

Proposed amendments to the Psychoactive Substances Bill

*Creating statutory aggravating factors to protect children from
psychoactive substances and currently controlled drugs*

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

Clause 6 (Aggravation of offence under section 5) should be amended as follows:

Page 3, line 20 leave out “If condition A or B is met” and insert “If condition A, B, C or D is met”

After subsection (5) insert:

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

(7) 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

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

(9) 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 supply to children, or in the vicinity of premises where vulnerable children reside, on the same footing as supply outside 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 we conducted 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 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's 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 The Inquiry heard how perpetrators target children's homes 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.

How does supported accommodation put young people at 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.

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

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. Our report detailed some of the serious safeguarding failures that could lead to exploitation.

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 being 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.

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 in this case 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. She had been placed at short notice in "supported living accommodation", and quickly became the victim of drug dealers in the area.

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, said she was introduced to other defendants through a girlfriend. She told the court how the men tried to pressurise her into smoking cannabis with them and having sex with men at the property.

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. 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 by the courts.

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

Schedule 4 (Consequential amendments) should be amended as follows:

After section 7 (Policing and Crime Act) insert –

"Misuse of Drugs Act 1971

8 (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 –

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

(6) 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

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

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

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

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.

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