

Committee(s):	Date(s):
Community and Children's Services	9 October 2015
Port Health & Environmental Services Committee	22 September 2015
Police Committee	25 September 2015
Subject: Psychoactive Substances Bill	Public
Report of: Remembrancer	For Information
<p style="text-align: center;">Summary</p> <p>The Psychoactive Substances Bill seeks to tackle the growing use of 'legal highs' by criminalising their production and supply.</p> <p>Recommendation</p> <p>To note the contents of this Report.</p>	

Main Report

Background

1. In May 2015, the Government was elected with a manifesto commitment to "create a blanket ban on all new psychoactive substances, protecting young people from exposure to so-called legal highs". The Labour and Lib Dem manifestos contained similar promises.

Parliamentary Discussion

2. Introducing the Bill, Government spokesman Lord Bates noted that "the number of deaths has been growing at an alarming rate—from 29 in England and Wales in 2011, to 60 in 2013, with a further 60 deaths reported in Scotland in the year before last". The open sale of psychoactive substances on the high street and the internet, he said, gave a "false impression that they are somehow safe to use". Seeking to counter criticism of the Bill's open-ended definition of 'psychoactive substance', Bates said "If we were to adopt too narrow a definition, we could, in a few months' or years' time, find ourselves having to bring forward further legislation because we were faced with a new generation of harmful substances that escaped the controls provided for in this Bill". Peers directed much criticism towards this aspect of the drafting but the Bill completed its passage through the Lords unchanged. Labour's Lord Rosser gave his party's general support to the Bill. Reflecting many of the opinions across the House, Lib Dem Lord Paddick gave support to the Bill's general thrust but attacked it as being "far too broad and indiscriminate". Having completed its progress through the House of Lords, the Bill has now moved to the Commons for further consideration.

Current Position

3. Under the 1971 Misuse of Drugs Act, substances can be controlled on an individual or on a group basis, following an assessment of their physical and social harms by the Advisory Council on the Misuse of Drugs. The Government considers this process as insufficiently flexible and too slow to react to circumstances where the chemical composition of legal highs can be modified to create a new substance which falls outside any existing drug controls.

The Bill

4. The Bill has three main aspects. First, the Bill defines psychoactive substances and makes them illegal. Second, the Bill sets out powers for the police and local authorities to serve notices on individuals or premises and, finally, provides for criminal and civil penalties.
5. The way the Bill seeks to define 'psychoactive' has garnered criticism as, unlike the scheme under the Misuse of Drugs Act, the provisions do not name the outlawed substances; under the Bill's open-ended definition, any substance that is not exempted (for example tobacco and alcohol) and that produces a stimulating or depressing effect on a person's central nervous system or affects the person's mental functioning or emotional state, could fall within the definition of a psychoactive substance.
6. If it comes into force in its current form, the legislation will exempt certain products from being psychoactive substances – tobacco, traditional and homeopathic medicines, caffeine and alcohol. Food and drink will be exempted from being psychoactive substances. Food or drink, however, with a "prohibited ingredient" would be banned. The drafting of this part of the legislation may lead to short term operational enforcement difficulties. The reason for this is the degree of ambiguity in the definition - the Bill relies upon whether the psychoactive substance is "naturally occurring" in the food and then whether or not it is "authorised by an EU instrument". Uncertainty may arise as to whether a substance is "naturally occurring" in a particular food or drink given that legal highs are often natural or close-to-natural substances.
7. The Bill does not criminalise simple possession. The Bill makes illegal the production or supply of a psychoactive substance. In the magistrates' courts the maximum penalty is a prison term of 6 months; in the Crown Court the maximum is 7 years' imprisonment.
8. The Bill provides four civil sanctions: a prohibition notice, premises notice, prohibition order and premises order. Under the Bill, authorities, including the City of London Corporation, would be empowered to issue such notices and apply for orders. Prohibition notices would require a person on whom it is served to desist from carrying out a prohibited activity, for example online sale of a psychoactive substance. Prohibition notices would be of indefinite duration unless served on a person under 18 years old (in which case it would remain in effect for 3 years). A premises notice, only to be served on those aged over 18, would require the recipient to take reasonable steps to prevent any, or specific, prohibited activities taking place at the premises. The Bill

envisages that a premises notice might be served on the occupier or landlord of a premises selling or distributing psychoactive substances. Under the Bill, there are two routes by which an order may be made. First, a court may make an order of its own volition following a conviction or, second, on application by a chief police officer or local authority (including the City). An offence of failing to comply with an order may be punished by a maximum of 2 years' imprisonment.

Comment by London Drugs and Alcohol Policy Forum

The LDAPF actively engaged with policy makers in the run-up to the Bill and a number of the Forum's concerns are addressed in the Bill. If the proposals come into force, it is likely to be easier to close 'head shops' (the shops that sell these substances). We have found shops within the City that could be covered by the new law.

Conclusion

9. Subject to the proposed new powers to simplify the closure of 'head shops', the Bill is of limited interest to the City. The powers for police and authority officers to control those psychoactive substances which are within the scope of the Act will be of interest to enforcement officers in the City of London Police and at the Corporation.

Philip Saunders
Parliamentary Affairs Counsel
x1201