Drug addiction and the law

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THE word addiction is derived from the Latin verb *adicere* which denotes the act of of complete submission, body and soul, of a slave to his master. An appropriate word indeed but one which, for many years, defied the efforts of the agencies of the League of Nations and later the United Nations to define.

The main difficulty facing those who tried to define addiction was to distinguish between addiction and habituation. Eventually the World Health Organization defined addiction as "a state of periodic or chronic intoxication, detrimental to the individual and to society, produced by the repeated consumption of a drug (natural or synthetic). Its characteristics include:

1. An overpowering desire or need (compulsion) to continue taking the drug and to obtain it by any means;
2. a tendency to increase the dose;
3. a psychic (psychological) and sometimes physical dependence on the effects of the drug.

Habituation was considered to fall short of addiction largely on the grounds of lack of physical dependence, but also because it was considered to be less detrimental to society.

The differentiation did not last long and it has now become the practice to recognize that habituation and addiction have much in common and to regard both as manifestations of drug dependence which can be defined as an abnormal state arising from repeated medical or non-medical use of a drug, either periodically or continuously. Thus the differentiation between addiction and habituation has disappeared, but in its place has come the realization that a distinction must be drawn between physical and psychological dependence upon a drug. The prolonged use of morphine and barbiturates can equally lead to drug dependence, though the characteristics of the disease may vary according to the drug which has produced it.

Until recently the United Kingdom has enjoyed relative freedom from the problem of addiction to dangerous drugs (i.e. substances controlled under the Dangerous Drugs Acts). A persistent myth, even amongst the medical profession, which has survived for years is that there is such a person as a 'registered drug addict'. There never has been such an individual and still is not, but between 1959 and 1964 the total number of addicts to dangerous drugs known to the Home Office had risen from 454 to 753.

Before this somewhat disturbing rise most known addicts were over the age of 50, few were taking heroin and there was a distinct professional loading in the number of addicts of non-therapeutic origin in that many were drawn from the ranks of doctors, dentists, midwives and pharmacists. By 1964, however, the proportion of non-therapeutic addicts had risen sharply, more were using heroin and, much more disturbingly, the number of heroin addicts under the age of 20 had risen from none in 1959 to 40; in the age group 20–34 the number of addicts known to be taking heroin had risen from 35 to 219.

What were the causes? The answer is not fully known but in 1962, incredible

though it may seem, the total consumption of heroin in the United Kingdom was 40 kilogrammes. Consumption in this context means the total quantities supplied by manufacturers or wholesalers to retail pharmacies, hospitals, laboratories, and legitimate professional purchasers. But at the other end of the scale, large amounts of heroin had been prescribed for addicts by no more than six doctors, all acting perfectly legally, and one of these had actually prescribed no less than six kilogrammes.

At the same time there was growing concern over the increasing abuse of the so-called 'soft' drugs, including cannabis and amphetamines, particularly by young people. Clearly something had to be done to prevent the further extension of the problem of drug abuse.

Present legislation

The Misuse of Drugs Bill is, at the time of writing in April 1970, before Parliament and will be dealt with in a later section of this paper.

At present the United Kingdom is a party to the United Nations Single Convention on Narcotic Drugs 1961 and a member of the United Nations Commission on Narcotic Drugs. The principal Acts concerned with the control of drugs are:

Dangerous Drugs Act 1965
Dangerous Drugs Act 1967
Drugs (Prevention of Misuse) Act 1964
Pharmacy and Poisons Act 1933
Medicines Act 1968.

These Acts, except for the Pharmacy and Poisons Act 1933 in relation to Northern Ireland, apply throughout the United Kingdom. The Dangerous Drugs Acts deal exclusively with drugs controlled by the United Nations Single Convention; the Drugs (Prevention of Misuse) Act 1964 deals with amphetamines and certain hallucinogens; the Pharmacy and Poisons Act 1933, which is further implemented by the Poisons List Order and the Poisons Rules, provides for the control of listed poisons (including drugs controlled by the 1964 and 1965 Acts).

The Medicines Act 1968, which is not yet fully operative, will eventually establish comprehensive legal control over the safety of all medicinal products. It will not be further considered here. The Health Ministers are responsible for the administration of this Act. The Home Secretary, Secretary of State for Scotland and the Minister for Home Affairs in Northern Ireland are responsible for the implementation of the other Acts.

1. *Dangerous Drugs Act 1965*

This Act codified earlier Acts of 1951 and 1964 and gives effect to the obligations of the United Kingdom under the United Nations Single Convention. There is a Schedule to the Act. Part I *of the Schedule* specifies a number of drugs and a few chemical substances which are subject to control as regards importation and exportation. Not all of the drugs and chemical substances listed in Part I of the Schedule are in clinical use.

Part II *of the Schedule* exempts certain substances from control as regards importation and exportation because these substances are considered to be less hazardous than those listed in Part I *of the Schedule.*

Part I *of the Act* prohibits, except under licence from the Home Office, the import and export of cannabis and related substances, raw opium, coca leaves and poppy straw. Section 6 of the Act makes it an offence, except under licence, to cultivate the cannabis plant whilst Section 5 makes it an offence for occupiers or managers of premises to allow those premises to be used for smoking or dealing in cannabis resin. It is interesting that this last section has unintentionally prevented research into the effects of

smoking cannabis and it is intended to remedy this state of affairs by amendment of the law as soon as the opportunity to do so occurs.

Part II *of the Act* prohibits the import and export of prepared opium except under licence. It also penalizes, except under conditions laid down by law, manufacture, dealing in, possession of and use of prepared opium, as well as making it an offence for occupiers and managers to allow their premises to be used for preparing or smoking opium.

Under Part III *of the Act* the Home Secretary is empowered to make regulations controlling manufacture, sale, possession and distribution of substances scheduled under the Act. The current regulations are the Dangerous Drugs (No. 2) Regulations 1964 which were actually made under the Dangerous Drugs Act 1951. Section 12 of the 1965 Act provides that if the United Nations Commission on Narcotic Drugs decide or appear likely to decide to add to or modify a schedule in the Single Convention, Her Majesty may by Order-in-Council make the appropriate change to the Schedule to the Act. An important point of law, however, which is all too often unknown to critics is that a drug *cannot* be brought under control of the Act if the international bodies do not—or appear unlikely to intend to—bring that drug under the control of the Single Convention.

Part IV *of the Act* specifies as offences against the Act contravention of regulations or conditions in licences, false declarations and the aiding, abetting, counselling or procuring the commission of an offence outside the United Kingdom if such an offence would be considered to be such if it had been committed within the United Kingdom. This Part of the Act also lays down maximum penalties on summary conviction or indictment.

2. *Dangerous Drugs (No. 2) Regulations 1964*

These regulations prohibit, except under licence or general authority given under the regulations, the manufacture of any of the dangerous narcotics scheduled in the United Nations Single Convention. Pharmaceutical manufacturers, processors, wholesale distributors, factors and procurers must hold licences, renewable annually, in respect of any appropriate drug which they wish to handle. Retail pharmacists are generally authorized "in the ordinary course of . . . retail business" to manufacture any extract or tincture of cannabis and to supply drugs and preparations otherwise than by way of wholesale dealing.

General authority to possess and supply dangerous drugs "so far as may be necessary for the necessary practice of his said profession, function or employment and in his capacity as a member of the said class" is given by the Regulations to doctors, veterinary surgeons and practitioners and persons in charge of laboratories used for research or instruction and attached to a university, university college, hospital, infirmary or any other institution approved for the purpose by the Secretary of State. If a doctor, veterinarian or pharmacist is convicted of an offence under the Act or Regulation the Home Secretary may withdraw his authority under the Act to prescribe or dispense scheduled drugs.

Other persons authorized to be in possession of the drugs falling in Part I of the Schedule to the 1965 Act are those who:

(a) have the drug lawfully supplied to them by a duly qualified medical practitioner or registered veterinary surgeon or registered veterinary practitioner;

(b) have the drug lawfully supplied on a prescription given by one of these three classes of persons.

An important proviso to Regulation 9 makes it unlawful for a person to possess a dangerous drug if he has obtained it on the prescription of a medical practitioner either without having disclosed the fact that he was already being supplied with the drug by another medical practitioner or by making a false declaration or statement.

3. *Dangerous Drugs Act 1967*

This is an extremely important Act so far as the medical profession is concerned and it is vital to the medical practitioner that he should understand its provisions. It must be read in conjunction with the Dangerous Drugs (Notification of Addicts) Regulations 1968 and the Dangerous Drugs (Supply to Addicts) Regulations 1968.

(a) *The Dangerous Drugs (Notification of Addicts) Regulations* 1968 came into force on 22 February 1968. They require any doctor to notify to the Chief Medical Officer of the Home Office, within seven days of his attendance upon a patient, the name, address, sex, date of birth, National Health Service number, date of attendance and the name of the drug(s) concerned if he considers or has reasonable grounds to suspect, that that person has "as a result of repeated administration . . . become so dependent upon the drug that he has an overpowering desire for the administration of it to be continued". The regulations only apply to drugs in the Schedule to the 1965 Act.

(b) *The Dangerous Drugs (Supply to Addicts) Regulations* 1968 came into force on 16 April 1968. They prohibit a medical practitioner from administering, supplying or authorising the administration or supply to drug addicts, *cocaine* or *heroin* except under licence or for the purpose of relieving pain due to *organic* disease or injury.

The selective issue of licences under the latter Regulations effectively prohibits the supply by medical practitioners of cocaine or heroin to addicts for the purpose of satisfying their craving for the drug except by licensed doctors working in clinics or hospitals concerned with the treatment of addiction.

It was recognized, however, that there might be occasions when a doctor working alone might find it difficult to distinguish between a patient who needed a drug for the relief of organic pain or injury and one who needed it because he was addicted. Accordingly advisory panels were set up all over the country by the Department of Health so that doctors could have ready access to expert advice in cases of doubt.

The Dangerous Drugs Act 1967 also makes provision for the establishment of a medical tribunal to consider and report on cases referred to it by the Home Secretary if there appears to have been a breach of the Regulations on notification of addicts or prescribing which have been outlined above. It also lays down the circumstances in which and the procedure by which the Home Secretary may withdraw a doctor's authority to administer, supply or prescribe any or all drugs scheduled under the 1965 Act.

4. *Drugs (Prevention of Misuse) Act 1964*

This Act makes it an offence to import, except under Home Office licence, or to possess without authority any substance listed in the Schedule to the Act and empowers the Home Secretary, after consultation with the Poisons Board, to modify the Schedule by adding or removing substances.

The Schedule includes amphetamines, chlorphentermine, pemoline, LSD, psilocybin, mescaline and bufotenine. It also includes derivatives of and certain substances chemically related to those referred to above.

Doctors, veterinarians, registered pharmaceutical chemists, retail pharmacists and persons in charge of laboratories concerned with scientific research and education are exempted from the restriction on possession of the scheduled drugs. They are not, however, exempted from the restriction on importation.

5. *Pharmacy and Poisons Act 1933*

The importance of this Act for doctors lies in its regulation of the sale and supply of listed poisons. It does *not* regulate their *possession.*

Section 16 of the Act sets up the Poisons Board as a statutory body to prepare, for the Home Secretary's approval, lists of substances for the purpose of the Act, classified according to the degree of control to which they are to be subjected and to advise the Home Secretary on the making of rules with respect to the manufacture of pharmaceutical

preparations containing poisons, the storage, transport and labelling of poisons, and related matters.

Since 1933 a comprehensive list has been established of poisons classified into 16 schedules with matching controls imposed by the Poisons Rules. For instance the sale to the general public of poisons in Part I of the Poisons List is restricted to the premises of retail pharmacists. Medicines and drugs containing substances named in Schedule 4 to the Poisons Rules may be sold only on prescription.

There are exemptions from restrictions for the sale of poisons:

(a) by way of wholesale dealing or transport;

(b) to a duly qualified medical practitioner, dentist or veterinarian for the purpose of his profession;

(c) to a person or institution concerned with scientific education or research if the article is required for the purposes of that education or research.

In some transactions, however, the Poisons Rules require that the purchaser must be known by the seller to be a person to whom the poison may properly be sold, and the purchaser must either sign the seller's poisons register or supply a signed order for the poison including a statement of the purpose for which it is required.

In summary the law at present provides a self-contained system of powers of control over drugs scheduled under the United Nations Single Convention. Unfortunately the system cannot at present be used to control other drugs, such as LSD, because the power to schedule drugs under the Dangerous Drugs Act 1965 and its Regulations is confined to drugs actually dealt with by the Single Convention.

Drugs other than narcotics can at present be considered for control in three ways:

(a) by voluntary means if there is a doubt about general safety;

(b) by the Pharmacy and Poisons Act 1933 if there is a danger to the individual from inadvertent misuse;

(c) by the Pharmacy and Poisons Act 1933 and the Drugs (Prevention of Misuse) Act 1964 if there is a danger from social misuse.

Future legislation

Mainly because the problem of the misuse of drugs has only recently become widespread present legislation on the subject has been constructed piecemeal. The fragmentary, inadequate and inflexible nature of such legislation will, it is hoped, have been recognized by the reader of the section of this article concerned with present legislation.

It would be irregular and premature to consider in great detail the Misuse of Drugs Bill which is at present before Parliament. The Bill is intended, however, to repeal and replace the Dangerous Drugs Acts of 1965 and 1967 and the Drugs (Prevention of Misuse) Act 1964.

Fashions in the misuse of drugs change with remarkable rapidity and it is intended that the Misuse of Drugs Bill will give to the authorities powers to deal with new patterns of drug abuse rapidly as they arise. Much of the old legislation was based upon a differentiation between 'narcotic' and 'non-narcotic' drugs. The drug dependent individual today frequently abuses many drugs simultaneously, not all of which would have been classed, in other times, as 'narcotics'. The modern addict may include in his armamentarium CNS stimulants, CNS depressants and hallucinogens and possibly even drugs which defy classification. The distinction between 'narcotics' and 'non-narcotics' has therefore ceased to have much meaning when one is considering legislative means for controlling the misuse of drugs.

Whilst still recognizing that illegal possession of certain drugs is a serious offence, the Bill clearly distinguishes between unlawful possession and trafficking. Several new trafficking offences are created and penalties for trafficking sharply increased. The Bill also takes account of the relative harmfulness of different drugs and makes the penalties

for unlawful possession of the more dangerous drugs more severe than unlawful possession of certain drugs which are considered to be less harmful.

It has also been necessary in the Bill to give some consideration to irresponsible prescribing by doctors. The Dangerous Drugs Act 1967 was passed to discourage the excessive prescription of heroin but, in one notorious case, nothing could be done to stop one practitioner from prescribing very large amounts of methamphetamine. Eventually by voluntary agreement with manufacturers and pharmacists all supplies of methamphetamine for parenteral use were diverted to hospital pharmacies. Almost as soon as this step had been taken a few doctors began prescribing amphetamine sulphate in powder form to be made into injections. Another voluntary agreement, by which pharmacists refused to dispense such prescriptions, became necessary to deal with the new situation. The Bill takes powers to deal with overprescribing of drugs liable to produce dependence by withholding the authority of a doctor to prescribe such drugs if it is established that the doctor has been prescribing them irresponsibly. These powers could be put into effect, under the new law, very quickly.

When it is considered that a doctor, dentist or veterinarian may have been prescribing, administering or supplying or authorizing the administration of controlled drugs in an irresponsible manner, the Bill makes provision for the Home Secretary to take action after advice from the respondent practitioner's professional peers. To this end, in appropriate cases, the Bill makes provision for the constitution of three types of organization.

1. *The Tribunal*—the chairman of which will be a lawyer appointed by the Lord Chancellor. The remaining membership will be four members nominated by organizations belonging to the respondent's profession. Proceedings will be private unless the respondent requests otherwise and the Tribunal accedes to the request. The respondent may be represented by counsel or a solicitor.

If the Tribunal finds that there are no grounds for action against a practitioner or that no action is necessary the Home Secretary must cause notice of the findings to be served on the practitioner.

If the Tribunal finds that there are grounds for action it must report its findings and recommendations to the Home Secretary. The recommendations will specify the controlled drugs which the Home Secretary may prohibit the practitioner from prescribing, administering and supplying, and authorizing their administration or supply.

Before he gives effect to any such recommendations, however, the Bill proposes that the Home Secretary shall inform the practitioner of the findings of the Tribunal. The practitioner will then have 28 days in which to make representations relating to the case. If such representations are made a second organization, called an Advisory Body, is brought into action.

2. *The Advisory Body* is proposed to consist of three people. The chairman is to be a lawyer, the members, as in the case of the Tribunal, to include representatives of the respondent's profession.

Again the respondent practitioner may be represented before the Advisory Body by a lawyer. After the Home Secretary has considered the advice given by the Advisory Body he may:

(a) give a direction in whole or in part in accordance with the recommendations of the Tribunal; or

(b) refer the case back to the original Tribunal or to another Tribunal constituted along the same lines as the first; or

(c) order that no further proceedings be taken in the case.

3. It is proposed that the *Professional Panel* consist of a chairman and two other members appointed by the Home Secretary from among the members of the respondent's

profession after consultation with one or more relevant professional bodies. Such a panel will be established where it seems necessary to investigate as a matter of urgency the case of a practitioner who appears to have been prescribing controlled drugs in an irresponsible manner. A practitioner may appear before, and be heard by, the professional panel either in person or by counsel or solicitor.

The panel will report to the Home Secretary whether the information before it appears to afford reasonable grounds for thinking that irresponsible prescribing, supply, administration or authorizing such supply or administration has taken place. If a positive report is made the Home Secretary may give a temporary direction prohibiting the practitioner from prescribing, supplying, administering and authorizing the administration of such controlled drugs as may be specified in the direction.

The period of operation of such a direction is proposed as six weeks from the date on which the direction takes effect. At the same time as giving the direction the Home Secretary shall refer the case to a Tribunal and the more normal procedure, to which reference has already been made, would be set in motion. The period of operation of a direction may be extended for further periods of 28 days if the Tribunal consents.

There is a Schedule to the Bill which defines the drugs controlled by the Bill. Drugs may be scheduled or taken off the Schedule in the light of experience and on advice given to the Home Secretary by an Advisory Council and Expert Committee on the Misuse of Drugs.

Thus it will be seen that the law, like the pattern of the social and medical problems with which it attempts to deal, is rapidly changing. Drug addiction is an evil which has been with mankind for many centuries. Its recent extension in the United Kingdom has manifestations which are new. Not the least of these is the readiness with which addicts, faced with the cutting off of their supplies of 'conventional' drugs of dependence, will turn to alternative drugs some of which may hitherto have not been considered as liable to produce dependence. Moreover constant research to find drugs which, if used properly, are of real value in the treatment of disease, has produced a very large number of substances which may be abused. To deal with this constantly changing pattern flexible legislation is necessary and the Misuse of Drugs Bill attempts to provide this. It is still, however, recognized that legislation will not cure the disease and long and painstaking research involving many disciplines will be necessary before any rational therapy becomes available.

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REFERENCE

Ministry of Health and Scottish Home and Health Department, 1967, Drug Addiction, The Second Report of the Interdepartmental Committee.