meets the criteria for being significantly psychoactive to be controlled under a new Act be made by either the ACMD or a new committee comprising experts nominated by the Royal College of Psychiatry, the British Pharmacological Society and the Academy of Medical Sciences.

5.5 Systematic evidence gathering of the effects of the new law be made part of the Bill. This must include monitoring deaths and other harms from ALL drugs, not just NPS to endure that any diversion of use into other substances is rapidly detected.

5.6 The impact on British research and productivity must be formally and annually monitored via appropriate bodies, e.g. the British Pharmacological Society and the Academy of Medical Sciences working alongside BIS.

5.7 Entertainment premises should be exempt from liability from their customers' use of psychoactive substances. If the owners or directors of premises are liable under this Bill – this could have a severe and negative impact on many venues crucial to the night-time and social economy in the UK including: clubs, pubs, bars, and music festivals.

5.8 This Bill as drafted could also have a severe and detrimental impact on all those providing services for people who have multiple vulnerable needs and are more likely to take substances – leading to a situation where Directors of Services are liable for any instances of psychoactive substance use or supply on their premises including: prisons and mental health wards.

Reference

Nutt DJ, King LA, Nichols DE (2013) Effects of Schedule I drug laws on neuroscience research and treatment innovation. Nat Rev Neurosci. Aug;14(8):577-85. doi: 10.1038/nrn3530

October 2015

Written evidence submitted by The Psychedelic Society (PSB 04)

Executive Summary

— The Psychedelic Society is a membership organisation for users of psychedelic substances with over 7,000 members in the UK.

— We are submitting evidence as we believe psychedelics should be legal for ceremonial and therapeutic use, and there is at least one substance being used in this way, 1P-LSD, that would be prohibited under the Bill.

— We recommend adding an exemption category for 'Psychedelic substances used in a ceremonial or therapeutic context', and exempting 1P-LSD under this category.

Introduction

1. *The Psychedelic Society* is a membership organisation that brings together users of psychedelic substances. We have over 7000 members across the UK and 6 local groups that hold regular events including talks, film screenings and stalls.

2. We have a good relationship with organisations including Transform, Release and the Beckley Foundation.

3. We are submitting evidence as we believe psychedelics should be legal for ceremonial and therapeutic use, and there is at least one substance being used in this way, 1P-LSD, that would be prohibited under the Bill.

Psychedelics are low risk

4. Psychedelics are a particular class of psychoactive substance that induce an altered state of consciousness sometimes compared to a 'waking dream'. They have been used in ritual and ceremonial settings for thousands of years. Examples include ayahuasca (used by indigenous South American communities), peyote (used by indigenous Mexican communities), psilocybin mushrooms ('magic mushrooms') and LSD.

5. Although they can induce powerful mental effects, they are non-toxic to the body, with a therapeutic index (ratio of lethal dose:effective dose, a measure of safety) *orders of magnitude* higher than alcohol and caffeine. They are not considered addictive, indeed, they are being investigated as a *treatment* for addiction to substances including alcohol and heroin.

6. A *2013 study* of more than 130,000 people found that psychedelic use was not indicative of increased mental health problems. In fact, some use of psychedelics corresponded with *lower* rates of psychological distress. A *2010 study* rated magic mushrooms and LSD as among the safest of 20 commonly used drugs, significantly safer than alcohol and tobacco.

Psychedelics have significant potential benefits

7. Psychedelics bring about profound and meaningful experiences. In a *2011 study* by the Johns Hopkins School of Medicine, 18 healthy adults participated in five eight-hour sessions with either psilocybin (the active ingredient in magic mushrooms) or a placebo. Fourteen months after participating in the study, 94% of those who received the drug said the experiment was one of the top five most meaningful experiences of their lives; 39% said it was the single most meaningful experience. A *follow-up study* found that participants had long-term increases in a personality attribute known as 'openness', linked to creativity, emotional intelligence and tolerance of others. The findings from these studies correlate with accounts from our members, many of whom say the ceremonial use of psychedelics has changed their life for the better.

8. Psychedelics are also being investigated as a treatment for various conditions including *depression*, anxiety, addiction and *PTSD*. Many of our members report having significantly benefitted from the use of psychedelics to self-treat these conditions.

1P-LSD

9. *1P-LSD* is a lysergamide (LSD-like) psychedelic. It has only been available since the start of 2015 and as such can be considered a 'novel psychoactive substance'. Structural analysis and submissions from our members indicate that 1P-LSD has a similar safety profile to other lysergamides i.e. it is non-toxic and non-addictive.

10. Many of our members who use psychedelics in ceremonial and therapeutic settings and who do not want to break the law have started using 1P-LSD as an alternative to prohibited psychedelics. In banning the trade in 1P-LSD, the Bill would deprive us of this choice and essentially force us to break the law in the continuation of our legitimate practice.

11. Following the *recent suggestion* of the APPG for Drug Policy Reform, we believe ceremonial and therapeutic use of 1P-LSD (and other psychedelics) may be protected under Article 8 of the European Convention on Human Rights (the right to private and family life).

Recommendations

12. Add an exemption category to Schedule 1 (Exempted Substances) for 'Psychedelic substances used in a ceremonial or therapeutic context', and exempt 1P-LSD under this category:

Psychedelic substances used in a ceremonial or therapeutic context

1P-LSD, when used in a ceremonial or therapeutic context.

13. We would be happy to provide further written and/or oral advice expanding on the definitions of these terms.

October 2015

Written Evidence submitted by Mr John Martin BA MSc,
Substance Misuse Project Worker, Fife, Scotland (PSB 05)

I have worked as a practitioner for many years within substance misuse and young people's services. I have a particular interest in this Bill as a result of my biography, the Bill's controversy and its ability to effectively reduce harms associated with NPS.

Firstly, regarding the main definition within the Bill:

2.2…Substances can have a psychoactive effect being neither stimulant nor depressant (of the CNS). The legal definition should either remove these two categories or include others .....
.....
e.g. it could read *"any substance which is capable of producing a psychoactive effect in a person who consumes it, and is not an exempted substance…A substance produces a psychoactive effect in a person if it affects the person's mental functioning or emotional state…A person consumes a substance if the person causes or allows the substance, or fumes given off by the substance, to enter the person's body in any way."*

'Excluded substances'

The annexed list of exclusions will need to be actively managed as more and more substances are identified that need to be excluded. How will this be done I wonder; what are the mechanisms/process for this and how do we ensure that we do not criminalise for supply beyond the intent of the Bill rather than the 'letter of the law' that will extrude?

A robust and timely mechanism/method will need to be in place and actively managed. Who will do this? What criteria will be used to assess inclusion in the exclusion list? Will this be related to harm? If so, why are Tobacco and Alcohol already (intently) excluded? Last year around 160,000 (depending upon what exactly is counted) people in the UK died prematurely as a result of the long term harms from Alcohol and Tobacco. Meanwhile mortalities rates related to NPS are relatively infinitesimally small.

Impact

Despite the controversy surrounding this Bill and its obvious inherent flaws, lack of clarity and contradictions, I believe that it nevertheless has the potential to dramatically reduce availability for large numbers of young people. In the short term, it will dramatically limit access for young people who would not consider supply routes other than retail outlets. This has to be welcomed and will, I believe, see large reductions in the numbers of young people presenting to A & E departments suffering the (often 'novice-related') adverse effects of these substances.

Other comments

Many others have succinctly commented, more than adequately I believe, on the fundamental weaknesses of this approach and of the Bill itself. I will not add my own summation here.

I believe that the greatest failing of this Bill and its progress through The Lords and Parliament to date, is that it is not evidence based. It takes no account of the overwhelming evidence that drugs policy should be related to harms or the 'unintended consequences' evidenced in Ireland. Nor has the process taken sufficient cognisance of the views of the ACMD (and others) who are, without argument, a real wealth of expertise in these matters.

As far as I can see there has been no meaningful, evidence based, impact assessment and we are therefore effectively be conducting a well-meaning, fundamentally flawed, social experiment once we pass this Bill. It will, despite this, very likely have a short term positive impact regarding the availability of these substances to young people. This facet I wholeheartedly welcome.

October 2015

Written evidence submitted by Simon Topham, Chief Executive, Millivres Prowler Group (PSB 06)

I am the Chief Executive Officer of Millivres Prowler Group – the UK's leading LGBT media and retail business. We have operated for over 40 years and have a very close relationship with gay community groups and health bodies.

In summary, my submission supports the proposed amendment to the bill exempting the substances commonly referred to as 'Poppers' from the bill.

We operate three licensed sex shops and media including Gay Times. We sell a product 'Aromas' (sometimes referred to as 'poppers'). I would like to make the following points about the bill before Parliament:

1. The substances commonly referred to as 'poppers' have been used for decades by gay men. They are commonly used by gay men as a sexual stimulant and to help relax the muscles for anal sex. Despite being used for over 40 years there is no evidence that they cause any serious harm. This was confirmed by Professor Iversen of ACMD and by Dr Owen Bowden-Jones in their evidence to the Commons Home Affairs Select Committee. Furthermore there are numerous other scientific studies that confirm the little or no harmful effect of the inhalation of Nitrites.

2. Poppers are popular with the gay community and the reason why they are explicitly mentioned by the minister in relation to this bill is baffling and raises concerns of a substance popular amongst gay men being specifically targeted in a way that may be seen as discriminatory.

3. It has been stated by the Minister, Mike Penning, before the Commons Home Affairs Select Committee that 'poppers will be banned' under the Psychoactive Substances Bill. It is my submission that there is no logical reason to ban these products as there is no evidence of harm and the head of the ACMD has clearly stated (to the same committee) that they would not be banned under current legislation.

4. It is our opinion that the bill will cause the sale of poppers to go underground with potentially very harmful consequences. Gay men will not stop using 'poppers' and the bill does not aim to criminalise possession. I am already aware of many European based websites that sell poppers online and these will target UK consumers. The problem is that this will destroy a regulated trade and replace it with an unregulated supply.

5. If these substances are supplied by overseas websites then there will be no guarantee that the substances are not more powerful or contain unsafe substances. There will be no control.

6. The main problem now is not the supply of these relatively harmless products but the unregulated sale of 'poppers' or poppers variants – in corner shops, garages or market stalls to anyone. In our view a sensible approach would be to encourage a carefully regulated regime – with Trading Standards using existing powers to limit sale of poppers to licensed sex shops only.

7. By this means the contents and formula of the substance can be regulated; the bottles clearly labelled with information around sensible use; child proof packaging enforced; and most importantly these substances would then only be sold to over-18 year olds (licensed sex shops must enforce over-18's only rules). In my direct experience, licensed premises are well regulated (and regularly visited) by trading standards officers, local police officers and local authority officials.

8. I must also add that on a purely commercial level, the banning of these substances will result in the almost complete wipe-out of the regulated, licenced sex shop industry in the UK with the loss of thousands of jobs. This will gain nothing – the business will simply be carried out by overseas (unregulated) websites who pay no taxes and employ no people in the UK.

But this regulated sale of poppers can only take place if it is clear that the legislation is not intended against substances *that cause little or no harm* or if poppers (Isopropyl Nitrites) are exempted from the bill.

Thank you for your time.

October 2015

Written evidence submitted by Rt Hon Mike Penning MP, Minister for Policing, Crime, Criminal Justice and Victims, Home Office (PSB 07)

PSYCHOACTIVE SUBSTANCES BILL: GOVERNMENT AMENDMENTS FOR COMMONS COMMITTEE STAGE

I am writing to let members of the Public Bill Committee have details of the Government amendments for Committee which I have tabled today (copy attached).

New offence of possession of a psychoactive substance in a custodial institution (amendments to clauses 1, 9, 35, 42 and 53 and new clause *"Possession of a psychoactive substance in a custodial institution")*

As I indicated at Second Reading in response to interventions from Steve Brine and others, we have been considering carefully the case for a limited possession offence to tackle the particular problems associated with the use of psychoactive substances in prisons (and other custodial institutions). As recommended by the Expert Panel which reported last autumn, the Bill focuses on tackling the trade in psychoactive substances and the offences in clauses 4 to 8 are directed to that end. Under the Bill, the simple possession of a psychoactive substance (as opposed to possession with intent to supply) is not criminalised. This approach reflects the fact that these substances have not had their harms assessed by the Advisory Council on the Misuse of Drugs. If a psychoactive substance's harms are felt to be severe enough to warrant a possession offence it can be controlled under the Misuse of Drugs Act 1971 which would then engage the possession offence provided for in that Act.

We have concluded that the problems associated with the use of psychoactive substances in prison (and other custodial institutions) justify a different approach in that context. The use of psychoactive substances in prisons is particularly destructive. Their use has been linked to mental health problems and disturbed behaviour by prisoners, including violence and it is therefore important that there are appropriate sanctions in relation to the possession of these substances. In a bulletin published in July, the Prisons and Probation Ombudsman identified 19 deaths in prison between April 2012 and September 2014 where the prisoner was known, or strongly suspected, to have been using psychoactive substances before their death. It is clear that the use of psychoactive substances is having an increasingly destructive impact on security and order in prisons, on the welfare of individual prisoners and on the safety of officers. Control and order is fundamental to prison life. Without it, staff, prisoner and visitor safety cannot be guaranteed and the rehabilitation of prisoners cannot take place.

It is already the case that possession of a psychoactive substance by prisoners constitutes an offence against discipline in England and Wales under the Prison Rules, but the maximum penalty that may be imposed under the prison adjudication system is 42 added days to the offender's time in custody. We do not believe that this has an adequate deterrent effect and in any event such sanctions have no effect on visitors, staff or others who possess a psychoactive substance in a prison (but who may not do so in a way that constitutes intent to supply). The introduction of a criminal offence for possession of a psychoactive substance in a custodial institution would complement the continuing work by the National Offender Management Service to educate prisoners, staff and visitors about the harms caused by psychoactive substances and also enable firm measures to be taken to punish those who possess psychoactive substances in prison. The amendment to clause 9 of the Bill provides for a maximum penalty for the new offence of two years' imprisonment on conviction on indictment. The definition of a custodial institution includes adult and juvenile prisons, the immigration detention estate and service custody premises.

AGGRAVATION OF OFFENCE UNDER CLAUSE 5 (AMENDMENT TO CLAUSE 6)

At Report stage in the House of Lords, the House agreed amendments to clause 6 of the Bill moved by Lord Rosser. These amendments required the court sentencing an offender to an offence under clause 5 of the Bill (supplying, or offering to supply, a psychoactive substance) to treat the fact that the supply, or offer to supply, was committed on prison premises as an aggravating factor. In the Report stage debate, Lord Bates made it clear that the Government was sympathetic to the principle behind these amendments, but indicated that such matters were now properly a matter for the Sentencing Council when developing their sentencing guidelines. Whilst it remains our view that the generality of aggravating factors should be determined by the Sentencing Council, having reflected carefully on the debate in the Lords we are content to accept these Lords amendments. However, it is necessary to make some technical and drafting changes to the Lords amendments, in particular to define the types of prison and other custodial premises to which the provision will apply. The amendment adopts the term "custodial institution" and defines this to include adult and juvenile prisons, the immigration detention estate and service custody premises.

EXEMPTED SUBSTANCES – DEFINITION OF MEDICINAL PRODUCTS (AMENDMENTS TO SCHEDULE 1)

Schedule 1 to the Bill sets out various exempted substances, including "medicinal products", which fall outside the definition of a psychoactive substance. At Lords Report stage, Baroness Chisholm of Owlpen undertook to consider further an amendment tabled by Baroness Meacher seeking to broaden the definition of

medicinal products (Official Report, 14 July 2015, column 492-493). Baroness Chisholm acknowledged that, for example, the existing definition did not capture "specials", that is medicinal products which have been specially manufactured or imported to the order of a doctor, dentist, nurse independent prescriber, pharmacist independent prescriber or supplementary prescriber for the treatment of individual patients to meet their special clinical need. Following consultation with the Medicines and Healthcare products Regulatory Agency and the Department of Health, we have concluded that the appropriate course is to import into the Bill the definition of a medicinal product in regulation 2 of the Human Medicines Regulations 2012. Regulation 2 defines a medicinal product as follows:

(a) any substance or combination of substances presented as having properties for treating or preventing disease in human beings; or

(b) any substance or combination of substances that may be used in, or administered to, human beings, with a view to:

  i. restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action; or

  ii. making a medical diagnosis.

This definition includes investigational medical products as well as homeopathic and herbal medicinal products. This therefore supersedes paragraphs 3 to 5 which are duly removed by the second amendment to Schedule 1.

Exempted activities (amendments to clauses 1, 4, 5, 7, 8, 11, 49, 50 and 54, new clause *"Exceptions to offences"* and new Schedule *"Exempted activities"*)

At Lords Report stage, Baroness Chisholm also indicated, in response to an amendment from Lord Rosser, that the Government would bring forward amendments to ensure that *bona fide* research would be unaffected by the provisions of the Bill (Official Report, 14 July 2015, column 492); a point also raised by Andrew Gwynne at Second Reading.

New clause "*Exceptions to offences*" provides that it is not an offence under the Bill for a person to produce, supply, offer to supply, possess with intent to supply, import or export a psychoactive substance, or possess such a substance in a custodial institution if, in the circumstances in which it is carried on by that person, the activity is an exempted activity as listed in new Schedule "*Exempted activities*". The new clause gives effect to new Schedule "*Exempted activities*". New clause "*Exceptions to offences*" also provides a power to add or vary any description of activity specified in the new Schedule; this regulation-making power replaces that in clause 10 of the Bill. I attach a supplementary delegated powers memorandum in respect of the new regulation-making power.

New Schedule "*Exempted activities*" lists exempted activities. This Schedule covers two distinct type of activities, namely research and healthcare-related activities.

The exemption for research will cover "approved scientific research", namely research carried out by a person who has approval from a relevant ethics review body to carry out that research. The definition of a relevant ethics review body includes a research ethics committee recognised or established by the Health Research Authority, as well as NHS bodies and research institutes (the definition of which includes universities). It should be noted that a considerable amount of scientific research falls outside the scope of the Bill in any case – only research involving the consumption of a psychoactive substance would be caught.

The exemption for healthcare-related activities recognises the fact that there may be cases when health care professionals may want to prescribe (and pharmacists will therefore need to dispense, or other health-care professionals will need to supply or administer) substances that are not medicinal products (as defined in the Human Medicines Regulations). We expect the exemption for medicinal products in Schedule 1 to the Bill will ensure that, in the overwhelming majority of cases, the clinical practice of health care professionals is not impeded by this Bill. But the exception for the professional activities of health care professionals (and those involved in the supply chain for substances prescribed by such a professional) will provide absolute certainty that this is the case.

For similar reasons, we are also exempting activities in respect of active substances. An active substance is defined in regulation 8 of the Human Medicines Regulations 2012 as:

> "any substance or mixture of substances intended to be used in the manufacture of a medicinal product and that, when used in its production, becomes an active ingredient of that product intended to exert a pharmacological, immunological or metabolic action with a view to restoring, correcting or modifying physiological functions or to make a medical diagnosis".

Active substances are therefore, in effect, the precursor substances used in the manufacture of medicinal products. The exemption will protect persons registered under the Human Medicines Regulations involved in the manufacture, importation or distribution of such active substances.

The other amendments are consequential on new clause "*Exceptions to offences*" and new Schedule "*Exempted activities*".

Repeal of the Intoxicating Substances (Supply) Act 1985 (amendment to Schedule 4)

The Intoxicating Substances (Supply) Act 1985 (the 1985 Act) (which does not extend to Scotland) makes it an offence to supply or offer to supply an intoxicating substance to a person under 18. The legislation was enacted to tackle the emergence of glue sniffing and covers predominately glues and solvents. The conduct element of the offence in the 1985 Act is covered by the offences of supplying or offering to supply a psychoactive substance in clause 5 of the Bill. In the interest of good law we should not have directly overlapping criminal offences on the statute book, accordingly the amendment to Schedule 4 repeals the 1985 Act.

Further amendments to take account of Scots law and policing practice (amendments to clauses 23, 27, 38, 39, 47, 53 and 58 and Schedule 2)

These amendments ensure that the Bill properly reflects separate Scots law and judicial and policing practice. Further details are provided in the explanatory statements which accompany these amendments. In relation to the amendments to clauses 38 and 39 and Schedule 2 (which relate to search warrants), the amendments recognise that those provisions are based on policing practice in England and Wales (and Northern Ireland) derived from provisions in the Police and Criminal Evidence Act 1984. In Scotland, police powers are not governed by one codified statutory scheme, but by a combination of the Criminal Procedure (Scotland) Act 1995 and common law principles. These amendments therefore disapply a number of the provisions in clauses 38 and 39 and Schedule 2 to Scotland and thereby allow the usual common law approach to govern the process around applications for and the execution of search warrants in that jurisdiction.

I am copying this letter to the members of the Public Bill Committee, Lord Rosser, Lord Paddick, Baroness Hamwee, Baroness Meacher and Lord Howarth of Newport. I am also placing a copy on the Bill page of the Home Office website.

October 2015

Further written evidence submitted by Rt Hon Mike Penning MP, Minister for Policing, Crime, Criminal Justice and Victims, Home Office (PSB 08)

Introduction

1. The Government has tabled amendments to the Psychoactive Substances Bill for Commons Committee stage. These include one new delegated power. This supplementary memorandum explains why the power has been taken and the reason for the procedure selected.

New clause *Exceptions to offence* (4): Power to add or vary any description of exempted activities

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Affirmative procedure*

2. Clauses 4 to 8 of the Bill make it an offence to produce, supply, offer to supply, possess with intent to supply, import or export a psychoactive substance. In each case, the relevant clause provides that it is subject to regulations made under clause 10. That clause provides that regulations may provide that it is not an offence under the Bill for any person, or any person of a specified description, to do an act, or an act of a specified description, in specified circumstances or if specified conditions are met. In effect, any such regulations would make lawful conduct which would otherwise be unlawful under clauses 4 to 8. This exemption mechanism will complement that provided for in Schedule 1 in respect of exempted substances. As indicated in the Department's original Delegated Powers Memorandum, this regulation-making power could be used, amongst other things, to make provision "to enable those who are conducting or supporting legitimate research into psychoactive substances to carry out their work".

3. At Lords Report stage, Baroness Chisholm indicated, in response to an amendment from Lord Rosser, that the Government would bring forward amendments to ensure that *bona fide* research would be unaffected by the provision of the Bill (Official Report, 14 July 2015, column 492). The Government's approach is now to specify certain "exempted activities", including research, on the face of the Bill, and to accompany this with a power to add to or vary this list of exempted activities. This new delegated power will replace that in clause 10.

4. New clause "*Exceptions to offences*" provides that it is not an offence under the Bill for a person to produce, supply, offer to supply, possess with intent to supply, import or export a psychoactive substance, or possess such a substance in a custodial institution (see new clause *Possession of a psychoactive substance in a custodial institution*) if, in the circumstances in which it is carried on by that person, the activity is an exempted activity as listed in new Schedule "*Exempted activities*". The new Schedule lists two categories of exempted activities, namely research and healthcare-related activities. New clause "*Exceptions to offences*" also provides, at subsection (4), a power to add or vary any description of activity specified in the new Schedule and to remove any description of activity added through the regulation-making power (in this regard, the new clause mirrors the power to amend Schedule 1 in clause 3 of the Bill).

5. The power is most likely to be used to vary an existing entry, for example, if the regulations mentioned in paragraphs 1 to 3 of the new Schedule were revoked and replaced with new regulations or the definition of a "relevant NHS body" in paragraph 4 of the Schedule needed to be amended to reflect changes in the organisation of the NHS in any part of the UK. However, it may also prove necessary, in the light of experience in operating the legislation, to add a new activity to the list of exempted substance. The regulation-making power cannot be exercised so as to remove one of the activities specified in the new Schedule to the Bill as enacted, but the new clause allows for the possibility that it might be necessary to remove from the Schedule an activity which had previously been added to the new Schedule by means of the delegated power.

6. As with the existing regulation-making power in clause 10, subsection (5) of the new clause requires the Secretary of State, before exercising the power, to consult the Advisory Council on the Misuse of Drugs and such other persons as she considers appropriate. Such persons might, for example, include regulatory bodies or other relevant experts as well as persons likely to be affected by the proposed regulations.

7. Given that the scope of the offences in clauses 4 to 8 is central to the scheme in the Bill, it is considered appropriate that the exemption of any activities from the ambit of these offences should be subject to Parliamentary debate and approval and that accordingly, the affirmative procedure should apply (as provided for in subsection (7) of the new clause. The affirmative procedure also recognises that this is a Henry VIII power.

October 2015

Written evidence submitted by the Chartered Trading Standards Institute (CTSI) (PSB 09)

1. Evidence detailed within this submission has been collected from our expert team of front line trading standards lead officers whose subject specialism focuses on the wider issues of age-restricted sales and health.

2. In paragraphs 18-19 and 20-23 we outline proposed amendments to the bill as requested by the public bill committee. In all other sections of the submission we provide expert information we would like the committee to be aware of in their deliberations.

3. In light of the report of the Home Affairs Select Committee (published 23 October) we note that other organisations have echoed our concerns about the cost implications associated within enforcement of the Psychoactive Substances Bill and would like to re-iterate this point to the public bill committee.

4. Introduction to CTSI

5. The Chartered Trading Standards Institute (CTSI) is a professional membership association founded in 1881. It represents trading standards officers and associated personnel working in the UK and also overseas – in the business and consumer sectors as well as in local and central government.

6. The Institute aims to promote and protect the success of a modern vibrant economy and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business, and targeting rogue traders.

7. We provide information, evidence, and policy advice to support local and national stakeholders.

8. We have also, as part of our recently revised remit, taken over responsibility for business advice and education concerning trading standards and consumer protection legislation. To this end, we have developed the Business Companion website (www.businesscompanion.info).

9. The CTSI Consumer Codes Approval Scheme, launched in 2013, has superseded the OFT scheme.

Executive Summary

- Local authority trading standards services have faced severe resource and staff reductions in recent years.
- Conducting investigations to determine the chemical nature and potential impact upon ingestion of suspected psychoactive substances can be incredibly costly.
- We are concerned about the ability of some trading standards services to effectively enforce the new legislation without additional funding.
- We propose the existing Bill should be amended in a number of ways:
  - To tighten up the definition of 'psychoactive' substance.
  - To remove the requirement that the prosecution must prove 'beyond reasonable doubt' that a substance has psychoactive effects and amend the Bill so that the prosecution only has to prove it is the intent of the supplier to sell substances that could have these effects (clause 5).
  - To enable enforcers to effectively seize suspected goods if they are otherwise lawfully on a premises (clauses 40, 41, 42).
  - To explicitly state who the government intends the enforcement body for the Bill to be.

EVIDENCE

10. Firstly, we are concerned that the definition of a substance having 'psychoactive' effects, as outlined in the proposed Bill, is very wide and also very difficult to prove.

11. We echo the findings of the Home Affairs Committee report that raise concerns that in the current drafting of the Bill, the breadth of the definition of 'psychoactive' substance is a concern because at present it is unclear exactly the kinds of substances it is specifically referring to.

12. Many substances could, in some circumstances, be described as 'psychoactive' depending on how they are used. As a consequence, we feel that there needs to be a more precise definition for the term to make it clearer the kinds of substances that the Bill covers.

13. Furthermore, under the proposed legislation it would be down to the prosecution to illustrate that any suspected substance was capable of producing 'psychoactive effects' and expert evidence would need to be obtained to prove this in court. Each separate substance being investigated would be required to undergo rigorous scientific testing and analysis to obtain a toxicology report detailing the specific chemical components found in the drug.

14. Evidence obtained from one trading standards service indicates that it costs around £100 per substance to conduct a basic test. This type of test is limited as it only provides investigators with information as to which chemicals are contained within a substance. Crucially, it fails to provide information about the exact harm a substance could cause when ingested. Without clinical evidence it can be extremely challenging to obtain reliable information of this type and further complex testing is required to garner accurate evidence as to what the effects of ingestion might be.

15. In terms of resource burden, trading standards have found that head-shop investigations require multiple tests to be conducted as the contents of a substance may differ between packets due to basic manufacture techniques. At the very least, one test for each type of product is required. So, for example, if a shop carries a range of six psychoactive substances a minimum of six tests would have to be carried out.

16. We are concerned about the significant cost implications for enforcers associated with the testing process and fear a significant number services will struggle to cope with this kind of financial burden. In some cases toxicologists are charging hefty sums to produce reports detailing the effects of substance ingestion (sometimes amounting to over four figures). This is a massive cost, especially considering that multiple tests on multiple substances will probably be required to progress just one investigation (we shall elaborate further on resource concerns later in this submission).

17. The recent report on the psychoactive substances bill, produced by the Home Affairs Committee, highlights our concerns regarding funding and reiterates that this is an issue multiple organisations have raised as an area of concern.

18. Linked to the problem of definition and testing costs, we have considered amendments to clause 5 (supply of psychoactive substances) to remove the requirement that the prosecution has to prove 'beyond reasonable doubt' that a substance has 'psychoactive' effects. As stated previously, with the Bill as it currently stands, proving that a seized substance is psychoactive could be challenging and would be incredibly costly for enforcers. Under our proposed changes the prosecutor would only need to prove that the intent of the supplier was that they planned to distribute products that might have psychoactive effect. This would facilitate the work of enforcers in combating the supply of NPS.

19. Please see our proposed amendments below in square brackets:

5 – Supplying, or offering to supply, a psychoactive substance[, or a substance purporting to be or likely to be mistaken for a psychoactive substance]

(1) A person commits an offence if—

(a) the person intentionally supplies[, offers or exposes for supply] a substance to another person,

(b) the substance is a psychoactive substance [or a substance purporting to be or likely to be mistaken for a psychoactive substance],

(c) the person knows or suspects, or ought to know or suspect, that the substance is a psychoactive substance [or a substance purporting to be or likely to be mistaken for a psychoactive substance], and

(d) the person knows, or is reckless as to whether, the psychoactive substance, [or a substance purporting to be or likely to be mistaken for a psychoactive substance], is likely to be consumed by the person to whom it is supplied, or by some other person, for its psychoactive effects [whether these effects are realisable or not].

20. Secondly, we wish to take this opportunity to raise our concerns over the potential effectiveness of the proposed new legislation in terms of enforcement powers specifically relating to the seizure of goods. We fear that the Bill provides insufficient powers to enable local authority enforcement officers to take action against suppliers of new psychoactive substances.

21. Considering specific segment of the Bill, powers outlined under clause 40 (examination) and clause 41 (production of documents) are only available for use by enforcement officers when acting under a warrant.

Powers under clause 42 (seizure) differ from the former in that they can be employed by an enforcement officer under warrant when an officer is otherwise lawfully in the premises.

22. We believe it is highly likely that trading standards officers will come across psychoactive substances when inspecting premises for other products such as illicit tobacco or alcohol but will not have a warrant to specifically obtain any suspected psychoactive substances found on their visit.

23. Indeed, it is important to note that although clause 42 of the Bill allows enforcement officers to seize psychoactive substances if they are otherwise lawfully on a premises, it is not possible for officers to seize suspected products without first examining the product or viewing the supplier's documents to establish what the product is purporting to be. We feel that this loophole makes the legislation unworkable for officers who will have to make a second visit to obtain suspected products which could very likely have been removed by the supplier by the time they return. Furthermore, a second visit would be very costly to an already resource-stretched service. We believe the Bill should be amended to include the clause that officers can act under the powers of clause 40 and clause 41 if they are 'otherwise lawfully on the premises', as in clause 42, to enable seizure of suspected psychoactive substances to take place more easily.

24. Thirdly, we believe that the Bill, as it stands, is unclear as to who exactly is supposed to be enforcing it. A specific definition, for example 'local authority enforcement officer', should be included to clarify this point.

25. Within the last parliament local authority trading standards have seen significant resource constraints with staff numbers dropping by an average of 40% and budgets falling by 50% (rising to over 80% in some areas). This has left many services struggling to cope with the over 250 pieces of statutory legislation that trading standards is already charged with enforcing.

26. In this climate of further predicted cuts, any additional statutory enforcement duties are difficult for trading standards to swallow as some departments are already struggling to cope with existing duties. In this case specifically, the new legislation on psychoactive substances will place an additional burden upon resources both in terms of the staff required to conduct inspections and drug testing costs. We are also concerned that prosecution costs could be high considering the *mens rea* element of the offences related to possession and supply of psychoactive substances.

27. We hope to see additional resources being allocated specifically to enforcement bodies, such as trading standards, to enable them to effectively investigate cases and, where necessary, bring to court for prosecution. Without this additional funding we fear the Bill runs the risk of becoming toothless because enforcement bodies such as trading standards will not have the resources to enforce it effectively.

28. Recommendations for the public bill committee

- The definition of 'psychoactive' substance should be made more precise to make it clearer exactly which types of substance the Bill is covering.
- The committee should push for amendments to clause 5 of the Bill to broaden the definition of an 'offence' relating to the supply of NPS.
- The committee should consider additional amendments to clause 40 and clause 41 to allow enforcement officers to seize suspected NPS more easily when they are already legally on the premises investigating other products.
- A definition detailing exactly which enforcement body is responsible for enforcing the Bill should be included.

October 2015

Written evidence submitted by Daryl Sullivan (PSB 10)

1. My name is Daryl Sullivan, I am an employee of an online 'headshop', an experienced campaigner for drug law reform, and a freelance writer.

2. I am submitting my views on the Psychoactive Substances Bill as I believe it is a seriously flawed piece of legislation as it currently stands which will inevitably lead to unintended consequences and great harm. On a personal note, it will also cost me my job if amendments are not made.

3. I would like to make it clear that, whilst I understand why the government has sought to ban 'legal highs', I do not agree that further prohibition is the way to go. However, it seems inevitable that the evidence on this matter will continue to be ignored, as it always has been – indeed it is worth noting that on the same day last year that the then coalition government released its report calling for a blanket ban on psychoactive substances, the Home Office also released a report (Drugs: International Comparators) which concluded that the strictness of a nation's drug laws has no effect on levels of drug use in that nation. This is just the first of many contradictions which have been thrown up by the passage of this Bill.

4. Given that the creation of yet another layer of prohibition seems inevitable then, I will not seek to argue against the Bill as a whole, but rather to suggest amendments that would at least make it slightly more logical, not to mention workable.

5. Firstly, and perhaps most importantly, is the issue of defining what is meant by 'psychoactive substances'. As was mentioned multiple times during the second reading of the Bill in the Commons, it is absolutely ludicrous that the government has got to this stage of the process without yet coming up with a workable definition of what it is trying to ban. I understand that a suggestion was made to insert the word 'novel' or 'new' into the legislation by the ACMD but that this was dismissed. I suggest that the simplest way to avoid many of the problems with the current definition would be to insert the word 'synthetic'.

6. Doing this would ensure that the sort of 'legal highs' which have undoubtedly caused harm – synthetic cannabinoids, research chemicals, etc – would be banned, whilst avoiding much of the confusion surrounding whether or not incense used in religious ceremonies is ok, for example. It would also make the job of creating a list of exemptions a whole lot easier.

7. One of the big problems with the Bill as I see it is that in trying to clamp down on harmful substances (and I don't doubt that there are some out there), it is inadvertently banning a large amount of natural, herbal, products which have been sold in this country and around the world for decades without problems. In my day job I sell, among other things: Kratom, Blue Lotus, Kanna, Passionflower, Mexican Dream Herb, African Dream Herb, the list goes on. None of these products have caused any harm to anybody, and yet thanks to the Psychoactive Substances Bill they will all become illegal to sell, and I and many others like me will be out of a job. Inserting the word 'synthetic' into the Bill would solve this problem immediately, whilst still leaving open the option to the government of controlling a herbal product under the Misuse of Drugs Act should they see fit to do so.

8. The other issue with defining psychoactivity is that it is very difficult, if not impossible, to prove that a substance is psychoactive without testing it on a human subject. Quite frankly I have no idea how you get around this issue – as has been seen in Ireland it is going to be incredibly difficult, not to mention hugely expensive, to secure convictions of offences committed under this new Law.

9. My second concern with the Bill is the way in which it has been rushed through Parliament without the proper process being undertaken. The ACMD were cut out until the Bill had already been written, and no proper analysis has been carried out into how similar laws have worked in Ireland and Poland. During the second reading of the Bill there was some disagreement about the effect a blanket ban has had in Ireland – Caroline Lucas MP and Paul Flynn MP argued that use has gone up, whilst others maintained that since hospital admissions were down, it must be working. This is nonsense: Increased use cannot equal decreased harm. Anyone can see that what is happening in Ireland is that people are still using the drugs, perhaps more so than before, but are not seeking medical help when they get into trouble for fear of beng criminalised. This is the trouble with prohibition, and is really something we should have learnt as a country by now.

10. Mike Penning MP argued during the second reading that Caroline Lucas' stats were irrelevant because he had been to Ireland himself and seen the damage that these drugs cause. I have a fairly simple question for Mr Penning which I have not been able to find an answer for as yet – when did he visit Ireland? If it was before the blanket ban was introduced, then would it not be a good idea for him to go back and see what difference has been made? And if it was after the ban, well then it's pretty clear that the legislation must not have had the desired effect. Either way a properly detailed analysis of the situation in Ireland must be undertaken before we rush into a ban of our own.

11. The other country which has introduced a blanket ban is Poland – it is worth repeating that on leaving office, the Polish President who introduced that Bill was asked what his greatest regret was. His reply? The Psychoactive Substances Bill.

12. Perhaps the one aspect of this new Bill which I agree with wholeheartedly and hope does not change is the fact that possession of drugs covered by the Bill will not be a criminal offence. This is absolutely key, and I welcome the government's realisation that criminalising thousands if not millions of people for simple possession is wrong. However, this does throw up the obvious hypocrisy of continuing to criminalise possession of drugs prohibited by the Misuse of Drugs Act.

13. If the government are aware, as they seem to be, that criminalising use is a harmful and destructive policy which does nothing to help anyone and only places further strain on the police and prison budgets, then they must see the contradiction in continuing to do so for possession of drugs such as cannabis. This also links in to another issue with the Bill as it currently stands, which is that there appears to be no concept of harm. In other words production and supply if all 'psychoactive substance' covered by the Bill will be treated the same, something which makes little if any sense.

14. In conclusion, the Psychoactive Substances Bill seems to have been rushed through Parliament without the proper consultations and reseach being undertaken into how such a Bill would work or what it is even trying to ban. It is vital that a thorough examination of similar legislation in Ireland and Poland is undertaken before we rush into something which could easily lead to an expansion of the black market, increased exposure to more dangerous drugs for those who wish to continue using, and less adequate medical care for anyone who gets into trouble with former 'legal highs' because of the fear of police involvement.

15. As well as this it is increasingly necessary that the government clarify exactly what is meant by 'psychoactive substances' as a matter of urgency. Various suggestions have been made, but my recommendation is that the word 'synthetic' is inserted into the Bill in order to ensure that harmless, traditional, herbal products such as Kratom are not suddenly prohibited for no reason. Changing the definition in this way would simplify the Bill, whilst still banning those drugs which are considered most harmful and which have brought about the political will for this ban, and leaving open the possibility of banning further drugs in future should the government wish (although I reiterate that I do not agree with the policy of banning any substance in principle).

16. Finally, the fact that possession of drugs covered by the new Bill will not be a criminal offence should be applauded. However, the hypocrisy of holding this position whilst maintaining that the criminalisation of users of other drugs is necessary, should not be allowed to pass unnoticed. Criminalisation of possession of any drug for personal use is wrong and harmful. The government seem to finally understand this, but they must expand this policy to encompass the Misuse of Drugs Act.

October 2015

Written evidence submitted by KTR Environmental Solutions Ltd (PSB 11)

I have pleasure in submitting my comments and concerns on a number of issues regarding this Bill with the view to achieving its core objectives in a robust and effective manner. I have for a number of years invested in and collaborated with registered phytoceutrical companies in the research and development of new products in the medical, food suppliments and health and wellness sectors using a number of plant species previously underutilized but show significant and proven potential to improve one's general health and wellbeing. This Bill, as currently defined will have unintended consequences as some of the plant species will be prohibited whereas they are internationally available with limited or no restrictions. I am a member of the British Herbal Medicines Association and subscribe to the ethical and safe use of all substances for human consumption.

Submission with Respect to the Psychoactive Substance Bill (the Bill)

Summary:

(a) The Bill exceeds the stated aims and objectives of the Governments Manifesto.

(b) Clauses 6,7,8 and 9 of Schedule 1 should be deleted as they are superceded by Clauses 3(3) of the Bill.

(c) Clauses 7 and 8 of Schedule 1 are controlled by the Tobacco Products Directive (TPD2) of the EU and regulations being implemented by the Department of Health. The Poisons Act 1972 and the Poisons Rules 1982 require that the sale of nicotine is only possible through pharmacies or registered sellers.

(d) References to and reliance on the New Psychoactive Substance Review – Report of the Expert Panel are inappropriate in terms of Clause 2 of the Bill.

(e) In terms of Clause 3(3) of the Bill the issue of the definition of "novel", "harm" or "relative harm" pose no impediment to the consideration of alternative definitions.

(f) The Home Secretary confirmed to the ACMD that the Misuse of Drugs Act 1971 remains at the apex of the regulatory framework and through the powers granted to the ACMD [including that of Clause 3(3)] of the Bill they are best placed to determine the Clause 2 definition and its implementation.

(g) The Bill undermines the application of the Nagoya Protocol (Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union) signed by the UK.

(h) Clause 8 of the Bill is disproportionate and prevents free trade and movement of goods within the EU.

(i) The purpose of this Bill is to regulate and control the use of substances for recreational purposes only.

(j) There is no provision for individuals or business entities to apply for an exemption or a ruling. This underlines the prohibition nature and thus unworkability of the Bill.

Explanatory Notes

Definitions

1.1 Since the Expert Panels report in September 2014 to the present day at least 8 definitions of "NPS" have been presented. It is apparent that the Home Office is unwaivering in this regard. The backbone to the NPS Bill rests on its definition and the outcomes are reliant on the definitions interpretation. It is acknowledged that the ACMD had no part in its drafting.The Goverments manifesto states *"We will create a blanket ban on all new psychoactive substances, protecting young people from exposure to so-called 'legal highs"* and this was based on one of the five options considered in the Expert Panel Report (i.e. General Prohibition).

1.2 The Terms of Reference (ToR) for the Expert Panel were clearly stated, quote:

"For the purpose of its deliberations, the Panel adopted the definition of NPS as follows: 'Psychoactive drugs, newly available in the UK, which are not prohibited by the United Nations Drug Conventions but which may pose a public health threat comparable to that posed by substances listed in these conventions.'

The key features are that NPS are psychoactive i.e. ones that stimulate, or depress the central nervous system, or cause a state of dependence; have a comparable level of potential harm to internationally controlled drugs; and are newly available, rather than newly invented." **Definition 1**

1.3 The Bill as currently presented and being deliberated by this committee reverts back to the initial definition contained in the first drafted Bill as presented to the House of Lords, namely:

"(1) In this Act "psychoactive substance" means any substance which—

(a) is capable of producing a psychoactive effect in a person who consumes it, and

(b) is not an exempted substance.

(2) For the purposes of this Act 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.

(3) For the purposes of this Act a person consumes a substance if the person causes or allows the substance, or fumes given off by the substance, to enter the person's body in any way". **Definition 2**

1.4 Had the Expert Panel adopted this definition in their deliberations the outcomes could foreseeably have been quite different, in particular to the Opportunities and Risks contained in Annex D: Model Impact Framework. The Expert Panel have not been given an opportunity to affirm or otherwise the validity of their report on the basis of a totally different definition to that in their ToR. The effect of this is that their report has been poached and inappropriately applied. This might well raise ethical and/or legal questions.

1.5 The UN Office of Drugs and Crime (UNODC) definition of NPS is *"New psychoactive substances are substances of abuse, either in a pure form or a preparation, that are not controlled by the 1961 Single Convention on Narcotic Drugs or the 1971 Convention on Psychotropic Substances, but which may pose a public health threat. In this context, the term 'new' does not necessarily refer to new inventions but to substances that have been recently become available".* **Definition 3**

1.6 On the 23rd October 2015 further amendments to Clause 2 of the Bill were tabled.

Either:

Stuart C. McDonald
Owen Thompson
Angela Crawley

"In this Act 'psychoactive substance' means any substance which is capable of producing a psychoactive effect in a person who consumes it, and—

(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)". **Definition 4**

Or:

Lyn Brown
Andrew Gwynne
Grahame Morris

"(a) is 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, and

"(2) For the purpose of this Act "substance" means any compound, irrespective of chemical state, produced by synthesis, or metabolites of those compounds.

"synthesis" means the process of producing a compound by human instigation of at least one chemical reaction. "compound" means any chemical species that is formed when two or more atoms join together chemically." **Definition 5**

1.7 The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) uses the following definition for NPS:

"A new psychoactive substance is defined as a new narcotic or psychotropic drug, in pure form or in preparation, that is not controlled by the United Nations drug conventions, but which may pose a public health threat comparable to that posed by substances listed in these conventions". **Definition 6**

1.8 Definition 4 comes closer to Definition 1 (Expert Panel); Definition 2 (UNODC) and Definition 6 (EMCDDA). If included definition 5 provides further scope to all of the aforementioned. In addition to the Misuse of Drugs Act 1971 and the United Nations Drug Conventions of 1961 and 1971, the International Narcotics Control Board (Green List) and The International Drug Control Conventions Schedules of the Convention on Psychotropic Substances could further strengthen the scope and breadth of undesirable substances.

1.9 The ACMD, due to the powers confered upon them under Clause 3(3), should be the final adjudicator in the choice of definitions. In this regard the following amendment tabled on 23rd October could have merit:

Lyn Brown
Andrew Gwynne
Grahame Morris

"(3A) The Home Secretary must consider making regulations under subsection (2) if she receives a recommendation from the Advisory Council of Misuse of Drugs to bring forward such a regulation in respect of a psychoactive substance." [Member's explanatory statement: This would enable the ACMD to proactively request that the Home Secretary consider regulations].

1.10 The definitions of both the UNDOC and EMCDDA are internationally recognized definitions, have legal clarity and business entities who wish to trade substances which are essentially legal will not be disproportionately penalized particularly within the EU, as will be the case should the current definition (Definition 2) be adopted. Furthermore, this definition echoes that of one of the ACMD's recommendations, that of the Expert Panels and gives added credibility to their report.

2. Schedule 1 – Exemptions

2.1 The Expert Panels Review states:

> *"In considering the general prohibition on distribution of NPS approach, the Panel was mindful that the approach would capture a very wide range of current and potential future psychoactive substances and there was potential for unintended consequences. With that in mind, the Panel recommends that the Government puts in place a schedule of exemptions for substances it wishes to permit when bringing the general prohibition into force (e.g. alcohol, tobacco, caffeine, energy drinks). Furthermore, in designing the legislation the Government should ensure that provision is made for newly emerging substances to secure exemptions (for example, by a power to add new exemptions by statutory instrument) where the risks of health and social harms can be adequately assessed. A regime is already in place for medicines but the Government needs to be mindful of the emergence of new markets."*

The Expert Panel give mere examples of exempted substances "*alcohol, tobacco, caffeine, energy drinks"*.

2.2 Section 3(3) states *"Before making any regulations under this section the Secretary of State must consult— (a) the Advisory Council on the Misuse of Drugs"*. Is not the inclusion of these "exempted" substances premature and not in accordance with the provisions in the Bill?

2.3 The drafters of this Bill has for whatever reason taken out energy drinks and most worryingly introduced "nicotine". Tobacco and nicotine are already regulated elsewhere, both within the UK and under EU instruments. With reference to the Governments own Statutory Instrument on age restrictions for "electronic cigarettes" it is stated:

> *"It has long been established that nicotine is highly addictive. Nicotine is a potent and powerfully addictive drug, which is five to ten times more potent than cocaine or morphine in producing behavioural and psychic effects associated with addiction potential in humans"*.

2.4 It is widely believed within the "e-Cig" industry is that the eventual aim is to see consolidation to a handful of suppliers primarily Big Tobacco (who by nature are oligarchs), which will lead to a nicotine tax at source, perhaps the intended consequence of nicotine's inclusion as exempted substances.

3. Harm and Blanket Ban

3.1 *"Questions are also being asked about whether scheduling substances under the criminal law has any impact on usage, whether 'drugs of misuse' might have benefits to the user, to what extent penalties should reflect the harm caused to individuals and society and whether some controls do more harm than good… The European Court has made it clear that the pharmacological properties of a product must be demonstrated by national medicines agencies if a substance is to qualify as a medicinal product, and that the onus in cases of classification is on the medicines agencies to prove that a product has such an effect, not for the supplier to show that it does not."*. Leslie A. King – Former part-time advisor to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Lisbon, Portugal.

3.2 This Bill aims to address the recreational use of substances. Substances so consumed in general make no claims as to prevent, cure or treat any disease nor in terms of both limbs of the MHRA definitions (i.e. presentation and function) can be considered medicinal. This has legal precedence as has been demonstrated

under EU law with respect to electronic cigarettes and the MHRA's failed bid to classify the product and devices "medicinal".

3.3 The guiding principles of the ACDM includes that to *"Provide a proportionate response supported by the evidence base which also minimises unintended negative consequences including legitimate development of medicines and* ***other products****"*. The Bill is disproprtionate and many beneficial substances prohibited.

4. Nagoya Protocol

4.1 The EU Nagoya Protocol, now written into law (and the UK is a signatory), has at its core values Access Benefit Sharing (ABS), recognises the rights of traditional knowledge and to provide plant species trading protection. This protocol promotes the important development of hitherto unaccessible plant species for medicinal, functional foods and health and wellness *(et al)* applications, many of which will be prohibited.

4.2 The Canadian Governments Agriculture Department state *"Over 20,000 medicinal plants has been published and very likely a much larger number of the world's flowering plant species have been used medicinally. Sometimes the figure of 70,000 medicinal plant species is cited, but this includes many algae, fungi, and micro-organisms that are not really plants as the word is understood by botanists"*.

See: http://www.agr.gc.ca/eng/science-and-innovation/science-publications-and-resources/resources/canadian-medicinal-crops/introduction-to-medicinal-plants/?id=1300832855227#a2

4.3 In the letter of 2nd July 2015 the ACMD wrote *"the ACMD can envisage situations whereby the supplier of benign or beneficial substances could be prosecuted under the Bill"*. This prosecution also extends to import and export. The Bill as it stands is manifestly inappropriate to the objective of removing barriers to intra-state trade and thus contrary to the principle of proportionality with respect to this particular issue.

5. Cognitive Enhancers

Cognitive enhancers will be prohibitted.

5.1 *"One important set of concerns is that social or global inequality might be exacerbated by cognitive enhancement, further marginalizing the poor. In this context, it is necessary both to consider whether future cognitive enhancements would be expensive or relatively cheap (like caffeine) and to establish criteria whereby society might have an obligation to ensure universal access to enhancers. Access to enhancement, especially in education, may be a key element in enabling participation of developing countries in the global economy. Furthermore, enhancement might lead to dramatic social benefits* by reducing natural inequality and promoting social justice (Savulescu 2009*) . Widespread population level increases in cognitive ability could have profound social and economic benefits. Some studies estimate that a 3% population wide increase in IQ would reduce poverty rates by 25% (Weiss 1998), leading to an annual economic gain of US $165-195 billion and 1.2-1.5% GDP (Schwartz 1994; Salkever 1995)"*. The Oxford Centre for Neuroethics, University of Oxford

See: http://www.neuroethics.ox.ac.uk/research/area_1

October 2015

References:

1. Legal Classification of Novel Psychoactive Substances. Former part-time advisor to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Lisbon, Portugal An International Comparison *Leslie A. King*
2. Law Environment and Development Journal Volume 9/2: Traditional Knowledge and Benefit Sharing after the Nagoya Protocol: Three Cases from South Africa.
3. Functional foods: the Food and Drug Administration perspective1–3 Sharon Ross
4. Identifying emerging trends in recreational drug use; outcomes from the Psychonaut Web Mapping Project. FabrizionSchifano Paolo Deluca et al Progress in Neuro-Psychopharmacology & Biological Psychiatry. journal homepage: www.elsevier.com/locate/pnp
5. Novel psychoactive substances of interest for psychiatry. FABRIZIO SCHIFANO LAURA ORSOLINI et al. (World Psychiatry 2015;14:15–26)
6. SCIENTIFIC REPORT OF EFSA. Compendium of botanicals reported to contain naturally occuring substances of possible concern for human health when used in food and food supplements. European Food Safety Authority (EFSA), Parma, Italy.
7. World Health Organization: General Guidelines for Methodologies on Research and Evaluation of Traditional Medicine. WHO/EDM/TRM/2000.1
8. The challenge of new psychoactive substances. A Report from the Global SMART Programme March 2013. United Nations Office on Drugs and Crime.
9. EMCDDA–Europol 2014 Annual Report on the implementation of Council Decision 2005/387/JHA.
10. A review of plants used in divination in southern Africa and their psychoactive effects J. F. Sobiecki Department of Anthropology & Development Studies, University of Johannesburg.

11. Psychoactive plants and southern African hunter-gatherers: a review of the evidence. Peter Mitchell and Andrew Hudson (School of Archaeology, University of Oxford: correspondence – St Hugh's College, Oxford, UK.
12. Pharmacology and Treatments. Foresight Brain Science, Addiction and Drugs project Leslie Iversen, Kelly Morris, David Nutt.
13. 'Legal Highs' – novel and emerging psychoactive drugs: a chemical overview for the toxicologist SIMON GIBBONS. *Department of Pharmaceutical and Biological Chemistry, UCL School of Pharmacy, London, UK*.
14. Assessing African medicinal plants for efficacy and safety: pharmacological screening and toxicology C.W. Fennell, K.L. Lindsey et al. Journal of Ethno-Pharmacology. July 2004.
15. Psychoactive natural products: overview of recent developments. iKem BT, Budapest, Hungary. Ann Ist Super Sanita 2014 | Vol. 50, No. 1: 12-27
16. Neuroscience of psychoactive substance use and dependence WORLD HEALTH ORGANIZATION GENEVA

Written evidence submitted by Danny Diskin, the Inter Faith Alliance UK (PSB 12)

1. I am writing to suggest an amendment to the Psychoactive Substances Bill. I chair a charity called the Inter Faith Alliance, a member body of the Inter Faith Network for the UK, which is the official body that deals with Inter Faith matters in this country. My organization focuses on the persecution of religious minorities.

2. Last Monday, October 19th, the Parliament of the World's Religions met in Salt Lake City, and among the faiths presenting for the first time were the União de Vegetal (UDV) and Santo Daime. These are established faith communities with their roots in Brazil and an international congregation, and they use the Amazonian visionary brew ayahuasca as an essential part of their religious practice. Neither would use the pejorative term "psychoactive substance" for ayahuasca; they consider it to be a sacrament. In peer-reviewed tests, UDV members scored above average in tests of memory, recall, attention and verbal ability, and were found to be more optimistic, gregarious and confident than sibling controls (McKenna et al, 1999).

3. The Brazilian government contracted a team of doctors, social scientists and other academics and scientists to exhaustively investigate the communities and their sacrament for a two year period. The result was that legal protection was extended to the groups, which remains the case today (CONFEN;1986). The professors concluded that:

> *"Moral and ethical standards of behaviour, similar in every respect to those which exist and are recommended in our society, are observed within the various sects, at times in an even stricter manner. Respect for the law always appeared to be emphasized… The ritual use of the tea does not appear to be disruptive or to have adverse effects upon the social interactions of the various sects' followers. On the contrary, it appears to orient them towards seeking social contentment in an orderly and productive manner."* [my translation] (CONFEN; 1985)

4. Ayahuasca is considered "cultural patrimony" in Peru (National Directorial Resolution No, 836 2008), and its ritual use is also protected by law in several European countries and the USA, where the DEA was permanently *"enjoined from applying or enforcing any of the laws, regulations, and treaties that govern the legal importation and distribution of Schedule I substances for the purpose of prohibiting, preventing, unduly delaying, or otherwise interfering with Plaintiffs religious use of Daime"* (Meyer 2006)

5. Ayahuasca does not constitute a threat to public health at all, nor is it illegal, and nor should it be. In the USA and other countries there are controls to allow the importation and distribution of the sacrament, but an outright ban would be a clear breach of the European Convention on Human Rights, specifically:

> *Article 9: The right to freedom of thought conscience and religion*
>
> *Article 14: The right not to be discriminated against in relation to any of the rights in the European Convention*

6. In accordance with the articles of the European Convention, the Dutch High Court dismissed charges against Daime practitioners in 2007, noting that "the strictly regulated conditions in which use occurs are a safeguard against misuse" (Waterman, 2007).

7. There are UK citizens who are members of one or other group, and they cannot practice their faith as provided for by the European Convention because of the way the drug laws are managed in this country. Though it is not illegal, the legal situation is unclear. After initially indicating a response would be forthcoming in 6 months, the Home Office has delayed for four years in responding to the UDV's request for license to import, and they continue to delay. Two Santo Daime practitioners were arrested and put on bail for two and a half years, only to be denied the right to state their case in court because the Crown Prosecution Service stated in court they had no evidence to submit. One was a social worker, who incidentally set up one of the most successful centres for victims of domestic violence in the north of England, and she lost her job as a result of the legal proceedings.

8. For further details on the legal situation and persecution of Daime practitioners, I refer you to the annexed article by Danny Nemu in *The Psychedelic Policy Quagmire: Health, Law, Freedom, and Society* by (J. Harold Ellens and Thomas B. Roberts eds.)

9. The Prime Minister has said "We should stand up against persecution of Christians and other religious groups wherever and whenever we can" (Christian Post). If the government is to be faithful to this noble sentiment then the human rights of practitioners of these Christian ayahuasca religions must be considered, and an amendment to this Bill should be made to exclude ayahuasca for ritual purposes (with any reasonable conditions that the committee sees fit to impose). If the freedom of religion cannot be guaranteed, my charity will pursue this matter through the institution of the IFN.

October 2015

References:

Christian Post http://www.christianpost.com/news/david-cameron-says-britain-must-stand-up-against-global-christian-persecution-urges-increased-evangelism-117845/#ilkwSO1DTzwmPVbO.99

CONFEN, (1985). Relatório final das atividades desenvolvidas pelo Grupo de Trabalho (GT)

CONFEN, (1986). Resolução No. 06.

Meyer, M. (2006). Religious Freedom and United States Drug Laws: Notes on the UDV-USA Legal Case. Interdisciplinary Group for Psychoactive Studies. NEIP. Retrieved from www.neip.info/downloads/Matthew%20UDV-USA%20case.pdf

McKenna, D. et al. (1999). Pharmacokinetics of Hoasca alkaloids in healthy humans. Journal of Ethnopharmacology. 65(3), 243–256.

Waterman, D. (2007). Ayahuasca in Church; harmfulness of ayahuasca for public health; limitations on freedom of religion under art. 9.2 EHCR. Case Appeal to High Court LJN: AZ2497- Netherlands (2007) Rough translation from "Ayahuasca in [A] Kerk; schadelijkheid ayahuasca voor volksgezondheid; beperking vrijheid van godsdienst ex art. 9.2 EVRM".

Written evidence submitted by Sandra Heyward JP,
Cornwall Councillor for the Gover Division (PSB 13)

I am writing in support of the bill to prevent the legal highs from being sold openly on our high streets along with the paraphalia. Here in St Austell Cornwall, I have come across the results of their use as a Cornwall Councillor and a board member of a charity that deals with homelessness, people with chaotic lifestyles, drug addiction and alcoholism.

Please do not underestimate the dangers of these substances, with their unknown ingredients. Our local trading standards have taken samples from the shop in our town and tested, as soon as a banned substance is found it is taken off, taken back to the drawing board as it were, made up of different substances and these could be anything, re packaged in similar packaging and name and once again sold to all. These substances are very cheap compared with the normal illegal substances and the ease with which they are purchased makes them very easy to access.

The results of taking these substances have been brought to my notice, the most worrying thing being the hardened drug users are taking them and consequently in most cases with catastrophic effect. People have been found in a catatonic state, ambulances called, but the problem being the unknown ingredients of the substance taken, the mental health issues that also have resulted from the taking of these substances has been very visible causing serious problems and concerns with the supporting people who support these people through their addictions. In particular a case was reported to me that the persons mental health and general wellbeing was of great concern to all concerned, the person was eventually persuaded to go back to the normal methadone or heroin or cocaine usage, the result with the persons compliance, after a few weeks of abstinence of the so called legal highes, he was in a much better state particularly mentally.

So far there have been no deaths attributed to these, although I do know of the death of a drug user who towards the end of his life played with psychoactive substances bought over the counter, not using them as they were supposed to be used by smoking etc, but by injection this resulted in septasemia and ultimately his death. I am not saying that this was a direct result of taking these substances, however although a drug user of many years, this may have contributed to his untimely passing.

The shops that openly sell these in our towns are selling to anyone who comes through the door to buy. The police are at a loss as to what to do, I believe that in places like Exeter and Plymouth they have managed to closed the premises down through the use of the new Anti Social behaviour Orders.

I know that my local MP Steve Double also has an issue with this, in fact he went under cover and bought some himself.

This is something that our youngsters will try it being classed as legal and well within their purse, like cannibus, cheaper than alcohol but in this case with devastating effects.

I really hope that you will see fit to ban the open sale of these.

October 2015

Written evidence submitted by the International Center for Ethnobotanical Education, Research & Service (ICEERS Foundation) (PSB 14)

CONSIDERATIONS REGARDING THE PSYCHOACTIVE SUBSTANCES BILL

The ICEERS Foundation is an international charitable, non-profit organisation founded in the Netherlands with delegations in Spain and Uruguay dedicated to: 1) studying and promoting public policy based on scientific evidence and human rights; 2) scientific research into, and education on the effects, risks and potential benefits of ethnobotanicals used for centuries by indigenous societies in ceremonial practices that have nowadays become widespread in our globalised society; 3) the protection of the indigenous ethnobotanical practices and their environment.

Over the last years, a time in which drug policy approaches around the world have diversified greatly, our Foundation has been involved in drug policy around the world, particularly Europe and the Americas, through participation in different expert committees, working as consultants with governments, lecturing at international drug policy congresses, the development of technical reports, etc. The international perspective of our institution about this subject matter and our profound expertise in the area of the above mentioned ethnobotanicals stimulated us to do an in-depth reading of the proposed Psychoactive Substances Bill with our team and associated experts in the UK and around the world.

Considering that the proposed Bill has a direct implication on the phenomenon of the use of plant materials that fall within the area of expertise of our organisation, and since we share the goal of the United Kingdom's Government to work towards the protection of public health in a world where the use of psychoactive substances is widespread, in this letter we present some initial considerations we hope the House of Commons Public Bill Committee will take into account. We could go into different other areas of the proposed Bill, but for the sake of clarity and respecting the 3000 word limit, we have focussed on its impact on ethnobotanicals.

Since this subject matter and its dimensions of science, policy, health, human rights, culture, religion, and traditional medicine, is very complex and decisions regarding a Bill of this scope and importance of a similar level of complexity, we would like to offer oral, in-depth presentations of the world leading researchers and experts in this field to assure for the Committee to obtain a comprehensive view on this subject matter.

Meanwhile, we remain at your disposal for any additional information you may request.

1. Summary

The definitional section of the Bill considers a "psychoactive substance" any substance which (a) is capable of producing a psychoactive effect in a person who consumes it, and (b) is not an exempted substance (as described in section 3). The Bill states that 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." This definition brings up two issues:

1.1 It implies that for those psychoactive substances falling outside of the Misuse of Drugs Act 1971, the inclusion criteria for a psychoactive substance in the Psychoactive Substances Bill will no longer be based on the potential harm this substance can cause to individual or public health, but merely the capacity to affect the human central nervous system. Therefore this approach entails profound challenges to fundamental rights, along with being unpredictable, and thus potentially breaching the principle of legal certainty, fundamental to the rule of law.

1.2 The extremely broad definition of psychoactive substances in the new Bill has a direct impact of criminalisation of cultural, religious, personal development and therapeutic practices involving the use of several ethnobotanicals.

Examples of these ethnobotanicals are ayahuasca, a tea made of the Amazonian vine Banisteriopsis caapi often boiled together with plants such as Psychotria viridis, utilised for centuries by indigenous societies of the upper Amazon region as a traditional medicine with a central role to safeguard the well-being of the individual and survival of the community, a practice passed on orally from generation to generation. Furthermore, religious institutions have used ayahuasca as a sacrament for nearly a century. Another example is Peyote (Lophophora williamsii), a desert cactus used by the Wixárika indigenous peoples of Mexico and the Native American Church in North America for similar purposes. Other examples are the different species of the cactus San Pedro (e.g. Echinopsis pachanoi), stemming from the traditions of the Andes mountains in Peru and Bolivia and Tabernanthe iboga, used for millennia in rites of passage in Central West Africa by the Bwiti culture and recognised as a prescription medication in the treatment of addiction in New Zealand and used under compassionate use programs in countries like Brazil due to its unique effects on chemical dependency and opioid withdrawal.

During the last decades practices involving the use of these ethnobotanicals have spread beyond their traditional contexts, through the interconnection of societies in our globalised world. The religions incorporating their use as a sacrament (groups like Santo Daime or União do Vegetal) have settled in an increasing number of countries, along with indigenous healers as well as occidental practitioners who often are direct disciples schooled in the indigenous traditions.

2. Ethnobotanicals' incompatibility with the New Psychoactive Substances (NPS) and Drug of Abuse framework

Unlike the New Psychoactive Substances such as Research Chemicals, Legal Highs, Party Pills or Spice – which the Psychoactive Substances Bill was ostensibly designed to address – the practices involving the utilisation of these ethnobotanicals:

2.1 resist traditional conceptualisations and categorisations of illegal drug "abuse" as defined by the dominant international drug control regime. Equating the ritualistic, religious and therapeutic/developmental uses of these plants to the problematic uses of controlled drugs like opiates, cocaine or methamphetamine—or treating the traditional shamans, their disciples and the church leaders as "drug traffickers" involved in illegal markets—is misinformed, not based on evidence, and contributes to confusion about the human-rights based legitimacy of these practices.

2.2 have no reported recreational use and are utilised in carefully constructed ceremonial settings in certain indigenous traditions, or in religious ceremonies. For a significant population in Europe and other parts of the world, the utilisation of these ethnobotanicals in ceremonial contexts has become a means to promote their spiritual and personal development, overcome suffering and deepen their relationship with themselves, their families, their communities and their environment. Practices involving the use of these materials can be compared with practices such as religious group practice, vipassana meditation, holotropic breathwork, personal growth retreats, etc. rather than with the isolated purchase and intake of psychotropic substances as happens with the NPS.

2.3 have a large body of scientific research accumulated over the last two decades offering a thorough understanding of their effects, risks and potential benefits. As an example, our Foundation developed a technical report on ayahuasca, written by the worlds most renowned bio-medical scientists who have researched this traditional plant-based tea for the last fifteen years in clinical and observational research. The original report is attached in pdf to this letter (annex 2). An excerpt from the report says:

Ayahuasca, whether administered in a laboratory context or ingested in a traditional context, produced, as evaluated with questionnaires to measure its subjective effects, transitory modifications in emotion, thought content, perception and somatic sensations (Grob et al.1996; Riba et al, 2001, 2003; Dos Santos et al, 2011, 2012) even to the point of being able to carry out complex tests of cognitive performance (Bouso et al., 2013).

Studies have been published in which neuroimaging techniques have been used in order to determine the cerebral areas that activate after the ingestion of ayahuasca (Riba et al., 2006; de Araujo et al., 2011). Both studies show that ayahuasca activates the cortical and paralimbic areas. This overall pattern of activation may be at the base of the introspective processes, memories of past experiences charged with emotional connotations, and complex cognitive processes, which are such prototypical experiences with ayahuasca (Shanon, 2002). These brain and cognitive phenomena may explain why ayahuasca is considered a potential psychotherapeutic ethnobotanical tool (Cavnar & Labate, 2013). Indeed, one study found that, under the effects, ayahuasca reduced the scores of panic and hopelessness in ritual users (Santos et al. , 2007). A recent study found antidepressant effects of ayahuasca in patients with major depression (Osório et al., 2015).

Some side effects after the administration of ayahuasca in the laboratory have been described, but they are localised and isolated (Riba et al., 2001; Riba & Barbanoj, 2005, 2006; dos Santos et al., 2011, 2012). In the general blood analyses carried out before and after on volunteers in clinical trials, no changes in hematological and biochemical functions were observed (Riba et al., 2001; Riba & Barbanoj, 2005). Cases in which psychiatric effects have appeared in the context of ayahuasca ritual use have also been documented, although their occurrence is rare (Lima & Tofoli , 2011). This suggests that ayahuasca, in principle, is contraindicated for people with serious psychiatric disorders.

The report concludes:

In conclusion, in the literature on the short-term, medium-term, and long-term effects it is shown that ayahuasca is a substance that is physiologically and psychologically acceptably safe (McKenna, 2004; Gable, 2007; Bouso & Riba, 2011; Barbosa et al., 2012; dos Santos, 2013).

2.4 far from generating tolerance and having potential for abuse, are used as tools in the treatment of chemical dependency; For example in the case of ayahuasca, scientific evidence demonstrates the following: As far as its potential for abuse, in the neuroimaging studies cited earlier, no active areas have been found in the reward centres. Rather, in this sense, the existing evidence indicates that ayahuasca can be a useful tool in the treatment of addictions (Bouso & Riba, 2013). In fact, there are various clinics in South America that specialise in the treatment of drug addiction, the most important of these being Takiwasi, in Peru (Mabit, 2007). The first study carried out in humans showed how many participants in ritual ayahuasca sessions had abandoned the consumption of alcohol and other drugs, such as cocaine, as a consequence of their participation

in the rituals (Grob et al., 1996). This finding has been found again in later studies (Halpern et al., 2008). A recent study, in which 127 users of ayahuasca in traditional contexts were evaluated and compared with 115 controls, no evidence was found of criteria of addiction according to the biopsychosocial indicators evaluated with the ASI (Addiction Severity Index) nor was it found that the continued use of ayahuasca was associated with the noxious biopsychosocial effects occasioned by drugs of abuse. Rather, the groups of ayahuasca users consumed less alcohol and other drugs than the control subjects and these high scores on the biopsychosocial indicators of addiction were replicated a year later, confirming the consistency of the results (Fábregas et al., 2010). One study, carried out with adolescents belonging to a Brazilian ayahuasca church, found that they consumed significantly less alcohol than the controls, concluding that ayahuasca, far from producing abuse or dependency, for these adolescents was a protecting factor against the consumption of alcohol (Doering-Silveira et al., 2005a).

Other studies have found lower indices of psychopathology and greater psychosocial integration in habitual users of ayahuasca (Bouso et al., 2012; Halpern et al., 2008) and two other studies have found no neuropsychological alterations, evaluated through tests of neuropsychological performance, in habitual users of ayahuasca after 10 to 15 years of continuous consumption (Grob et al., 1996; Bouso et al., 2012).

In the case of Tabernanthe iboga (and its principal alkaloid ibogaine), scientific evidence also demonstrates it has no potential of abuse and is even capable of eliminating opioid withdrawal.

Animal studies have found consistent decreases in drug self-administration after ingesting this alkaloid. Preclinical studies show that iboga alkaloids produce significant attenuation of opioid withdrawal signs in different animal species, and reduce self-administration of cocaine, amphetamine, methamphetamine, alcohol, and nicotine (Maciulaitis et al., 2008). In humans, one paper describing 33 treatments for opioid dependence showed complete resolution of withdrawal signs in 29 (88%) (Alper et al., 1999). An open label prospective study showed resolution of withdrawal signs and symptoms at 24 hours (Mash et al., 2000). No controlled clinical trials have been conducted to assess clinical efficacy.

Anecdotal evidence suggests that a single administration of ibogaine is capable of alleviating drug craving and relapse of drug use for a period of time of weeks to months. The only follow-up study done until now showed that 67% of the 21 participants ended the use of either all or the primary and secondary drugs of abuse after ibogaine. Thirty-three percent of them did not end the use of their primary or secondary drugs of abuse, but decreased the amount of drug use. The overall average drug free period (from primary and secondary drugs of abuse) of all participants was 21.8 months. The median was, however, lower – 6 months. (Bastiaans E., 2004).

Also research into peyote in the Native American Church shows a lack of abuse potential and event a beneficial effect reducing alcohol use while not causing any psychopathology (Albaugh et al., 1974; Pascarosa & Futterman, 1976; Halpern et al., 2005).

2.5 count on an extensive history of human use; The oldest traces of possible use of e.g. ayahuasca have been found in the Azapa desert in the north of Chile, where residues of harmine have been found in hair analyzed from mummies from the Tiwanaku period between 500 and 1000 C.E. In the Azapa valley Banisteriopsis caapi does not grow, nor does any other harmine-containing plant, which suggests an intense commerce between the ancient populations of Chile and the Amazonian peoples; probably the former provided the latter with salt and the latter provided the former with medicines, among them Ayahuasca (Ogaide et al, 2009). In the case of Tabernanthe iboga, its use probably dates back millennia under the Pygmees in Gabon. In 1864 the first description of T.iboga was published about the specimen in France and in 1885 its ceremonial use was described in a first publication.

2.6 are not under international control according to the International Narcotics Control Board, even though some of them naturally contain small amounts of alkaloids that are included in the 1971 Convention on Psychotropic Substances (and under the Misuse of Drugs Act 1971). In a letter to ICEERS for which we did an inquiry for a court case in Chile in 2010, the INCB confirmed that ‘No plant or concoction of plants that contain DMT are under international control’, meaning ayahuasca is clearly distinguished from pure, chemically extracted psychotropes present in small amounts in the plants. The same counts for the other plants of traditional use.

2.7 some of them are protected under the Freedom of Religion Act or as Cultural Patrimony. For example in 2008 Ayahuasca was declared Cultural Patrimony of Peru, due to its ancestral use as a traditional medicine (Instituto Nacional de Cultura, 2008) and its use for religious purposes is firmly established and legalized in Brazil (Labate et al., 2009). The religious use of ayahuasca on the part of certain churches is also legally protected and regulated in Holland, Canada, and the United States and the churches in which ayahuasca is considered a sacrament and is used for that purpose have expanded internationally into numerous European, American and Asian countries (Labate et al., 2009; Labate & Jungaberle, 2011). In 2000, the former president of Gabon, Omar Bongo, declared Tabernante iboga a “cultural heritage strategic reserve” and is since 2012 also protected as a plant species under the Nagoya protocol. In Slovenia there is an officially established iboga church (Sacrament of Transition). The Native American Church was officially established in the US in 1918, protecting the religious use of peyote as a sacrament with an estimated 250,000 adherents currently.

3. Recommendations

3.1 We firmly believe that control measures that prohibit ceremonial practices involving the category of ethnobotanicals we described here as if they were NPS threaten the fundamental and universal rights to freedom of religion and thought , the fundamental right of every human being to achieve the highest attainable standard of health enshrined in the World Health Organisation (WHO) Constitution, and the freedom to choose ways and tools that facilitate healthy personal growth and spiritual development, increased quality of life and well-being, individual flourishing, social bonding and family life.

3.2 The respect for these fundamental rights necessarily involves policy approaches that allow for access to and use of these ethnobotanicals within their contexts of use as described earlier. Therefore, if passed, the Psychoactive Substance Bill will open the door for the prohibition of these practices without taking into account 1) the important cultural and religious value of their use within ceremonial contexts, whose benefits for individuals and communities have been historically documented; 2) the scientific evidence regarding their acceptable safety profile when utilised in responsible and controlled environments, and the evidence regarding their potential to improve health, quality of life and well-being; 3) political precedents in other countries regarding regulatory approaches towards the use of these ethnobotanicals in religious practices, as prescription medication or cultural heritage.

3.3 Due to the reasons discussed above, we ask for the consideration of the House of Commons Public Bill Committee which will exam the Psychoactive Substances Bill 2015-2016 to consider the following amendment:

To add within the category of "Exempted substances": Ethnobotanicals that contain psychoactive alkaloids, and their traditional concoctions or preparations, that have a long history of ceremonial uses in different parts of the world, and have known neuropharmacological effects, risks and potential benefits due to extensive scientific research (pre-clinical, clinical or observational). Examples of these ethnobotanicals are: Banisteriopsis caapi, Psicotria viridis, Diplopterys cabrerana, Mimosa hostilis, Tabernante iboga, Echinopsis pachanoi, Trichocereus peruvianus, Lophophora williamsii, etc.

October 2015

References for the scientific evidence

Albaugh, B. J., & Anderson, P. O.,1974. Peyote in the treatment of alcoholism among American Indians. American Journal of Psychiatry, 131(11), 1247-1250.

Alper, KR, Lotsof, HS, Frenken, GM, Luciano, DJ, Bastiaans, J. 1999. Treatment of acute opioid withdrawal with ibogaine. Am J Addict, 8: 234–242.

Bastiaans, E., 2004. Life after ibogaine: an exploratory study of the long-term effects of ibogaine treatment on drug addicts. Doctorandus thesis. Vrije Universiteit Amsterdam, Faculty of Medicine. URL: http://www.ibogaine.org/ibogaine udi bastiaans.pdf (accessed 11.08.07).

Bouso, J.C. & Riba, J. 2011. An overview of the literature on the pharmacology and neuropsychiatric long term effects of ayahuasca. In: R.G. dos Santos (Ed.). The Ethnopharmacology of Ayahuasca. Trivandrum: Transworld Research Network. http://www.trnres.com/ebook/uploads/rafael/T_12998350813%20Rafael.pdf.

Bouso, J.C.; González, D.; Fondevila, S.; Cutchet, M.; Fernández, X.; Barbosa, P.C.R.; Alcázar-Córcoles, M.Á.; Araújo, W.S.; Barbanoj, M.J.; Fábregas, J.M. & Riba, J. 2012. Personality, psychopathology, life attitudes and neuropsychological performance among ritual users of ayahuasca: A longitudinal study. PLOS ONE, 7 (8): e42421.

Bouso, J.C.; Fábregas, J.M.; Antonijoan, R.M.; Rodríguez-Fornells, A. & Riba, J. 2013. Acute effects of ayahuasca on neuropsychological performance: differences in executive function between experienced and occasional users. Psychopharmacology. doi: 10.1007/s00213-013-3167-9.

de Araujo, D.B.; Ribeiro, S.; Cecchi, G.A.; Carvalho, F.M.; Sanchez, T.A.; Pinto, J.P.; de Martinis, B.S.; Crippa, J.A.; Hallak, J.E. & Santos, A.C. 2011. Seeing with the eyes shut: Neural basis of enhanced imagery following ayahuasca ingestion. Human Brain Mapping 33 (11): 2550-60.

Doering-Silveira, E.; Grob, C.S.; Dobkin de Rios, M.; Lopez, E.; Alonso, L.K.; Tacla, C. & da Silveira, D.X. 2005a. Report on psychoactive drug use among adolescents using ayahuasca within a religious context. Journal of Psychoactive Drugs, 37 (2): 141-44.

dos Santos, R.G. 2011. Ayahuasca: Physiological and subjective effects, comparison with d-amphetamine, and repeated dose assessment. Doctoral thesis, Universitat Autònoma de Barcelona, Barcelona, Spain. http://www.tdx.cat/handle/10803/83979.

dos Santos, R.G. 2013a. Safety and side effects of ayahuasca in humans – An overview focusing on developmental toxicology. Journal of Psychoactive Drugs, 45 (1): 68-78. 2013.

dos Santos, R.G.; Valle, M.; Bouso, J.C.; Nomdedéu, J.F.; Rodríguez-Espinosa, J.; McIlhenny, E.H.; Barker, S.A.; Barbanoj, M.J. & Riba, J. 2011. Autonomic, neuroendocrine and immunological effects of ayahuasca. A comparative study with d-amphetamine. Journal of Clinical Psychopharmacology 31 (6): 717-26.

dos Santos, R.G.; Grasa, E.; Valle, M.; Ballester, M.R.; Bouso, J.C.; Nomdedéu, J.F.; Homs, R.; Barbanoj, M.J. & Riba, J. 2012. Pharmacology of ayahuasca administered in two repeated doses. Psychopharmacology, 219 (4): 1039-53.

Fábregas, J.M.; González, D.; Fondevila, S.; Cutchet, M.; Fernández, X.; Barbosa, P.C.; Alcázar-Córcoles, M.Á.; Barbanoj, M.J.; Riba, J. & Bouso, J.C. 2010. Assessment of addiction severity among ritual users of ayahuasca. Drug and Alcohol Dependence, 111 (3): 257-61.

Grob, C.S.; McKenna, D.J.; Callaway, J.C.; Brito, G.S.; Neves, E.S.; Oberlaender, G.; Saide, O.L.; Labigalini, E.; Tacla, C.; Miranda, C.T.; Strassman, R.J. & Boone, K.B. 1996. Human psychopharmacology of hoasca, a plant hallucinogen used in ritual context in Brazil. Journal of Nervous and Mental Disease, 184 (2): 86-94.

Halpern, J. H., Sherwood, A. R., Hudson, J. I., Yurgelun-Todd, D., & Pope, H. G., 2005. Psychological and cognitive effects of long-term peyote use among Native Americans. Biological psychiatry, 58(8), 624-631.

Instituto Nacional de Cultura. 2008. Declaración Patrimonio Cultural de la nación a los conocimientos y usos tradicionales de la ayahuasca practicados por comunidades nativas amazónicas. Resolución Directoral Nacional, no. 836. Lima, Peru.

Labate, B.C. & Jungaberle, H. (Eds.). 2011. The Internationalization of Ayahuasca. Zurich/Berlin: Lit Verlag.

Labate, B.C. & Cavnar, C. (Eds.). 2013. The Therapeutic Use of Ayahuasca. Berlin/Heidelberg: Springer-Verlag.

Labate, B.C.; Rose, I.S. & dos Santos, R.G. 2009. Ayahuasca Religions: A Comprehensive Bibliography and Critical Essays. Santa Cruz, CA: Multidisciplinary Association for Psychedelic Studies.

Lima F.A.S. & Tófoli, L.F. 2011. An epidemiological surveillance system by the UDV: mental health recommendations concerning the religious use of hoasca. In: B.C. Labate & H. Jungaberle (Eds.). The Internationalization of Ayahuasca. Zurich/Berlin: Lit Verlag.

Mabit, J. 2007. Ayahuasca in the treatment of addictions. In:. M.J Winkelman & T. B. Roberts (Eds.). Psychedelic Medicine: New Evidence for Hallucinogenic Substances as Treatments, vol. 2. Westport: Praeger.

Maciulaitis R, Kontrimaviciute V, Bressolle FMM, Briedis V. 2008. Ibogaine, an anti-addictive drug: pharmacology and time to go further in development. A narrative review. Hum Exp Toxicol, 27(3):181–94.

Mash DC, Kovera CA, Pablo J, et al. 2000. Ibogaine: complex pharmacokinetics,concerns for safety, and preliminary efficacy measures. Ann N Y Acad Sci, 914:394–401.

McKenna, D.J. 2004. Clinical investigations of the therapeutic potential of ayahuasca: rationale and regulatory challenges. Pharmacology and Therapeutics, 102 (2): 111-29.

Ogalde, J.P.; Arriaza, B.T. & Soto, E.C. 2009. Identification of psychoactive alkaloids in ancient Andean human hair by gas chromatography/mass spectrometry. Journal of Archaeological Science, 36 (2): 467-72.

Osório, F.L.; de Macedo, L.R.H.; de Sousa, J.P.M.; Pinto, J.P.; Quevedo, J.; Crippa, J.A.S. & Jaime Eduardo C. Hallak, J.E.C. 2011. The therapeutic potential of harmine and ayahuasca in depression: evidence from exploratory animal and human studies.

Pascarosa, P., & Futterman, S.,1976. Ethnopsychedelic therapy for alcoholics: Observations in the peyote ritual of the Native American Church. Journal of psychoactive drugs, 8(3), 215-221.

Riba, J. 2003. Human pharmacology of Ayahuasca. Doctoral thesis, Universitat Autònoma de Barcelona, Barcelona, Spain. http://www.tdx.cat/handle/10803/5378.

Riba, J. & Barbanoj, M.J. 2005. Bringing ayahuasca to the clinical research laboratory. Journal of Psychoactive Drugs, 37 (2): 219-30.

Riba, J. & Barbanoj, M.J. 2006. Ayahuasca. In: J.C. Peris; J.C. Zurián; G.C. Martínez & G.R. Valladolid (Eds.) Tratado SET de Transtornos Adictivos. Madrid: Ed. Médica Panamericana.

Riba, J.; Rodríguez-Fornells, A.; Urbano, G.; Morte, A.; Antonijoan, R.; Montero, M.; Callaway, J.C. & Barbanoj, M.J. 2001. Subjective effects and tolerability of the South American psychoactive beverage ayahuasca in healthy volunteers. Psychopharmacology, 154 (1): 85-95.

Riba, J.; Valle, M.; Urbano, G.; Yritia, M.; Morte, A. & Barbanoj, M.J. 2003. Human pharmacology of ayahuasca: subjective and cardiovascular effects, monoamine metabolite excretion, and pharmacokinetics. Journal of Pharmacology and Experimental Therapeutics, 306 (1): 73-83.

Riba, J.; Romero, S.; Grasa, E.; Mena, E.; Carrió, I. & Barbanoj, M.J. 2006. Increased frontal and paralimbic activation following ayahuasca, the pan-amazonian inebriant. Psychopharmacology, 186 (1): 93-8.

Shanon, B. 2002. The Antipodes of the Mind: Charting the Phenomenology of the Ayahuasca Experience. Oxford/New York: Oxford University Press.

Written evidence submitted by Hampshire County Council Trading Standards Service (PSB 15)

1. Background

1.1 Hampshire County Council Trading Standards Service is a service provided by the local authority that is tasked with the enforcement of a wide range of legislation aimed at protecting the consumer as a whole whilst maintaining a fair trading environment.

1.2 The Trading Standards Service therefore aims to promote and protect the success of a modern vibrant economy and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business, and targeting rogue traders.

1.3 Hampshire County Council Trading Standards Services provides such services in a jurisdictional area with in excess of 1.3 million residents and in excess of 51,000 VAT registered businesses.

2. Comments on Psychoactive Substances Bill and Proposed Amendments

2.1 The Bill as currently drafted places the emphasis of enforcement squarely onto the composition of psychoactive substances. Simply put, the product must be a psychoactive substance, as defined in Clause 2, in order for the Bill to apply.

2.2 Clause 2.2 indicates that the product must either stimulate, or depress a person's central nervous system and thereby affect their mental functioning or emotional state in order to be considered to be a 'psychoactive substance'.

2.3 In order to determine, to the criminal evidence standard, that a product is a psychoactive substance it will be necessary to both determine the chemical composition of each product and the harm it could subsequently cause to the individual. This is a two step process that will be both difficult, and costly, to enforce.

2.4 In 2012-2013 Hampshire County Council Trading Standards undertook testing of a small number of psychoactive substances obtained from a single retail outlet in Hampshire. The testing initially consisted of chemical analysis at a laboratory within Hampshire to determine composition, with the results being reviewed by a leading, and nationally recognised, clinical toxicologist.

2.5 This single exercise took many months and the cost was in excess of £6,000. The results indicated that whilst it was a relatively straightforward matter to determine chemical composition, it was more difficult to determine the effect on the human physiology due to a lack of clinical trials; especially when anecdotal evidence would indicate that users would be unlikely to take such products in isolation. Such products often being used in conjunction with alcohol and controlled drugs.

2.6 It is the view of Hampshire County Council Trading Standards that enforcement of this Bill could be made more practical; quicker and cost effective by amending Clause 5 in respect of the proposed offence for 'supplying, etc' a psychoactive substance.

2.7 A proposed amendment to this Clause, would be:

5 – Supplying, or offering to supply, a psychoactive substance[, or a substance purporting to be or likely to be mistaken for a psychoactive substance]

(1) A person commits an offence if—

(a) the person intentionally supplies[, offers or exposes for supply] a substance to another person,

(b) the substance is a psychoactive substance [or a substance purporting to be or likely to be mistaken for a psychoactive substance],

(c) the person knows or suspects, or ought to know or suspect, that the substance is a psychoactive substance [or a substance purporting to be or likely to be mistaken for a psychoactive substance], and

(d) the person knows, or is reckless as to whether, the psychoactive substance, [or a substance purporting to be or likely to be mistaken for a psychoactive substance], is likely to be consumed by the person to whom it is supplied, or by some other person, for its psychoactive effects [whether these effects are realisable or not].

2.8 The effect of this amendment would mean that in relation to the supply chain, an offence would still be committed if there was a supply, offer to supply, etc., of a product that the seller knew or suspected, or ought to have known or suspected, was *purporting* to be a psychoactive substance or *likely to be mistaken* for such a product.

2.9 The practical and effective aspect of enforcement stems from a reduction in the amount of testing needing to be undertaken by enforcement authorities, as the main evidence of any offence would focus on the circumstances in which it was being sold instead. What did the seller think they were selling? What did the consumer think they were buying?

2.10 The Bill, as currently drafted, is not clear in terms of which body would have enforcement responsibility. Instead, it defines who may enforce the proposed legislation by reference to individual powers of enforcement. For example, Clause 35 (Power to Stop and Search Persons) is only available to the police or customs officials.

Clause 38 (Power to Enter and Search Premises) is available to 'a relevant enforcement officer' which is defined as being the police, customs officials and officers of local authorities.

2.11 It is the view of this Service that the Bill would benefit from a clear indication as to which authorities would have a duty of enforcement and, whether this relates to the entirety of the Bill or of individual clauses. Such an indication would lead to consistent enforcement practices being adopted.

2.12 It is the view of this Service that the Bill would also benefit from further consideration being given to the proposed enforcement powers that would be available to local authorities, in order that effective enforcement can occur. Specifically around the power to enter and search premises (Clause 38); examination (Clause 40); production of documents (Clause 40).

2.13 The powers as currently drafted in Clause 38; Clause 40 and Clause 41 would only be available to Trading Standards Officers having obtained a search warrant from a Justice of the Peace.

2.14 The power of seizure (Clause 42) would be available to Trading Standards Officers who are on premises for the purpose of a search (Clause 38) or *otherwise lawfully on premises*.

2.15 It is the view of this Service that in order for Trading Standards Officers to be able to properly determine whether or not a product should be seized (Clause 42), it may be necessary to both examine the product and any documentation in the possession of the occupier. If Trading Standards Officers were lawfully on premises, but not pursuant to a search under Clause 38, it is our view that there is a risk they may not be able to lawfully seize such products which may be required as evidence. Should they subsequently leave the premises and apply for a search warrant to enter in accordance with Clause 38, the relevant evidence may no longer be on the premises.

2.16 It is the view of this Service that a routine power of entry, to premises not wholly or mainly occupied as a dwelling place, would also be necessary in order to ensure effective enforcement. The existing Clause 38 should be amended to clarify that it relates to premises wholly or mainly occupied as a dwelling place and/or premises where entry is likely to be refused. This would enable visits to outlets such as retail shops and warehouses to occur without having to seek an entry warrant.

2.17 Furthermore, Clauses 40 and 41 should be amended to extend the power of examination and production of documents to such routine entries. This would mean that in the scenario given in paragraph 2.15 above, Trading Standards Officers will have exercised a routine power of entry; be able to examine products and look at relevant documents in order to determine whether or not it is proportionate to exercise a power of seizure of relevant evidence.

3. Conclusion

3.1 In conclusion, Hampshire County Council Trading Standards Service would recommend that the Committee consider:

(i) Clear indication of enforcement agency responsibility

(ii) Amendment of the proposed Clause 5 offence to include products purporting to be, or likely to be mistaken for, psychoactive substances

(iii) Inclusion of a 'routine power of entry' to premises not wholly or mainly used as a dwelling place

(iv) Amendment of Clause 38 to clarify it applies to premises wholly or mainly used a dwelling place and/or premises where entry is likely to be refused

(v) Amendment of Clauses 40 and 41 to extend their availability to entries to premises not under warrant.

October 2015

Written evidence submitted by the Drugs, Alcohol and Justice Cross-Party Parliamentary Group (PSB 16)

Chair: Lord David Ramsbotham (Crossbench)

A Parliamentary Group which acts as an interface for professional providers of drug and alcohol treatment with parliamentarians of all parties who share an interest in these issues.

1. We are concerned at the haste with which the Bill has been drafted and considered, which could lead to serious unintended consequences. In our view, as currently drafted and presented, it lacks clarity.

2. We would strongly recommend therefore, that–

— Careful consideration is given to the submissions provided by *Release* and *Transform*

— The advice provided by the Advisory Council on the Misuse of Drugs (ACMD), regarding the scope of the proposed legislation and definitions of substances, is adhered to

— The Bill is scrutinised to ensure compliance with Lord Bingham's Eight Principles of the Rule of Law –

— The law must be accessible and so far as possible, intelligible, clear and predictable.
— Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.
— The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.
— Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.
— The law must afford adequate protection of fundamental human rights.
— Means must be provided for resolving without prohibitive cost or inordinate delay, bone fide civil disputes which the parties themselves are unable to resolve.
— Adjudicative procedures provided by the state should be fair.
— The rule of law requires compliance by the state with its obligations in international law as in national law.

October 2015

Written evidence submitted by Dr Ornella Corazza and Dr Andres Roman Urrestarazu (PSB 17)

Summary

This evidence argues about the importance to give further consideration to Performance and Image Enhancing Drugs (PIEDs) in the Bill. It presents some preliminary results on the rapid diffusion and motivations behind PIEDs use in society, which is alarming. It argues that more attention should be given in the Bill to the similarities between Novel Psychoactive Substances (NPSs) and PIEDs in terms of marketing, access, consumption and distribution, while encouraging research into their safety and toxicity. The provided evidence will also refer to the necessity to strengthen prevention, harm reduction and public health safety within an international context. In conclusion, it reflects on the need to cross country harmonization of the Bill to include EU regulations in order to avoid parallel imports of psychoactive substances from other EU Member States.

Authors

Ornella Corazza, PhD, Reader in Substance Addictions and Behaviours, University of Hertfordshire, Hatfield, United Kingdom.

Andres Roman-Urrestarazu, MD, PhD, Research Officer in Health Economics and Health Policy, London School of Economics and Political Science, LSE Health and Social Care, London, United Kingdom; Director of Studies in Psychology and Behavioral Science Trinity Hall, University of Cambridge. Cambridge, United Kingdom.

To the Members of the House of Commons Public Bill Committee

Dear Madam/Sir,

In response to your invitation, we welcome the opportunity to provide evidence in regards to New Psychoactive Substances (NPSs). The recent appearance on the illicit drug market of a variety of NPSs, misleadingly as 'legal highs', combined with the ability of the Internet to act as a marketplace and disseminate information quickly, represents a challenge for public health, drug policies, service provision and public safety (Griffith et al 2013; Corazza et al. 2013). NPSs, an umbrella term for products intended to mimic the psychoactive effects of controlled drugs, has been formally defined by the European Union as "a new narcotic or psychotropic drug, in pure form or in a preparation, that is not scheduled under the Single Convention on Narcotic Drugs of 1961 or the Convention on Psychotropic Substances of 1971, but which may pose a public health threat comparable to that posed by substances listed in those conventions (Council of the European Union decision 2005/387/JHA)". As also outlined in the Bill, the 'legal highs' market is characterized by the speed with which suppliers circumvent drug controls by offering new alternatives to restricted products and advertise them with captivating and sophisticated online marketing strategies (as "air fresheners", "herbal incenses", "bath salts", "plant fertilizers", "collectors' items", etc.), using usually web based platforms for ordering them while at the same time offering distribution chains of their products that link to a mail distribution system. The term 'legal high' has also been crafted as a dubious and successful marketing instrument in and of itself, as it implies that these substances are not as dangerous as controlled drugs, thus boosting their popularity and sales among certain groups of people that, as we have observed, have very particular characteristics and do not fit the profile of the usual illegal drug user (ACMD 2011).

1. The diffusion of Performance and Image Enhancing Drugs in society

According to our most recent studies (e.g. Corazza et al 2014; Bersani et al 2015; Cinosi et al 2015), the latest development of this fast growing phenomenon, is the diffusion of websites selling a wide range of Performance and Image Enhancing Drugs (PIEDs), including medicine without prescriptions or medical supervision. Such a

new substance-use trend could be linked to the change of legislation on NPSs in various countries, which has made this market even more profitable for illicit retailers and manufacturers, and we believe that it deserves mention in the Bill. PIEDs, sometimes classifiable as a sub-group of NPSs, is an umbrella term to indicate a wide range of products, which have the apparent potential to improve human abilities and attributes. PIEDs include: (a) anabolic drugs used to enhance structure and function of muscles; (b) drugs taken for weight-loss purposes; (c) Image-enhancing drugs taken to modify ageing processes, beauty and cosmetic appearance; (d) 'Sex drugs' and aphrodisiacs; (e) cognitive enhancers; (f) drugs taken to improve mood and social behaviours.

The main problem about this is that although PIEDs share some similarities with NPSs, they usually attract the attention of individuals who do not necessarily perceive themselves as 'drug users' but are vulnerable to cultural/media pressures to improve their bodies and minds and find a quick 'fix' to look and feel better. PIEDs have been marketed in the same way as NPSs, using the same channels and distribution chains that we have described, but their market is far more extended as targeting the wider population.

2. Preliminary evidence on the access, motivations and risks associated with PIEDs use

In order to provide a better understanding on the availability, motivations, and possible risks associated with the diffusion of PIEDs in society, we initiated "Keep fit", a cross-sectional study on lifestyle, body-image and the use of PIEDs as amongst an adult population who engage in physical activities in collaboration with colleagues based in four different countries across the EU.

More information on the project can be found here: http://humanenhancementdrugs.org/.

Although the study is ongoing, we are able to share here for the first time some preliminary data, which mainly reflect the UK situation. So far we have obtained 433 responses. 51% of the sample was male and 49% female. Participants were mainly engaging with walking (69%), jogging and running (47%) and weight-lifting (69%). 83% claimed to care a lot about their physical appearances. 44% followed a diet; 31% used products to lose weight, while 47% used products to reach their fitness goals. The Internet played an important part in the supply and information gathering about the best products to buy. Approximately, 40% of participants who used products purchased them online, and 43% discovered them through online fitness fora/blogs. The most common products bought for weight loss were proteins (58%), herbal products (34%), such as teas/infusions, Guarana, Ginseng. Interestingly, we also recorded the alarming usage of amphetamine (17%), thyroid hormones (17%) and diuretics (15%). Additional studies from Internet fora, allowed us to provide evidence for cannabis use (Bersani et al 2015). 36% of the participants felt often bothered by feeling down, depressed, or hopeless during the past month; 28% experienced side-effects such as skin problems, change in mood, headache, diarrhoea, digestion problems, fast heart rate, irritability, sweating, among others. Overall, from this preliminary analysis emerges a tendency to use PIEDs among the studied population; the "perceived" reliability of the Internet as a source of information; the choice of the Internet as the favorite "market place" to buy PIEDs; the self-reported emergence of side-effects from PIEDs use; a high level of concern for physical appearance.

Based on this preliminary evidence, one should address the following questions:

— How does the Bill respond to the PIEDs phenomenon?
— Can the Bill better clarify the relation between NPSs and PIEDs?
— What are key the objectives of the Bill on this regard? Harm reduction? Public health safety?

3. The need for an international policy framework

NPSs have been regulated by new legislations for drug control internationally trying to curve the growing demand, while safeguarding the public's best interest and health in different ways. Although we recognise the Bill as an important piece of legislation, we believe the main focus of the Bill has been misplaced in substance control and banning, while licensing, regulation of trade and market strategies and distribution have not been affected. This is mostly so because the current Bill does not have:

— a defined impact on how it will affect the current market structure on which NPSs, PIEDs and other drugs are being sold and further more;
— a plan on how it might affect distribution chains that can be seen as harmful as the substances as they allow easy and anonymous access to a series of NPSs, PIEDs, counterfeit and other restricted substances.

As we have tried to demonstrate with the provided evidence, this is specially the case of PIEDs and a variety of other drugs sold over the web without any licensing and sometimes without any regulation. The production of counterfeit drugs, PIEDs and NPSs has led to the sophisticated development strategies of organized crime seeing a new profitable market without any prompt regulation in regards to the distribution over the web. So far the Bill has only introduced regulation on the chemical components that it is aiming to control and ban but not including in its scope the sources of the illicit business behind it, which employ novel market strategies that are an inherent part of the surge in NPSs and PIEDs. Overall, the development of such markets is difficult to follow as they are not currently under international law control. Since there is much uncertainty about these issues, the EU's drug policy 2013-2020 follows for NPSs the same guidelines and pursues the same aims as for traditional abuse drugs, i.e., the reduction of demand and supply, simultaneously encouraging the involvement of citizens, youths, but also drug users and addicts, in both self-management of health and anti-

drug policy development. As a result, investigations and policy recommendations remain mainly focused on recreational users ("clubbers'), when in fact the phenomenon as we are trying to demonstrate reaches a much wider population. Further, the fact that these products are available online makes their market not easy to trace and very difficult to regulate at both national and international level. This is one of the reasons why we believe the Bill should encompass distribution as one of its main points in the attempt to regulate not only NPSs but also PIEDs, including medicines sold illicitly without prescription as this bypasses any form of safety control.

It is also crucial to ask how does the Bill harmonize with current EU directives with regard to drug control and the surge of the NPSs and PIEDs markets. The focus here should be how the UK can be aligned to a supranational drug strategy. The questions should be:

— What is the case of parallel imports?

— How would the UK be able to control imports from other EU Member States that have different laws?

These questions clearly expose the urgent need to harmonize the Bill with EU drug policy. This is specially so considering that identifying policy gaps that have facilitated the emergence of NPSs market is crucial to define a new Bill that will be effective in its scope and aims. We believe that the focus should be on regulation at the European Level. This is because the production and distribution has become cross national and hence implementing unilateral policy frameworks is short sighted and might produce important internal consequences such as one can see in the PIEDs market that tends to swiftly move around as legislation becomes harder in different countries.

Further, serious concerns about the safety profile of NPSs have been discussed in the Bill but with no serious effects in the online NPSs market. A better understanding of the online illicit market of NPSs/PIEDs is necessary in order to contribute towards the development of a new regulatory policy framework aimed at reducing harm and preventing initiation in society by affecting both the substances, distribution and marketing spheres of the NPSs market. We will therefore try and recommend comparative policy analysis. Besides, the Polish and Irish models, we believe that further consideration should be given to New Zealand, which provides the first regulated legal market for NPSs. This new regulatory framework is going through a transitional and implementation phase by adding a range of different trade restrictions and a provisional licensing regime for NPSs while at the same time introducing different operators. This policy regime is unique in its nature and might be used as a reference to inform a renewed policy framework across the UK and the EU.

References

Advisory Council on Misuse of Drugs (ACMD) (2011). *Consideration of the Novel Psychoactive Substances ('Legal Highs').*

Bersani, FS., Santacroce, R., Coviello, M., Imperatori, C., Francesconi, M., Vicinanza, R., Minichino, A., Corazza, O. (2015) Cannabis: a "self-medication" drug for weight management? The never ending story. *Drug Testing and Analysis.* DOI: 10.1002/dta.1891.

Cinosi, E, Martinotti, G., Simonato, P., Singh, D., Demetrovics, Z., Roman-Urrestarazu, A., Bersani, FS., Vicknasingam, B., Piazzon, G., Li, J., Yu, W., Kapitány-Fövény, M., Farkas, J., Di Giannantonio, M., Corazza, O. (2015) Following "the roots" of Kratom (*Mitragyna speciosa*): the evolution of an enhancer from a traditional use to increase work and productivity in South-East Asia to a recreational psychoactive drug in Western Countries. *Bio Med Research International* (in press).

Corazza, O., Demetrovics, Z., van den Brink, W., Schifano, F. (2013) ' 'Legal highs' an inappropriate term for 'Novel Psychoactive Drugs' in drug prevention and scientific debate', *International Journal of Drug Policy*, 24 (1): 82-3.

Corazza, O., Bersani, FS., Brunoro, R., Martinotti, G., Schifano, F. Performance and Image Enhancing Drugs: the abuse of cognitive enhancer Piracetam. *Substance Use and Misuse,* May 2014, Early Online: 1-8, doi: 10.3109/10826084.2014.912232.

Evans-Brown, M., McVeigh, J., Perkins, C., & Bellis, M. (2012). Human enhancement drugs: The emerging challenges to public health. Centre for Public Health, Liverpool John Moores University.

Griffith, P., Evans Brown, M., Sedefov, R., (2013). Getting up to speed with the public health and regulatory challenges posed by new psychoactive substances in the information age Addiction doi:10.1111/add.12287.

United Nations Office on Drugs and Crime UNODC (1971). *The Convention on Psychotropic Substances of 1971.* United Nations Office on Drugs and Crime.

About the authors

Dr Ornella Corazza is a Reader in Substance Addictions and Behaviours at the Department of Pharmacy, Pharmacology and Postgraduate Medicine at the University of Hertfordshire in the UK. She has contributed to the generation of original data on over 700 novel psychoactive substances (NPSs) presented in more than 60 peer-reviewed publications. She managed ReDNet, an EU-wide research project funded by the European Union, which aimed to develop innovative forms of drug prevention among vulnerable individuals and was awarded the 2013 Health Award. Dr Corazza is currently leading "Keep Fit", a project on lifestyles, body image and the

use of performance and image enhancing drugs in society. She works in close co-operation with national policy makers as well as various international agencies (European Commission; United Nation Office on Drugs and Crime; World Anti-Doping Agency). Considering her multidisciplinary experience in the combined field of health, culture and legislation, Dr Corazza also plays a major role in drug education internationally assisting schools, charities and the metropolitan police with information on new drugs and trends. The basic theme of her research is to find out new strategies to understand drug use and enhance lifestyles.

Dr Andres Roman-Urrestarazu is a Research Officer in Health Economics and Health Policy in LSE Health and Director of Studies in Psychological and Behavioral Science at Trinity Hall, University of Cambridge. He specialises in psychiatry and health economics, holds a PhD in Psychiatry from the University of Cambridge, and a Medical Doctorate from the University of Santiago de Chile and an MSc in International Health Policy from the London School of Economics. He has worked for NICE in the Centre for Health Technology Evaluation, LSE Health and the PSSRU, while also working extensively as a clinician in mental health facilities both in the UK and South America. Dr Roman-Urrestarazu has also developed a teaching career in Trinity Hall, Cambridge as Director of Studies in Psychology and Behavioral Science. His clinical research experience has been mainly related to the epidemiology of neurodevelopmental disorders such as schizophrenia and ADHD. Prior to joining LSE Health, he worked extensively in the 1986 Northern Finland Birth Cohort where he was interested in longitudinal analyses of mental health and mental health outcomes. Currently he is contributing to the design of the Qatar Health Survey 2015 and the links between NCD's and the utilization of health care services. He has also developed a research agenda in addiction studies merging clinical, policy and health economics in order to understand the impact of the development of the drug market.

October 2015

Written evidence submitted by Mr Joseph Woollen (PSB 18)

1. I am becoming increasingly frustrated by the Government's refusal to employ an evidence based approach to drug legislation and instead are relying on their uneducated and emotion based pre-conceived ideas on drugs. It all started when David Nutt, the Chief Drug Advisor, was sacked.

2. So, the Government hires an expert to conduct research and provide a scientific and evidence based proposals to drug legislation. The expert is then sacked because his findings do not line up with how non-experts 'feel' about drugs. I feel the situation has been getting progressively worse since, and it is making criminals out of scores of youths and adults alike who are causing very little, if any, harm. Especially when compared to the burden alcohol abuse puts on the NHS in cities across the country.

3. Now, the Psychoactive Substances Bill aims to make illegal anything that can promote a psychoactive response in the user – unless specifically excluded. This is a worrying approach; "everything is illegal unless we say so." Not only that, it is entirely unpractical (No2 is used in whipped cream, and is now likely going to become illegal) and could hinder scientific research.

4. I was pleasantly surprised when the bill was discussed in the House of Lords, who made some incredibly progressive amendments. These included: medicinal marijuana, drug testing services for users to check if their product is contaminated/impure, fact based drug education, allowing substances that have little room for abuse to stay legal etc. This would be a great step forward. It is abundantly clear that just by simply making something illegal, you are not going to stop people doing it. This is evidenced by the countless numbers of drug users in the country. So if you can't STOP them from taking/using drugs, isn't the next best thing to at least make sure they're educated on the risks and provide testing centres to ensure their products are clean? Many drugs, including heroin, are not overly damaging to the body. The danger lies in impurities that they have been cut with and not knowing the strength of the product which leads to overdose. And what about addicts? Shouldn't they be given treatment and cared or rather than locked in a prison cell?

5. But of course, all these proposals by the experts where dismissed by the politicians who clearly have very little to zero knowledge about drugs and this ridiculous, draconian bill seems like it will soon become the law. Around the world, drug laws are becoming increasingly more progressive. Even America, the country that started the War on Drugs, has decriminalised and even legalised marijuana for medical and personal use in many states. And of course, Portugal decriminalised ALL drugs and what were the results? Usage, addiction, deaths, HIV infection etc all decreased!

6. Meanwhile, our government is sticking their fingers in their ears, ignoring all the experts advice, ignoring the progressive and harm-reducing laws introduced elsewhere in the world and are instead, campaigning to make it illegal to own the required ingredients to make whipped cream in your own home. It's utterly absurd and I'm absolutely sick of it. I haven't even gotten into the fact that drug education in schools is severely lacking and is based on scare tactics and misinformation. That's a discussion for another day.

Summary

Look at the facts and what is working around the world when shaping drug laws. Do not act on your pre-conceived notions of drugs and drug users and how you "feel". Be open to change.

October 2015

Written evidence submitted by the Law Society of Scotland (PSB 19)

Introduction

1. The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

2. This paper is intended to provide you with some of our comments on this Bill. If you would like to discuss the paper further, or if you would like more information on points we have raised, please do not hesitate to contact us.

3. Contact details can be found at the end of the paper.

Background

4. The Psychoactive Substances Bill received its 2nd reading in the House of Commons on 19 October 2015.

5. The Bill is based upon HM Government's response to an Expert Panel Report on the New Psychoactive Substances review in October 2014.

Summary of Main Provisions

6. The Bill creates the offence of producing a Psychoactive Substance in terms of Clause 4 and of supplying, or offering to supply, a Psychoactive Substance in terms of Clause 5. Exempted substances are listed in Schedule 1 of the Bill and this list can be amended by regulations made by the Secretary of State.

7. The meaning of a psychoactive substance is defined in Clause 2 of the Bill by which "Psychoactive Substance" means" any substance which is capable of producing a psychoactive effect on a person who consumes it and is not an exempted substance".

8. The Society acknowledges the challenges faced with the availability of New Psychoactive Substances (NPS) which have similar effects to traditional illicit drugs, are designed to evade drug laws, are sold openly in our high streets and over the internet, at low risk and high reward for suppliers and retailers, and often pose serious risks to public health and safety.

9. We also acknowledge that this is not of course a problem unique to the UK and that the global market place of the internet has made the distribution of NPS easier and giving people of all ages access to these new drugs.

10. We welcome the policy intent of Government in the introduction of this Bill to reduce the demand for all drugs, restrict the supply of drugs and support individuals to recover from their dependence.

11. We note that there is therefore potential for some consideration to be given to the current offence provisions contained within the Misuse of Drugs Act 1971.

12. While we welcome policy intent of this Bill, we remain of the view that, in approaching what is a world-wide problem, there is still a lack of scientific evidence on the extent of this issue and the effects of NPS in their many and varied forms. In this respect we advocate a combined approach to educate users, sellers and the public in general in that this should be a powerful force in the effectiveness of regulation.

13. With particular reference to enforcement of the offence provisions contained within the Bill, we highlight that users are purchasing NPS in different ways.

14. Reference is made to anonymous on-line sales and the practical difficulties in enforcement of these new production supply and import export offences.

15. We note that fatalities arising as a result of use of NPS are indiscriminate because, while longer term use now seems to be related to paranoia, other mental health and physiological problems, we note that "one bad batch" of NPS can be immediately fatal.

16. We therefore take the view therefore that much work requires to be done producing scientific evidence or otherwise of long term harms caused by NPS.

17. We note specifically that while many NPS at present on the market may be low risk, they are in abundance and in many different composite forms and accordingly the police are not equipped with the resources to be able to test it all properly. Accordingly their approach is to raid providers' shops and confiscate the NPS.

18. Given the profit margins involved, it is our understanding that stock can be quickly replenished at relatively low cost.

19. We have also taken into account the various approaches in other jurisdictions and, notably, refer to New Zealand where a different approach was considered, namely to place the onus of proving that substances are fit and safe for human consumption back onto the manufacturers. Accordingly all approved products would be sold subject to a range of retail restrictions relating to age of consumer, advertising restrictions and licensing of sellers.

20. With particular reference to Clause 2 of the Bill we highlight a practical issue around "capability of producing a psychoactive effect in a person who consumes it "and suggest that an alternative definition around the capacity to depress or stimulate the central nervous system with some sort of hallucinogenic effect could be considered".

21. Finally, the Society took part in the New Psychoactive Substances Expert Review Group set up by the Scottish Government which reported in February 2015 which recommended the following:

1. Licensing authorities should attach conditions and restrictions in relation to the sale of NPS when issuing public entertainment or similar licences. This could be extended to include drug paraphernalia.
2. Producing a tool-kit and operational guidance to help local authority trading standards staff in tackling NPS.
3. Establishment of a National Centre of Excellence in Forensic Analysis to lead in the detection and identification of NPS in Scotland.
4. Developing a specific definition of NPS that could be adopted across all areas in Scotland.
5. To ask the Scottish Government to consider adapting the key elements of the Irish approach, (general prohibition under exception with no possession offence similar to this Bill)
6. The development of a formal protocol between relevant agencies, setting out roles, responsibilities and information-sharing protocols.

22. We note that the House of Commons Home Affairs Committee published its report on Psychoactive Substances on 23rd October 2015.

http://www.publications.parliament.uk/pa/cm201516/cmselect/cmhaff/361/361.pdf

We refer specifically to paragraphs 21 and 22 of this report and trust that its terms will be taken into account with a view to improving the legislation.

We also note that there has been no assessment of the effectiveness of the legislation which was introduced in Ireland in 2010 upon which the Bill is based.

With reference to paragraph 23 of the report we agree that the Government should draw more extensively on the experience and expertise of key stakeholders who should also be involved in reviewing the legislation once enacted.

October 2015

Written evidence submitted by Release and Transform (PSB 20)

Release is the UK's centre of expertise on drugs and drug laws, providing free and confidential legal and drug services to people who use drugs and/or those caught up in the criminal justice system. The organisation campaigns for evidence-based drugs policies and for reform of the UK's current drug policy, with a specific call for the end of criminal sanctions for possession offences. Release has Consultative Status with the UN Economic and Social Council

Transform is a UK-based charity and think tank producing policy analysis on, and advocating for, an end to the failed, enforcement-based 'war on drugs' and its replacement with a responsible system of market regulation, for almost 20 years. Transform operates in the UK and internationally and has been awarded Consultative Status with the UN Economic and Social Council.

We welcome the opportunity to submit evidence to this Committee. We acknowledge the potential health harms associated with Novel Psychoactive Substances ('NPS') and the inadequacy of the current legislative response to these emerging substances. However, we are of the view that the Government's proposed blanket ban of such substances is unworkable, likely to be counterproductive, and that the legislation itself is imprecise and unwieldy. It is Transform's and Release's opinion that far more could be done to reduce the harms of these substances through a review of drug policy as a whole, looking at both controlled substances and NPS, examining how the markets interact and finding solutions that are firmly based on principles of public health and human rights.

In addition to an analysis of specific clauses, Release and Transform are keen to highlight the following key observations:

1. The Bill will not achieve its stated aims of disrupting the trade in NPS and protecting UK citizens from their associated harms

Evidence from two other countries that have implemented a blanket NPS ban demonstrates that such legislation does not reduce prevalence and can lead to increased social and health harms.

Ireland's 2010 Psychoactive Substances Act has been held up as a precedent as it ended most retail shop sales, and led to the closure of many so-called 'head shops'. In its explanatory note, the UK government specifically cites Ireland as the Bill's model: '*the Government announced its intention to develop proposals for a blanket ban similar to that introduced in Ireland in 2010*'.[4] Despite these head shop closures, use of NPS amongst young people aged 15-24 years in Ireland is today the highest in the EU, and has increased since the 2010 ban, from reported lifetime use of 16% in 2011 to 22% in 2014.[5] Rather than disappear, reports indicate that the market has simply shifted to illicit street and online markets.

After banning the manufacture, sale and advertising of NPS in 2010, Poland saw the number of NPS-induced poisonings rise dramatically from 562 cases in 2010 to 1,600 cases in the first ten months of 2014.[6] The emergence of an unregulated online market, as well as the incorporation of the NPS trade into the traditional criminal market is thought Tobe behind this increase. The case of Poland highlights that banning these substances has done nothing to alleviate their potentially serious health harms, or to protect vulnerable younger users who comprise most of the market. Questions should be asked as to whether the informally regulated 'head shops' at least served as some sort of filter, reducing access for underage customers, limiting access to more unknown substances and potentially providing harm reduction advice to users on how to consume more safely (even though this would potentially place them at greater risk of prosecution).

The outcomes in Poland and Ireland are unsurprising. The evidence on the impact of prohibition has increasingly established that this policy has little or no impact on levels of use – instead tending to merely displace markets and increase harms. In fact, the Home Office's own report, 'Drugs: International Comparators' (October 2014), stated, '*Looking across different countries, there is no apparent correlation between the "toughness" of a country's approach and the prevalence of adult drug use*'.[7] Similar conclusions have been drawn by the World Health Organisation, The Organisation of American States, and the European Monitoring Centre on Drugs and Drug Addiction and Home Affairs Select Committee.

We fully endorse the observation of the Chair of the Home Affairs Select Committee that 'there should have been an impact assessment of the ban of NPS in Ireland before the Bill was published'[8] and urge the committee to call for the progress of the bill to be halted until such an impact assessment is undertaken, alongside a detailed expert consideration of the likely impacts of a blanket ban explored – with the support of the ACMD. To proceed in the absence of such analysis would be reckless and negligent.

2. The Bill is poorly drafted and will be unworkable on a number of legal grounds including the difficulty in proving the psychoactivity of a substance in court proceedings

Ultimately, this Bill bans everything that has the potential to have a psychoactive effect, meaning substances will have to be exempted from the Bill so as not to be subject to the proposed offences. However, we are seriously concerned about the lack of legal certainty associated with this legislation – a principle which is recognised by national and international law (discussed at point 3). The use of the precautionary principle means the Bill is procedurally different to legislation set before, and therefore undermines the whole harm-led rationale that currently exists within our drugs laws – how effective this is debateable – but it is at least based on the principle of assessment of harm. As the Advisory Council on the Misuse of Drugs ('ACMD') has highlighted, meaningful harm assessments are now entirely absent from the new default blanket ban that makes no distinction between substances despite huge variation in potential risks.[9] In fact, as the Home Affairs Select Committee has highlighted it is this complete lack of consultation with the ACMD, civil society and industry in the pre-drafting process that has contributed to many of the problems implicit in the Bill.[10]

As has been widely flagged by multiple expert commentators, including the ACMD, the definition of psychoactivity in the draft Bill is extremely vague and broad, and, if taken literally, potentially encompasses thousands of plants, spices, herbal remedies, over-the-counter medicines, and household and industrial products. A range of substances – most obviously alcohol and tobacco – that clearly come within the given definition of

[4] UK Home Office, 'Psychoactive Substances Bill [HL]: Explanatory Notes,' May 28, 2015, http://www.publications.parliament.uk/pa/bills/lbill/2015-2016/0002/en/16002en.pdf

[5] European Commission,'International Day against Drug Abuse: new study shows increasing use of 'legal highs' among young Europeans,'June 26, 2014, http://europa.eu/rapid/press-release_MEMO-14-445_en.htm

[6] Polish REITOX Focal Point. '2014 National Drug Report: Poland – New developments, trends, and in-depth information on selected issues,'EMCDDA, 2015, p. 131. http://www.emcdda.europa.eu/publications/national-reports/poland-2014

[7] Home Office, 'Drugs: International Comparators,'October, 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368489/DrugsInternationalComparators.pdf pg. 51

[8] Rt Hon Keith Vaz MP, commenting on publication of the Home Affairs Select Committee Inquiry Report into the Bill, http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news-parliament-2015/151023-psych-subs-report-pubn/

[9] Advisory Council on the Misuse of Drugs, 'ACMD letter to the Home Secretary: Psychoactive Substances Bill,' 13 July 2015 https://www.gov.uk/government/publications/acmd-letter-to-the-home-secretary-psychoactive-substances-bill-13-july-2015

[10] Home Affairs Select Committee, Psychoactive substances – First Report of Session 2015–16, 23 October 2015, http://www.publications.parliament.uk/pa/cm201516/cmselect/cmhaff/361/361.pdf

'psychoactive substances', and are certainly of equal or greater risk than most NPS, are exempt. This reflects a fundamental legal and logical inconsistency, raising issues around fairness, proportionality and equality before the law. The rare occasions when the Government has attempted to account for the distinction between alcohol/tobacco and illicit drugs have only underlined this fundamental legal inconsistency by citing historical and cultural reasons for the anomaly – not scientific risk or health impact assessments.

Apart from the arbitrary separation of substances there is a much more pertinent legal problem of establishing that a substance is psychoactive for the purposes of the Bill. We would agree with the ACMD and its very simple conclusion that 'psychoactivity cannot be definitively proven'.[11]

As the Expert Panel (originally convened by the Home Office to make recommendations on NPS legislation rather than consulting the ACMD) acknowledges, for new and untested substances, legally establishing that something is psychoactive is a real challenge that likely requires randomised controlled trials on humans, which would be impractical (particularly for the 100s of new substances emerging each year) and unethical. Clearly, in vitro or animal testing would not be sufficient to establish the legal test of psychoactivity, and whilst common sense may indicate that a substance is psychoactive this is not a sufficient threshold for legal proceedings. The ACMD has made some suggestions[12] but these, by its own admission remain inadequate and problematic.

The reality is that attempts to clarify the definition are a legal and scientific minefield that will cause confusion and wasted resources across the criminal justice system as they are tested by experts in court. There are also a range of important outstanding questions relating to the degree of psychoactivity needed to qualify it under the 'psychoactive' definition, and how this will in turn relate to different effects on different individuals, as well as to issues of dosage and potency. This critical issue is not captured in the legislation. The use of the terms 'it [NPS] affects the person's mental functioning or emotional state' will likely be subject to the *De Minimis*[13] rule, and it appears that no discussion has been had on this matter.

3. In its current state the legislation lacks legal certainty surrounding what substances may lead to commission of an offence

Legal certainty is an established principle of international law contained within Article 7 of the European Convention of Human Rights, which states that:

> *"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed."*

In order for this to be realised an offence must be clearly and precisely defined. The House of Lords, in *R v. Rimmington and R v. Goldstein [2005] UKHL 63* confirmed this, with Lord Bingham stating:

> *"There are two guiding principles: no one should be punished under a law unless it is sufficiently clear and certain to enable him to know what conduct is forbidden before he does it; and no one should be punished for any act which was not clearly and ascertainably punishable when the act was done."*[14]

This Bill fails to meet either of these requirements. This is despite the fact that the principles of legal certainty have been firmly recognised by domestic jurisprudence, which establishes that 'an offence must be clearly defined in law'[15] and also that 'a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail'[16]. In its current form the Bill makes it impossible for:

- An individual to understand whether many substances will be considered psychoactive;
- The police to determine whether a substance is psychoactive and an offence has been committed;
- The CPS to establish whether it is appropriate to charge with an offence;
- A lawyer to properly advise their client on plea and potential sentence; and
- A Judge or jury to determine guilt or otherwise.

[11] Advisory Council on the Misuse of Drugs, 'Re: Definitions for Psychoactive Substances Bill' 17 August 2015 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454039/Definitions_report_final_14_august.pdf

[12] Advisory Council on the Misuse of Drugs 'Re: ACMD's final advice on definitions for Psychoactive Substances Bill' 23 October 2015 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470421/ACMD_definitions_advice_final-23-October-2015.pdf

[13] De minimis is a legal term which dictates that the law should not be concerned with trifling matters. In the context of the PSB there is a real risk that when establishing whether a substance is psychoactive for the purposes of the Act, some attention must be given by the Courts to the degree it 'affects the person's mental functioning or emotional state'. If the substance has a fleeting effect like, for example, poppers and nitrous oxide, the Court may decide that the *de minimis* rule will apply.

[14] R v. Rimmington and R v. Goldstein [2005] UKHL 63 at Paragraph 33.

[15] S.W. v. United Kingdom: C.R. v. United Kingdom (1995) 21 EHRR 363 at Paragraph 35.

[16] Sunday Times v. United Kingdom 91979) 2 EHRR 245 at Paragraph 49.

The need for the rule of law to be properly considered in the drafting of new legislation is clearly demonstrated by the formation of the All-Party Parliamentary Group on the Rule of Law whose "purpose is to promote parliamentary and public discussion of the rule of law as a practical concept."[17]

In addition, there are problems with the Schedule of exemptions. For example, if something is considered exempted, is it indefinitely exempted regardless of whether it is consumed for its psychoactive properties? To put this into context the exemption for food is:

> *'Any substance which— (a) is ordinarily consumed as food, and (b) does not contain a prohibited ingredient. In this paragraph— "food" includes drink; "prohibited ingredient", in relation to a substance, means any psychoactive substance— (a) which is not naturally occurring in the substance, and (b) the use of which in or on food is not authorised by an EU instrument.'*

If we take nutmeg, a substance that is thought to have very potent psychoactive properties[18], as an example, it should be exempted from the Act as it is 'ordinarily consumed as food' and the psychoactive element is 'naturally occurring'. However, what if it is being consumed for its psychoactive effect? Does it still fall within the 'ordinarily consumed' definition, or does it become a psychoactive substance which is caught by the legislation? Such hypotheticals highlight the fundamental weakness of the legislation as currently drafted.

4. The PSB is in contravention of the 'Good law initiative', introduced by the Government under the previous Coalition.

The Office of Parliamentary Counsel states that 'good law' is law that is:[19]

- Necessary
- Clear
- Coherent
- Effective
- Accessible

It is our position that the Bill meets none of these objectives and is unworkable in practice.

Necessary

Whilst the emergence of NPS is worrying, especially in light of the unknown harms associated with a specific new substance or group of substances, the media and political attention given to the issue potentially outweighs the realities of the situation in terms of prevalence. An estimated 6.1% of 16– 24 year olds have admitted trying NPS, and of that number 2.8% tried an NPS over the previous 12 months.[20] To put this into context, 16.3% of 16 – 24 year olds reported using cannabis in the last year21.This is not to downplay the issue of NPS, but it is important to expose the scale of the problem and to consider a proportionate response. It is our view that the problem could be much more effectively tackled by focusing resources on education and health initiatives rather than criminal justice responses that have proven ineffective in both Ireland and Poland. The proposed legislation is likely to create more harm by driving the market underground into criminal networks, or create a new group of young social suppliers who are willing to buy on the internet and distribute to their friends. Either way, the market will become more harmful under the proposed legislation, not less harmful as intended.

Clear

The definition of the psychoactivity has been explored above (point 2), but it will undoubtedly be difficult, if not impossible, for people to know the degree of psychoactivity, if any, of a substance in their possession. In addition there are some concerns over the various tests of mens rea[22] in the Bill. Firstly, the person accused of an offence will have to have knowledge that the substance is psychoactive, which, as discussed, will be difficult to establish. Secondly, there is a lack of clarity as to the subjective and objective nature of the mental element of the offence in relation to the various offences. For example, in production a person commits the offence if they 'intentionally produce a psychoactive substance' and they 'know or suspects that the substance is a psychoactive substance'.

It would appear here that a subjective test is being applied and the defendant's actual behaviour is being assessed. However, the test to establish a supply offence is that the 'person knows or suspects, or ought to know or suspect' that the substance is psychoactive, meaning the second limb of that definition allows for an objective test i.e. a reasonable person test.

---

[17] All-Party Parliamentary Group on the Rule of Law Media Release, 19th June 2015, http://binghamcentre.biicl.org/documents/662_appg_rule_of_law_press_notice_2015-06-19.pdf

[18] Dorsey, S, 'Effects of Nutmeg &Myristicine' Erowidhttps://www.erowid.org/plants/nutmeg/nutmeg_info3.shtml

[19] Cabinet Office and Office of the Parliamentary Counsel, 'Government Guidance – Good Law,' 16 April 2013 https://www.gov.uk/guidance/good-law

[20] Home Office, 2015, Crime Survey for England and Wales: Drug Misuse Declared, https://www.gov.uk/government/statistics/tables-for-drug-misuse-findings-from-the-2014-to-2015-csew

[21] Ibid.

[22] *Mens rea* is the mental element of the offence. In most criminal offences the prosecution must establish that the person had knowledge, or at least was reckless, that their actions would result in the offence being committed.

Looking at nutmeg as an example, suppose a group of young people go into a supermarket and purchase a quantity of nutmeg – which is of course exempt from the Bill under the 'food' exemption – and when paying for the nutmeg they talk about consuming it to get high, as explored above this disclosure may end the exemption. If so, is there then an onus on a supermarket cashier in those circumstances to know or suspect, or ought to know or suspect, that the substance is psychoactive simply from the overheard conversation? Or, can they reasonably put it down to a joke between friends and continue with the sale? Whilst for some people the psychoactive properties of nutmeg may be well known, it cannot necessarily be inferred that this is knowledge that all or most people ought to possess. If that level of knowledge were to be implied across the board, supermarket cashiers would have to be educated about what foodstuffs would ordinarily be exempted but may also be used for their psychoactive effect. Considering the difficulty in establishing psychoactivity it is difficult to see how this would work in practice.

Finally, in order to fully protect themselves against any prosecution for supply, the cashier may feel the need to question all customers about their intended use of nutmeg (and other products), as the final test for supply returns to a subjective one that 'the person knows, or is reckless as to whether, the psychoactive substance is likely to be consumed by the person to whom it is supplied, or by some other person, for its psychoactive effects'.

There are a number of other aspects of the Bill that lack clarity, much of which we covered in detail in our amendments to the Bill at the Lords stage.[23]

Coherent

The points raised for the discussion on clarity above could also apply to this discussion; but, to focus on one clear example of the lack of coherent reasoning behind the Bill we need only look at the issue of offences related to personal use. Whilst it is welcomed that the Government has decided not to criminalise possession of NPS, heeding the position of the Expert Panel that acknowledged the criminalisation of possession/use of NPS would have a negative impact on young people, the decision to criminalise importation for personal use is at odds with this position. Since online purchases are one of the main sources for these substances, this could put a lot of young people who obtain NPS via such sources at risk of prosecution, something the Expert Panel and Government were at pains to avoid.

Additionally contributing to the Bill's incoherence is the fact that it makes production of NPS for personal use an offence. Despite this similarly being contrary to the Government's position of not wanting to criminalise young people, these drugs in reality are produced en masse; to produce an amount within the realms of personal consumption is highly improbable.

Effective

Please see the sections above on the feasibility of proving psychoactivity (point 2) and the impact of similar bans in Ireland and Poland (point 1), both of which demonstrate the inefficacy of a blanket ban approach.

Accessible

The importance of accessibility is directly linked to Article 7 of the ECHR and the principle of legal certainty discussed above (point 3). This is effectively demonstrated in *Rimmington*[24] where Lord Bingham states:

> *'Article 7 therefore sustains his [the defence counsel's] contention that a criminal offence must be clearly defined in law, and represents the operation of the 'principle of legal certainty'.*[25]

Lord Bingham goes on to cite S.W. v United Kingdom: C.R v United Kingdom:[26]

> *'The principle enables each community to regulate itself "with reference to the norms prevailing in the society in which they live. That generally entails that the law must be adequately accessible. An individual must have an indication of the legal rules applicable in a given case and he must be able to foresee the consequences of his actions, in particular to be able to avoid incurring the sanction of the criminal law'.*

Amendments proposed by the Government

The Government published a Notice of Amendments[27] to the Psychoactive Substances Bill on 23rd October 2015, including a number of new clauses. We provide an analysis of what we submit are the most relevant clauses at Appendix A of this submission, but draw the Committee's attention in particular to NC2 which creates a new offence of "Possession of a psychoactive substance in a custodial institution".

This is a significant and worrying departure from the government position, and that of the expert group, which has always been that this Bill was not intended to criminalise possession of psychoactive substances

[23] Release, 'Psychoactive Substances Bill – proposed amendments' http://www.release.org.uk/sites/default/files/pdf/publications/Psychoactive%20Substances%20Bill%20amendments%20FINAL_0.pdf
[24] *R v. Rimmington and R v. Goldstein [2005] UKHL 63.*
[25] Ibid at page 23, line 34.
[26] (1995) 21 EHRR 363.
[27] http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0063/amend/pbc0632210a.1-7.html

covered by the Bill. Possession of a psychoactive substance outside of a custodial institution remains outside the scope of the Bill, and no explanation is provided as to why it is deemed necessary to make this distinction. There is no justification to criminalise prisoners more harshly simply because of their already vulnerable position. Whilst there has been some concern expressed around the use of psychoactive substances, particularly synthetic cannabinoids, in prisons the creation of this offence will not deter use in these settings. As evidenced by numerous reports, including the government's own,[28] a policy based on punitive user level sanctions has little impact on levels of use.

We urge the committee to reject this amendment, and encourage the use of evidence based prevention, treatment and harm reduction interventions in prisons – in line with established best practice, and technical guidance provided by the WHO, UNAIDS, UNODC technical guidance.[29]

Amendments proposed by Release and Transform

There are a number of positive changes to the Bill proposed through the government's own amendments, some of which Release had previously proposed.[30] However, we do not feel that these go far enough and submit that further amendments are necessary. We provide our analysis of those identified clauses at Appendix B of this submission.

Conclusions and Recommendations

Transform and Release have argued strongly that the Bill is unworkable, unwieldy, and that it will increase health and social harms rather than delivering its intended goals. As highlighted by the Home Affairs Select committee, these failings reflect a highly problematic policy development process that entirely bypassed both pre-drafting public consultation (despite Cabinet Office guidelines) and even consultation with the Government's own expert advisory body, the ACMD, despite advice on such matters clearly being the latter's specific remit and area of expertise.

Given this, we hope that the Public Bill Committee will support our recommendation for the Bill to be abandoned in its current form, and that a full review, consultation and evidence-based policy development process be implemented that informs a comprehensive new policy and legislative response to NPS in the UK. It is essential that any policy review include a meaningful impact assessment of Ireland's policy response, something that the Home Office's Expert Panel were not specifically able to deliver in the absence of relevant data.

Furthermore, it is clear that development of such potentially significant new drug legislation around NPS needs to be part of a more comprehensive independent review of the malfunctioning and outdated Misuse of Drugs Act. Such a review has indeed been supported in previous reports by the HASC, as well as by the ACMD, and has had broad support from organisations across the country working on drugs andrelated issues.

We do, however, recognise that the Government appears determined to push through the blanket ban, despite its near universal lack of support and objections from key centres of expertise. Should this be the case, we hope that a number of key amendments can be made to the Bill to at least curtail or minimise the inevitable negative costs of some of the more egregious elements of the legislation. These have been detailed in the proposed amendmentsat Appendix B.In addition we propose that:

— Nitrous Oxide ('laughing gas') has been found by the ACMD to have 'few, if any, short term adverse effects'. The ACMD confirmed that 'deaths linked to nitrous oxide are rare (1 in UK in 2011, 5 in 2010)', that 'there is no firm evidence of physical dependence,' and have specifically not recommended a ban.[31] As such, Nitrous Oxide should also be exempt from the Bill alongside akyl nitrate; it is a low risk drug, and efforts should be focused on education as to safer consumption practices and the potential dangers of more intensive long-term use.

The Bill should be submitted to the All-Party Parliamentary Group on the Rule of Law, for scrutiny and consideration before it moves further through the legislative process.

— Broadening out from the focused nature of the two previous recommendations, there must be a greater shift in the Government's drugs strategy away from an enforcement-led approach to one that is centred on public health and education. The woeful lack of investment in NPS education strategies by Government must be remedied immediately, to spend less than £200,000 over the last 3 years is shocking. We would recommend that before implementing any criminal justice approach the Government explore the impact of a comprehensive fully funded education strategy that encompasses both prevention and harm reduction.

[28] Home Office, 'Drugs: International Comparators,' October, 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368489/DrugsInternationalComparators.pdf at Page 51.

[29] UNAIDS, WHO, UNODC 'Services for people in prisons and other closed settings' 2014 https://www.unodc.org/documents/hiv-aids/publications/Prisons_and_other_closed_settings/2014_guidance_servicesforpeopleinprisons_en_1.pdf

[30] Release, Proposed amendments to the Psychoactive Substances Bill for House of Lords Committee Stage, June 2015, http://www.release.org.uk/publications/proposed-amendments-psyhoactive-bill-committee-stage

[31] Advisory Council on the Misuse of Drugs, 'ACMD letter to the Home Secretary on nitrous oxide abuse,' March 2015 https://www.gov.uk/government/publications/acmd-advice-on-nitrous-oxide-abuse

The evidence for effective prevention interventions is growing stronger with most commentators recognising that media campaigns and school programmes which focus on deterrence having little impact. However, interventions that look to build protective factors, for example, peer-based interventions or those that address the underlying reasons for use have shown to have some success.[32] Harm reduction programmes that aim to reduce the harm associated with consumption of various substances have proven to have a significant impact in minimising the risks. The UK has historically been a leader in harm reduction interventions, during the 1990s local Drug Action Teams funded by the Department of Health, launched a number of initiatives aimed at recreational users of drugs, such as MDMA and cocaine, which whilst discouraging use was realistic that some people will use drugs and so provided information on how to use safely. Unfortunately, such programmes no longer seem to be a priority for Government with the FRANK website providing oblique 'just say no' type information. For example, no information is given about dosage in the section on MDMA despite such information potentially saving lives. If the Government is serious about protecting young people's health and keeping them safe then it is unfortunate that their dedicated drugs site does not give the type of information that will achieve this. As such we would like to see serious and significant investment in evidence based education programmes to address NPS use.

— Any new legislation on NPS should be subject to rigorous independent evaluation with key impact indicators agreed in advance. Should the legislation – as predicted – fail to deliver on its intended goals, and/or be associated with serious negative outcomes, it should then be terminated, and alternative policy models developed based on appropriate evidence, review and expert consultation, as should have happened in the first instance. We propose that a robust evaluation framework in mandated by the legislation, and that this evaluation is linked – on a fixed time frame – to a review of the legislation, and full consultation on possible amendments or reforms.

October 2015

[32] International Drug Policy Consortium, 2012, 'Drug Policy Guide', IDPC London, http://idpc.net/publications/2012/03/idpc-drug-policy-guide-2nd-edition

Appendix A – Amendments proposed by the Government[33] (PSB 20A)[34353637383940]

Amendment No.	Clause	Proposed amendment	Comments
1	1	Page 1, line 5, after '9' insert "and (Possession of a psychoactive substance in a custodial institution)"	*This is consequential of NC2 – please see substantive comments in relation to this New Clause.*
51	2	Page 1, line 14, leave out subsection (1) and insert— "In this Act "psychoactive substance" means any substance which is capable of producing a psychoactive effect in a person who consumes it, and— (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)"	Whilst this new definition includes part of the alternative definition of psychoactive substances proposed by ACMD, it is not fully resolve the potential issues. Please see Appendix B for further discussion. This does incorporate some reference to harm, but is too vague to offer the necessary certainty over what is deemed to be a psychoactive substance.
43	2	Page 1, line 15, leave out paragraph (a) insert— "(a) is 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, and"	We welcome replacement of the definition of a psychoactive substance within the Bill with the definition recommended by the Advisory Council for the Misuse of Drugs.
44	2	Page 1, line 18, leave out subsection (2) and insert— "(2) For the purpose of this Act "substance" means any compound, irrespective of chemical state, produced by synthesis, or metabolites of those compounds. "synthesis" means the process of producing a compound by human instigation of at least one chemical reaction. "compound" means any chemical species that is formed when two or more atoms join together chemically."	We welcome replacement of the definition of a psychoactive substance within the Bill with the definition recommended by the Advisory Council for the Misuse of Drugs.
45	3	Page 2, line 14, at end insert— "(3A) The Home Secretary must consider making regulations under subsection (2) if she receives a recommendation from the Advisory Council of Misuse of Drugs to bring forward such a regulation in respect of a psychoactive substance."	We welcome a mechanism to allow the ACMD to proactively request that the Home Secretary consider regulations.

[33] http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0063/amend/pbc0632210a.1-7.html

Amendment No.	Clause	Proposed amendment	Comments
56	Sched 1	Page **39**, line **23**, at end insert— "Miscellaneous 11 —alkyl nitrates"	We welcome the decision not to include alkyl nitrates within the remit of the Bill, as we had previously recommended.[34] However, we further recommend that the same approach is taken to Nitrous Oxide, which the ACMD has also previously recommended not controlling.[35]
5	4	Page 2, line 32, leave out from "subject to" to end of line 33 and insert "section (Exceptions to offences) (exceptions to offences)."	*This is consequential of NC3 – please see substantive comments in relation to this new clause.*
46	5	Page 2, line 36, at end insert "for personal gain"	We welcome restriction of the offence of supplying psychoactive substances to those who do it for personal gain, as opposed to those who supply them for other purposes, as this will go some way to ensuring that those who supply on a social basis within a friendship group are not criminalised.
6	5	Page 3, line 14, leave out from "subject to" to end of line 15 and insert "section (Exceptions to offences) (exceptions to offences)."	*This is consequential of NC3 – please see substantive comments in relation to this new clause.*
52	5	Page 3, line 15, at end insert— "(5) It is not an offence under this section for a person ("A") to supply a psychoactive substance to person ("B"), where A and B are known to each other and such supply is part of an agreement to obtain psychoactive substances for either As, Bs or both's own consumption, and the supply does not profit person A."	We welcome efforts to avoid one person being criminalised when they are responsible for purchasing psychoactive substances for a group when each person in the group is actually purchasing for their own consumption.

[34] Release and Transform, Evidence to Home Affairs Select Committee, September 2015, http://www.release.org.uk/sites/default/files/pdf/publications/Release%20%26%20Transform%20Submission%20to%20HASC%20on%20Psychoactive%20Substances%20Bill.pdfat Page 9.

[35] Advisory Council on the Misuse of Drugs, 'ACMD letter to the Home Secretary on nitrous oxide abuse,' March 2015 https://www.gov.uk/government/publications/acmd-advice-on-nitrous-oxide-abuse

Amendment No.	Clause	Proposed amendment	Comments
41	6	Page 3, line 43, at end insert— "(8A) Condition D is that the offence was committed on or in the vicinity of any premises intended to locate any vulnerable child; (8B) In this section "vulnerable child" means any person aged under 18 who is not living with their family and is— (a) accommodated in regulated residential care or unregulated accommodation under section 17, 20, 25 or 31 of The Children Act 1989, or, (b) accommodated in accommodation under part 7 of the Housing Act 1996. (8C) The Secretary of State may by order made by statutory instrument specify the circumstances in which paragraph (a) and/or (b) of subsection (7B) apply. (8D) Condition E is that the offender supplies a psychoactive substance to any persons under the age 18."	We are concerned that this creates a mandatory aggravating feature where an offence is committed in the vicinity of the specified premises, with no consideration given to knowledge of the defendant. Premises which are used to locate vulnerable children are often not openly specified as such, in order to afford protection to the residents, and so a defendant may not be aware that the premises are such an establishment. In those circumstances it would be unjust for the offence to be automatically aggravated. If this is to be included, recommend that this be specified as a potential aggravating factor which the Court *may* take into account, not one which they must treat as aggravating the offence. It is one that the Court is in fact likely to take into account of its own accord in any event.
48	6	Page 3, line 43, at end insert— "(8A) Condition D is that the person who committed the offence knew, or had reason to believe, that the consumption of psychoactive substance would cause the person consuming the substance harm."	Given the problems defining psychoactivity, and differing effects of substances on people, it would be extremely hard to prove that the defendant knew or had reason to believe that it would cause the person in question harm. We are concerned that this creates a mandatory aggravating feature where an offence is committed in these circumstances. If this is to be included, recommend that this be specified as a potential aggravating factor which the Court may take into account, not one which they must treat as aggravating the offence.

Amendment No.	Clause	Proposed amendment	Comments
	6	Page 3, line 43, leave out "on prison premises." and insert "in a custodial institution. ( ) In this section— "custodial institution" means any of the following— (a) a prison; (b) a young offender institution, secure training centre, secure college, young offenders institution, young offenders centre, juvenile justice centre or remand centre; (c) a removal centre, a short-term holding facility or pre-departure accommodation; (d) service custody premises; "removal centre", "short-term holding facility" and "pre-departure accommodation" have the meaning given by section 147 of the Immigration and Asylum Act 1999; "service custody premises" has the meaning given by section 300(7) of the Armed Forces Act 2006."	*This is consequential of NC2 – please see substantive comments in relation to this New Clause.*
	7	Page 4, line 17, at end insert— "(d) the person intends to do this for personal gain"	We welcome restriction of the offence of supplying psychoactive substances to those who do it for personal gain, as opposed to those who supply them for other purposes, as this will go some way to ensuring that those who supply on a social basis within a friendship group are not criminalised.
	7	Page 4, line 18, leave out from "subject to" to end of line 19 and insert "section (Exceptions to offences) (exceptions to offences)."	*This is consequential of NC3 – please see substantive comments in relation to this new clause.*
	8	Page 4, leave out sub-paragraph (i)	We welcome the proposal that importation of a new psychoactive substance for personal consumption is not an offence, to ensure that someone purchasing psychoactive substances over the internet, intended for their own use is not criminalised, especially as they may not know that it is in fact being imported.
	8	Page 4, line 27, leave out sub-paragraph (i)	We welcome the proposal that importation of a new psychoactive substance for personal consumption is not an offence, to ensure that someone purchasing psychoactive substances over the internet, intended for their own use is not criminalised.
	8	Page 4, line 38, leave out sub-paragraph (i)	We welcome the proposal that importation of a new psychoactive substance for personal consumption is not an offence, to ensure that someone purchasing psychoactive substances over the internet, intended for their own use is not criminalised.

Amendment No.	Clause	Proposed amendment	Comments
	8	Page 5, line 6, leave out from "subject to" to end of line 7 and insert "section (Exceptions to offences) (exceptions to offences)."	*This is consequential of NC3 – please see substantive comments in relation to this new clause.*
	9	Page 5, line 26, at end insert— "(2) In sentencing, account shall be taken of the relative harm associated with the psychoactive substance that was the subject matter of the offence"	We welcome efforts to ensure that sentencing is commensurate with the potential harm done by the substance involved, but submit that the issue of harm should be considered at a much earlier stage when determining whether or not a substance should be controlled.
	9	Page 5, line 26, at end insert— "( ) A person guilty of an offence under section (Possession of a psychoactive substance in a custodial institution) is liable— (a) on summary conviction in England and Wales— (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or (ii) to a fine, or both; (b) on summary conviction in Scotland— (i) to imprisonment for a term not exceeding 12 months, or (ii) to a fine not exceeding the statutory maximum,or both; (c) on summary conviction in Northern Ireland— (i) to imprisonment for a term not exceeding 6 months, or (ii) to a fine not exceeding the statutory maximum, or both; (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both."	*This is consequential of NC2 – please see substantive comments in relation to this new clause.* We submit that being in possession of a psychoactive substance in prison should not be a criminal offence at all, and is certainly not something that should be liable for a custodial sentence.
	11	Page 6, line 16, leave out "regulations under section 10." and insert "section (Exceptions to offences)."	*This is consequential of NC3 – please see substantive comments in relation to this new clause.*
	35	Page 22, line 5, leave out "8" and insert "(Possession of a psychoactive substance in a custodial institution)"	*This is consequential of NC2 – please see substantive comments in relation to this new clause.*
	35	Page 22, line 21, leave out "8" and insert "(Possession of a psychoactivesubstance in a custodial institution)"	*This is consequential of NC2 – please see substantive comments in relation to this new clause.*
	42	Page 26, line 9, leave out "8" and insert "(Possession of a psychoactive substance in a custodial institution)"	*This is consequential of NC2 – please see substantive comments in relation to this new clause.*
	49	Page 29, line 28, leave out "regulations under section 10" and insert "section (Exceptions to offences)"	*This is consequential of NC3 – please see substantive comments in relation to this new clause.*

Amendment No.	Clause	Proposed amendment	Comments
	50	Page 31, line 12, leave out "regulations under section 10" and insert "section (Exceptions to offences)"	*This is consequential of NC3 – please see substantive comments in relation to this new clause.*
	53	Page 32, line 43, leave out "8" and insert "(Possession of a psychoactive substance in a custodial institution)"	*This is consequential of NC2 – please see substantive comments in relation to this new clause.*
	53	Page 33, line 26, leave out "8" and insert "(Possession of a psychoactive substance in a custodial institution)"	*This is consequential of NC2 – please see substantive comments in relation to this new clause.*
	53	Page 33, line 28, leave out "8" and insert "(Possession of a psychoactive substance in a custodial institution)"	*This is consequential of NC2 – please see substantive comments in relation to this new clause.*
	53	Page 33, line 30, leave out "8" and insert "(Possession of a psychoactive substance in a custodial institution)"	*This is consequential of NC2 – please see substantive comments in relation to this new clause.*
	53	Page 33, line 32, leave out "8" and insert "(Possession of a psychoactive substance in a custodial institution)"	*This is consequential of NC2 – please see substantive comments in relation to this new clause.*
	54	Page 34, line 9, leave out "regulations under section 10." and insert "section (Exceptions to offences)."	*This is consequential of NC3 – please see substantive comments in relation to this new clause.*
	Sched 4	Page 48, line 16, at end insert— "Intoxicating Substances (Supply) Act 1985 (1) The Intoxicating Substances (Supply) Act 1985 is repealed. (2) In consequence of the repeal made by sub-paragraph (1), in Schedules 3 and 6 to the Regulatory Enforcement and Sanctions Act 2008, omit the entry relating to the Intoxicating Substances (Supply) Act 1985."	We recognise that the Bill encompasses those substances and offences dealt with by the Intoxicating Substances (Supply) Act 1985. However consideration must be given to transporting the statutory defence contained within that Act whereby "In proceedings against any person for an offence under subsection (1) above it is a defence for him to show that at the time he made the supply or offer he was under the age of eighteen and was acting otherwise than in the course or furtherance of a business.[36]

[36] Section 1(2) Intoxicating Substances (Supply) Act 1985 http://www.legislation.gov.uk/ukpga/1985/26/section/1

Amendment No.	Clause	Proposed amendment	Comments
	Sched 4	Page 48, line 16, at end insert— "Misuse of Drugs Act 1971 (1) The Misuse of Drugs Act 1971 is amended as follows— (2) In section 4A (Aggravation of offence of supply of controlled drug) after subsection (4) insert— "(4A) The third condition is that the offence was committed on any premises intended to locate any vulnerable child or in the vicinity of said premises; (4B) in this section "vulnerable child" means any person aged under 18 who is not living with their parents or carers and is (a) accommodated in residential care under section 17, section 20, section 25 or section 31 of The Children Act 1989, or, (b) accommodated in a multi-occupant dwelling under part 7 of the Housing Act 1996. (4C) The Secretary of State may by order made by statutory instrument specify the circumstances in which a court must take into account Condition C; (4D) The fourth condition is that the offender supplies a controlled drug to any persons under the age of 18.""	We are extremely concerned at the proposal to use this legislative process to amend the Misuse of Drugs Act without proper consultation against guidance on Consultations issued by the Cabinet Office.[37] As referred to in relation to Amendment 41, this creates a statutory aggravating factor. Premises which are used to locate vulnerable children are often not openly specified as such, in order to afford protection to the residents, and so a defendant may not be aware that the premises are such an establishment. In those circumstances it would be unjust for the offence to be automatically aggravated. If this is to be included, recommend that this be specified as a potential aggravating factor which the Court may take into account, not one which they must treat as aggravating the offence.

[37] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf

Amendment No.	Clause	Proposed amendment	Comments
	NEW	"Possession of a psychoactive substance in a custodial institution (1) A person commits an offence if— (a) the person is in possession of a psychoactive substance in a custodial institution, (b) the person knows or suspects that the substance is a psychoactive substance, and (c) the person intends to consume the psychoactive substance for its psychoactive effects. (2) In this section "custodial institution" has the same meaning as in section 6. (3) This section is subject to section (Exceptions to offences) (exceptions to offences)."	This is a significant departure from the government position, which has always been that this Bill was not intended to criminalise possession of psychoactive substances. This was not a recommendation of the expert group, ACMD, or Home Affairs Select committee (and indeed runs counter to their stated views in published reports) and has not been subject to any consultation or discussion with relevant expertise or organisations with expertise in prison welfare and law. Possession of a psychoactive substance outside of a custodial institution is not criminalised. There is no justification to criminalise prisoners more harshly simply because of their already vulnerable position. This will not deter use in these settings – as evidenced by numerous reports, including the government's own,[38] a policy based on punitive user level sanctions has little impact on levels of use. We submit that being in possession of a psychoactive substance in prison should not be a criminal offence at all, and is certainly not something that should be liable for a custodial sentence. Issues relating to possession of substances within the prison adjudication system. Current guidance[39] does not provide that possession of a controlled drug by a prisoner must be referred to the police, and there is no reason to depart from this for new psychoactive substances. We urge the Committee to reject this amendment, and encourage the use of evidence based prevention, treatment and harm reduction interventions in prisons – in line with established best practice, and technical guidance provided by the WHO, UNAIDS, UNODC technical guidance.[40]

[38] Home Office, 'Drugs: International Comparators,' October, 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368489/DrugsInternationalComparators.pdfat Page 51
[39] The Appropriate Handling of Crimes in Prison – Protocol between National Offender Management Service, Association of Chief Police Officers, Crown Prosecution Service, 27th February 2015, https://www.cps.gov.uk/publications/agencies/crime_in_prisons_protocol_2015.pdf
[40] UNAIDS, WHO, UNODC 'Services for people in prisons and other closed settings' 2014 https://www.unodc.org/documents/hiv-aids/publications/Prisons_and_other_closed_settings/2014_guidance_servicesforpeopleinprisons_en_1.pdf

Amendment No.	Clause	Proposed amendment	Comments
	NEW	"Exceptions to offences (1) It is not an offence under this Act for a person to carry on any activity listed in subsection (3) if, in the circumstances in which it is carried on by that person, the activity is an exempted activity. (2) In this section "exempted activity" means an activity listed in Schedule (Exempted activities). (3) The activities referred to in subsection (1) are— (a) producing a psychoactive substance; (b) supplying such a substance; (c) offering to supply such a substance; (d) possessing such a substance with intent to supply it; (e) importing or exporting such a substance; (f) possessing such a substance in a custodial institution (within the meaning of section (Possession of a psychoactive substance in a custodial institution)). (4) The Secretary of State may by regulations amend Schedule (Exempted activities) in order to— (a) add or vary any description of activity; (b) remove any description of activity added under paragraph (a). (5) Before making any regulations under this section the Secretary of State must consult— (a) the Advisory Council on the Misuse of Drugs, and (b) such other persons as the Secretary of State considers appropriate. (6) The power to make regulations under this section is exercisable by statutory instrument. (7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."	We welcome efforts to create exceptions to offences in certain circumstances to ensure that interference with activities carried out by health care professionals acting in that capacity and also approved research activities.

Amendment No.	Clause	Proposed amendment	Comments
	NEW	"Breach of a premises notice (1) A senior officer or a local authority may issue a notice requiring a premise to cease trading if conditions A, B and C are met. (2) Condition A is that the premise has been issued a premises notice under section 13 of this Act. (3) Condition B is that in the view of the senior officer or a local authority that issued the premises notice, the terms of that notice are not being complied with. (4) Condition C is that the senior officer or local authority has made an application to an appropriate court for a premises order under section 19 of this Act. (5) A notice issued to a premise under subsection 1 shall cease to have effect when a court has considered an application for a premises order in respect of that premise. (6) In a case where a court has decided not to issue a premises order to a premise that has been subject to a notice under this section, the court may order the local authority or the senior officer's organisation to pay compensation to the owner of the premises in respect of income lost due to the suspension in trading. (7) For the meaning of "senior officer", see section 12(7)."	*We have highlighted issues with premises notices and orders in our proposed amendments at Appendix B – please see these for substantive comments on the need for certainty and provision for appeals.*

Amendment No.	Clause	Proposed amendment	Comments
	NEW SCHED	"Exempted activities Healthcare-related activities 1 Any activity carried on by a person who is a health care professional and is acting in the course of his or her profession. In this paragraph "health care professional" has the same meaning as in the Human Medicines Regulations 2012 (S.I. 2012/1916) (see regulation 8 of those Regulations). 2 Any activity carried on for the purpose of, or in connection with— (a) the supply to, or the consumption by, any person of a substance prescribed for that person by a health care professional acting in the course of his or her profession, or (b) the supply to, or the consumption by, any person of a substance in accordance with the directions of a health care professional acting in the course of his or her profession. In this paragraph "health care professional" has the same meaning as in the Human Medicines Regulations 2012 (see regulation 8 of those Regulations). 3 Any activity carried on in respect of an active substance by a person who— (a) is registered in accordance with regulation 45N of the Human Medicines Regulations 2012, or (b) is exempt from any requirement to be so registered by virtue of regulation 45M(2) or (3) of those Regulations. In this paragraph "active substance" has the same meaning as in the Human Medicines Regulations 2012 (see regulation 8 of those Regulations).	We welcome efforts to except offences in certain circumstances to ensure that interference with activities carried out by health care professionals acting in that capacity and also approved research activities.

Amendment No.	Clause	Proposed amendment	Comments
		Research 4 Any activity carried on in the course of, or in connection with, approved scientific research. In this paragraph— "approved scientific research" means scientific research carried out by a person who has approval from a relevant ethics review body to carry out that research; "relevant ethics review body" means— (a) a research ethics committee recognised or established by the Health Research Authority under Chapter 2 of Part 3 of the Care Act 2014, or (b) a body appointed by any of the following for the purpose of assessing the ethics of research involving individuals— (i) the Secretary of State, the Scottish Ministers, the Welsh Ministers, or a Northern Ireland department; (ii) a relevant NHS body; (iii) a body that is a Research Council for the purposes of the Science and Technology Act 1965; (iv) an institution that is a research institution for the purposes of Chapter 4A of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (see section 457 of that Act); (v) a charity which has as its charitable purpose (or one of its charitable purposes) the advancement of health or the saving of lives; "charity" means— (a) a charity as defined by section 1(1) of the Charities Act 2011, (b) a body entered in the Scottish Charity Register, or (c) a charity as defined by section 1(1) of the Charities Act (Northern Ireland) 2008; "relevant NHS body" means— (a) an NHS trust or NHS foundation trust in England, (b) an NHS trust or Local Health Board in Wales, (c) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978, (d) the Common Services Agency for the Scottish Health Service, or (e) any of the health and social care bodies in Northern Ireland, as defined by section 1(5) of the Health and Social Care (Reform Act (Northern Ireland) 2009."	

October 2015

Appendix B – Proposed Amendments to Psychoactive Substances Bill (PSB 20B)[41]

Release and Tranform do not support this Bill but have proposed amendments to lessen the disproportionate impact on human rights and the harmful impact of the bill. Below details Release's proposed amendments and the basis for the proposals.

Clause	Proposed Amendment	Basis for amendment
1	After Clause 1 **insert "Impact Assessment**" "(1) The Secretary of State must on commencement of this Act conduct an annual impact assessment of this Act, including deaths and other harms caused by all controlled substances and banned substances and (2) if it is deemed that the Misuse of Drugs Act 1971 and/or the Psychoactive Substances Act 2015 has contributed to increased health and social harms this Act will cease to have effect from 01 January 2018, unless further legislative action is taken by the Secretary of State."	There is concrete evidence from Ireland and Poland, both countries which have banned NPS, that there have been increased rates of use of these drugs since the bans have been introduced – lifetime use of NPS in Ireland has increased from 16% of young people (2011) to 22% (2014). There has also been an increase number of deaths (Ireland) and increased hospital admissions (Poland). An impact assessment would ensure that Parliament can assess whether the Government's approach to controlled drugs and banned drugs reduces or increases harm. Government states that it is their duty to protect the public, an assessment of their approach is necessary to ensure that duty is being met. Clearly, if harm increases the approach should be terminated.
2	Page 1, Line 14, Before 'psychoactive' **insert** 'synthetic' to read: "In this Act "**synthetic** psychoactive substance" means any substance which –a) is capable of producing a *psychoactive effect* in a person who consumes it, and **[insert]** **b) Produced by chemical synthesis, especially not of natural origin, and**c) is not an exempted substance"	We endorse the amendment proposed by the ACMD1 and additionally/alternatively propose *this* amendment. The Government's manifesto pledge commits to banning 'new psychoactive substances' ('NPS'). All of the substances identified by the EMCDDA have been of a synthetic nature. This proposed revision of the definition ensures that the legislation tackles the problem that Government is aiming to address without introducing a disproportionate ban on all substances capable of having a psychoactive effect and which are not NPS. Such a disproportionate ban would undermine the rule of law and engender an intolerable degree of legal uncertainty as demonstrated by the exemptions already identified as necessary by the Government. The NPS is dominated by synthetic drugs with the EMCDDA stating that just two groups – synthetic cannabinoids and synthetic cathinones – account for 63% of all new psychoactive substances reported for the first time by the EU Early Warning System, and 73% of all seizures in 2013/14.
3	Page 2, Line 10, **insert** after Clause 3 (2) a new **Clause 3 (3) "The Secretary of State will establish a mechanism whereby substances may be independently submitted to the Advisory Council on the Misuse of Drugs to consider a) whether the substance is of low risk of harm and b) whether the substance should be added, varied or removed from Schedule 1 subject to regulations under section 3(2)" and c) any recommendation by the ACMD should be binding on the Secretary of State".**	Currently the Bill has no framework for adding substances to Schedule 1 Exempted Substances bar a duty for the Secretary of State to consult those parties whom the Secretary of State deems it appropriate to consult. In the absence of any purposive framework such delegated powers are unwieldy and may imperfectly achieve the policy objectives of the primary legislation which is to prevent harm from NPS. The Government advocates for an evidenced based approach to policy making, this amendment would support the Government in its endeavour.

[441] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470421/ACMD_definitions_advice_final-23-October-2015.pdf

Clause	Proposed Amendment	Basis for amendment
4	**Delete** Clause 4 (1)(c) (i)	The Government decided not to make possession of NPS a criminal offence based on the advice of the NPS Expert Panel who did not think it was necessary to criminalise young people. Clause 4 (1)(c)(i) makes production of a NPS for personal use a criminal offence.
8	**Delete** Clause 8 (2)(d)(i)	The Government have proposed an amendment which ensures that those importing for personal use are not criminalised.Clause 8 (2)(d)(i) makes exportation for personal use an offence which clearly is odd in and of itself but also undermines the Government's approach which is to avoid the unnecessary and harmful impact of criminalising young people.
Defence Clause	Page 5, Line 25, **insert** new clause: **"(1)This section applies to offences under any of the following provisions of this Act, that is to say section (4) and (5), section 7 and (8)** **(2) In any proceedings for an offence to which this section applies it shall be a defence for the accused to prove that the psychoactive substance which is the subject of the charge has been consumed by significant numbers of people over the course of a significant amount of time in the absence of significant harmful effects.** **(3)Nothing in this section shall prejudice any defence which is open to a person charged with an offence to which this section applies to raise apart from this section."**	The Government's manifesto pledge commits to banning 'new psychoactive substances' ('NPS'). The United Nations Office on Drugs and Crime has defined New Psychoactive Substances as "substances of abuse, either in a pure form or a preparation, that are not controlled by the 1961 Convention on Narcotic Drugs or the 1971 Convention on Psychotropic Substances, but which may pose a public health threat". This new defence clause recognises that not all substances fall within the Government's aim of banning NPS and as such defendants should be afforded a defence for substances caught up by the Bill which are not harmful or not NPS and not listed in Schedule 1. The proposed defence places the legal burden on the defendant to prove that the substance is not harmful.
12	Page 6, Line 18, **delete** Clause 12(1) and replace with **"A senior officer or a local authority may give a prohibition notice to a person if conditions A, B and C are met."** AND Page 6, Line 28, **Insert** after Clause 12(4) a **new Clause 12(5) "Condition C is that the person to whom the notice is given is informed that failure to comply with the notice may result in Court proceedings."** Page 6, Line 32, In Clause 12(6) **delete "given to an individual who is under the age of 18".** Additionally, provide for a process to appeal to Court for withdrawal of the Notice – see Appeal Clause for specific details.	Where Court proceedings (and ultimately a Prohibition Order) may result from failure to comply with the Notice, the recipient must be made fully aware of the consequences. The distinction created between by the current Clause means that a Notice to someone over the age of 18 is indefinite – this is not just or proportionate. See Appeal Clause for specific details.

Clause	Proposed Amendment	Basis for amendment
13	Page 7, Line 2, **delete** Clause 13(1) and **insert a new Clause 13(1) "A senior officer or a local authority may give a premises notice to a person if conditions A, B and C are met."** AND **Insert** after Clause 13(4) a **new Clause 13(5) "Condition C is that the person to whom the notice is given is informed that failure to comply with the notice may result in Court proceedings."** Page 7, Line 26, **insert after Clause 13(6) a new Clause 13(7) "A premises notice –(a) must specify the period for which it has effect, and** **(b) may not have effect for more than 3 years."** Page 7, Line 24, **insert** after new Clause 13(7) a **new Clause 13(8) "For the purposes of this section, patrons of entertainment establishments and those responsible for health and social care services and prisons are exempt from liability for their clients' use of psychoactive substances on their premises within the meaning of the Act."** Additionally, provide for a process to appeal to Court for withdrawal of the Notice – see Appeal Clause for specific details.	Where Court proceedings (and ultimately a Premises Order) may result from failure to comply with the Notice, the recipient must be made fully aware of the consequences. It is not just or proportionate for a premises notice to be made indefinitely, particularly as there may be a negative impact on legitimate business. It is not just or proportionate for liability to be incurred in circumstances where the premises owner/manager does not have direct control over the activities on the premises, or where activities may be more likely than on other premises because of the nature of business on those premises. In relation to entertainment establishments, there are already provisions within licencing laws to deal with substances on premises – it is unnecessary to have additional control through this Act. If the current licencing regime does not allow for psychoactive substances to be covered, the proper course of action would be for amendment of that rather than the introduction of new legislation. In relation to social care services, we can look to the situation of occupier's liability for drug offences on premises under section 8 of the Misuse of Drugs Act. This does not have provision for premises notices or orders, and there is no justification for applying a different regime to psychoactive substances. At Page 6, Line 10, Clause 11(f) provides that "assisting or encouraging the carrying on of" which can be used to cover instances of substantive offences where premises owners and occupiers contribute positively to the commission of an offence. In relation to prisons, again the additional powers would be unnecessary for these institutions given the strict framework within in which they already operate. See Appeal Clause for specific details.

Clause	Proposed Amendment	Basis for amendment
Appeal Clause	Page 7, Line 27, **insert** after Clause 13 **a new Clause** **"Appeals against making of prohibition and premises notices** **(1) A person issued with a notice may appeal to a magistrates' court against the notice on any of the following grounds.** **1. That the conduct specified in the notice–** **(a) did not take place,** **(b) is not likely to take place** **(c) is conduct that the person cannot reasonably be expected to control or affect.** **2. That any of the requirements in the notice, or any of the periods within which or times by which they are to be complied with, are unreasonable.** **3. That there is a material defect or error in, or in connection with, the notice.** **4. That the notice was issued to the wrong person.** **(2) An appeal must be made within the period of 21 days beginning with the day on which the person is issued with the notice.** **(3) While an appeal against a notice is in progress—** **(a) a requirement imposed by the notice to stop doing specified things remains in effect, unless the court orders otherwise, but** **(b) any other requirement imposed by the notice is of no effect.** **For this purpose an appeal is "in progress" until it is finally determined or is withdrawn.(4) A magistrates' court hearing an appeal against a notice must—** **(a) quash the notice,** **(b) modify the notice (for example by extending a period specified in it), or** **(c) dismiss the appeal."**	It is essential that judicial oversight is built into the process of issuing notices to ensure that police discretion is not exercised unfettered, and to prevent potential abuses of power. Comparable Anti-Social Behaviour legislation has a similar appeal process in relation to the issuing of community protection notices.
14	Page 7, Line 31, **insert** after Clause 14(2)(b) a **new Clause 14(2)(c) "Explain what specific prohibited activity is alleged or is sought to be prevented."**	It is essential that any Notice clearly specifies the activity for which the Notice is being issued, particularly in light of court proceedings being a consequence of non-compliance.

Clause	Proposed Amendment	Basis for amendment
17	Page 9, Line 11, **delete** Clause 17(2) and **insert a new Clause 17(2) "Condition A is that the court is satisfied so that they are sure that–** **(a) issuing a notice was necessary, and** **(b) the requirements within any notice were reasonable in all the circumstances, and** **(c) that the person has failed to comply with a prohibition notice."** Page 9, Line 29, in Clause 17(7) **delete "made against an individual who is under the age of 18 at the time the order is made".**	Proceedings take place in criminal courts, and breach of an order is considered a criminal offence – as such the standard of proof should be the criminal standard. The situation is comparable to anti-social behaviour where the House of Lords has previously ruled that the relevant standard of proof applicable to the determination of whether anti-social behaviour has occurred under section 1(1)(a) Crime and Disorder Act 1998, is the equivalent of the criminal standard of beyond reasonable doubt (Clingham (formerly C (a minor)) v Royal Borough of Kensington & Chelsea, R v Manchester Crown Court ex parte McCann [2002] UKHL 39; [2003] 1 AC 787). There must be judicial oversight regarding whether it was necessary to issue a notice and that the requirements within it were not unreasonable/impossible to comply with. The distinction created by the current Clause means that a Notice to someone over the age of 18 is indefinite – this is not just or proportionate.
18	Page 10, Line 14, in Clause 18(4) **delete "who is under the age of 18 at the time the order is made".**	The distinction created by the current Clause means that a Notice to someone over the age of 18 is indefinite – this is not just or proportionate.
19	Page 10, Line 36, **delete** Clause 19(3) and **insert a new Clause 19(3) "Condition A is that the court is satisfied so that they are sure that –(a) issuing a notice was necessary, and** **(b) the requirements within any notice were reasonable in all the circumstances, and** **(c) that the person has failed to comply with a premises notice."** Page 11, Line 9, after Clause 19(7) **insert a new Clause 19(8) "A premises order–** **(a) must specify the period for which it has effect, and** **(b) may not have effect for more than 3 years."** Page 11, Line 9, after new Clause 19(8) **insert a new Clause 19(9) "For the purposes of this section, patrons of entertainment establishments and those responsible for health and social care services and prisons are exempt from liability for their clients' use of psychoactive substances on their premises within the meaning of the Act."**	Proceedings take place in criminal courts, and breach of an order is considered a criminal offence – as such the standard of proof should be the criminal standard. The situation is comparable to anti-social behaviour where the House of Lords has previously ruled that the relevant standard of proof applicable to the determination of whether anti-social behaviour has occurred under section 1(1)(a) Crime and Disorder Act 1998, is the equivalent of the criminal standard of beyond reasonable doubt (Clingham (formerly C (a minor)) v Royal Borough of Kensington & Chelsea, R v Manchester Crown Court ex parte McCann [2002] UKHL 39; [2003] 1 AC 787). There must be judicial oversight regarding whether it was necessary to issue a notice, and that the requirements within it were not unreasonable. It is not just or proportionate for a premises notice to be made indefinitely, particularly as there may be a negative impact on legitimate business. Please see explanation at Clause 13 above as to why these specific groups should be excluded.

Clause	Proposed Amendment	Basis for amendment
22	Page 13, Line 46, after Clause 22(4) **insert "provided use of that force is necessary and proportionate."**	It is essential that powers of those enforcing access prohibitions are not used disproportionately.
31	Page 19, Line 32, in Clause 31(1) **delete** "civil" and insert "**criminal**" Page 19, Line 33, in Clause 31(2) **delete** "balance of probabilities" and **insert "the criminal standard."** Page 13, Line 36, in Clause 31(3) **delete "not".** Page 19, Line 39, after Clause 31(3) **insert "although it may not have been available during those criminal proceedings."**	Proceedings take place in criminal courts – as such the standard of proof should be the criminal standard. The court should only be able to hear evidence that would have been admissible during the criminal proceedings. This ensures, along with other amendments, that criminal rules of evidence apply in these proceedings, and that the admission of hearsay evidence is limited.
35	Page 22, Line 5, in Clause 35(1) **delete "or section 25."**	Section 25 contains an offence relating to failure to comply with a prohibition order or premises order – it is not necessary to have further search powers specifically for this. If the alleged breach relates to a separate substantive offence there will already be powers in place to deal with that.
35	Page 22, Line 40, in Clause 35(4) **delete "or section 25."**	Section 25 contains an offence relating to failure to comply with a prohibition order or premises order – it is not necessary to have further search powers specifically for this. If the alleged breach relates to a separate substantive offence there will already be powers in place to deal with that.
44	Page 26, Line 37, after Clause 44(1) **insert "or section 44."**	Any provisions relating to seizure of items under section 42 must also be equally applied to items seized under section 44 (albeit that this is an extension to seizure powers detailed in section 42).
45	Page 27, Line 21, after Clause 45(1) insert **"or section 44."**	As above
49	Page 29, Line 23, **delete** Clause 49(2). Page 29, Line 25, **delete** Clause 49(3) insert new Clause 49(3) **"If in exercise of the power conferred by sub-paragraph (1) of this section the officer seizes and retains a psychoactive substance or controlled drug, he must, if the person from whom it was seized maintains that he was lawfully in possession of it, tell the person where inquiries about its recovery may be made.**	Officers should not have the power to dispose of substances based solely on reasonable belief, without that having been confirmed by independent testing, particularly where a person asserts that it is a substance which is lawfully in their possession.
Schedule 1 Exempted Substances	Page 38, line 23, at end **insert "Low non-psychoactive doses of psychoactive substances".**	

Clause	Proposed Amendment	Basis for amendment
Schedule 1 Exempted Substances	Page 39, Line 24, **insert:** **Cosmetic Products** **11 Any substance which is ordinarily used as a cosmetic product and which complies with** EU Regulation 1223/2009 (Cosmetics Regulation) **Aromatherapy products** **12 Any substance which is ordinarily used as an aromatherapy product** **13 Any substance naturally produced by the human body** **14 Substances traditionally used in religious ceremonies**	Currently all of these groups are caught by the Bill. Perfume, as with aromatherapy (such as lavender oil), can have a psychoactive effect. In respect of substances naturally occurring in the body this would include bodily fluids such as semen which has a psychoactive effect (see: http://www.newscientist.com/article/dn2457-semen-acts-as-an-antidepressant.html). Research also suggests that incense, such as frankincense, used in religious ceremonies has psychoactive effect (http://www.sciencedaily.com/releases/2008/05/080520110415.htm). Clearly it is unlikely that police or the CPS would take a prosecution in either the case of bodily fluids or frankincense but well drafted legislation should be explicit on what is and what is not exempted.
Schedule 4 Consequential Amendments	Page 48, Line 28, in amendments to Proceeds of Crime Act' at 1 (2) after 1A(D) **insert "1A (e) a person found guilty of an offence under section 4 or section 8 shall be excluded from Section 1 A of this Act if the offence was one where the substance was for personal use".**	If the deletion of the personal use aspects of production and exportation are not deleted the reach of the POCA amendments needs to be limited to trafficking type offences.
Schedule 4 Consequential Amendments	Lifestyle offences **insert ( ) "para ( ) does not include production or exportation for personal use'**	Same principle as amendment above.

October 2015

Written evidence submitted by the Association of the British Pharmaceutical Industry (ABPI) (PSB 21)

PSYCHOACTIVE SUBSTANCES BILL

Introduction

1. The Association of the British Pharmaceutical Industry (ABPI) represents innovative research-based biopharmaceutical companies, large, medium and small, leading an exciting new era of biosciences in the UK. Our industry, a major contributor to the economy of the UK, brings life-saving and life-enhancing medicines to patients. Our members supply 90 per cent of all medicines used by the NHS, and are researching and developing over two-thirds of the current medicines pipeline, ensuring that the UK remains at the forefront of helping patients prevent and overcome diseases. The ABPI is recognised by Government as the industry body negotiating on behalf of the branded pharmaceutical industry, for statutory consultation requirements including the pricing scheme for medicines in the UK.

2. The ABPI welcomes the opportunity to submit comment to the Public Bills Committee's review of the Psychoactive Substances Bill. The ABPI has previously submitted these concerns to the Home Affairs committee inquiry into the Psychoactive Substances Bill in partnership with the British Generic Manufacturers Association (BGMA) and the Proprietary Association of Great Britain (PAGB).

3. We would like to use this submission to raise our concerns around the potential unintended[42] impacts of the Psychoactive Substances Bill, as currently drafted. These relate to the research, development, and production of medicines by our industry. We would ask that the Committee take our concerns into consideration when reviewing proposed amendments that may address the issues below.

4. Our first concern is to ensure that the Bill does not apply to the legitimate supply and availability of certain compounds, which may have psychoactive properties, but which are used as intermediates, precursors, excipients or active pharmaceutical ingredients (API) in the research or manufacture of medicines. If these were viewed as in scope of the Bill, this could cause significant difficulties in purchasing, importing, and exporting these substances, which would significantly inhibit the production of medicines in the UK. It should also be made clear that arrangements under the current requirements for the purchase , holding and use of chemical precursors set out in the Controlled Drugs (Drug Precursors) (Intra-Community Trade) Regulations 2008 (SI 2008 No. 295) and the Controlled Drugs (Drug Precursors) (Community External Trade) Regulations 2008 (SI 2008 No. 296) will not be affected by the Bill. The principal aim of these regulations is to monitor international trade and prevent diversion of drug precursors for illicit drug manufacture – to handle these substances a licence is already required.

5. We also ask that the wording of the Bill or accompanying guidance clearly exclude research compounds, of unknown properties which therefore may be novel psychoactive substances, but that are not intended for human consumption, from the scope and subsequent implementation of the Bill. Again, any confusion over the applicability of the Bill to research compounds could result in the limitation and/or decline of drug discovery development and research for new treatments in the UK, with the loss to patient care that this would imply.

6. We understand from the Home Office [HO communication – Stephen Polly, 16th October 2015] that none of the above compounds are considered to be within the scope of the Bill since they are not intended for direct human consumption. However, this should be made explicit in the draft Bill or associated guidance to preclude any difficulties in purchasing, importing, or exporting these substances, which could have an adverse impact on the research and production of medicines in the UK. We also hope that any such guidance will be published promptly following enactment of the Bill, to reduce the risk of misinterpretation, and potentially put supply of certain substances at risk.

7. Another concern is that the current scope of the Bill could inadvertently apply to legitimate research involving psychoactive substances, potentially criminalising such research or the supply of substances for such use. The current exemptions covering medicinal products and investigational medical products would exempt the large majority of medicines research projects from the scope of the Bill. However, some legitimate research may not be covered by these exemptions. For example research into a novel substance which may have psychoactive properties, which has no history of food use and is not an investigational medicinal product, may fall under the scope of the Bill. We also echo the concerns of the scientific research community that some basic research, for example in the field of neuroscience, which may have implications for our understanding of phenomena such as memory and mental illness and hence have implications for our industries in the long term, may currently fall under the scope of the Bill.[43] Therefore, to avoid putting such significant research at risk, we believe the exemptions must be extended and strengthened to include all 'bona fide' research in humans as approved by appropriate Research Ethics Committees.

8. We are grateful for the opportunity to engage with the Committee on these concerns, and are confident that the Home Office and Government is sympathetic to these issues and committed to ensuring that the Bill does not impact on legitimate research, development, manufacture, and supply of medicines in the UK. We look forward to continuing to work with the Home Office to fully address our concerns, through the extension

[42] We consider these unintended as they were not formally stated aims of the Bill.

[43] The Academy of Medical Sciences, The Royal Society, Wellcome Trust, Royal Society of Biology, British Pharmacological Society, Royal College of Psychiatrists joint submission.

and strengthening of the exemptions within the Bill and issuing of appropriate and timely guidance and we hope that the Committee will also work to secure these changes.

October 2015

Written evidence submitted by the Advisory Council on the Misuse of Drugs (PSB 22A)

Re: Definitions for Psychoactive Substances Bill

I am pleased to enclose the Advisory Council on the Misuse of Drugs' (ACMD) advice concerning the scope of the Psychoactive Substances Bill and the definition of psychoactive substances.

In constructing its definition the ACMD has focused on those substances previously termed 'novel' by the ACMD. The ACMD has also reviewed the current definition in the Psychoactive Substances Bill and proposed a revision.

We have highlighted the benefits and risks of the current and proposed definition.

Professor Les IversenChair of the ACMDcc Rt. Hon. Jeremy Hunt, MP, Secretary of State for Health Rt. Hon. Mike Penning MP, Minister for Policing, Crime and Criminal JusticeRt. Hon. Jane Ellison, MP, Parliamentary Under Secretary of State for Public Health line

ACMD advice on definitions of scope for the "Psychoactive Substances Bill"

1. Introduction

1.1 The Home Secretary's letter to ACMD of 11 July 2015 made clear that the provisions in the Psychoactive Substances Bill (the Bill) "will complement those in the Misuse of Drugs Act 1971 which will remain at the apex of the regulatory framework for the control of harmful substances."

1.2 The ACMD's proposed definitions are made with this regulatory hierarchy in mind.

1.3 The ACMD considers that the focus of the "Psychoactive Substances Bill" should be to prevent the potential harms resulting from the flood of NPS, with no accompanying safety data, into the UK.

1.4 The ACMD believe the scope of the Psychoactive Substance Bill needs to be focused on a group of substances, which the Council has referred to as "Novel Psychoactive Substances" (NPS) [*letter to Home Secretary, 2nd July 2015; letter to Home Secretary, July 13th 2015*].

2. Recommendations for proposed alternative definitions:

2.1 **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.

2.1.1 *Benefits*:

— The definition of "substance" includes synthesis. There is no ambiguity of the term "synthetic" as this fits the Oxford English Dictionary definition of synthetic (of a substance):
  — Synthetic (adjective):(of a substance) made by chemical synthesis, especially to imitate a natural product: e.g. synthetic rubbero
— This covers what the ACMD understands to be the intended scope of the legislation, and would cover nitrous oxide and "poppers" (amyl nitrite and congeners), both of which are 'synthetic' and psychoactive.

2.1.2 *Risk*:

— This definition would omit the small number of psychoactive natural products.

2.1.3 *Proposed solution to risk:*

— The small number of problematic psychoactive natural products could be considered by the ACMD for control under the Misuse of Drugs Act 1971.

2.2 The Home Secretary's letter to the ACMD (of 11 July 2015) stated that inclusion of the term "novel" was considered to be unworkable. The terms new and novel have been used interchangeably, by act or omission, which has resulted in some confusion. In lieu of this, the ACMD has returned to the scope and intended thrust of the Bill and proposes the following alternative definitions, one or other of which might provide a legally defensible 'meaning of psychoactive substance':

i. "Psychoactive substances which are not prohibited by the United Nations Drug Convention of 1961 and 1971, or by the Misuse of Drugs Act 1971."

or

ii. "Psychoactive substances which are not prohibited by the United Nations Drug Conventions of 1961 and 1971, or by the Misuse of Drugs Act 1971, and which people in the UK are seeking for intoxicant use."

or

iii. "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."

2.2.1 **Recommendation 2:** The ACMD recommends option (iii) above, as this retains the concept of the assessment of harm. This definition is also closest to that used by the Expert Panel (para 3.4 below).

3. Background

3.1 Definition of 'Psychoactive Substance' in the draft "Psychoactive Substances Bill"

3.1.1 Paragraph 2: *"Meaning of "psychoactive substance" etc*.

(1) In this Act "psychoactive substance" means any substance which–

(a) is capable of producing a psychoactive effect in a person who consumes it, and

(b) is not an exempted substance.

3.1.2 *Benefits:*

— Pre-emptive control, avoiding the delays inherent in reactive regulation.

3.1.3 *Risks:*

— The scope of this definition is unnecessarily broad, with the potential for unintended consequences.

— An impossible list of exemptions will be needed. No matter how carefully a list of "exemptions" is drawn, the possibility that relatively harmless substances may be included is ever present.

— A disproportionate weight to the importance of psychoactive "natural" or "herbal" materials is given in this definition. These materials are relatively few in number by comparison with the hundreds of NPS entering Europe and the UK.

— Psychoactivity cannot be definitively proven.

3.1.4 Proposed solution to risk:

— The small number of problematic psychoactive natural products could be considered by the ACMD for control under the Misuse of Drugs Act 1971.

3.2 European Definition of NPS

3.2.1 The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) uses the following definition for NPS:

> *"A new psychoactive substance is defined as a new narcotic or psychotropic drug, in pure form or in preparation, that is not controlled by the United Nations drug conventions, but which may pose a public health threat comparable to that posed by substances listed in these conventions".*

3.2.2 *Benefits:*

— This definition includes the concept of harmfulness, which is also key to the ACMD's recommended definition.

3.2.3 *Risks:*

— The term "new" is difficult to define.

3.3 ACMD advice on NPS (2011)[44]

3.3.1 In 2011, the ACMD's report on Novel Psychoactive Substances (NPS) defined NPS as:

> *"psychoactive drugs which are not prohibited by the United Nations Single Convention on Narcotic Drugs or by the Misuse of Drugs Act 1971, and which people in the UK are seeking for intoxicant use."*

3.3.2 This included the major category of substances designed to be similar chemically and/or pharmacologically to known specific controlled drugs. It included substances, which were not new, but for which a novel form of misuse had developed. The definition also included herbal or fungal materials or their extracts.

3.3.3 Since 2010, the ACMD's NPS Committee has recommended many other NPS for control as they have arisen in the UK. For the purposes of control under the Misuse of Drugs Act 1971, the ACMD must provide evidence of the harmfulness, or potential harmfulness, of NPS.

3.4 *New Psychoactive Substances Expert Review Panel*[45]

3.4.1 The existing system for the control of NPS involves a constant cycle of advice from ACMD. Delays of 6–12 months between identifying an NPS in the UK and its control under the Misuse of Drugs Act 1971 are inevitably incurred in gathering evidence of harm and the requirement for scrutiny by both Houses of Parliament. The introduction of Temporary Class Drug Orders (TCDO) has helped to accelerate this process, and the ACMD has recommended four such Orders since 2010.

3.4.2 In 2013, the then Minister for Crime Prevention, Norman Baker, convened a panel of experts (referred to in this report as "Expert Panel") to consider changes in drugs policy that might facilitate control of the ever-increasing volume of NPS entering the UK. The EMCDDA provides a regular update and notes the arrival in Europe of more than 100 NPS each year.

3.4.3 The Expert Panel was established to deal with the problem of NPS, as defined above (para 3.2.1.) by the EMCDDA.

3.4.4 The Introduction to the Expert Panel's report, 2014 explained:

> *"In recent years, the United Kingdom has seen the emergence of new drugs that have similar effects to drugs that are internationally controlled. These drugs can be collectively called New Psychoactive Substances (NPS). These drugs have been designed to evade drug laws, are widely available and have the potential to pose serious risks to public health and safety and can even be fatal."*

3.4.5 The Expert Panel offered the definition of New Psychoactive Substances (referred to in this report as "NewPS") as:

> *'Psychoactive drugs, newly available in the UK, which are not prohibited by the United Nations Drug Conventions but which may pose a public health threat comparable to that posed by substances listed in these conventions.'*

3.4.6 The Expert Panel's recommendation 2.2 stated:

> **Recommendation 2.2: A general prohibition on the distribution of NewPS**
>
> *Taking into account the opportunities and risks of applying the general prohibition on distribution of NPS approach in the UK, the Panel recommends that the Government take forward this approach subject to ensuring that: (i) definitions used in legislation are robust;(ii) required exemptions are addressed (see below); (iii) the approach is focused on tackling the trade or supply rather than personal possession or use; and (iv) potential unintended consequences are explored more fully, building on learning and evidence from countries which have already taken this approach.*
>
> *In considering the general prohibition on distribution of NewPS approach, the Panel was mindful that the approach would capture a very wide range of current and potential future psychoactive substances and there was potential for unintended consequences. With that in mind, the Panel recommends that the Government puts in place a schedule of exemptions for those substances it wishes to permit when bringing the general prohibition into force (e.g. alcohol, tobacco, caffeine, energy drinks). Furthermore, in designing the legislation the Government should ensure that provision is made for newly emerging substances to secure exemptions (for example, by a power to add new exemptions by statutory instrument) where the risks of health and social harms can be adequately assessed. A regime is already in place for medicines but the Government needs to be mindful of the emergence of new markets.*

3.4.7 It is thus clear that in drafting the Bill, the Government included a "total ban on all psychoactive substances" in the definition of scope. The Expert Panel's recommendation 2.2 talks of a general ban on the

[44] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/119139/acmdnps2011.pdf
[45] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368583/NPSexpertReview PanelReport.pdf

distribution of New PS, but then includes a general ban on all psychoactive substances (based on the Irish model).

Written evidence submitted by the Advisory Council on the Misuse of Drugs (PSB 22B)

Re: ACMD's final advice on definitions for Psychoactive Substances Bill

Thank you for meeting with myself and Professor Ray Hill on 21 September 2015. At the meeting we discussed the ACMD's scientific advice on the proposed definition for the Psychoactive Substances Bill (of 17 August 2015). Although ACMD has argued that the Bill should focus on "Novel Psychoactive Substances" (otherwise known as "legal highs") and that there should be reference to harms, you reiterated that it is the Government's intention that the Bill covers all psychoactive substances, including natural psychoactive substances. You explained that the Bill will be supported by and inexorably linked to a separate forensic strategy. In light of this clarification we agreed that it would be helpful to meet again to reconsider the ACMD's view that the definition of 'psychoactive substances' that appears on the draft Bill might be made more legally defensible by being defined in scientific rather than lay terms, and to discuss ACMD input to the forensic strategy.

The meeting between the ACMD Technical Working Group and Home Office policy, legal advisors, and representatives of CAST took place on 7 October 2015. I note below the conclusions from the meeting, including areas of commonality and points on which we were unable to agree, and ACMD's final recommendations concerning the definition of psychoactive substances.

Agreed

1. The Working Group supports the need for a detailed forensic strategy and guidance to support the Bill.

The ACMD stresses that it has significant expertise in areas of science relevant to the implementation and operation of the new legislation, such as pharmacology and neurochemistry. The ACMD's Technical Working Group has provided advice to Home Office CAST when we have met, in particular on *in vitro* testing. We believe this reflects the best available science in this area.

The ACMD's intention is to try to make the Bill easier to apply by providing a definition which is demonstrable by means of *in vitro* testing.

The ACMD is encouraged by the progress CAST has made, which has incorporated ACMD advice to date. This is an area where the ACMD will continue to contribute to ensure the forensic strategy is evidence-based and scientifically robust, and ACMD agreed to continue dialogue with CAST to this end.

2. Comprehensive detail on pharmacology, chemistry or testing methodology is not required on the face of the Bill.

Unable to agree:

The ACMD proposes the following extension, based on the known basic pharmacological activities of existing psychoactive substances, to clause 2:

(2) For the purposes of this Act 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; as measured by the production of a pharmacological response on the central nervous system or which produces a response in *in vitro* tests qualitatively identical to substances controlled under the Misuse of Drugs Act 1971, and references to a substance's psychoactive effects are to be read accordingly and...

["qualitatively identical to" means that the substance interacts with the same target as a known psychoactive drug controlled under the Misuse of Drugs Act 1971.]

The ACMD feel that the current definition on the face of the Bill is too unspecific and does not adequately define a psychoactive substance

To reinforce the legal rigour of the Bill the ACMD further proposes the inclusion of an additional clause:

(4) Examples of classes of substances which come under the provisions of the Bill include, but are not limited to, all stimulants, dissociatives, hallucinogens, substances acting through the endocannabinoid system, the opioid system and the GABAergic system, which are not already covered by the Misuse of Drugs Act 1971.

The ACMD believe these proposed amendments strengthen and importantly focus the current definition by:

— Listing classes of substances, all of which have met the criterion of causing harm, making it very likely that new, related substances will have the same 'capability'.

— Creating a "blanket ban" coverage. This lists examples which are broad enough to immediately capture all of the NPS the ACMD has encountered to date and removes the need for an extensive list of exemptions and its frequent revision.
— Including flexibility for control of future substances.
— Flexing to cover substances the Home Office wishes to control under the Bill such as nitrous oxide and alkyl nitrites.
— Using the Misuse of Drugs Act 1971 as a comparable marker, as it references modes of action already known and is flexible enough to also cover any new modes of action.
— Adding an inclusion list should make the exemptions list more manageable.

Recommendations

— The Home Office to provide the ACMD with an opportunity to review the draft of the forensic strategy and supporting guidance prior to the implementation of the new legislation.
— The Home Office to consider the modification of clause (2) and the addition of proposed clause (4) to strengthen the definition and to make the definition more specific.
— In the event that the amendments being proposed by the ACMD are not agreed, we recommend that the text is added as a permanent feature of the supporting guidance and forensic strategy associated with the Psychoactive Substances Act. It should be explicitly stated that the text was developed in consultation with the ACMD and that it would not be varied without further ACMD advice.
— ACMD to continue to provide independent scrutiny and challenge to ensure that the forensic strategy is founded on and supported by a robust evidence-base.

October 2015

Written evidence submitted by the Home Office (PSB 22C)

Psychoactive Substances Bill

Thank you for your letter of 23 October, as well as your earlier letter of 17 August, on the Psychoactive Substances Bill. This reply also provides an update on progress following the recommendations in your earlier letter of 2 July.

At the outset I would like to thank you and your members for the time you have spent with Home Office officials over the summer working on various aspects of this Bill. I valued our discussion on 21 September and I know Home Office officials had a constructive meeting with your Technical Working Group on 7 October. I have also welcomed the Council's input on developing the Bill's forensic strategy with the Home Office's Centre for Applied Science and Technology, advising the department on the potential scope of the post-implementation review and your advice on our wider response. Your continued input will be essential to ensure the successful implementation of this Bill.

Building on our dialogue over the last few months, I am responding formally to your latest letter promptly, as well as to your previous advice of 17 August, to ensure that Parliament has the benefit of the Government's full response while the House of Commons scrutinises the Psychoactive Substances Bill this week.

The ACMD's letter of 17 August – defining "psychoactive substances"

The growth in psychoactive substance misuse coincided with the emergence of synthetic substances onto the UK market around 2008/9. The undoubted focus of this Bill is on those products. However, some natural psychoactive substances are of course harmful (e.g. Ibogaine and Kratom) and if the Bill only covers synthetic products, the market may be driven towards natural products, or claimed natural products, more generally. I therefore have no desire to create this loophole and drive this market, just as the Misuse of Drugs Act 1971 has done with synthetic substances with new substances emerging which have been designed to evade controls.

The Council's earlier recommendation to limit the scope of the Bill to synthetic substances was driven by your concerns about the breadth of the definition and its consequences especially for herbal medicines. We have worked hard across Government, notably with the Department of Health and the Medicines Healthcare Products Regulatory Agency, to find a robust solution, to ensure that such products are fully exempted from the Bill. I understand that officials have kept you updated on the work to strengthen these. We are now proposing an amendment that will exempt all homeopathic and herbal products from the Bill. These will continue to be regulated by medicines legislation.

The ACMD also suggested narrowing the definition of a psychoactive substance to focus on substances with a pharmacologically similar response and comparable public health threat to that of controlled drugs. The term 'similar' places a burden on evidence gatherers/forensic experts to prove the similarity of a psychoactive substance to a drug controlled under the MDA 1971. There will almost certainly be discrepancies in how 'pharmacologically similar' is interpreted which will cause issues similar to those posed by the analogue legislation used in the United States, namely differences in how forensic scientists, lawyers and courts interpret

the term 'similar'. The New Psychoactive Substances Review Expert Panel considered and rejected the analogue model for this and other reasons.

Furthermore, I believe this approach would lessen the number of substances caught by the Bill, limiting the number of psychoactive substances caught to those which produce pharmacologically similar responses to substances controlled by the Misuse of Drugs Act 1971. Home Office officials believe nitrous oxide and alkyl nitrites are not pharmacologically similar to any current controlled drug. In addition, the European Monitoring Centre for Drug and Drug Addiction report a number of psychoactive substances such as dimethocaine, mephetramine, methiopropamine which, depending on how different experts define 'similarity', could reach a different outcome as to whether they are pharmacologically similar. I wish to avoid such uncertainty.

Finally, I appreciate you and members would prefer a harm assessment to be included in the Bill so that the Bill captures only psychoactive substances which pose a public health threat similar to that of drugs that are already controlled under the MDA 1971 and UN provisions. This would introduce a further subjective and evidential test for prosecutors who would have to show once again that the substances display similarities to controlled drugs in posing a comparable public health threat. A considerable challenge caused by the vast majority of these substances is the lack of harm data on both their short and long term effects and as we have observed from New Zealand, agreeing a harms threshold is challenging.

Response to the ACMD's letter of 23 October

Recommendation 1 – the Home Office to provide the ACMD with an opportunity to review the draft of the forensic strategy and supporting guidance prior to the implementation of the new legislation.

Recommendation 4 – ACMD to continue to provide independent scrutiny and challenge to ensure that the forensic strategy is founded on and supported by a robust evidence-base.

I am greatly encouraged that you believe the Bill's forensic strategy, currently being developed, reflects the best available science in this area. I am confident that it will be able to prove that a substance is capable of producing a psychoactive effect.

The Council has a crucial role to play in relation to our forensic strategy, both its development and ongoing maintenance. My letter to you in May, at an early stage of the Bill's development, recognised the expertise which the Council has to contribute on this aspect of the Bill's implementation. Your advice and our discussions have only reinforced my view. I understand that the input you have already provided the Centre for Applied Science and Technology has ensured that we have made good progress in our readiness for proposed implementation next April. There will also be a role for the Forensic Regulator to make sure that the testing will be done to the same or equivalent quality standards as current forensic work. With your help, I believe that we can continue to build world-leading scientific capability and capacity in this area. I welcome your continued input and of course, we will seek the ACMD's views going forward in the way you recommend.

Recommendation 2 – the Home Office to consider the modification of clause (2) and the addition of proposed clause (4) to strengthen the definition and to make the definition more specific.

Recommendation 3 – in the event the amendments being proposed by the ACMD are not agreed, we recommend that the text is added as a permanent feature of the supporting guidance and forensic strategy associated with the Psychoactive Substances Act. It should be explicitly stated that the text was developed in consultation with the ACMD and that it would not be varied without further ACMD advice.

In drafting the Bill's definition of a psychoactive substance we have sought to balance the requirement to have a legally robust and accessible definition. The avoidance of criteria for manufacturers of these dangerous substances which allow them to try to circumvent (or indeed incentivise them to), the provisions of the Bill is paramount. I would also add that it would be highly unusual, if not unprecedented, to set out in legislation how an offence is to be proved – for instance, the Misuse of Drugs Act 1971 is silent as to what tests are required to prove whether a drug is controlled. Equally, any text which itself is non- exhaustive (in this case, the proposed types of testing techniques and classes of substances) can provide uncertainty in legislation, in spite of its best intention.

I appreciate that the Council has not sought to suggest an alternative definition of psychoactivity to the one set out in clause 2(2) but only to add to it. The current definition in the Bill provides that a substance must be capable of producing a psychoactive effect. It is the Government's view that this test is robust and that it will be possible to evidence the offences in the Bill to the requisite criminal standard.

I fully accept that the underpinning science and testing technique will be key elements of the Bill's implementation. However, legislation is designed to be "technology-neutral". It is therefore my strong preference not to include any further text on the face of the Bill. The proposed addition to clause 2(2) of the Bill (as I understand it), of outlining appropriate tests to prove psychoactivity, and the inclusion for clause 2(4) of a non-comprehensive list of classes, can better contribute to the Bill's accompanying forensic strategy. Importantly, this will give us flexibility to update our forensic approach with the post implementation experience of enforcement partners, any unforeseen shifts in the psychoactive substances market and innovations in science, including testing methodology.

I am assured that you indicate in your advice that your proposed text will provide the blanket ban sought and will cover such harmful substances as nitrous oxide and alkyl nitrates. I re-iterate my response above, that the ACMD has a vital role in the forensic strategy. My officials will work with the Council to confirm the exact wording to fully understand its application at a policy and operational level, for inclusion in the forensic strategy and as well as what other document(s) this is most suited to.

I also wanted to revisit our progress in relation to the advice you provided in your 2 July letter and to further assure you of the impact your advice has had on the Bill and its implementation.

In response to your steer, we are:

— including a duty on the Secretary of State to consult the ACMD before exercising certain regulation-making powers;

— ensuring all bona fide scientific research is exempted from the Bill. We have worked closely with government colleagues and experts in the research field such as the Academy of Medical Sciences to develop this amendment;

— ensuring that the supply of legitimate medicinal products, including all homeopathic and herbal products are not captured. A further amendment will exempt activities by healthcare professionals in the lawful course of their duties. This exemption, together with the one for medicinal products, will ensure that all healthcare is entirely removed from the scope of the Bill;

— requiring the Secretary of State to publish a review on the operation of the Act 30 months after it comes into force. We will continue to discuss with the ACMD how this will be undertaken. Whilst it will be conducted by Home Office analysts, it will be published, and laid before Parliament and will be open to scrutiny;

— working with the police, NCA and other law enforcement agencies to ensure effective action is taken, intervening and seeking to close on and off line markets; and

— driving forward a comprehensive action plan on prevention, treatment and information sharing and ensuring that our approach to new psychoactive substances is in line with our balanced drugs strategy. We are building on our current approach to raise our ambition for recovery and tackle drugs as a key driver of crime. As a major partner, the ACMD will play a pivotal role in developing our approach and we look forward to consulting with you on this.

I have greatly valued the advice you have provided me throughout the summer on various aspects of this Bill. I appreciate you may be disappointed that I have been unable to accept all your recommendations, but your challenge has been welcomed and I believe we have a stronger Bill as a result. I look forward to continuing to work with the ACMD as we move towards the implementation of the Bill next spring.

I am copying this letter to Rt. Hon. Jeremy Hunt, MP, Secretary of State for Health Rt. Hon. Mike Penning MP, Minister for Policing, Crime and Criminal Justice and Rt. Hon. Jane Ellison, MP, Parliamentary Under Secretary of State for Public Health

October 2015

Written evidence submitted by the Home Office

PSYCHOATCTIVE SUBSTANCES BILL: GOVERNMENT AMENDEMTNS FOR COMMON COMMITTEE STAGE

I am writing to drawn members of the Public Bill Committee attention to the Govenment's response, issued today, to the latest advice from the Advisory Council on the Misuse of Drugs relating to the Psychoactive Substance Bill received last Friday (copy attached). I also attach for east of reference the ACMD's advice of 17 August.

I am copying this letter to the members of the Public Bill Committee, Lord Rosser, Lord Paddick, Baroness Hamwee, Baroness Meacher and Lord Howarth of Newport. I am also placing a copy on the Bill page of the Home Office website.

October 2015

Written evidence submitted by the Royal Society for Public Health (RSPH) (PSB 23)

1. The Royal Society for Public Health (RSPH) is an independent, multi-disciplinary charity dedicated to the improvement of the public's health and wellbeing. With a membership of over 6,000 public health professionals, we help inform policy and practice, working to educate, empower and support communities and individuals to live healthily. We have previously called for this bill and are submitting evidence due to our desire to make sure that the outcome of the bill is the protection of individuals and the reduction of harm.

2. In March 2015, we published "Removing legal highs from the high street", which included calling for a ban on the import and sale of psychoactive substances. This recommendation was based on concerns that the

legal status of these substances has enabled them to be sold on the high street, normalising their use and giving the false impression that they are safe or safer than other controlled substances. Given that the composition and safety of NPS varies enormously, research by the Angelus Foundation that a quarter of young people aged 16-24 years old believed that NPS are safer than illegal drugs was particularly worrying. In principle, we welcome the bill to close the legal loopholes that allow the development, production and sale of significantly harmful substances to members of the public for consumption.

3. While the legal status and visibility of head shops on the high street may have contributed to the rise in the use of NPS, some of the demand for psychoactive substances would no doubt remain after the bill came into force. This demand would logically be displaced to 'underground' sources of psychoactive substances, and more recent evidence from Ireland makes it unclear whether the ban there has reduced the use of NPS. The bill needs to create the right legal framework to minimise any adverse consequences for health. The RSPH therefore suggests the following:

4. We must avoid causing additional harm to individuals who use psychoactive substances. The bill should not criminalise individuals, especially young people, for using psychoactive substances. The bill did not aim to criminalise possession and there has been some confusion in debate around the status of buying NPS, for instance over the internet and in custodial institutions. The effect of a criminal record and/or prison sentence on the life opportunities, health and wellbeing of individuals would be disproportionate for personal use and would be counterproductive to protecting individuals from harm. As well as making this clear in the legislation, the government should make clear in communications that those who seek help for problem use will not receive criminal sanctions.

5. As a permanent solution, treating all psychoactive substances covered by the bill as the same in terms of sanctions would not reflect the difference in risks and harms from different substances. The blanket ban should help to rectify the current situation that incentivises new, often more dangerous formulations and gives the impression that NPS are safer than controlled drugs. But psychoactive substance use will persist and the structure of sanctions needs to shape this by linking them to evidence of harm. An evidence-based process should be established to determine appropriate sanctions for substances covered by the legislation. It should be made clear how these cohere with the existing classification system for drugs controlled under the Misuse of Drugs Act.

6. The bill should avoid preventing the development of new substances for recreational use that reduce or minimise the risks of harm. The enormous health costs of alcohol and tobacco for example, which this bill exempts, are well established and advances may allow for less harmful formulations that could displace them. It should be established that innovation and research to this end would not be blocked.

7. The government should undertake an assessment of any additional burden that changes may place on the drug treatment system at a time when the Public Health Grant to local authorities has been cut by £200m in year. A survey of public health workers commissioned by the RSPH in July 2015 found that 26 out of 100 public health workers had seen rationing of drug treatment services.[46] Given this context, the government should make sure that sufficient resources are made available to deal with health problems caused by psychoactive substances.

October 2015

Written evidence submitted by Addaction (PSB 24)

Introduction to Addaction

1. Addaction exists to help its beneficiaries overcome their problems with addiction, mental health, behaviours and improve well-being. We employ over 1,500 staff members and last year we worked with nearly 70,000 people across all our services.

(a) Last year, 27,202 of our service users were engaged in structured treatment.

(b) 98% of our service users surveyed said they would recommend us to their friends and family.

(c) 97% said Addaction works well with other services.

(d) 91% felt that they had made progress in their recovery.

(e) 97% said that they had been given the support that they wanted.

(f) 41.3% of our service users who were discharged from drug services had successfully completed their treatment plan.

(g) 53.5% of our service users who were discharged from alcohol services had successfully completed their treatment plan.

(h) We received more than 21,000 referrals to our Mental Health Services with 50% of our clients moving to recovery, compared to 44% nationally.

[46] https://www.rsph.org.uk/en/about-us/latest-news/index.cfm/pid/DBD993A9-1590-4884-965F31860CB4A1C8

i. 30,000 school pupils attended workshops and assemblies by the Amy Winehouse Foundation Resilience Programme which is run in partnership with Addation.

j. Over 70% of people who were injecting left treatment with a hepatitis C test booked.

k. Our volunteers contributed an incredible 32,834 hours in total last year.

Overview

2. At Addaction, we pride ourselves on delivering evidence-based interventions across a wide range of services. We regularly consult with experts across a range of disciplines in order to ensure that the work we provide for some of the most vulnerable in our society will have the greatest possible impact, with the best likelihood of achieving successful outcomes and sustained recovery for those with which we work. We constantly strive to improve our services, and to deliver great results for individuals, families and communities.

3. We are concerned that the Home Office did not consult the Advisory Council on the Misuse of Drugs (ACMD) – a panel of substance misuse experts and leaders in the field – on the development or drafting of the Psychoactive Substances Bill. We are also concerned about the inclusion of Nitrous Oxide (laughing gas) in the bill, which is counter to recent ACMD advice. We would urge the Government to ensure an approach based on evidence, allowing for detailed consultation with the ACMD when reviewing this bill.

4. Addaction provides services across 16 prisons. Our experience is that New Psychoactive Substances (NPS) are becoming widely used within the prison estate,[47] but that those who are using these substances are more difficult to engage in treatment services than traditional drug users. Anecdotal reports links this to the fact that NPS users within prisons do not consider themselves to be addicted. Hence, a range of alternative responses will be needed to engage, advise, educate and treat this emerging population. At present there is limited resource for this to be achieved within custodial settings. We would urge the Government to create an 'innovation fund' to rigorously investigate and analyse the effective interventions for these new and emerging substances and those at risk of harm from them.

5. The majority of the work we undertake with young people is in relation to the use of traditional substances and in particular alcohol and cannabis. Nonetheless, there has been a notable increase in both the interest in and the use of NPS from 2008 onwards. The substances of initial focus were stimulant pills and powders including methylone and mephedrone. As time progressed and the range of different types and brands of substances increased it was the synthetic cannabinoid receptor agonist (SCRA) smoking blends that were more widely used by those engaged with our services.

6. We noticed a clear correlation between increasing levels of NPS use among specific populations and the numbers of different head shops located in certain parts of the county. It is difficult to ascertain whether shops appeared due to increasing demand for substances or conversely whether the appearance of these premises stimulated interest in NPS. However, what is apparent – giving the town of Maidstone as an example – is that the numbers of young people talking about their experiences of NPS increased as the number of premises selling these substances grew in number.

7. The demographics using these substances also changed over time. When 'legal highs' first appeared in the mid-2000s they were perhaps associated with a more middle class demographic: 'psychonauts' and experimental users interested in pursuing recreational drug diversity. This user group has now significantly changed and the young people most likely to become involved in NPS use are those from deprived backgrounds including those in local authority care or the criminal justice system.

Case example – Kent Young Person's Services

8. In July 2014 Kent undertook Operation Lantern, a trading standards initiative backed by Kent Police which targeted more than 20 head shops across Kent and Medway. Over four hundred packets were seized as part of this operation and, invoking General Product Safety Regulations, stores were prohibited from selling any of the 'legal highs' that they had in stock at the time of the raids. This continued for a six month period while the matter went through the court process. We believe that our experiences in relation to changing user demographics and our observations relating to Operation Lantern and its aftermath are important to share with regard to the potential positive and negative impacts of the proposed bill.

9. There was a discernible decrease in the number of people engaged with our services who were able to access NPS following the trading standards' initiative. It was clear that the normal supply mechanisms of substances had been disrupted and, for the first four to six weeks after it took place, numerous service users disclosed that the availability of NPS had decreased. Therefore an initial conclusion is that prohibiting the supply of these substances was immediately successful in reducing the numbers of young people who were accessing and consuming them on a more recreational or experimental basis.

10. However, at the same time it was evident that people who had a higher level of dependence on these substances were continuing to try to source these products. It is worth emphasising that it was the SCRA products that were most widely used in this way within our service user populations. As highlighted in DrugScope's Street Drugs Survey from January 2015, the vulnerable groups most associated with the problematic use of

[47] The Forensic Early Warning System (FEWS) in its annual report statse that 738 out of the 893 samples of drugs they collected (from only 20 prisons) were uncontrolled NPS (mainly two types of synthetic cannabinoids).

SCRAs included prison populations, street homeless or those in hostels, as well as disenfranchised young people including those outside of mainstream education or those involved with the care system.[48] There was clear evidence from fieldwork delivered by our team that more problematic or entrenched users of SCRAs continued to use them but were acquiring them from different, more dangerous sources.

11. While it was of course unlikely that head shops were providing substance information or harm reduction advice to people purchasing NPS, it was at least a relatively risk free way of getting hold of desired products. Instead we became aware of young people purchasing substances from street dealers and being far more susceptible to exploitation as a consequence. A concern with the new legislation is that, while it may reduce the number of people using NPS as a whole, it is likely to leave already vulnerable populations increasingly isolated from society and at risk of harm through increased contact with street and online dealers. In other words, the purchase of these substances will be displaced to other, less visible places, but the market itself will remain (as has been seen after changes to legislation in Ireland).

Attitudes toward risk

12. There is a sense that as NPS are often referred to as 'legal highs' young people equate them with lower levels of harm. While this might be true for some people this is not the attitude of many of those with whom we work. Surveys carried out within the past year with young people who have linked in with our Early Intervention Service in Kent demonstrate that many are aware of NPS risks; moreover, there was an overwhelming sentiment expressed that NPS were likely to be more dangerous than traditional street drugs.[49]

13. It is our belief that we should not solely focus on highlighting the potential harms of NPS. It is well established that young people have a higher predisposition to taking risks, and their behaviours will not necessarily change just because there is perceived to be potential danger. Indeed, it is well understood within the sector that 'just say no' style tactics not only do not work, but may in fact encourage experimentation.

14. Many of the young people we see who are using NPS and SCRAs in particular are those from the previously mentioned vulnerability groups. These are young people who are likely to have poor self-esteem and self-worth, and those who are from more deprived backgrounds and for whom the more cost-effective SCRA products will be more attractive.

15. We must ensure that any future legislation considers the needs of these most vulnerable populations and allows capacity for work around resilience and safer decision making to be delivered by support services such as substance misuse organisations, mental health provision and those offering education and pastoral care. Without this in place, any ban is only likely to isolate these hard to reach groups even further. The bill provides an opportunity to implement a statutory duty on local authorities to provide services for NPS users irrespective of age and we would recommend this.

Confusion about relative harms

16. We are also concerned about the potential for confused messages that might be given by a blanket ban on all psychoactive substances. The high risk of SCRAs is sometimes conflated by the media with the much more widely used nitrous oxide. Often referred to as laughing gas, this has become widely consumed, even among groups who might not consider experimenting with drugs in general. It is perceived to be a low risk substance by many young people and offers a short-lived high that will usually impact little on longer-term health or social functioning. While there are some genuine risks from nitrous oxide use, these can typically be managed fairly well. Problematic use and deaths related to its consumption are very rare and young people are often well aware of this. We would support nitrous oxide being exempted as per ACMD advice.

17. 'Legal highs' or NPS are often discussed as though they are one amorphous substance and there can be much confusion about which are risky and which are not. If young people are to make informed choices around use it is vital that products with greater potential harms are identified so that risks might be more easily addressed and managed. As such, there is obvious concern that legislation that incorporates nitrous oxide might divert individuals to other substances, such as alcohol or banned, more dangerous substances. In the context of young people in particular, the potential harms of alcohol should not be ignored given the links to physical and mental health issues, impaired social functioning, unplanned and unprotected sexual activity, as well as crime and other anti-social behaviour.

Criminalisation

18. We are extremely pleased that possession and use of psychoactive substances has not been criminalised as part of this bill, ensuring immediate safeguards against criminalisation for young people who may be engaged in experimental activity in a very brief way. However, the Bill has not been able to allay the existing uncertainty; for example, what constitutes a psychoactive substance or how much of a product would be for personal use. If these issues remain unresolved and the subject of conjecture for academics, politicians, scientists and service providers, how can we expect more naïve potential users to make choices that will keep them protected by law?

[48] http://www.drugsandalcohol.ie/23282/1/DownAStonyRoadDrugTrendsSurvey2014.pdf
[49] www.addaction.org.uk/core/core_picker/download.asp?id=1362

In summary

19. Addaction strives to reduce the harms that communities can face as a result of substance use, both legal and illicit. Some elements of the proposed bill may well reduce the availability of potentially dangerous substances, which would of course be welcomed. However, we have grave concerns that other aspects of the proposed legislation are likely to exacerbate current issues experienced by some of our most vulnerable populations and potentially create a new set of problems. It is imperative that these cohorts are offered support rather than being criminalised or further burdened by societal stigma, making already hard to reach populations increasingly isolated.

Our recommendations

20. We would urge the Government to ensure that the legislation is based on evidence, allowing for detailed consultation with the ACMD when reviewing this bill.

21. We would urge the Government to create an 'innovation fund' to rigorously investigate and analyse the effective treatment and early interventions for these new substances and those at risk of harm from them.

22. We support nitrous oxide being exempt from the bill as per ACMD advice.

23. We recommend that the bill includes an amendment to implement a statutory duty on local authorities to provide advice, support and treatment services for NPS users irrespective of age.

October 2015

Written evidence submitted by the Beckley Foundation (PSB 25)

The **Beckley Foundation** is a think tank founded and led by **Amanda Feilding**, which collaborates with leading scientific and political institutions worldwide. Since 1998 the Foundation has been at the forefront of the creation of a scientific evidence-base on which to base effective drug policies.

The Beckley Foundation undertakes and commissions **pioneering scientific research** into psychoactive substances in order to understand the mechanisms of action in the brain underlying the effects of these substances, and the possible harms and benefits resulting from their use. We investigate their potential medicinal and therapeutic uses. This research has been severely obstructed in the UK and elsewhere due to excessive regulatory burdens, depriving patients in need of effective treatments.

Understanding Risk and Harm

The regulatory challenge that novel psychoactive substances pose has arisen mainly due to the criminalisation of classic psychoactive substances. Novel psychoactive substance often have unknown risk profiles and dosage. Risk associated with 'legal highs' is exacerbated by the present regulatory framework in which distributors are unable to disclose the true purpose of their product and are thereby unable to give any dosage or general usage information. The proposed criminalisation of sale and production of all novel psychoactive substances does not address these key problems; it merely results in novel psychoactive substances being **driven into the illicit market**. Well-documented harms result from unknown contents and potencies, including doctors not knowing how to treat the patient when accidents arise.

The Bill bans substances based on assumed risk, with no requirement that the substances are shown to be harmful. Effective **drug policy must address harms** and implement methods to reduce these harms. With this aim in mind the Beckley Foundation initiated research leading to the Lancet paper: *Development of a Rational Scale to Assess the Harm of Drugs of Potential Misuse*, by Nutt, *et al* (2007 & 2010). This paper provides a workable model for assessing the harms of different substances; the necessary precursor to mitigating those harms. If the Bill goes ahead in its current form, risk profiles will become almost impossible to assess. The blanket ban on production will severely hinder all research into these substances.

Recommendations

We call for policies that focus on **health, human rights, cost-effectiveness and harm reduction**. It is essential that research into novel psychoactive substances is allowed. The best way forward is that the manufacturers and/or distributors bear the cost of the scientific research assessing risk. If the risk profile is considered low enough by government experts, the substance should be given a licence to be sold. If the results of use of the substance prove harmful, the licence would not be granted.

We urge the Public Bill Committee to support the abandonment of the Bill and advocate a **complete review of the current UK drug laws** looking at all regulatory alternatives using rational, evidence-based thinking.

If the bill continues in its current form, we strongly call for provisions allowing for scientific research so that policy can be based on the emerging scientific evidence base.

October 2015