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Baroness Sally Hamwee
Joint Committee on Human Rights
Committee Office
House of Commons
London
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OFFENSIVE WEAPONS BILL: CLAUSE 6 – OFFENCE OF HAVING A CORROSIVE SUBSTANCE IN A PUBLIC PLACE

I am responding to Baroness Hamwee's letter of 24 October on behalf of the Joint Committee on Human Rights setting out the Committee's concerns about clause 6 of the Offensive Weapons Bill which makes it an offence to have a corrosive substance in a public place. I am grateful for the Committee's consideration of the Bill. These points raised focus on three issues – the need for members of the public to have clarity on when a criminal offence may be committed, clarity on what constitutes 'good reason' and the different burdens that apply to the offence in Scotland and the rest of the United Kingdom.

Before addressing these points in detail, I would like to reassure the Committee that the proposed offence is not aimed at law abiding members of the public who purchase corrosive products to use in their homes and we do not consider that in practice this will be an issue. Our focus is on those who carry corrosives substances in public with the possibility of using them to harm others. The police have estimated that there are around 800 corrosive attacks a year in England and Wales which can leave victims and survivors with terrible life changing injuries and severe psychological problems and it is imperative that we take legislative action to address this.

It may also be helpful if I explain the general approach we took when developing the proposed offence at clause 6 of the Bill. It became clear following the spate of corrosive attacks last summer that an offence of possessing a corrosive substance in a public place would be a useful tool for the police when they come across

individuals or groups on the street who may have in their possession a substance that could be used in an attack but where there is insufficient evidence that they intend to use it at that time to commit an attack. In such circumstances the police are currently powerless to take action against those individuals. Our starting point was therefore to develop an offence which mirrored the existing offence at section 139 of the Criminal Justice Act 1988 that makes it an offence to possess a bladed or pointed article in a public place. This offence is well understood and widely used by the police. The debates about the Bill in Commons Committee have confirmed the cross-party position that measures to deal with corrosive substances should be consistent with those currently available to tackle knife crime – that corrosives should be treated in exactly the same way as knives wherever possible. The offence at clause 6 of the Bill therefore follows section 139 to ensure that the potential use of corrosives as a weapon matches the approach taken on dealing with knife crime.

I will now turn to the specific points raised by the Committee.

Clarity on what is meant by a corrosive substance

The Committee has raised concerns that the definition of 'corrosive substance' which underpins the offence at clause 6 of the Bill does not provide sufficient clarity to members of the public on when they might commit the offence of having a corrosive substance in a public place. The Bill does two things in relation to corrosives. First, it makes it an offence to sell certain corrosive products to a person under 18 and to arrange for the delivery of corrosive products to a residential premise or locker and second it makes it an offence to possess a corrosive substance in a public place. These two measures require different approaches to how you define a corrosive. For the sale of corrosives to a person under 18 it is important that manufacturers and retailers know exactly what they can and cannot sell. We have therefore taken the approach of listing (in Schedule 1 of the Bill) the specific chemicals and concentration levels which will be prohibited from sale to a person under 18. The intention is that manufacturers will then notify retailers of the products that are age restricted and that they will barcode them so that at the point of sale staff are alerted when they need to verify the age of the buyer.

Such an approach will not work in relation to the possession offence. Many chemical products do not list concentration levels on their packaging. We also know that those who might intend to use corrosive substances to cause harm often decant the substance into other containers – for example into bottles used for soft drinks. It will not be possible for police officers on the ground who come across a container containing a suspect liquid to know exactly what chemicals it contains or at what concentration levels. For the police to take action they need a simpler definition that can be used operationally. We have therefore taken the approach of defining a corrosive substance for the purposes of clause 6 by the effect it has rather than its specific chemical composition. Clause 6(9) therefore defines a corrosive substance as one which is capable of burning human skin by corrosion. A simple 'on-street' testing kit is being developed for the police which will enable them to establish whether a particular liquid is capable of causing burning to human skin without the need for elaborate chemical testing – though such forensic testing would be provided later on if it was decided to proceed with a prosecution. The definition used in clause

6 would capture all of the substances that are defined as corrosive products in Schedule 1 but it may also capture other corrosive substances and substances at lower concentration levels than those set out in the Schedule.

We are clear that the corrosive substances that would be captured by this new possession offence are not the most common household cleaning products that many of us use in our homes. It would not cover, for example, household bleach or standard household cleaners or liquids such as table vinegar which are not strong enough to cause permanent damage to the skin. It would however capture strong drain cleaners and unblockers, brick and patio cleaners, paint strippers and industrial cleaning agents which members of the public might, of course, purchase. Most of these products will be marked to show that they contain a strong corrosive and that they can seriously burn the skin.

It is therefore difficult to see how we can define a corrosive substance for the purposes of a possession offence that would provide absolute clarity to members of the public on what is covered by the offence and at the same time be useable by the police on the ground. Defining a corrosive substance in relation to Schedule 1 of the Bill as proposed in your amendments would not do this for the reason I have outlined above although we could certainly look at providing guidance on the types of products that might be caught as part of the implementation of the Bill.

It should be noted that similar issues already exist, although to a lesser extent, in relation to the section 139 offence. Bladed and pointed articles also cover a very wide range of items that members of the public would legitimately possess in a public place – everything from plastic disposal knives to some types of DIY and garden equipment as well as cutlery and cooking utensils. Such items are not labelled to make it clear that it is an offence to have them in a public place. Although it could be argued that members of the public are likely to be clearer about what constitutes a bladed or pointed article that may not always be the case and we are not aware that this has caused any issues – for example the police stopping members of the public who might have bought a knife in a shop.

Clarity on what constitutes 'good reason'

The Committee have asked for clarity on what would constitute a 'good reason' defence. The good reason/lawful authority defence set out in clause 6(2) is important to ensure that law abiding members of the public are not prosecuted for the proposed offence. A 'good reason' defence has existed for some time in relation to the possession of bladed and pointed articles and has been operated by the police with no issues. A good reason in this context would be that a member of the public had bought a corrosive substance and they were taking it home for the purpose for which the substance had been designed – for example to unblock their drain or for decorating purposes. Good reason would also cover where a person in possession of a corrosive substance that they use in the course of their business or employment – for example a plumber who has a drain unblocker, a builder who has brick cleaner, an employee of a cleaning company that has industrial cleaning agents or a person who has swimming pool chemicals because their job involves maintaining swimming pools (that is consistent with the bladed article offence where many workers have in

their possession knives to use at work). Good reason would also cover a student in possession of chemicals that they need to use as part of their studies or someone taking a product home to use in maintaining their property.

We would not expect the police to be challenging shoppers as they leave a supermarket. Rather clause 6 will provide them with a power to tackle those who may have serious violent intent, acting on intelligence and reasonable suspicion. Where a person has a legitimate use for a corrosive substance and it is in its original container and not brandished in public the 'good reason' could be easily shown and no further action would be taken. For these reasons we do not see there is a lack of clarity here. Good reason is a common sense test that is well understood by the police and there is no evidence to suggest that its application has raised issues in other contexts. There would therefore be relatively few cases where the courts would be expected to establish what constitutes good reason but where that is the case we think it is right that this is a matter left to the courts to determine in relation to each specific case. It would not be reasonable to have a list of all the circumstances that would be covered by the good reason defence. We will however look to produce guidance for the public, the police and prosecutors setting out examples of what might constitute a good reason before the new offence is brought into force.

The use of persuasive and evidential burdens

The Committee has said that the analysis of the legal burden imposed by clause 6(2) needs to be considered in relation to this specific offence.

In considering whether the imposition of the legal burden is within reasonable limits, the nature of the threat to society which the new offence is seeking to combat needs to be considered and weighed against the interference with the rights of the individual. In this case a person is required to prove facts within his/her knowledge which should be relatively easy to establish (such as when and where they had purchased an item and for what purpose or the nature of their employment). We expect that the circumstances in which the defendant is likely to need to establish a defence are those where there is a suspicion that an individual or group are carrying a substance which they might use for an attack on another person. If the person or members of the group were intending to use the substance for a legitimate purpose the facts to enable them to establish the good reason defence would be within their knowledge and they would be readily able to provide evidence for this.

Adopting the amendment proposed by the Joint Committee on Human Rights – to change the persuasive burden to an evidential one – would mean that a different test would apply in relation to the possession of a corrosive substance in public to that which exists for possession of a bladed or pointed article. This would not reflect the aim of ensuring that corrosive substances should be treated in the same way as knives in relation to measures aimed at tackling serious violent crime. As mentioned above, we expect the proposed offence only to be used in cases where there is a real risk that criminal activity may result unless action is taken and that the persuasive burden will therefore not fall on law abiding members of the public. We are not aware of any problems that have arisen in relation to the persuasive burden for the possession of

knives offence though thousands of people will possess bladed and pointed articles in public every day.

Finally, I also note your point about the lack of justification for the different legal and evidential burdens between Scotland and England and Wales and Northern Ireland for this new possession offence. Clause 6 deals with matters that are devolved to Scotland. The Scottish Government have chosen to mirror the evidential burden that exists in relation to the existing offence of possessing a bladed or pointed article in a public place in Scotland.

I hope this response addresses the concerns of the Committee.

A handwritten signature in blue ink that reads "Victoria Atkins". The signature is written in a cursive style with a large initial 'V' and a long, sweeping tail on the 'y'.

Victoria Atkins MP
Minister for Crime, Safeguarding and Vulnerability