

**REPLY BY THE PRESIDENT OF
THE COMMITTEE FOR HOME AFFAIRS
TO QUESTIONS ASKED PURSUANT TO RULE 14 OF THE
RULES OF PROCEDURE BY DEPUTY L QUERPEL**

QUESTION

As you will recall, during their recent October States debate, the States of Guernsey debated amending the Domestic Abuse and Related Provisions Law 2024, submitted for debate by the Committee for Home Affairs. 12.3(b) of the legislation, which focuses on cruelty to children, states that if a person under the influence of drink or a prohibited drug, be deemed to have neglected a child in a manner likely to cause injury to that infants health, then they are guilty of an offence. However, the legislation doesn't include prescribed drugs, so in relation to that, are you able please to clarify why the legislation doesn't appear to cover prescribed drugs?

ANSWER

This section mirrors a provision currently applicable in England and Wales under section 1(2)(b) of the Children and Young Persons Act 1933. Despite the age of that Act, the "prohibited drugs" amendment was brought in much more recently, in 2015.

The section creates automatic criminal liability when an adult does something inherently dangerous, namely sleeps in the same bed as a very young child whilst under the influence of illegal drugs or alcohol.

The policy reason why this automatic criminal liability targets illegal drugs, and not prescription drugs, is because of the higher risks of impairment and unpredictable behaviour that can significantly increase the danger to the child, and the fact that there was no good (therapeutic) reason why the adult should be taking such drugs. Whilst prescription drugs can also impair judgment, they are taken for therapeutic reasons and generally in accordance with medical advice. For a person to find themselves subject to automatic criminal liability following a tragedy in which they were taking prescribed medication (rather than illegal drugs) would be a significant step further and may lead to an unfair result.

This provision is solely concerned with automatic criminal liability in very narrow circumstances. It does not mean that a parent who, for example, neglects a child whilst under the influence of prescribed medication would necessarily escape liability. It is just that such a defendant would have to be tried in the ordinary way with the prosecution proving all elements of the crime beyond reasonable doubt, and without the benefit of a provision creating automatic criminal liability.

This distinction underscores the exceptional nature of automatic criminal liability, which is reserved for cases involving illegal drugs due to the absence of any legitimate reason for their use and the heightened risk they pose to children.