

Appendix A - Amendments proposed by Members of Parliament¹

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)"	<i>This is consequential of NC2 – please see substantive comments in relation to this New Clause.</i>
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.

¹<http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0063/amend/psc0632210a.1-7.html>

44	2	<p>Page 1, line 18, leave out subsection (2) and insert— “(2) For the purpose of this Act</p> <p>“substance” means any compound, irrespective of chemical state, produced by synthesis, or metabolites of those compounds.</p> <p>“synthesis” means the process of producing a compound by human instigation of at least one chemical reaction.</p> <p>“compound” means any chemical species that is formed when two or more atoms join together chemically.”</p>	<p>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.</p>
45	3	<p>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.”</p>	<p>We welcome a mechanism to allow the ACMD to proactively request that the Home Secretary consider regulations.</p>
56	Sched 1	<p>Page 39, line 23, at end insert— “Miscellaneous 11 —alkyl nitrates”</p>	<p>We welcome the decision not to include alkyl nitrates within the remit of the Bill, as we had previously recommended².</p> <p>However, we further recommend that the same approach is taken to Nitrous Oxide, which the ACMD has also previously recommended not controlling³.</p>

²Release 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.pdf> at Page 9.

³Advisory 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>

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).”	<i>This is consequential of NC3 – please see substantive comments in relation to this new clause.</i>
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).”	<i>This is consequential of NC3 – please see substantive comments in relation to this new clause.</i>
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.
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.	<p>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.</p> <p>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 <i>may</i> take into account, not one which they <i>must</i> treat as aggravating the</p>

		<p>(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.</p> <p>(8D) Condition E is that the offender supplies a psychoactive substance to any persons under the age 18.”</p>	<p>offence. It is one that the Court is in fact likely to take into account of its own accord in any event.</p>
48	6	<p>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.”</p>	<p>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</p> <p>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.</p>
	6	<p>Page 3, line 43, leave out “on prison premises.” and insert “in a custodial institution.</p> <p>() 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;</p>	<p><i>This is consequential of NC2 – please see substantive comments in relation to this New Clause.</i></p>

		“service custody premises” has the meaning given by section 300(7) of the Armed Forces Act 2006.”	
	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).”	<i>This is consequential of NC3 – please see substantive comments in relation to this new clause.</i>
	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.
	8	Page 5, line 6, leave out from “subject to” to end of line 7 and insert “section (Exceptions to offences) (exceptions to offences).”	<i>This is consequential of NC3 – please see substantive comments in relation to this new clause.</i>
	9	Page 5, line 26, at end insert— “(2) In sentencing, account shall be taken of the relative harm associated with the psychoactive	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.

		substance that was the subject matter of the offence”	
	9	<p>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.”</p>	<p><i>This is consequential of NC2 – please see substantive comments in relation to this new clause.</i></p> <p>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.</p>
	11	<p>Page 6, line 16, leave out “regulations under section 10.” and insert “section (Exceptions to offences).”</p>	<p><i>This is consequential of NC3 – please see substantive comments in relation to this new clause.</i></p>
	35	<p>Page 22, line 5, leave out “8” and insert “(Possession of a psychoactive substance in a custodial institution)”</p>	<p><i>This is consequential of NC2 – please see substantive comments in relation to this new clause.</i></p>

	35	Page 22, line 21, leave out “8” and insert “(Possession of a psychoactive substance in a custodial institution)”	<i>This is consequential of NC2 – please see substantive comments in relation to this new clause.</i>
	42	Page 26, line 9, leave out “8” and insert “(Possession of a psychoactive substance in a custodial institution)”	<i>This is consequential of NC2 – please see substantive comments in relation to this new clause.</i>
	49	Page 29, line 28, leave out “regulations under section 10” and insert “section (Exceptions to offences)”	<i>This is consequential of NC3 – please see substantive comments in relation to this new clause.</i>
	50	Page 31, line 12, leave out “regulations under section 10” and insert “section (Exceptions to offences)”	<i>This is consequential of NC3 – please see substantive comments in relation to this new clause.</i>
	53	Page 32, line 43, leave out “8” and insert “(Possession of a psychoactive substance in a custodial institution)”	<i>This is consequential of NC2 – please see substantive comments in relation to this new clause.</i>
	53	Page 33, line 26, leave out “8” and insert “(Possession of a psychoactive substance in a custodial institution)”	<i>This is consequential of NC2 – please see substantive comments in relation to this new clause.</i>
	53	Page 33, line 28, leave out “8” and insert “(Possession of a psychoactive substance in a custodial institution)”	<i>This is consequential of NC2 – please see substantive comments in relation to this new clause.</i>
	53	Page 33, line 30, leave out “8” and insert “(Possession of a psychoactive substance in a custodial institution)”	<i>This is consequential of NC2 – please see substantive comments in relation to this new clause.</i>
	53	Page 33, line 32, leave out “8” and insert “(Possession of a psychoactive substance in a custodial institution)”	<i>This is consequential of NC2 – please see substantive comments in relation to this new clause.</i>
	54	Page 34, line 9, leave out “regulations under section 10.” and insert “section (Exceptions to offences).”	<i>This is consequential of NC3 – please see substantive comments in relation to this new clause.</i>
	Sched 4	Page 48, line 16, at end insert— “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

		<p>(1) The Intoxicating Substances (Supply) Act 1985 is repealed.</p> <p>(2) In consequence of the repeal made by subparagraph (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.”</p>	<p>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.”⁴</p>
	<p>Sched 4</p>	<p>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.””</p>	<p>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 Office⁵.</p> <p>As referred to in relation to Amendment 41, this creates a statutory aggravating factor.</p> <p>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.</p>

⁴ Section 1(2) Intoxicating Substances (Supply) Act 1985 <http://www.legislation.gov.uk/ukpga/1985/26/section/1>

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf

	NEW	<p>“Possession of a psychoactive substance in a custodial institution</p> <p>(1) A person commits an offence if—</p> <p>(a) the person is in possession of a psychoactive substance in a custodial institution,</p> <p>(b) the person knows or suspects that the substance is a psychoactive substance, and</p> <p>(c) the person intends to consume the psychoactive substance for its psychoactive effects.</p> <p>(2) In this section “custodial institution” has the same meaning as in section 6.</p> <p>(3) This section is subject to section (Exceptions to offences) (exceptions to offences).”</p>	<p>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.</p> <p>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 own⁶, a policy based on prohibition <u>punitive user level sanctions</u> has little impact on levels of use.</p> <p>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.</p> <p>Issues relating to possession of substances within the prison adjudication system. Current guidance⁷ 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.</p> <p>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</p>
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⁶Home Office, ‘Drugs: International Comparators,’ October, 2014,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368489/DrugsInternationalComparators.pdf at Page 51

⁷The 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

			technical guidance provided by the WHO, UNAIDS, UNODC technical guidance ⁸
	NEW	<p>“Exceptions to offences</p> <p>(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.</p> <p>(2) In this section “exempted activity” means an activity listed in Schedule (Exempted activities).</p> <p>(3) The activities referred to in subsection (1) are—</p> <p>(a) producing a psychoactive substance;</p> <p>(b) supplying such a substance;</p> <p>(c) offering to supply such a substance;</p> <p>(d) possessing such a substance with intent to supply it;</p> <p>(e) importing or exporting such a substance;</p> <p>(f) possessing such a substance in a custodial institution (within the meaning of section (Possession of a psychoactive substance in a custodial institution)).</p> <p>(4) The Secretary of State may by regulations amend Schedule (Exempted activities) in order to—</p> <p>(a) add or vary any description of activity;</p> <p>(b) remove any description of activity added under paragraph (a).</p> <p>(5) Before making any regulations under this section the Secretary of State must consult—</p>	<p>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.</p>

⁸ 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

		<p>(a) the Advisory Council on the Misuse of Drugs, and</p> <p>(b) such other persons as the Secretary of State considers appropriate.</p> <p>(6) The power to make regulations under this section is exercisable by statutory instrument.</p> <p>(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.”</p>	
	<p>NEW</p>	<p>“Breach of a premises notice</p> <p>(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.</p> <p>(2) Condition A is that the premise has been issued a premises notice under section 13 of this Act.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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</p>	<p><i>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.</i></p>

		<p>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)."</p>	
	<p>NEW SCHED</p>	<p>"Exempted activities Healthcare-related activities</p> <p>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.</p> <p>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).</p> <p>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.</p> <p>In this paragraph "health care professional" has the same meaning as in the Human Medicines Regulations 2012 (see regulation 8 of those Regulations).</p>	<p>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.</p>

	<p>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.</p> <p>In this paragraph “active substance” has the same meaning as in the Human Medicines Regulations 2012 (see regulation 8 of those Regulations).</p> <p>Research</p> <p>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;</p> <p>“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;</p>	
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	<p>(iii) a body that is a Research Council for the purposes of the Science and Technology Act 1965;</p> <p>(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);</p> <p>(v) a charity which has as its charitable purpose (or one of its charitable purposes) the advancement of health or the saving of lives;</p> <p>“charity” means—</p> <p>(a) a charity as defined by section 1(1) of the Charities Act 2011,</p> <p>(b) a body entered in the Scottish Charity Register, or</p> <p>(c) a charity as defined by section 1(1) of the Charities Act (Northern Ireland) 2008;</p> <p>“relevant NHS body” means—</p> <p>(a) an NHS trust or NHS foundation trust in England,</p> <p>(b) an NHS trust or Local Health Board in Wales,</p> <p>(c) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978,</p> <p>(d) the Common Services Agency for the Scottish Health Service, or</p> <p>(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.”</p>	
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