

Psychoactive Substances Bill

House of Commons: Committee Stage

Making supply of drugs to children or outside accommodation that homes vulnerable children an aggravating factor in sentencing

We are asking the Government 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, a statutory aggravating factor of the offence. This will put these factors on the same footing as supply in the vicinity of a school, which is a statutory aggravating factor in both this Bill and the *Misuse of Drugs Act 1971*.

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 very serious, often resulting in criminalisation and sexual exploitation. Our evidence demonstrates how 'legal highs' are increasingly being used by adults looking to groom and exploit children.

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 sentencing. This reflects existing provisions related to 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. The use of psychoactive substances is particularly acute outside supported accommodation, where we estimate that some 8,400 children aged 16 and 17 are accommodated every year. 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, recognising that local authorities can accommodate children under both 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 are at higher 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 homes² 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 providers are not subject to strict standards and can include places like foyers, supported lodgings, night-stops, crash-pads, hostels or training or moving-on flats.

Our recent report, 'On your own now' found that every year around 8,400 16 and 17 year olds are placed in unregulated accommodation that leaves them at risk by their local authority. Our survey of providers revealed that 63% of providers feel that legal highs pose a severe risk to the young people in their care.

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 their exploitation 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.

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

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 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, courts are not required to consider this when passing sentences.

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. We believe there is no instance where supplying drugs to vulnerable children shouldn't be considered when passing down a sentence.

This is particularly important for older children aged 16 and 17. Previous Children's Society research³ has shown that professionals regularly view older children as less at risk or harm and less in need of 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. The following case study is from a high-profile investigation in Bristol in 2014:

In Bristol last year, thirteen men were convicted of a string of child sex crimes. The offenders were from a drug dealing gang. 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..

The link between drugs, legal highs and child sexual exploitation

The grooming process involves adults exploiting a power imbalance between victims and themselves. The imbalance may be based on age, but drugs, legal highs and alcohol are often used to increase dependency, create debt, and stupefy children thus increasing the 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. 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 do not know what is 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.

Our amendments

The text for both statutory aggravating factors and the text necessary to also amend the *Misuse of Drugs Act 1971* to see the same statutory factors applied to that Act are found below:

Amendment 40:

Mr David Burrowes

Clause 6

Page 3, line 20, leave out “or C” and insert “, C, D or E”

Amendment 41:

Mr David Burrowes

Clause 6

Page 4, line 9, at end insert—

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

Amendment 42:

Mr David Burrowes

Schedule 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”

***For more information please contact Jake McLeod on
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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

³ The Children’s Society, NSPCC and Social Policy Research Unit - Safeguarding Young People (2010)