



## BRIEFING PAPER

Number CBP 7334, 16 October 2015

# The Psychoactive Substances Bill 2015

By Sarah Barber

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Contributing Authors: Patricia Strickland  
Jacqueline Beard

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# Introduction

The [\*Psychoactive Substances Bill 2015\*](#) was announced in the Queen's Speech on 27 May 2015. This has now passed its House of Lords stages and will have its Second Reading in the House of Commons on 19 October 2015.

This briefing paper will provide some background to new psychoactive substances, their use, and the current legislative framework. It will provide an overview of the Bill and its consideration in the Lords. Some response to the Bill from interest groups will also be discussed.

New psychoactive substances have been a challenge for existing drugs legislation in the UK; they are developed at such a speed that by the time one substance is controlled, another one with a slight change in chemical structure can take its place in the market. There have been some developments to attempt to improve control of these substances, such as temporary class drug orders which allow the 12 month temporary control of a substance.

In 2014, the Home Office appointed an expert panel to look at legislative options to better tackle new psychoactive substances. The expert panel looked at international examples on this and recommended that a blanket ban approach, similar to that in place in the Republic of Ireland, would be the best framework. The Government response to the review said that they would take the recommendations forward. The Conservative manifesto prior to the 2015 election included a commitment to bring forward a blanket ban on new psychoactive substances.

## Summary of the Bill

**Clause 1** provides an overview of the content of the Bill

**Clause 2** defines the meaning of psychoactive substance under the Bill

**Clause 3** provides regulation making powers for the Secretary of state to add substances to a list of exempted substances under the Bill in Schedule 1

**Clauses 4-10** provide for four offences under the Bill: producing; supplying or offering to supply; possession with an intent to supply; and importing/exporting a psychoactive substance. This section also outlines the penalties for these offences and provides three aggravating factors for the offence. These are: that the offence took place in the vicinity of a school; a person under the age of 18 was used to deliver the substances; or the offence took place in a prison. There is also a regulation making power under Clause 10 for the Secretary of State to add activities that would normally be caught by the Bill to an exempted list.

**Clauses 11-34** provide powers for dealing with prohibited activities under the Bill. There are four civil sanctions, prohibition notices, premises notices, prohibition orders, and premises orders. The breach of an order will be a criminal offence.

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**Clauses 35-47** outline the powers to stop and search, and of entry and seizure.

**Clauses 48-53** provide details on the retention and disposal of seized goods under the Bill.

**Clauses 54-62** contain final and consequential provisions. The Bill extends to England, Wales, Scotland and Northern Ireland.

[Detailed explanatory notes to the Bill](#) have been published, and links to the debate on the Lords stages of the Bill can be accessed via the Parliament [Psychoactive Substances Bill 2015 Bill page](#).

# 1. Background

## 1.1 New psychoactive substances

New psychoactive substances (NPS) are chemicals that have been synthesised to mimic the effects of traditional illicit drugs. The substances are designed to evade existing misuse of drugs legislation and continue to do this once controls are introduced by a slight altering of the chemical structure of existing substances. There are some issues with defining NPS, and the use of inaccurate terms such as 'legal highs.'

### Legal highs?

NPS have been called 'legal highs' but this term can be inaccurate and misleading for a number of reasons.

A significant number of the substances called 'legal highs' may actually contain controlled drugs (19% of the substances found in legal high drug samples from the Home office forensic early warning system in 2013-14 were already controlled)<sup>1</sup>.

Some of these substances may have been legal when first used in the UK, but have now become controlled under the Misuse of Drugs Act (eg. mephedrone).

The term 'legal high' can imply that they are to some extent regulated and safe- this is not the case.

Also, the Home Office highlight that the term 'high' gives the impression that all these substances are in some way a stimulant; they do not all have these effects.

The Advisory Council on the Misuse of Drugs (ACMD), the independent expert body that provides advice to the Home office on drug misuse, defines novel psychoactive substances as:

„psychoactive drugs which are not prohibited by the United Nations Single Convention on Narcotic Drugs or by the Misuse of Drugs Act 1971, and which people in the UK are seeking for intoxicant use“.<sup>2</sup>

The former independent UK centre for drug expertise, Drugscope roughly divide NPS according to the types of drugs they are designed to mimic:

- Synthetic cannabinoid receptor agonists – substances that are synthesised to act on the brain in a similar way to cannabis (eg Black mamba, Clockwork orange)
- Stimulant type drugs- These substances replicate the effects of drugs such as MDMA and amphetamine (eg. Benzylpiperazine (BZP) Mephedrone, Benzo Fury)
- Hallucinogenic- Substances with an hallucinogenic effect such as Bromo-dragonfly, Methoxyetamine
- Opiates- These are less common in the UK, but have been encountered in Europe. (eg. Kratom)<sup>3</sup>

<sup>1</sup> Home Office, [Annual Report on the Home Office Forensic Early Warning System \(FEWS\) A system to identify New Psychoactive Substances in the UK](#), August 2014

<sup>2</sup> ACMD, [Consideration of the Novel Psychoactive Substances. \('Legal Highs'\)](#), October 2011

<sup>3</sup> Drugscope, [Not for human consumption, An updated and amended status](#) report on new psychoactive substances and club drugs in the UK, 2015

The 2014 Home Office review of evidence on new psychoactive substances reported that ongoing problems and inconsistencies with defining NPS may have an impact on information collection and research in this area:

Throughout this report there are issues about which substances are defined as an 'NPS'. This is important because the inclusion or exclusion of substances affects estimations of the overall scale of the NPS problem. This is not an issue for research that focuses on specific substances, but research that attempts to look at NPS as a whole will be affected.

Additional definitional issues emerge when considering NPS that have achieved widespread use and are now controlled substances. For example, ketamine and mephedrone are now well-established recreational drugs that are controlled under the Misuse of Drugs Act 1971. Due to this, these would not be covered by definitions that solely focus on the legal status of a drug at a UK level. Despite this, mephedrone is still widely considered to be an NPS, and some authors and agencies also considered ketamine to be an NPS. As controlled substances can still be considered an NPS, it is unclear when a substance ceases to be an NPS, and instead becomes a traditional illicit drug.

Similarly, the exact NPS that are subject to control measures varies across different countries (EMCDDA, 2014b). The UK has taken a proactive approach to NPS, and many substances that controlled in the UK are not controlled in other countries, or at a European or international level. Therefore, definitions that focus on legal status at an international level will include a great deal of substances that are already controlled in the UK.<sup>4</sup>

### **Box 1: New psychoactive substances- different types of products on the market**

The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) produced an report on NPS in Europe in March 2015. Within this, they outlined a wide spectrum of different types of products that could be considered as falling within the NPS market:

- Legal highs: Marketed in bright and attractive packaging. Sold openly in head/smart shops and online. Aimed at recreational users.
- Research chemicals: Sold under the guise of being used for scientific research. Aimed often at 'psychonauts,' people who experiment with the effects of NPS. Sold openly online.
- Food supplements: Sold under the guise of being food or dietary supplements. Aimed at people wanting to enhance their body and mind. Sold openly in fitness shops and online.
- Designer drugs: Passed off as drugs such as MDMA and heroin. Produced in clandestine labs by organised crime. Sold on illicit drug market by drug dealers.
- Medicines: Medicines that are diverted from patients or illegally imported into Europe. Sold on illicit drug market by drug dealers.<sup>5</sup>

Increasing in popularity since 2008-9, NPS represent a relatively new challenge in drugs policy and are being developed at a speed never before seen in the drugs market. Often they are labelled as bath salts or

<sup>4</sup> Home Office, Giles Stevenson and Anna Richardson, [New Psychoactive Substances in England. A review of the evidence](#), October 2014

<sup>5</sup> EMCDDA, [New psychoactive substances in Europe.: an update from the EU early warning system](#), March 2015

research chemicals and contain warnings such as 'not for human consumption' which allows them to bypass control under the [Medicines Act 1968](#).

NPS are developed and sold across international markets. The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) has emphasised the importance of international collaboration in information collection and data sharing on this issue.

Most of these products are produced in China and India. These are then shipped to Europe in bulk where they are sold on to consumers. Users access these substances primarily from three sources: online retailers, high street shops (head shops) and non-retail sources such as friends and drug dealers.<sup>6</sup>

## The definition in the Bill

The Government used the term psychoactive substances in the drafting of the Bill. They chose not to use the terms new or novel in the definition used. The Minister, at Second Reading of the Bill, said that the purpose of this was to ensure the scope of the Bill was broad enough to cover new substances that are being created:

In defining what we mean by a psychoactive effect, our definition draws on scientific advice and international precedents, including the 1971 UN Convention on Psychotropic Substances. As I have indicated, we make no apologies for the breadth of the definition. If we were to adopt too narrow a definition, we could, in a few months' or years' time, find ourselves having to bring forward further legislation because we were faced with a new generation of harmful substances that escaped the controls provided for in this Bill.<sup>7</sup>

The definition of psychoactive substances within the Bill has been the subject of much debate during the Lords consideration of the Bill, more information on this is provided later in this briefing paper. (Section 5)

The ACMD have also been in correspondence with the Home Secretary regarding concerns about the definition of psychoactive substances under the Bill. They have previously used the term novel psychoactive substances and initially advised that the bill should be amended to use this term. In August 2015 they sent a report to the Home secretary about views on definitions of psychoactive substance.<sup>8</sup>

## 1.2 The NPS market

The internet has played an important role in the widespread availability of NPS products. The substances are for sale on both the 'clearnet',<sup>9</sup> mainly those NPS that are not controlled, and the 'darknet'<sup>10</sup> through sites such as Silkroad 2.0. Those NPS sold on the darknet sites tend to

<sup>6</sup> [New Psychoactive Substances Review, Report of the Expert panel, October 2014](#)

<sup>7</sup> [HL Deb 9 June 2015 c736](#)

<sup>8</sup> [Advisory Council on the Misuse of Drugs, Report on definitions for Psychoactive Substances Bill](#), 17 August 2015

<sup>9</sup> Clearnet refers to websites that are openly available on the internet

<sup>10</sup> Darknet refers to sites that are not openly available on the internet. They can usually only be accessed by using specific software such as tor.

be those that are already controlled and are available alongside other controlled drugs.

In 2013 the EMCDDA identified 651 online shops selling 'legal highs' in Europe<sup>11</sup> and the National Crime Agency have estimated that between 100-150 clearnet websites in the UK are offering the sale of NPS.<sup>12</sup> However, evidence suggest that the most frequently used sources for consumers of NPS are friends and family, dealers and head shops.

Head shops were defined by the expert panel conducting the 2014 review of NPS as:

...a commercial retail outlet specialising in the sale or supply of NPS together with equipment, paraphernalia or literature related to the growing, production or consumption of cannabis and other drugs. These outlets may also have online businesses, but those businesses solely based online would not fit within this definition.<sup>13</sup>

Head shops are not a new type of retailer but there is some evidence that their number has increased due to the NPS market. The drugs charity Angelus Foundation have estimated that there are over 250 head shops selling non-controlled NPS in the UK.

### 1.3 The scale of the use and development of NPS

The [EMCDDA](#) use information from the EU Early Warning System<sup>14</sup> to provide an overview of the NPS market in Europe. They report that there has been an unprecedented increase in the number, type and availability of NPS in the last 5 years in Europe. The EMCDDA report that this growth in the NPS market has only been possible because of the "growing interconnectedness of the world, driven by globalisation and the internet."<sup>15</sup> The number of new NPS notified to the early warning system in 2014 was 101. The Early Warning System is currently monitoring more than 450 substances.<sup>16</sup>

The Crime Survey for England and Wales looked at reporting of generic rather than specific new psychoactive substance use for the first time in 2014-15.<sup>17</sup> They explain that in this context NPS refers to "*newly available drugs that mimic the effect of drugs such as cannabis, ecstasy and powder cocaine, and which may or may not be illegal to buy, but are sometimes referred to as 'legal highs'.*" The survey reports that use of NPS during the last year seems to be concentrated in the 16-24 year age group. Overall prevalence of use is generally low compared with that of established drugs like cannabis and ecstasy. The Crime Survey

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<sup>11</sup> EMCDDA, European Drug report, [Trends and Development 2014](#)

<sup>12</sup> [New Psychoactive Substances Review, Report of the Expert panel, October 2014](#)

<sup>13</sup> [New Psychoactive Substances Review, Report of the Expert panel, October 2014](#)

<sup>14</sup> EMCDDA, [The EU Early Warning System](#),

<sup>15</sup> EMCDDA, [New psychoactive substances in Europe.: an update from the EU early warning system](#), March 2015

<sup>16</sup> EMCDDA, [European Drug report, Trends and developments](#), 2015

<sup>17</sup> Home Office, [Drug Misuse: Findings from the 2014/15 Crime Survey for England and Wales](#), July 2015

estimated that 0.9% of adults between 16 and 59 have used an NPS in the last year.

An EU wide survey of just over 13,000 young people aged 15-24 showed that 8% of respondents had used NPS at least once in 2014.<sup>18</sup> However, the Home Office urge caution in the interpretation of this survey - claiming that it tends to overestimate usage compared with other, more robust surveys.<sup>19</sup>

Overall use of NPS in the UK general population remains low compared with traditional illicit drugs. However, the use of NPS is higher in certain subgroups such as clubbers, men who have sex with men (MSM) and young people. A more detailed discussion of the prevalence of use and the characteristics of NPS users can be found in the 2014 [Home Office review of the Evidence on NPS](#).

## 1.4 Harms

There is a growing body of clinical evidence on the health harms of NPS but limitations remain, especially in regard to potential long term effects. There is a consensus that more information collection and research is needed in this area. The available evidence suggests that the overall harms from NPS are low compared with the overall harms from traditional illicit drugs.<sup>20</sup>

This section will focus mainly on health harms but social harms are also a consideration. Again, there is very little research in this area. The Home Office evidence review states it is plausible that these social harms could be similar to those from other recreational or club drugs (those that NPS are designed to mimic) and that it is unlikely these substances are playing an important role in fuelling crime or anti-social behaviour.<sup>21</sup>

The ACMD reports that the use of NPS can result in acute toxicity and serious harm, and beyond this can result in young people putting themselves in vulnerable situations. Generally, the pattern of acute toxicity with NPS is broadly similar to that seen with traditional stimulant drugs such as cocaine and MDMA. The ACMD highlights the difficulty in collecting information. Healthcare professionals may not be aware of new NPS and the products may be variable in both substance content and potency despite being labelled with the same name.<sup>22</sup>

The Home Office review of the evidence on NPS also notes evidence gaps around health harms of NPS.<sup>23</sup> This is an important issue to address, especially in light of the fact that some substances that may

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<sup>18</sup> European Commission, [Flash Eurobarometer 401, Young people and drugs](#), 2014  
Home Office, Giles Stevenson and Anna Richardson, [New Psychoactive Substances in England, A review of the evidence](#), October 2014

<sup>20</sup> Home Office, Giles Stevenson and Anna Richardson, [New Psychoactive Substances in England, A review of the evidence](#), October 2014

<sup>21</sup> Home Office, Giles Stevenson and Anna Richardson, [New Psychoactive Substances in England, A review of the evidence](#), October 2014

<sup>22</sup> ACMD, [Consideration of the Novel Psychoactive Substances \('legal highs'\)](#), October 2011  
Home Office, Giles Stevenson and Anna Richardson, [New Psychoactive Substances in England, A review of the evidence](#), October 2014

initially seem to have low harms may later be found to cause long term significant health implications, for example Ketamine.

A Scottish Drugs Forum survey of drug services in 2013 provides a summary of some of the key harms associated with NPS use:

- Overdose and temporary psychotic states and unpredictable behaviours
- Attendance at A&E and some hospital admissions
- Sudden increase in body temperature, heart rate, coma and risk to internal organs (PMA)
- Hallucination and vomiting
- Confusion leading to aggression and violence
- Intense comedown that can cause users to feel suicidal.

Use was also associated with longer term health issues –

- Increase in mental health issues including psychosis, paranoia, anxiety, 'psychiatric complications'
- Depression
- Physical and psychological dependency happening quite rapidly after a relatively short intense period of use (weeks).<sup>24</sup>

The Government drug advice website, FRANK, provides user-friendly information about the potential health risks of different types of NPS, but warns that these are not comprehensive and that more research is needed into the long and short term health effects of NPS.<sup>25</sup> More advice on NPS health effects is also provided on the [NHS Choices website](#).<sup>26</sup>

The Office for National Statistics report that deaths from NPS use are low compared with those from heroin/morphine or cocaine poisoning but they have increased in the last few years. The number of deaths increased again in 2014 to 67:

Some of the more common NPS include synthetic cannabinoid receptor agonists (for example, "spice"), gamma-hydroxybutyrate (GHB) and its precursor gamma-butyrolactone (GBL), piperazines, cathinones such as mephedrone, benzofurans, and more recently, prescription-type drugs, for example, benzodiazepine analogues. Most of these substances are now controlled under the [Misuse of Drugs Act \(1971\)](#).

The number of deaths involving NPS are low compared with the number of deaths involving heroin/morphine, other opiates, or cocaine. However, over the past few years there has been an rise in NPS deaths, with 67 deaths registered in 2014 (up from 60 deaths in 2013). Analysis of the trends based on the year the death occurred, reveal a different pattern than that seen for

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<sup>24</sup> Scottish Drugs Forum. *The shape of drug problems to come: the results of the 2013 drug trends in Scotland survey* (as quoted by [Drugscope](#))

<sup>25</sup> FRANK, [Legal Highs](#)

<sup>26</sup> NHS Choices, Live well: Legal Highs, October 2014

registration year. Analysis of year of occurrence suggests that there were sharp increases in NPS deaths between 2010 and 2011 and again between 2011 and 2012, but then the number of deaths fell in 2013. Although figures for deaths occurring in 2014 are very incomplete (and thus are not shown in Figure 5), initial indications suggest that the upward trend in NPS deaths has now stabilised.<sup>27</sup>

It may be useful to note that the ONS list in a background note ([background note 10](#)) all the substances that are included as NPS for the purpose of its reporting.

The EMCDDA report an increase in serious harms reported to the organisation in the last few years. Most of these involve acute non-fatal incidents and deaths but also have involved broader social harms. It highlights 16 public health alerts that were issued in response to serious harms in 2014.<sup>28</sup>

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<sup>27</sup> ONS, [Deaths related to drug poisoning in England and Wales, 2014 registrations](#), September 2015

<sup>28</sup> EMCDDA, [New psychoactive substances in Europe: an update from the EU early warning system](#), March 2015

## 2. Current legislative framework

Traditionally, drug control in the UK is provided under the [Misuse of Drugs Act 1971](#), NPS have been a new challenge to this model. The speed of production and marketing of newly developed substances has led to the introduction of Temporary Class Drug Orders and the use of a variety of alternative legislation. The UK has banned over 85% of the main groups of NPS seen in the EU since 2005.<sup>29</sup>

The 2014 Government appointed expert panel review of NPS (the panel) has recommended a new, strengthened legislative approach to complement the Misuse of Drugs Act. In May 2015, the Psychoactive Substances Bill was announced in the Queen's Speech to introduce a blanket ban on psychoactive substances (this is discussed further in section 3 of this note).

### 2.1 Misuse of Drugs Act 1971

Illicit drug control in the UK is provided under the *Misuse of Drugs Act 1971*. The Act makes it illegal for people to possess, supply, produce, or import/export illegal drugs.

[The Misuse of Drugs Act 1971](#) separates illegal drugs into three classes- A, B and C. This aims to classify drugs according to their relative harmfulness when used. These drugs are listed under parts I, II and III in [Schedule 2 to the Act](#).<sup>30</sup>

The Gov.uk website provides [information on examples of different classes of drugs and possible penalties for offences under the Act](#).<sup>31</sup>

The [Misuse of Drugs Regulations 2001](#) allow for the lawful possession and supply of certain controlled drugs for legitimate purposes. They cover the prescribing, administering and safe use and possession of these drugs.

The Government can add a drug to the *Misuse of Drugs Act 1971* by making a Parliamentary drug control order, following consultation with the Advisory Council on the Misuse of Drugs (ACMD). However, there have been difficulties using this traditional legislative model with regards to new psychoactive substances. The speed of development of new substances does not allow for the time usually needed for consideration.

The Misuse of Drugs Act 1971 now also allows for generic controls of NPS, whereby a family of drugs, that are closely related chemically are controlled. However, not all related substances will be covered. The ACMD have pointed out examples where those not covered by the generic control have been developed and marketed as NPS, such as synthetic cannabinoids.<sup>32</sup>

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<sup>29</sup> [New Psychoactive Substances Review. Report of the Expert panel, October 2014](#)

<sup>30</sup> [Schedule 2: controlled drugs, Misuse of Drugs Act 1971](#)

<sup>31</sup> Gov.uk, [Drug penalties](#), November 2013

<sup>32</sup> ACMD, [Consideration of the Novel Psychoactive Substances \('legal highs'\)](#), October 2011

A new legislative tool, the temporary class drug order was developed to attempt to tackle the speed of these new substances coming on the market.

## 2.2 Temporary class drug orders

In response to difficulties legislating against NPS, amendments to the [Misuse of Drugs Act 1971](#) were made for NPS to be banned on a temporary (12 month) basis.<sup>33</sup>

[Schedule 17](#) of the [Police Reform and Social Responsibility Act 2011](#) provides powers to introduce temporary class drug orders (TCDOs) by secondary legislation. A substance can be subjected to temporary control only if two conditions are met:

- the substance or product must not be a Class A drug, a Class B drug or a Class C drug
- the Home Secretary must have either determined following consultation with, or received recommendation from, the Advisory Council on the Misuse of Drugs (ACMD) that the order should be made.<sup>34</sup>

On 15 November 2011, a [Working Protocol between the Home Secretary and the Advisory Council on the Misuse of Drugs](#) was published. This provides a framework for invoking [TCDOs](#).<sup>35</sup>

In March 2012, the first TCDO, was introduced to ban the drug methoxetamine (also known as Mexxy).<sup>36</sup> As a result those caught making, supplying or importing the drug face up to 14-years in prison and an unlimited fine under the [Misuse of Drugs Act 1971](#).<sup>37</sup> Simple possession of a drug controlled under a TCDO is not an offence.

The Minister, Lord Bates, reported during the Second Reading of the Psychoactive Substances Bill that TCDOs have been used to ban over 500 NPS.

## 2.3 Use of alternative legislation

A 2014 [Home Office document on Head shops](#) provides guidance on how local authorities may take action against head shops for selling drug paraphernalia, controlled drugs or other intoxicating substances.<sup>38</sup>

They outline what legislation may be used for and which offences in this area. There is recourse to the [Intoxicating Substances \(Supply\) Act 1985](#) (which prohibits the sale of substances to those under the age of 18 which the seller has reason to believe may be inhaled for the purposes

<sup>33</sup> [Misuse of Drugs Act 1971](#). Legislation.gov.uk, accessed 30 June 2014

<sup>34</sup> [Police Reform and Social Responsibility Act 2011, Schedule 17](#), Legislation.gov.uk, accessed 30 June 2014

<sup>35</sup> [Working Protocol between the Home Secretary and the Advisory Council on the Misuse of Drugs](#), gov.uk, accessed 30 June 2014

<sup>36</sup> <http://www.homeoffice.gov.uk/media-centre/news/mexxy-banned>

<sup>37</sup> [Misuse of Drugs Act 1971](#). Legislation.gov.uk,

<sup>38</sup> Home Office, [Guidance for local authorities on taking action against 'head shops' selling new psychoactive substances \(NPS\)](#)

of intoxication) and numerous elements of consumer trading legislation here.

## 3. A review of NPS

An expert panel to consider how best to tackle NPS was appointed by the Government in December 2013. The panel were asked to look at how the legislative framework could be improved to deal with these substances and to also look at enhancing treatment, prevention and education responses.

The panel was made up of representatives from law enforcement, local authorities, medical science and drug prevention. The [full terms of reference](#) are provided in the 2014 report.

This panel reported in October 2014<sup>39</sup> and the Government response was published at the same time.<sup>40</sup>

There has also been a review of NPS initiated by the Scottish Government, and a Committee Inquiry at the Welsh Assembly.

### 3.1 Strengthening the legislative framework

The panel's assessment of the current legislative approach in the UK was that the *Misuse of Drugs Act 1971* provided a clear and well understood framework. It is linked to evidence based information on the harms of drugs. Over 500 psychoactive substance have been controlled under this Act since 2010.<sup>41</sup>

They also highlighted the use of TCDOs and successful use of alternative legislation to tackle NPS.

However, they reported that the current response was limited and could be improved. The panel highlight the reactive nature of the UK process of drugs control and said that, at worse, this could be driving developments in the NPS market. They recommended that the Government consider strengthening the legal framework by:

- the use of a neurochemical legislative approach with regards to synthetic cannabinoid (controlling on the basis of the effect on the brain rather than chemical structure);
- the use of a blanket ban on all psychoactive substances, similar to that in place in the Republic of Ireland.

Beyond the consideration of a potential new legislative approach, the expert panel looked at the wider response to NPS.

Its recommendations in this area included the following:

- Undertake research in key areas such as NPS use, prevention and treatment interventions;
- Improve information collection and sharing on NPS;
- Develop further evidence based clinical information for prevention and treatment approaches.

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<sup>39</sup> [New Psychoactive Substances Review, Report of the Expert panel, October 2014](#)

<sup>40</sup> [Government response to New Psychoactive Substances Review Expert Panel Report, October 2014](#)

<sup>41</sup> [HL Deb 30 June 2015 c1943](#)

The panel considered a number of alternative legislative approaches as part of the review. Some of these are discussed briefly below. For more information on this, there is more detail in the panel's report and the EMCDDA provides a [useful website](#) looking at legislative approaches to NPS across Europe.

### Analogue legislation

Analogue control measures work on a substance by substance basis. If a substance is both chemically similar, and has a similar effect on the central nervous system as a controlled drug it will be automatically controlled. In comparison, a generic control, as currently used in the UK, relates to groups of substances. If substances are derived from the same core molecular structure (variations around the same central chemical backbone as described by the ACMD) then they are automatically controlled.<sup>42</sup>

In 2011, the ACMD reported that this analogue approach is attractive because simple modifications can readily be covered. At this time, it suggested that the possibility of using new analogue legislation in conjunction with existing generic controls should be explored.<sup>43</sup>

However, in evidence to the Home Affairs Select Committee Inquiry in 2013, the ACMD reported that although they were still considering the analogue approach, the US Government were having legal difficulties in implementing this legislation and were considering a revision.<sup>44</sup> The Committee also noted that the United Nations Office on Drugs and Crime had reported that analogue legislation had not always been implemented successfully.

The NPS review expert panel assessed the potential for an analogue approach in the UK. The report concluded that adopting an analogue approach would not fully address the gaps in the UK's existing legislative response to NPS.

### A regulated market

A new approach to NPS has been developed in New Zealand. This seeks to regulate the manufacture and sale of NPS. This regime was introduced by the [New Psychoactive Substances Act 2013](#) which came into force in May 2014. Currently, the regulatory framework is not fully in place. So far, no substances have been granted full approval.

This approach puts responsibility on manufacturers to prove the products they produce are low risk before they can go on sale and allows for the restriction of sales and health warnings in a similar way to tobacco. Decisions about whether to approve a product will be made by the [Psychoactive Substances Regulatory Authority](#), with advice from an expert advisory committee. A February 2014 British Medical Journal (BMJ) article provides more information on this:

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<sup>42</sup> UK Drug Policy Commission, [Analogue controls: An imperfect law](#), June 2012

<sup>43</sup> ACMD, [Consideration of the Novel Psychoactive Substances \('Legal Highs'\)](#), October 2011

<sup>44</sup> House of Commons Home Affairs Select Committee Inquiry, [Written evidence submitted by Advisory Council on the Misuse of Drugs, 13 November 2013](#)

The New Zealand Psychoactive Substances Act 2013 puts the onus on the drug manufacturers to show that their products pose no more than a “low risk of harm” before allowing them on to the market. Drug manufacturers are required to pay for research costs and a \$NZ10 000 application fee. The act also restricts sales of approved psychoactive substances in a similar way that sales of alcohol and tobacco are restricted. Selling or supplying to people under 18 years of age is an offence. Approved substances are available only from licensed premises. Packaging and advertising are restricted and health warnings are mandatory.<sup>45</sup>

The panel assessed the potential for using a regulatory approach in the UK. Although they acknowledged that it could address some of the needs in the UK system - by reducing harm and protecting individuals by ensuring that substances are tested and sold safely, they expressed concerns about how it would work in practice. The panel advised that the Government should monitor the use of this regulatory approach once it was established in New Zealand.

### **Restricted availability approach**

This is similar to the regulatory approach in that it provides some regulation of products by applying restrictions and possibly licensing shops. These restrictions may be placed on a number of areas, such as the age of purchasers, place of sale or advertising. This response has also been used in the past in New Zealand where it was used to control BZP when it remained legal, until its control. It is not currently used for any substances.

The panel considered this approach in the regard to substances that were currently uncontrolled in the UK. They stated that it would have the potential to encourage ‘responsible retailing’ but enforcement issues would remain, and there would still be unknowns around the contents and therefore risks of NPS. The panel did not think that this approach would sufficiently protect individuals from the risks pose by NPS. It also did not remove the concerns that the substance by substance control approach was in some way fuelling the development of new NPS.

### **Neurochemical approach**

The expert panel considered the use of a neurochemical legislative approach, similar to that in place in the US, to tackle synthetic cannabinoids. This would introduce a system by which a substance is controlled not on the basis of its chemical content but on its effect on the brain.

The panel suggested that this approach would be could be most appropriate in controlling synthetic cannabinoids, the use of generic controls under the Misuse of Drugs Act 1971 had been useful in anticipating new substances and controlling them generally, but in the case of synthetic cannabinoids this had not been as effective. This generic control was introduced in 2009, and was updated in 2012, but the panel identified six ‘third generation’ synthetic cannabinoids that were currently uncontrolled and on sale.

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<sup>45</sup> BMJ, Jack Newberry and Alex Wodak, [Regulation of new psychoactive substances](#), 13 February 2014

The panel concluded that this approach had potential in controlling this group of substances, and the Government should look at its feasibility. However, they identified a number of potential risks involved such as an increase in the illicit market, and potential risks to research development in the future.

## A blanket ban

A number of countries, including the Republic of Ireland, Poland and Romania have a general prohibition on the supply, importation and exportation of NPS. The simple possession of a NPS is not unlawful in these countries.

### The legislative approach in the Republic of Ireland

The [Criminal Justice \(Psychoactive Substances\) Act 2010](#) came into force in Ireland in August 2010. It makes it an offence for anyone to advertise, sell, supply, import or export a psychoactive substance, either knowing or being reckless that it was for human consumption.

Psychoactive substance is defined in this legislation as any substance which has the capacity to stimulate or depress the central nervous system, resulting in hallucinations, dependence or significant changes to motor function, thinking or behaviour.

The legislation provides for an escalating range of powers

- Police officers can use a prohibition notice
- The courts can issue a prohibition order or closure order for failure to comply
- Non-compliance with a prohibition order can be punishable by a maximum of five years in prison

The expert panel stated that a police inventory of head shops in Ireland prior to the introduction of the legislation indicated there were 102. Following the legislation coming into force the head shop trade had virtually disappeared.

The panel report there has been no formal evaluation has been undertaken but some concerns had been expressed about a displacement to traditional illicit drugs, a drug prevalence survey is underway in 2015. This survey is due for publication in December 2015.<sup>46</sup>

In terms of prevalence, the results from the National General Population Drugs Prevalence Survey in Ireland currently underway are due in 2015 and these will allow a comparison of trends in NPS use since 2010/2011 (the years in which the previous comparable survey was conducted).<sup>47</sup>

Under this type of legislation, psychoactive substances tend to be defined as a substance that stimulates or depresses the central nervous system and is associated with dependency, hallucinations or disturbances in motor function or behaviour. Exemptions are needed for substances such as alcohol, caffeine and tobacco.

<sup>46</sup> National Advisory Committee on Drugs and Alcohol, [NACDA Drug Prevalence Survey 2014/2015](#) [accessed 16 October 2015]

<sup>47</sup> [New Psychoactive Substances Review, Report of the Expert panel, October 2014](#)

The expert panel concluded that this approach was the best suited to strengthen the UK's legislative approach to NPS. It reported that introducing this type of legislation would:

- tackle the NPS market by responding to the ease of availability of the substances;
- remove the risk that the approach used now was fuelling the development of new products;
- Maximise opportunities for compliance and reduce complexity from an enforcement and prosecution point of view and
- Would provide powers to shut down websites selling NPS.
- However, they did identify some risks with this approach. These included whether it represented a proportionate response to NPS and whether it could result in a move to the criminal, backstreet market for NPS. The panel also highlighted that conceptually this was an entirely new direction for drug control in the UK. This would represent a precautionary approach rather than a proportional response on the evidence of harm.

They recommended that subject to conditions, the Government should take forward this approach:

Taking into account the opportunities and risks of applying the approach in the UK, the Panel recommends that the Government take forward this approach subject to ensuring that: (i) definitions used in legislation are robust; (ii) required exemptions are addressed (see below); (iii) the approach is focused on tackling the trade or supply rather than personal possession or use; and (iv) potential unintended consequences are explored more fully, building on learning and evidence from countries that have already taken this approach.

In considering the general prohibition on distribution approach, the Panel was mindful that the approach would capture a very wide range of current and potential future psychoactive substances and there was potential for unintended consequences. With that in mind, the Panel recommends that the Government puts in place a schedule of exemptions for substances it wishes to permit when bringing the general prohibition into force (e.g. alcohol, tobacco, caffeine, energy drinks). Furthermore, in designing the legislation, the Government should ensure that provision is made for newly emerging substances to secure exemptions (for example, by a power to add new exemptions by statutory instrument) where the risks of health and social harms can be adequately assessed. A regime is already in place for medicines, but the Government needs to be mindful of the emergence of new markets.<sup>48</sup>

In terms of prevalence, the results from the National General Population Drugs Prevalence Survey in Ireland currently underway are due in 2015 and these will allow a comparison of trends in NPS use since 2010/2011 (the years in which the previous comparable survey was conducted).<sup>49</sup>

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<sup>48</sup> [New Psychoactive Substances Review, Report of the Expert panel, October 2014](#)

<sup>49</sup> [New Psychoactive Substances Review, Report of the Expert panel, October 2014](#)

## 3.2 Government response

The Government announced that they would take forward a number of the panel's recommendations, including:

- Considering extending the length of temporary control drug orders to 24 months to allow the ACMD longer to assess new substances;
- Looking at the feasibility of a general prohibition on the distribution of non-controlled NPS for human consumption. They would consider whether there should be an escalation of civil as well as criminal measures and would consider the panel's view that such an approach would target NPS supply and trade;
- Consider a new basis by which synthetic cannabinoids might be controlled, by reference to the effect on the brain rather than chemical structure;
- Working with the CPS to update its guidance on drug offences to include NPS;
- Continue the development of a Home Office NPS resource pack to be used by informal educators such as youth workers and probation services;
- Continue to maintain and update the Government drug information website, FRANK;
- Encourage investment in research into NPS.

In October 2014, a Ministerial Statement from the then Minister for Crime Prevention Norman Baker provided more information about this new approach:

In response to these recommendations I am announcing today a range of actions. We will develop proposals for a blanket ban similar to that introduced in Ireland in 2010. This would give law enforcement greater powers to tackle the market in so called "legal" highs in general, instead of on a substance by substance basis. I have also commissioned the Advisory Council on the Misuse of Drugs to provide advice on a cutting edge way of basing legal controls for future synthetic drugs that mimic cannabis and on the effects these substances have on the brain rather than their chemical structure. The expert panel highlighted a number of factors that will need to be considered in taking these recommendations forward in the UK context. We therefore think it is important to take the time necessary to ensure that any legislation developed in response to the expert panel's recommendations is carefully considered and will work in the UK.

In response to the expert panel's wider recommendations, we will also implement a comprehensive action plan that includes strengthening training given to front-line NHS staff to deal with the effects of NPS use and the publication of new guidance by Public Health England for local authorities, including advice on integrating new psychoactive substances into local drugs education, prevention and treatment work.

In addition to the expert panel's report and Government's response we are publishing a wider Home Office evidence paper—"New Psychoactive Substances in England—A Review of

the Evidence.” This paper builds on the evidence considered and set out in the expert panel’s report.<sup>50</sup>

New Clause 21, tabled by the Opposition at the Report Stage of the *Serious Crime Bill 2015* sought to create new controls on NPS.<sup>51</sup> At this time, the Parliamentary Under-Secretary for the Home office, Karen Bradley said that the Government welcomed the principle behind this new clause but that the ban on NPS required careful consideration. The Government were moving quickly to ensure that the necessary primary legislation would be ready to be introduced at the earliest opportunity in the next Parliament.<sup>52</sup>

On 27 May 2015, the decision to introduce a UK wide ban on NPS was announced in the Queen’s Speech.<sup>53</sup> A briefing paper published alongside the Queen’s Speech provided more information about the main elements of the Psychoactive Substances Bill at the time:

- The Bill would make it an offence to produce, supply, offer to supply, possess with intent to supply, import or export psychoactive substances; that is, any substance intended for human consumption that is capable of producing a psychoactive effect. The maximum sentence would be seven years’ imprisonment.
- Substances, such as alcohol, tobacco, caffeine, food and medical products, would be excluded from the scope of the offence, as would controlled drugs, which would continue to be regulated by the Misuse of Drugs Act 1971.
- As recommended last year by the NPS Expert Panel, the Bill would focus on the supply of NPS and so would not include a personal possession offence.
- Specific substances will continue to be controlled under the existing Misuse of Drugs Act legislation (including possession) where they can be identified and their harms can be adequately assessed by the ACMD.
- This legislation is supported by the Devolved Administrations and the Scottish government and the National Assembly for Wales have published their own reports calling for a blanket ban
- The Bill would include provision for civil sanctions – prohibition notices and prohibition orders (breach of the latter would be a criminal offence) – to enable the police and local authorities to adopt a proportionate response to the supply of NPS in appropriate cases.
- The Bill would also provide powers to seize and destroy NPS and powers to search persons, premises and vehicles, as well as to enter premises by warrant if necessary.<sup>54</sup>

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<sup>50</sup> [HC Deb 30 October 2014 c29WS](#)

<sup>51</sup> House of Commons, [Notice of Amendments, Serious Crime Bill](#), 19 February 2015

<sup>52</sup> [HC Deb 23 February 2015 c112](#)

<sup>53</sup> [Queens Speech 2015](#), 27 May 2015

<sup>54</sup> Home Office, [The Queen’s Speech](#), 27 May 2015

### 3.3 Scottish Government Expert review on NPS

A Scottish Government appointed an expert review panel was set up in June 2014 to review the current legal framework to control the sale and supply of NPS.

The review panel published its report in February 2015.<sup>55</sup> They concluded that the Scottish Government and the Home Office should work together to develop a new legislative approach to control NPS and the group agreed that there were some benefits to the Irish model:

The Misuse of Drugs Act 1971 provides a more straightforward regime but it relies on substances being controlled under that Act. It was considered that the other criminal offences examined did not assist in tackling the problem of the sale or supply of NPS over and above the existing common law offence of culpable and reckless conduct.

In light of this, the Group considered there was real merit in considering a new offence to deal with the sale or supply of NPS. Particular consideration was given to the type of approach adopted in Ireland, and it was agreed this would be preferable to the other approaches adopted internationally.

The Irish definition would require proof of the psychoactive nature of the substance. The Group noted that in the Home Office NPS Report of the Expert Panel there is consideration to using the term "intoxication". The Group would welcome further examination of this to ensure this is what is required in policy terms. It would be helpful to ensure that the terminology adopted can be supported in evidence whether forensic or expert evidence.

The Group recognise that headshops are only one part of the NPS landscape with the internet playing a large part in the trade. Internet sales could be considered as part of any new offence, taking into account potential difficulties raised in terms of extra territorial jurisdiction. Consideration should also be given to establishing proof of identity when someone is dealing over the internet to ensure that the offence is effective in that area.<sup>56</sup>

The group also made recommendations on the need for the development of a definition of NPS in order to ensure consistency and common understanding, the establishment of a forensic centre of excellence in Scotland to develop national standards on testing for NPS; and improved information sharing.

### 3.4 Welsh Assembly Committee Inquiry

The Health and Social Care Committee at the National Assembly for Wales launched an Inquiry into NPS in June 2014.

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<sup>55</sup> New Psychoactive Substances Review Group, [Review of the current legal framework available to govern the sale and supply of New psychoactive Substances](#), February 2015

<sup>56</sup> New Psychoactive Substances Review Group, [Review of the current legal framework available to govern the sale and supply of New psychoactive Substances](#), February 2015

Its report was published in March 2015.<sup>57</sup> The Committee Chair, David Reeves AM wrote a blogpost on the Welsh Assembly website which provides a summary of some of the recommendations made by the Committee:

What we said in our report:

- The current drugs education programme in schools should be reviewed urgently to make it better and more consistent across Wales, and to make sure it is delivered by people who are suitably trained and qualified;
- a national training programme on NPS should be developed for all staff providing public services (e.g. doctors, nurses, police, social workers, prison officers etc);
- the Welsh Government's 2015 public awareness campaign on NPS should include targeted information for young people and emphasise that legal does not mean safe;
- those working in this field, including the media, should stop using the term "legal highs" as it is very misleading;
- the Welsh Government should encourage the UK Government to move as quickly as possible to implement the suggested ban on the supply of NPS.

The [Welsh Government response](#) to the report,<sup>58</sup> accepted all the recommendations from the Committee. The UK Home Office also wrote a [letter](#) to the Health and Social Care Committee, welcoming its findings and highlighting that they were consistent with those of the UK and Scottish expert panels' reports.<sup>59</sup>

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<sup>57</sup> National Assembly for Wales, Health and Social Care Committee, [Inquiry into New Psychoactive Substances](#), March 2015

<sup>58</sup> [Welsh Government Response to recommendations from the Health and Social care Committee: Inquiry into New Psychoactive Substances](#), May 2015

<sup>59</sup> Home Office, [Letter from Minister for Crime Prevention](#), March 2015

## 4. The Psychoactive Substances Bill 2015

This section will provide a brief overview of the content of the Bill.

[Detailed explanatory notes to the Bill](#) have been published, and links to the Hansard debate on the Lords stages of the Bill can be accessed via the Parliament [Psychoactive Substances Bill 2015 page](#). A useful version of the [Bill with track changes](#) showing amendments made in Committee has also been made available on the Bill pages.

### Definition of Psychoactive substances

Clause 2 of the Bill defines the term psychoactive substance for the purpose of the Bill as any substance that is capable of producing a psychoactive effect in a person who consumes it, where that substance is not an exempted one.

Psychoactive effect is defined further as one that has an effect on the central nervous system:

[...] a substance produces a psychoactive effect in a person if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state; and references to a substance's psychoactive effects are to be read accordingly.<sup>60</sup>

Methods of consumption are also outlined as including injecting, eating or drinking, snorting, inhaling and smoking. A substance is consumed if an individual causes or allows the substance, or fumes given off by it to enter their body.

This clause remained unchanged during the Lords stages of the Bill but there was some debate on whether the definition of psychoactive substances was the right one and how the psychoactivity of a substance would be established. See Section 5 below for further information on this.

### Exempted substances

Clause three states that exempted substances are listed in Schedule 1 to the Bill. These include:

- alcohol
- caffeine
- food
- tobacco
- medicines (homeopathic and registered herbal medicines are also listed)
- controlled drugs.

Clause 3 of the Bill also provides for regulation-making powers (subject to the affirmative procedure) for the Secretary of State to add or remove substances from the list of exempted substances. However, it should be

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<sup>60</sup> Clause 2, [Psychoactive Substances Bill \[HL\]](#)

noted that these powers to remove do not extend to substances present on the list when the Bill is enacted.

During Lords consideration of the Bill, and following correspondence with the Advisory Council on the Misuse of Drugs a new subsection was added to Clause 3 to require the Secretary of State to consult the ACMD before making regulations. There were other amendments tabled at this time to change the wording of the exemption for medicines under the Bill to ensure that all medicines would be covered.

## Offences

Clauses 4-9 introduce the offences of producing, supplying or offering to supply, possession with intent to supply, and importing or exporting a psychoactive substance.

Clause 10 provides regulation-making powers to create exemptions to the offences.

### Producing a psychoactive substance

Clause 4 defines production as manufacture, cultivation or any other means of production.

A person commits this offence if the production is intentional, and they must know, or suspect that the substance is psychoactive. The person must also either intend to consume the substance, or know or be reckless as to whether it is likely to be consumed by others.

### Supplying, or offering to supply a psychoactive substance

In order to commit the offence, the supply must be shown to be intentional. The prosecution must also show that the person knew or suspected, or ought to have known or suspected that the substance is a psychoactive substance and knew or was reckless as to whether it will be consumed by a person for its psychoactive effects.

The Bill provides for a statutory aggravating factor under Clause 6 which would increase the seriousness of the offence of supplying, or offering to supply a psychoactive substance when the court is considering sentencing. The statutory aggravating factor will apply to the offence if either of the following conditions are met:

- a person supplies a controlled substance on, or in the vicinity of a school premises, within school times;
- the offender uses a person under 18 to deliver a psychoactive substance or a drug related consideration, to a third person; or
- where the offence was committed on prison premises.

The first two aggravating factor conditions echo those added to the *Misuse of Drugs Act 1971* by the [Drugs Act 2005](#). The third condition was added to the Bill through an Opposition tabled amendment at Report Stage in the House of Lords.

### Possession of psychoactive substance with intent to supply

The prosecution must show that the offender knew or suspected that the substance was psychoactive, and intended to supply it to someone for its psychoactive effects.

It should be noted that the offence of possession, only applies where there is an intent to supply. Simple possession of a psychoactive substance is not an offence under the Bill.

The intention to supply offence will be satisfied if the supply is to a person who intends to consume the substance or to a go-between for the transaction.

### Importing or exporting a psychoactive substance

The importation or exportation must be intentional, it must be shown that the offender knew or suspected the substance to be psychoactive and the offender must have intended to consume the substance themselves or knew (or been reckless as to) whether others will consume it for its psychoactive effect.

Clause 9 of the Bill sets out the maximum penalties for offences under clauses 4-8. These vary across the UK, and according to whether the penalty is following summary conviction or indictment. The following table is taken from the Bill explanatory notes<sup>61</sup>:

Offences	Maximum penalty on summary conviction in England and Wales	Maximum penalty on summary conviction in Scotland	Maximum penalty on summary conviction in Northern Ireland	Maximum penalty on conviction on indictment
Clause 4 (production), 5 (supply and offering to supply), 7 (possession with intent), 8 (importation/exportation)	Six months' imprisonment (rising to 12 months once section 154 (1) of the Criminal Justice Act 2003 is commenced), an unlimited fine, or both.	12 months' imprisonment, a fine not exceeding the statutory maximum (currently £10,000), or both.	Six months' imprisonment, a fine not exceeding the statutory maximum (currently £5,000), or both.	Seven years' imprisonment, an unlimited fine, or both.

Clause 10 provides regulation-making powers for the Secretary of State to specify exceptions to the offences. These regulations may provide exemptions to make conduct that would usually be considered an offence under the Bill, lawful. For example, the explanatory notes suggest that these powers could be used to introduce regulations to exclude medical research activity from being covered by the Bill. This is similar to the powers provided by Section 7 of the *Misuse of Drugs Act*.

During the Lords consideration of the Bill, a Government amendment was added to require the Secretary of State to consult the ACMD when considering making regulations under clause 10.

Amendments were tabled to include an exemption for the use of psychoactive substances in medical research in the Bill or to require the Secretary of State to make regulations to ensure that exemption. The Government have said they would consider this issue further.

### Powers for dealing with prohibited activities

Clause 11 defines what is meant by "prohibited activity" under the Bill.

<sup>61</sup> Home Office, [Psychoactive Substances Bill, Explanatory Notes](#), 29 May 2015

Clauses 12-34 of the Bill introduce a range of civil sanctions that can be used in a progressive approach to tackle prohibited activity. A similar approach has been used in previous legislation such as the [Antisocial Behaviour Crime and Policing Act 2014](#) and the [Serious Crime Act 2007](#). It includes notices and orders, which have some similarities to those used in Ireland's [Criminal Justice \(Psychoactive Substances\) Act 2010](#).

### **Police and local authority notices**

- **Prohibition notices**

These could be issued by a senior police officer or a local authority to an individual if they reasonably believe they are carrying out a prohibited activity and where it is necessary and proportionate to issue a notice to prevent the person carrying on that activity.

- **Premises notices**

These could be issued in the same way and under the same conditions as the prohibition notice above. However, they provide a means to tackle the activity taking place in a certain premises, for example, a head shop. The owner of a premises is required, under a notice to take reasonable steps to prevent prohibited activities at the premises specified in the notice. These may only be issued to someone over 18 years of age.

The Bill intends that the notices will be given in writing and are to be handed to the person, left at their address, posted or be communicated by electronic means to them. It also provides information on what information must be included in the notice.

The duration of a notice will be indefinite, except in the case of a prohibition notice given to a person under 18, in which case it is limited to 3 years. A notice may be withdrawn if, for example the premises if no longer trading as a head shop.

### **Court orders**

- **Prohibition order**

A court may make a prohibition order against an individual where it is satisfied on the balance of probabilities that the respondent has failed to respond to a prohibition notice; or where there is no prohibition notice in place but the court is satisfied to the same standard that the respondent is, or is going to, perform a prohibited activity, and would fail to comply with a prohibition notice. The court has to be satisfied that it is necessary to issue the order in order to stop the activity.

The courts can also issue a prohibition notice when sentencing an offender under Clauses 4-8 of the Bill.

- **Premises order**

Like a premises notice, a premises order can only be issued to those over 18 years of age. The conditions applicable to the order are similar to those of the prohibition order above; that the court

must be satisfied to the standard of the balance of probabilities, that a premises order has not been complied with, that prohibited activity is being conducted at a premises and that it is necessary and proportionate.

Applications for an order can only be made by a limited number of people:

- Chief Police Officer of territorial forces in the UK;
- Chief Constable of the British Transport Police;
- Director General of the National Crime Agency;
- Secretary of State (in performing general customs functions); and
- Local authorities.

Clause 25 provides that it is an offence to not comply with a prohibition or premises order. The maximum penalties on summary conviction or indictment across the UK (as shown in the Bill explanatory notes) are provided below:

Maximum penalty on summary conviction in England and Wales	Maximum penalty on summary conviction in Scotland	Maximum penalty on summary conviction in Northern Ireland	Maximum penalty on conviction on indictment
Six months' imprisonment (rising to 12 months once section 154(1) of the Criminal Justice Act 2003 is commenced), an unlimited fine, or both.	12 months' imprisonment, a fine not exceeding the statutory maximum (currently £10,000), or both.	Six months' imprisonment, a fine not exceeding the statutory maximum (currently £5,000), or both	Two years' imprisonment, an unlimited fine, or both.

More information on the variations and discharging of a prohibition/premises order, the route and process for appeal, and special measures for witness are provided in clauses 24-31 of the Bill.

There was little change to this part of the Bill during the Lords Stages, apart from some drafting and minor Government amendments. A Government amendment did extend the means of communicating prohibition and premises orders to include electronic methods. Further provision in respect of access prohibitions under Clause 21 were also added to the Bill at Committee Stage.

## Powers of entry, search and seizure

These powers are in clauses 35 to 39 of the Bill.

The police have both general and specific stop and search powers in various pieces of legislation.<sup>62</sup> The main general powers are in the *Police and Criminal Evidence Act 1984* (PACE). The issues surrounding stop and search are discussed in Library Briefing Paper 03878, [Stop and Search Powers](#).

Similarly the police have a variety of powers to search premises.<sup>63</sup>

<sup>62</sup> The main powers are set out in [Annex A of PACE Code A](#),

<sup>63</sup> See [PACE Code B](#)

Clause 35 contains stop and search powers for police and customs officers.<sup>64</sup> The officers would have to have reasonable grounds to suspect that the person had committed (or was likely to commit) an offence under clauses 4 to 8 or under clause 25 of the Bill. As set out above, the offences under clauses 4 to 8 cover producing, supplying or offering to supply, possession with intent to supply or exporting psychoactive substances. It should be noted that there is no offence of simple possession in the Bill so individuals could not be stopped and searched on this basis. The clause 25 offence is that of failing to comply with a prohibition or premises order.

The officers can use their stop and search powers in any place to which they have access. This would include any public place or any premises that are the subject of a search warrant under clause 38 or any other Act. Stop and search powers under the Bill are subject to certain safeguards under PACE.

Clause 36 gives police and customs officers powers to enter and search vehicles, again where they have reasonable grounds for suspicion. These also engage certain PACE safeguards. Powers to board and search vessels and aircraft are in clause 37. Clauses 38 and 39 provide for judicial authorisation (warrants) to enter and search premises.

These provisions were not altered much in the Lords beyond some minor and technical Government amendments.<sup>65</sup> Lord Paddick and Lord Howarth both moved some probing amendments in committee to explore why the Government had included the stop and search clauses. Lord Paddick argued that if the police suspected a person had committed one of the criminal offences under the Bill, they would have common law powers to stop and search.<sup>66</sup> For the Government, Lord Bate argued that the clauses were necessary so that stop and search powers could apply not only to the offences but also to breaches of the prohibition and premises orders.<sup>67</sup>

Lord Howarth questioned how the provisions could be consistent with the Government's policy of reforming police stop and search powers to make them more targeted. Lord Bate said that while Government are clear that stop and search powers were vital in the fight against crime when used correctly, they were counterproductive and a waste of police time when misused.<sup>68</sup> The amendments were withdrawn.

## Retention and disposal of items

Clauses 48-53 of the Bill make provision for the retention of seized items for as long as is necessary, and for the disposal of psychoactive substances seized as part of an investigation.

Little change was made to this section in the Lords consideration of the Bill beyond Government drafting amendments.

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<sup>64</sup> This includes National Crime Agency officers designated with police or customs powers

<sup>65</sup> [HL Deb 30 June 2015 cc 2042-44](#)

<sup>66</sup> [Ibid. c2037](#)

<sup>67</sup> c2039

<sup>68</sup> c2040

## Supplementary and final provisions

During Report Stage of the Lords consideration of the Bill, a new Government amendment was introduced to enable Border Force officers to access the powers under the *Customs and Excise Management Act 1979* when they intercept psychoactive substances coming in or going out of the UK.

This would make a psychoactive substance liable to forfeiture if it was imported into the UK and it was likely to be used by an individual for its psychoactive effects. This is now Clause 54 in the Bill.

New Clause 57 was added by Government amendment at Report Stage in the House of Lords. This Clause states that the Secretary of State must, within a period of 30 months from when sections 4-8 of the Bill come into force, review the operation of the Act, publish a report of the review and lay this before Parliament.

The extent of the Bill is laid out in Clause 61. The Act would apply in England, Wales, Scotland and Northern Ireland.

## 5. Lords consideration of the Bill

This section will provide an overview of some of the amendments tabled and the issues discussed during Lords consideration of on the Psychoactive Substances Bill.

### 5.1 A review of existing legislation

#### Misuse of Drugs Act 1971

The Liberal Democrat Peer, Lord Paddick, tabled an amendment at Committee stage to require the Secretary of State to commission an independent evidence-based review of the Misuse of Drugs Act 1971.<sup>69</sup> It was proposed that the review should be published before the provisions of the Psychoactive Substances Bill came into force and inform whether the Bill was the correct approach in this area.

Lord Paddick said that making drugs illegal had not been a deterrent and the classification of substances under the Misuse of Drugs Act was not based on a sound scientific base:

I can tell noble Lords that making drugs illegal is not an effective deterrent, and that the classification of drugs under the Misuse of Drugs Act lacks a sound scientific basis in the case of many of the drugs listed in that legislation, and therefore it lacks credibility in the eyes of those whom the system of classification is designed to deter. However, rather than taking my word for it, I ask the House to support an independent review. We are not asking for a major piece of new research but for a similar exercise to that carried out recently by David Anderson into the far more complex area of surveillance, which he completed in less than 12 months. We are not trying to delay the passing of this legislation, just asking that we hold back from giving effect to it until after the review has been conducted. It may well be that, having seen the review, the Government decide to adopt a different approach.<sup>70</sup>

Lord Condon and others said that the delay that the proposed review would cause in the implementation of the Bill would be at least 12 months, and urgent action was required to address the production and supply of psychoactive substances and so he could not support the amendment.<sup>71</sup>

The Minister of State for the Home Office, Lord Bates responded to the amendment. He said that action needed to be taken urgently to tackle new psychoactive substances.<sup>72</sup> He pointed to the ACMD review in 2011 that said the Government should explore a ban on psychoactive substances and the view of the Home Office expert panel. He stated that the Government had a mandate to introduce the Bill as outlined in the Conservative manifesto.<sup>73</sup>

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<sup>69</sup> HL deb 23 June 2015 c1477

<sup>70</sup> HL Deb 23 June 2015 c1478

<sup>71</sup> HL Deb 23 June 2015 c1482

<sup>72</sup> HL deb 23 June 2015 c1494

<sup>73</sup> HL Deb 23 June 2015 c1494

The amendment was put to a division and was not agreed (Contents 98, Not-Contents 316).<sup>74</sup>

## Republic of Ireland: Impact assessment

The Crossbench Peer, Baroness Meacher, introduced an amendment at Committee Stage to require the Secretary of State to conduct an impact assessment of the Criminal Justice (Psychoactive Substances) Act 2010 in the Republic of Ireland, and to publish a report setting out whether the assessment justified the commencement of this Act in its current form.<sup>75</sup> She said that the situation in the Republic of Ireland could be regarded as a pilot for the Bill under consideration. Baroness Meacher reported that the BBC had produced evidence that the ban in Ireland is not working, and the EMCDDA had also expressed concern about the operation of the legislation.<sup>76</sup>

The Opposition spokesperson, Lord Tunnicliffe said that the Bill closed a loophole in the Misuse of Drugs Act 1971 and it should be closed urgently. There was enough evidence to proceed with this Bill.<sup>77</sup> Lord Bates responded to the amendment. He said that the Home Office appointed expert panel had reviewed the working of the Irish legislation and concluded that this was the model that should be followed.<sup>78</sup>

Lord Bates highlighted the reduction in headshops in the Republic of Ireland and noted that no Irish-domain web pages selling NPS were still in operation.<sup>79</sup> The amendment was withdrawn.

## 5.2 Medicinal use of cannabis

The Liberal Democrat Peer, Baroness Hamwee introduced a group of amendments to Clause 1 of the Bill at Committee Stage to provide for the legal possession and supply of cannabis prescribed by a doctor.<sup>80</sup> The intention of the amendment was to move cannabis from Schedule 1, to Schedule 2 of the Misuse of Drugs Regulations 2001, which would allow a doctor to prescribe the substance. Baroness Hamwee said this was about enabling cannabis to be used for good and to reduce the dangers of harm.<sup>81</sup> Baroness Meacher supported the amendment, saying it would decriminalise the 30,000 patients in the UK who take cannabis to treat pain, seizures or discomfort.<sup>82</sup>

However, Conservative Peer, Lord Ribeiro stressed that it was important to ensure that any use of cannabis for medical purposes was based on properly carried out research.<sup>83</sup>

The Minister said that the Government's position on this issue was clear, there was no intention to reschedule cannabis:

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<sup>74</sup> HL Deb 23 June 2015 c1496

<sup>75</sup> HL Deb 23 June 2015 c1510

<sup>76</sup> HL Deb 23 June 2015 c1511

<sup>77</sup> HL Deb 23 June 2015 c1515

<sup>78</sup> HL Deb 23 June 2015 c1515

<sup>79</sup> HL Deb 23 June 2015 c1518

<sup>80</sup> HL Deb 23 June 2015 c1499

<sup>81</sup> HL Deb 23 June 2015 c1500

<sup>82</sup> HL Deb 23 June 2015 c1501

<sup>83</sup> HL Deb 23 June 2015

The Government's position is that we have no plans to reschedule cannabis. There is clear scientific evidence that cannabis is a harmful drug which can damage people's mental and physical health, and which can have a pernicious effect on communities.

Let me deal with a couple of the points that were raised in the debate. In responding to these amendments, I remind the Committee that cannabis is a controlled drug under the Misuse of Drugs Act 1971, and listed in Schedule 1 to the Misuse of Drugs Regulations 2001. The 1971 Act will continue to regulate the availability of controlled drugs, and Schedule 1 to the Bill specifically excludes drugs controlled under the 1971 Act.

To move herbal cannabis and cannabis resin to Schedule 2 to the 2001 regulations, and thereby enable their prescribing, would amount to a circumvention of the established evidence-based regulatory process that successive Governments have had in place to ensure that products made available in the UK as medicines are as safe and effective as possible. My noble friend Lord Ribeiro made the point about the importance of rigorous clinical trials<sup>84</sup>

The amendment was withdrawn.

At Report Stage, Baroness Hamwee again introduced an amendment to Clause 1 relating to the medical use of cannabis. This amendment was a new clause to require the Secretary of State to consult the ACMD on the use of her powers to make regulations to move cannabis to Schedule 2 of the Misuse of Drugs Act.<sup>85</sup> She said that the procedure already existed for cannabis to be moved to schedule 2 and that she was proposing a more tentative step at this time - that the ACMD be consulted on this issue.

A number of peers supported this amendment. The Minister said that there was no compelling body of evidence to challenge the Government's view, and that of the ACMD in 2008, that cannabis is a significant public health harm and causes harm to individuals and society. He said that the Government had carefully considered the proposal but that they did not regard it as necessary, and didn't see a case for a change in the Government position at this time.<sup>86</sup>

The amendment was withdrawn.

### 5.3 Definition of psychoactive substance

At the Bill's Second Reading, the Under-Secretary of State for the Home Office explained that the definition of psychoactive substance in the Bill was purposefully wide - he said this was in order to prevent the need to introduce more legislation in future when a new generation of substances were outside the controls in the current Bill.<sup>87</sup>

#### **Addition of the word 'synthetic'**

Baroness Meacher introduced an amendment on the meaning of psychoactive substances to Clause 2 at Committee Stage. This sought to limit the scope of the Bill to those substances that are synthetic. She

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<sup>84</sup> HL Deb 23 June 2015 c1507

<sup>85</sup> HL Deb 14 July 2015 c542

<sup>86</sup> HL Deb 14 July 2015 c547

<sup>87</sup> [HL Deb 9 June 2015 c737](#)

said that to extend the ban to natural substances would lead to unintended consequences. She said the Bill as it stood was disproportionate and would lead to legal uncertainty:

The point behind this amendment is that the Bill as it stands is disproportionate and will engender an intolerable degree of legal uncertainty for an awful lot of people—researchers, medical people or whoever—who have no interest in consuming these substances but may be involved in handling them. Actually, one should extend that to people who are in the commercial sector trading, producing and so forth who may need to use these substances and really do not want to be questioned by the police.

It would be helpful to know why the Government have extended the scope of the Bill to include natural psychoactive substances. Are the Government aware that there are many natural substances, included in perfumes and other products, for example, which could be caught unintentionally by the Bill as it stands? We had a debate earlier about the whole business of definition and in a sense that comes up here again. Things might be a bit simpler if the Bill were limited to synthetic substances. Will the Minister explain to the House what investigations have taken place to establish the unintended consequences of the extension of this definition to include natural substances?<sup>88</sup>

The Minister responded to the amendment. He said that the definition in the Bill was designed to capture substances that are supplied for human consumption and have psychoactive effects. The definition has been drawn purposefully wide: by defining the substances as to their effects rather than their chemical composition, the legislation would avoid the challenges currently faced with the Misuse of Drugs Act. The Minister said that restricting the definition to just synthetic substances would allow producers to take advantage of natural products that have a harmful effect.<sup>89</sup>

The amendment was withdrawn, but re-tabled at Report Stage when Baroness Meacher drew attention to increasing support for limiting of the scope of the definition within the Bill.<sup>90</sup> She highlighted the advice of the ACMD on this issue, that it was not possible to list all possible exemptions and that the Bill as currently drafted may cover a number of benign substances.<sup>91</sup> She also mentioned a letter from a number of eminent ethicists and academics, including the Archbishop of Canterbury, to the Times newspaper, that said it was not possible to legislate against all psychoactive substances without criminalising the sale of harmless everyday products.<sup>92</sup>

Baroness Meacher also stated that she believed the use of the word 'synthetic' would be the right way to limit the scope of the blanket ban under the Bill. She said that this approach, rather than the inclusion of the word 'novel' as suggested by the ACMD (and the subject of another amendment in the group) would be the best way to exclude natural products being caught under the Bill:

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<sup>88</sup> [HL Deb 23 June 2015 c1529](#)

<sup>89</sup> HL Deb 23 June 2015 c1532

<sup>90</sup> HL Deb 14 July 2015 c463

<sup>91</sup> [HL Deb 14 July 2015 c464](#)

<sup>92</sup> The Times, [Letters: Banning 'legal highs'](#), 6 July 2015

At a meeting with a top professor of neuropsychopharmacology and a QC, we discussed the relative merits of the words “novel”, “new” and “synthetic” in this context. It was agreed that neither the term “novel” nor the term “new” would be recognised in a court of law. We have many lawyers here, and I am sure they will tell me if my legal adviser is wrong or right. Mr Fortson QC was very clear on this point. He said that the best term to define legal highs and thus to honour the Conservative manifesto commitment would be “synthetic psychoactive substances”. The following sets out what we agreed as drafted by one of those experts:

“We recommend that the target of the Bill be amended to define the banned substances as synthetic psychoactive substances. This will at a stroke eliminate the requirement for many innocuous psychoactive botanicals to be exempted, eg, perfumes, incense, herbal remedies”.

I believe that there could be many hundreds, perhaps thousands more. In particular, it will cover all current and future synthetic cannabis analogues, which are proving such a huge problem in prisons and elsewhere.<sup>93</sup>

The Minister responded to the amendment by saying that the Government were not ruling out the term ‘synthetic.’<sup>94</sup> He explained that during the legislative process the Government wished to consider all the options. Lord Bates said that in the case of using the term ‘synthetic’ there were concerns that natural and harmful psychoactive substances would not be caught by the Bill, such as Kratom and Salvia. In the case of using the term ‘novel’ this may prevent the Bill catching long standing intoxicating substances, such as Nitrous Oxide and poppers.<sup>95</sup>

The Minister said that the Government were exploring what the definition should be and it would be kept under review for Third Reading. He also said amendments may be tabled during the Commons consideration of the Bill:

Look at the pace of events over the past week and the exchanges of correspondence that there have been. This is moving because we are genuinely exploring what the definition should be. Of course we will keep it under review for Third Reading and, should the Bill go to the other place, it is likely that, as a result of deliberations in your Lordships’ House, government amendments will be tabled in other areas dealing with other clauses. Therefore, through the normal process, we will get an opportunity to consider those Commons amendments should they be made. There will be opportunities for this discussion to continue with the ACMD in the proper way. However, I come back to the basic principle on which the noble Lord and I agree absolutely: we cannot have any more loopholes popping up so that people can exploit the gaps in the legislation. That is the whole point. We might as well not have the Bill if it will simply open up a number of new areas—be it botanicals or some other derivative—that can be used for the purposes that the Bill is intended to clamp down on.<sup>96</sup>

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<sup>93</sup> HL Deb 14 July 2015 c464

<sup>94</sup> HL Deb 14 July 2015 c476

<sup>95</sup> HL Deb 14 July 2015 c478

<sup>96</sup> HL Deb 14 July 2015 c482

### **Republic of Ireland**

Baroness Hamwee and Lord Paddick also tabled amendments at Committee Stage that would insert the definition used in the Republic of Ireland legislation into the Bill. These amendments were not moved.

The Minister said that the Government had used the Republic of Ireland definition as a starting point, but had refined it to make it more concise. They had removed the need for a substance to cause a state of dependence as they believed this caused unnecessary duplication, and had removed the word 'significant' as this added subjectivity to the definition.<sup>97</sup>

### **Definition by the ACMD**

Baroness Hamwee also tabled another amendment to Clause 2 on the subject of the definition of psychoactive substance during Report Stage. This would have provided that the definition of a psychoactive substance would depend on the opinion of the ACMD that it was substance capable of producing a psychoactive effect, and that it would be likely to be harmful.<sup>98</sup> She highlighted a letter from the ACMD to the Home Secretary that had said that without the inclusion of the word harm within the Bill that it could envisage situations where the supplier of benign substances would be prosecuted.<sup>99</sup>

The Minister responded that the Government did not favour this approach as it would perpetuate the inadequacies of the current approach to psychoactive substances under the Misuse of Drugs Act. This substance by substance approach would lead to a delay which would allow for the development of new substances.<sup>100</sup>

Baroness Hamwee said she would like to test the opinion of the House on this issue. The amendment was put to a division and was not agreed to (Contents-95, Not-Contents- 314).<sup>101</sup>

### **Assessing the psychoactive effect**

In response to questions during Committee Stage, Lord Bates explained how it was envisioned that the psychoactive effect of a substance would be assessed:

There are a number of ways, and these include data based on a human user's experience, argument by analogy and in vitro neurochemical profiling. Working with the Centre for Applied Science and Technology at the Home Office, we will identify and build the capability in the UK to meet the demand for this new forensic requirement, as well as working with the Office of the Forensic Science Regulator to ensure that the high standard of quality that forensic evidence meets is maintained.

The Home Secretary has written to the Advisory Council on the Misuse of Drugs seeking its views on how we can strengthen the UK's forensic capacity and capability to support the implementation of the legislation. We remain ready to consider

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<sup>97</sup> HL Deb 23 June 2015 c 1534

<sup>98</sup> HL Deb 14 July 2015 c484

<sup>99</sup> HL Deb 14 July 2015 c484

<sup>100</sup> HL Deb 14 July 2015 c479

<sup>101</sup> HL Deb 14 July 2015 c485

carefully any recommendations the council may have about other aspects of the Bill. We will continue with the forensic early warning system, which has enabled forensic providers more easily to identify new psychoactive substances coming on to the UK market through the provision of reference standards and establishing a new psychoactive substances community.<sup>102</sup>

The Minister also denied that the wide definition under the Bill would catch unintended effects such as the scent from a flower. He said that the offences will only apply where a substance is ingested for the psychoactive effect.<sup>103</sup>

## 5.4 Monitoring of the Act

At committee stage, Baroness Meacher tabled an amendment to introduce a New Clause after Clause 1 of the Bill. This amendment would require the Secretary of State to publish an annual report on the impact of the Psychoactive Substances Act.<sup>104</sup> The report would set out the impact of the Act, including deaths and other harms caused by controlled and banned substances. The opposition spokesperson, Lord Rosser, had also tabled a similar amendment to require the Secretary of State to produce an annual report on new psychoactive substances. He said that the Home Office expert panel review had highlighted a lack of information in this area.<sup>105</sup>

These amendments were withdrawn.

Lord Rosser retabled an amendment to require annual reporting at Report Stage.<sup>106</sup> A Government Report Stage amendment was tabled and made to add a New Clause to the Bill on this issue. This required a one-off report to be prepared and laid before Parliament within 30 months of the Act coming into force.

Baroness Chisholm of Owlpen noted that the Government accepted that in this situation there was a case for special treatment so it was bringing forward the post-legislative scrutiny of the Bill, but they were not convinced of the need for ongoing review.<sup>107</sup> Lord Rosser withdrew the amendment but said that he was disappointed that it would be a one-off review, and hoped the matter would be further considered.<sup>108</sup>

## 5.5 The role of the ACMD

There was discussion on the role of the ACMD at Committee Stage of and had been extensive correspondence between the ACMD and the Home Secretary since the publication of the Bill.

Two amendments were tabled (to Clause 3 and Clause 10 of the Bill) at Committee Stage by Baroness Hamwee which would require the Secretary of State to consult with the ACMD before making regulations

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<sup>102</sup> [HL Deb 23 June 2015 c1533](#)

<sup>103</sup> HL Deb 23 June 2015 c1535

<sup>104</sup> HL Deb 23 June 2015 c1519

<sup>105</sup> HL deb 23 June 2015 c1525

<sup>106</sup> HL Deb 14 July 2015 c559

<sup>107</sup> HL deb 14 July 2015 c563

<sup>108</sup> HL deb 14 July 2015 c565

under Clause 3 of the Bill to add substances to the exempted substances list in schedule 1, and before making regulations under Clause 10 of the Bill to provide exemptions from the offence under the Bill.<sup>109</sup> These amendments were supported by the opposition. Lord Bates responded to the amendments. He said that the Home Office continued to greatly value the advice of the ACMD, whose role was central in assessing drugs, including NPS. He said he would take the amendments away for further consideration before Report Stage. These amendments were not moved.

At Report Stage of the Bill, an Opposition amendment to Clause 3 of the Bill, tabled by Lord Rosser, sought to require that the ACMD be consulted regarding regulation making powers to alter the exempted substance list in Schedule 1.<sup>110</sup> This amendment was agreed. A Government amendment was also tabled at this time to amend Clause 10 of the Bill to make the ACMD a statutory consultee in respect of these regulation-making powers. In a letter to Lord Rosser prior to Report Stage, Lord Bates had said that the Government recognised that the ACMD had a particular standing regarding matters in relation to the misuse of drugs, and so they thought it appropriate to add this requirement to the Bill.<sup>111</sup>

## 5.6 Medicines and scientific research

Amendments were tabled by Baroness Meacher at Committee Stage to amend the exemptions listed under Schedule 1 to the Bill.<sup>112</sup>

These would alter the list within Schedule 1 to include "*all medicinal products prescribed by a doctor or sold by a pharmacist.*" It would also insert the following exemption: "*All research pharmaceuticals being used to develop new medicines or progress neuroscience research.*"

Baroness Meacher said that in the absence of the first amendment, there would be some legitimate medical treatments that would be banned under the Bill. These included medicines prescribed on an unlicensed basis by doctors.<sup>113</sup>

She said the second of the two amendments would ensure that research scientists using psychoactive substances in their work would not be stopped by the Bill:

The aim of the amendment is to ensure that all research, including work using humans consuming substances for research purposes—not for fun—but not captured by the Medicines for Human Use (Clinical Trials) Regulations 2004, would remain legal and enable vital neuroscientific research to continue. Without this amendment, laboratory suppliers may be wary of supplying some requested compounds for neuroscience research because of their potential to have a psychoactive effect on humans. This could mean that vital new medicines may never get developed. I would be grateful if the Minister could confirm that she agrees that the

<sup>109</sup> HL Deb 30 June 2015 c1938

<sup>110</sup> HL Deb 14 July 2015 c488

<sup>111</sup> Gov.uk, [Letter from Lord Bates to Lord Rosser](#), 9 July 2015

<sup>112</sup> HL Deb 30 June 2015 c1961

<sup>113</sup> HL Deb 30 June 2015 c1961

term “investigational medicinal products”, as defined by the 2004 regulations, does not cover all research used to develop new medicines or progress neuroscience research, and therefore that this amendment really is needed to protect these crucial areas of research.<sup>114</sup>

She highlighted the letter written by the Academy of Medical Sciences, the British Pharmacological Society, the Royal College of Psychiatrists and others to the Home Secretary expressing support for the amendment and noting concerns that the Bill as it stood would affect important medical research.<sup>115</sup>

The Opposition spokesperson, Lord Rosser also tabled an amendment to require regulations to be laid under Clause 10 of the Bill to specifically exclude medical research.<sup>116</sup> He drew attention to the Constitution Committee’s report on the Bill that commented on the regulation making powers under Clause 10:

The report of the Constitution Committee refers to Clause 10 authorising the Secretary of State,

“to specify excepted acts”,

from a defence under the Bill,

“by making regulations”.

The committee stated that the House might,

“wish to consider whether it is appropriate to confer such a broad power on the Secretary of State, and in particular whether it should be unconstrained by any textual indication as to the purpose or purposes for which it may be exercised”.

Our amendment inserts a specific requirement in Clause 10 in respect of medical research activity.

The Constitution Committee also drew attention to the fact that,

“the details of the excepted-acts regime are ... absent from the Bill”,

unlike the exempted-substances regime. It says:

“Whether any such regime is in fact established and, if so, on what terms are instead matters that are wholly for the Secretary of State to determine ... The House may wish to consider whether it is appropriate to leave the details of the excepted-acts regime to be determined wholly through secondary legislation”.<sup>117</sup>

Lord Rosser also cited the letter above from medical organisations and said that he hoped the Minister would respond that the Government will take the action necessary to make sure the Bill will not leave medical researchers open to prosecution.<sup>118</sup>

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<sup>114</sup> HL Deb 30 June 2015 c1962

<sup>115</sup> The Academy of Medical Sciences, [Letter to the Home Secretary](#), 29 June 2015

<sup>116</sup> HL Deb 30 June 2015 c1964

<sup>117</sup> [House of Lords Select committee on the Constitution, 2<sup>nd</sup> Report of session 2015-16, 22 June 2015](#)

<sup>118</sup> HL deb 30 June 2015 c1964

Baroness Chisholm of Owlpen responded to the amendments. She said that the current exemption on medical products covered all medicines that had a marketing authorisation in the UK or EU. The current definition was a starting point and the Medicine and Healthcare Products Agency was reviewing this.<sup>119</sup> The Government was looking at this, and was planning to bring forward amendments at a later stage.

Prior to Report Stage of the Bill, Lord Bates wrote to Lord Rosser (copied to all Peers) regarding Government amendments to be tabled at a later stage. He discussed the Committee Stage debate on exempted substance in this letter, and said that the ACMD had provided some advice on this issue. He said that in order to consider this advice fully, the Government were deferring the tabling of amendments until Commons Stages.<sup>120</sup>

On the issue of scientific research, the Minister responded that the Government was looking at this, and wanted to ensure that the Bill did not affect anyone carrying out bona fide research into psychoactive substances. He said amendments may be brought on this topic at a later stage.<sup>121</sup>

Baroness Meacher retabled these amendments at Report Stage of the Bill.<sup>122</sup> The Minister said that there was common ground between these amendments and the Government's view.

On the issue of scientific research with psychoactive drugs the Minister confirmed that the Government is firmly committed to bringing forward an amendment on this issue, and the letter from the medical organisations had been responded to by Lord Bates:

It is already the case that broad swathes of research involving psychoactive substances fall outside the blanket ban. If a substance is not intended for human consumption for its psychoactive effects, it will not be caught by the Bill. Paragraph 3 of Schedule 1 exempts investigational medicinal products used in clinical trials. However, I understand, and the Government fully accept, that this exemption does not go far enough. This is an issue of some concern for the academic and scientific community. The noble Baroness, Lady Meacher, referred in Committee and again today to the letter in support of her Amendment 12 sent to my right honourable friend the Home Secretary by the Academy of Medical Sciences and five other leading scientific institutions. My noble friend Lord Bates responded to that letter yesterday. I shall read out the critical paragraph in that response:

"We have now had some further discussions with the Department of Health and the Medical Research Council. In going forward, we need to ensure that any amendment to the Bill satisfies the scientific community as represented by the Academy of Medical Sciences and your co-signatories, as well as our own policy and legislative requirements. For this reason, we intend to develop this work in the coming weeks with a view to introducing an amendment when the Bill is considered by the House of Commons. To help

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<sup>119</sup> HL deb 30 June 2015 c1965

<sup>120</sup> Gov.uk, [Letter from Lord Bates to Lord Rosser](#), 9 July 2015

<sup>121</sup> HL deb 30 June 2015 c1965

<sup>122</sup> HL Deb 14 July 2015 c489

achieve this I would value engagement between your representatives and officials from both the Home Office and the Department of Health to reach a common understanding and satisfactory outcome in the next few weeks”.

I hope that that will reassure noble Lords that we are firmly committed to bringing forward an appropriate amendment on this issue, but it will take more time to get it right in consultation with the Academy of Medical Sciences, the Advisory Council on the Misuse of Drugs and others. We need to ensure that bona fide medical and scientific research is excluded from the ambit of the Bill, while not creating a loophole for others, whose only purpose is the recreational use of psychoactive substances, to exploit.<sup>123</sup>

On the issue of medicinal products, the Minister said that there was ongoing discussions with the MHRA and the Department of Health. He committed to using the time over the summer recess to bring forward appropriate amendments on this in the Commons.<sup>124</sup>

## 5.7 Aggravating factors

Opposition amendments were introduced at Committee Stage to introduce new aggravating factors to Clause 6 of the Bill. An aggravating factor will increase the seriousness of the offence when the court is considering sentencing. The Bill, as drafted provided for two aggravating factors, which would aggravate the offence of supply/offering to supply under Clause 5. These were that the substance was supplied in the vicinity of a school, and where a person under the age of 18 was used to deliver the substance. These echo the aggravating factors in the *Misuse of Drugs Act 1971*.

### Prisons

The amendment, tabled by Lord Rosser sought to add another aggravating factor- to seek to supply, or supply a substance within a prison.<sup>125</sup> This amendment was supported by a number of peers contributing to the debate.

Lord Bates, in his response, acknowledged the problems that psychoactive substances cause in prisons and that the National Offender Management Service had ongoing work to give clear guidance to prison governors on this issue. He also highlighted the new offence under the *Serious Crime Act 2014* of projecting an item over a prison perimeter. He said he would make contact with the Ministry of Justice to discuss the subject of the amendments.

The amendment was withdrawn but reintroduced at Report Stage.

Lord Rosser stated that the use of psychoactive substances could lead to bullying, and harassment and undermines the safety of prisons. He highlighted a recent report from the Prisons and Probation Ombudsman:

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<sup>123</sup> HL Deb 14 July 2015 c492

<sup>124</sup> HL Deb 14 July 2015 c493

<sup>125</sup> HL Deb 30 June 2015 c1987

There is a market in drugs in at least some prisons, and it can lead as well to incidents of bullying, harassment and debt. The taking of psychoactive substances can undermine safety in our prisons. It may exacerbate unpredictable behaviour and the threat of violence and, in certain instances, increase the risk of suicide and self-harm. In a bulletin this month, the Prisons and Probation Ombudsman wrote:

“The use of New Psychoactive Substances ... is a source of increasing concern, not least in prison. As these substances are not allowed in prison, and also because they are difficult to test for, it is possible that in addition to the cases in this bulletin there were other prisoners who had used such drugs before their death”.

The bulletin goes on to look at 19 deaths in prison between April 2012 and September 2014 where the prisoner was known or strongly suspected to have been using NPS-type drugs before their death.<sup>126</sup>

He said that he hoped the Government would accept the amendment, which did not weaken but strengthened the Bill. The Minister, in response, explained that the Misuse of Drugs Act 1971, as enacted did not contain any aggravating factors but these were added by subsequent legislation. He also highlighted that courts must follow sentencing guidelines<sup>127</sup> unless it is contrary to the interests of justice to do so (Coroners and Justice Act 2009). He said the Government would write to the Sentencing Council to ask it to take into account the issues raised in the Lords Debate and offered to discuss the matter further this with Lord Rosser to see what opportunity there was to introduce an amendment on this at later stages.

Lord Rosser said he wished to test the view of the House on the amendment. It was put to a division and was agreed (Contents-178, Not-Contents 139)<sup>128</sup>

### **Supply to children**

At Committee Stage, Lord Kirkwood of Kirkhope introduced an amendment (supported by the Children’s Society) to make the supply of psychoactive substances to under 18s, or in the vicinity of where vulnerable children reside, an aggravating factor. He said that evidence showed that psychoactive substances were being offered to children in vulnerable situations.

Lord Bates responded to the amendment. He said he would be happy to meet with Lord Kirkwood and representatives from the Children’s Society to discuss this amendment and whether this was something that needed to be looked at in more detail.<sup>129</sup> The amendment was withdrawn.

The amendment was reintroduced at Report Stage. Lord Kirkwood of Kirkhope said there had been a productive meeting with the Minister and the Children’s Society. He said the Minister’s view was that the

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<sup>126</sup> HL Deb 14 July 2015 c505

<sup>127</sup> The Sentencing Council, [Drug offences: Definitive Guideline](#), 2012

<sup>128</sup> HL Deb 14 July 2015 c519

<sup>129</sup> HL Deb 30 June 2015 c1990

Sentencing guidelines were sufficient but that he thought that the aggravating factor should be on a statutory basis.<sup>130</sup> The Lord Bishop of Bristol supported the amendment. He said it was important for a number of reasons, firstly that there are ruthless people who will take advantage of children, and secondly, that young people report they feel under pressure to take drugs and use alcohol.

The Minister responded to the amendment. He said that the current sentencing guidelines for drug offenders already provides that targeting vulnerable individuals (including those under 18) is an aggravating factor and he highlighted that the Government would write to the Sentencing Council on this issue.<sup>131</sup>

The amendment was withdrawn.

## 5.8 Education and public awareness

Education and guidance on psychoactive substances was raised at a number of points during the Lords consideration of the Bill.

At Committee Stage, Lord Howarth of Newport tabled two amendments after Clause 2 of the Bill on these issues.

One of these amendments was to require the Secretary of State to issue guidance on how users and enforcement agencies can identify psychoactive substances and their harms. Lord Howarth of Newport said that the Government should inform people about the definition of and about the practicalities of identifying psychoactive substances.<sup>132</sup> It was its responsibility to provide the fullest information it can. Labour Peer, Lord Tunnicliffe spoke in support of the amendment. He said that the guidance would be important for potential users of psychoactive substances and those in the retail sector.<sup>133</sup>

Baroness Chisholm of Owlpen responded to the amendment. She acknowledged the importance of effective implementation of the Bill and explained the ongoing work providing guidance:

I emphasise that we are working closely with enforcement agencies—the police, the Border Force, the National Crime Agency and the Local Government Association—to ensure the successful implementation of the Bill. All the agencies, supported by the Home Office, will produce guidance for their own officers that will address issues such as those raised by the noble Lord. For example, it seems sensible that the College of Policing, with the national policing lead on drugs policy, is best placed to produce the guidance for police officers, along with our input, as I have said. Similarly, the Local Government Association is well placed to produce tailored guidance for local authorities.

We are also working with other bodies, including the British Retail Consortium and the Association of Convenience Stores, to produce targeted guidance for their members. It is also important

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<sup>130</sup> HL Deb 14 July 2015 507

<sup>131</sup> HL Deb 14 July 2015 c 514

<sup>132</sup> HL Deb 23 June 2015 c1552

<sup>133</sup> HL Deb 23 June 2015 c1555

to discuss with the Welsh and Scottish Governments and with Northern Ireland's Department of Justice what guidance is needed to address their national needs. Any guidance for prosecutors in England and Wales is a matter for the Director of Public Prosecutions.<sup>134</sup>

The second amendment tabled at Committee Stage by Lord Howarth of Newport required the Secretary of State to ensure that all children of secondary school age receive education about psychoactive substances and that this should be inspected by Ofsted.<sup>135</sup> Lord Bates responded to the amendment, he said that the Bill was primarily a law enforcement measure, but education is part of the wider context:

The Bill is primarily a law enforcement measure, setting out definitions et cetera, although it is part of a wider context that includes education. As to whether we should have references to education or treatment programmes in the Bill, I personally favour things that are very clear and focused about what they want to do. What we hope to achieve through education is a very important part of the context. I undertake to reflect on that between now and Report.<sup>136</sup>

Both these amendments were withdrawn but Lord Howarth of Newport said they would be returned to at Report Stage.

At Report Stage of the Bill, Lord Rosser tabled an amendment to insert a New Clause before Clause 54 on the Secretary of States duty to increase public awareness of new psychoactive substances.<sup>137</sup> This included a number of requirements including establishing a scheme to promote public awareness and assisting schools with educating pupils on the dangers of NPS. The amendment also required the Secretary of state to publish a report on the actions taken under this Clause within six months of the Act coming into force, and annually after this time. Lord Rosser highlighted the ACMD's letter to the Home Secretary in July 2015 where they had advised of the importance of ensuring adequate resources to support education, harm reduction services, and evidence gathering NPS.<sup>138</sup> He said that legislation and enforcement were important, but so are education, training and prevention.

Lord Bates responded to the amendment. He said that prevention and education were a key strand of the Government's Drug Strategy. He highlighted ongoing work by Public Health England, resources to support schools in teaching about drugs and alcohol, and a recently produced Home Office resource pack on psychoactive substances. He also undertook to ask the cross-governmental group responsible for reviewing the activities under the Drug Strategy to look at the effectiveness of education on NPS.<sup>139</sup>

The amendment was withdrawn.

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<sup>134</sup> HL Deb 23 June 2015 c1556

<sup>135</sup> HL Deb 23 June 2015 c 1560

<sup>136</sup> HL Deb 23 June 2015 c1570

<sup>137</sup> HL Deb 14 July 2015 c551

<sup>138</sup> HL Deb 14 July 2015 c552

<sup>139</sup> HL deb 14 July 2015 c557



## 6. Advisory Council on Misuse of Drugs

The [Advisory Council on the Misuse of Drugs](#) (ACMD) is an independent expert advisory body that makes recommendations to the Government on the control of harmful drugs. It provides an overview of its responsibilities on the website:

We are responsible for:

- making recommendations to government on the control of dangerous or otherwise harmful drugs, including classification and scheduling under the Misuse of Drugs Act 1971 and its regulations
- considering any substances which are being or appears to be misused and of which is having or appears to be capable of having harmful effects sufficient to cause a social problem
- carrying out in-depth inquiries into aspects of drug use that are causing particular concern in the UK, with the aim of producing considered reports that will be helpful to policy makers and practitioners<sup>140</sup>

On 26 May 2015, the Home Secretary wrote to the Chair of the ACMD to inform him of the introduction of the Psychoactive Substances Bill and to request the Councils input on a number of issues within the Bill.<sup>141</sup> These included how forensic capacity and capability might be strengthened and how to establish a comprehensive scientific approach to determine the psychoactivity of a substance. Correspondence between the Chair of the ACMD and the Home Secretary has been ongoing through the summer.

The ACMD expressed support for the move to prevent harms and deaths from NPS and has stated there are positive aspects to the Bill but has expressed concerns - that the Bill may have unintended consequences and not achieve its aims.

Some of these concerns related to the definition of psychoactive substances within the Bill, the assessment of psychoactive effect, the impact on medical and scientific research, and the displacement of the NPS market.

The ACMD provided a number of recommendations regarding the Bill, which were later responded to by the Home Secretary.<sup>142</sup>

The ACMD have also provided a report on different definitions of psychoactive substances under the Bill.<sup>143</sup>

The correspondence is provided below:

- [Letter from Home Secretary to ACMD regarding the Psychoactive substances Bill](#), 26 May 2015

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<sup>140</sup> Gov.uk, [Advisory Council on Misuse of Drugs](#) [accessed 13 October 2015]

<sup>141</sup> Home Office, [Letter to Les Iverson, chair of the ACMD](#), 26 May 2015

<sup>142</sup> [ACMD letter to the Home Secretary, 3 July 2015](#)

<sup>143</sup> [ACMD report on definitions for the Psychoactive Substances Bill](#), 17 August 2015

- [Letter from ACMD to Home Secretary](#), 2 July 2015
- [Letter from Home Secretary to ACMD](#), 11 July 2015
- [ACMD letter to Home Secretary](#), 13 July 2015
- [ACMD Report on definitions for Psychoactive Substances Bill](#), 17 August 2015

## 7. Scrutiny and responses to the Bill

### Home Affairs Select Committee Inquiry

The House of Commons Home Affairs Committee announced an Inquiry on the Psychoactive Substances Bill in July 2015.<sup>144</sup>

The Inquiry looked at a number of issues relating to the Bill, including which groups would be most affected by a ban on psychoactive substances, what specialist treatment may be needed by psychoactive substance users and whether the enforcement agencies have the powers to effectively enforce the proposed new laws.

The Chair of the Committee, Keith Vaz said that the Committee wanted to know whether the new proposed approach would tackle the production and distribution of NPS:

"It has become increasingly difficult to keep up with the generation of new psychoactive substances that are constantly being developed, often expressly to evade drug laws, and freely available on the internet and on the street.

While these drugs are described as legal highs or even natural highs they can be extremely damaging to people's physical and mental health, or even lethal, and all the more so because each new substance is a totally unknown quantity, untested and uncontrolled.

The Committee wants to know whether these new laws are effectively shaped to tackle the production and distribution of the existing and new chemicals constantly coming on to the market, and what further measures will be required to support that and really make it work."<sup>145</sup>

The Committee held two oral evidence sessions for the Inquiry. These included taking evidence from the chair of the ACMD, Professor Les Iverson, and the Minister for Policing, Crime and Criminal justice, Mike Penning.

More information and access to the videos and transcripts of the evidence sessions is provided on the [Committee's Inquiry webpage](#).<sup>146</sup>

### The Constitution Committee

The House of Lords Constitution Committee assesses the constitutional implications of all Public Bills coming before the House of Lords. It published its consideration of the Psychoactive Substances Bill in its [Second Report of the 2015-16 session](#).<sup>147</sup>

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<sup>144</sup> House of Commons Home Affairs Select Committee, [New psychoactive substances inquiry announced](#), 22 July 2015

<sup>145</sup> House of Commons Home Affairs Select Committee, [New psychoactive substances inquiry announced](#), 22 July 2015

<sup>146</sup> House of Commons Home Affairs Committee, [Psychoactive Substances Bill inquiry](#)

<sup>147</sup> [House of Lords Select committee on the Constitution, 2<sup>nd</sup> Report of session 2015-16, 22 June 2015](#)

## Responses to the Bill

This section provides a brief overview of some of the response to the Bill.

A number of organisations have welcomed the new legislative approach. The Local Government Association, representing more than 400 local councils in the UK, had called on the Government to include a ban on NPS in the Queen’s Speech. Following the announcement, an LGA spokesperson said that the Bill would enable the closure of head shops and protect the public from the devastating consequences.<sup>148</sup>

The Angelus Foundation welcomed the Psychoactive Substances Bill and said it should help “*shut down the high street trade in legal highs.*” However, alongside the new legislation, it called for more investment into improving public awareness and education on NPS.<sup>149</sup>

The National Police Chief Council’s lead on NPS, Commander Simon Bray has expressed support for the Bill.<sup>150</sup> He said that a blanket ban would make it simpler for law enforcement to deal with drugs that are potentially unsafe but may not already be controlled.

There has also been some criticism of the approach taken in the Psychoactive Substances Bill. These views have included concerns that the effects of the Bill are too far-reaching and it may ban a number of unintended substances.<sup>151</sup>

A group of scientists, academics, and ethicists, including the Archbishop of Canterbury wrote a letter to the Times in July 2015. This said that the signatories to the Letter requested that the Government reconsider the Psychoactive Substances Bill. They argued that it is not possible to legislate in this way without criminalising harmless substances, and banning all psychoactive substances will impeded medical research and the development of new treatments. The letter also says that the Bill will transfer the supply of NPS to the unregulated market.<sup>152</sup>

There were a number of concerns expressed about the potential impact the Bill would have on medical research into psychoactive substances. The Academy of Medical Sciences, the Royal Society, The Wellcome Trust and others co-signed a letter to the Home Secretary on this issue. This expressed concerns about the unintended consequences of the Bill, in that it may affect many types of important research.<sup>153</sup> Lord Bates responded to this letter saying it was not the Government’s intention to interfere with research into psychoactive substances. The Government

<sup>148</sup> Local Government Association, [Queens Speech: legal high ban will enable closure of ‘head shops’](#), 27 May 2015

<sup>149</sup> Angelus Foundation, [Angelus’ Success in Campaigning to Tackle Open Sale of ‘Legal Highs’](#), 31 May 2015

<sup>150</sup> NPCC, [Blanket ban will make it simpler for law enforcement to deal with unsafe drugs](#), 29 may 2015

<sup>151</sup> Matthew Scott, [Theresa May wants to ban pleasure. The](#) Telegraph, 2 June 2015

<sup>152</sup> The Times, [Letters: Banning ‘legal highs’](#), 22 July 2015

<sup>153</sup> The Academy of Medical sciences, [Letter to Home Secretary](#), 29 June 2015

was developing work in order to bring amendments on this topic during the Commons stages of the Bill.<sup>154</sup>

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<sup>154</sup> Home Office, [Letter to Professor John Tooke, President of the Academy of medical Sciences](#), 14 July 2015

## 8. Interventions targeting new psychoactive substances

### 8.1 Home Office Drugs Strategy 2010

As part of the review of the Home Office Drugs Strategy in 2012, [an action plan on New Psychoactive Substances \(NPS\)](#) was introduced.

This outlined what the previous Government had done and planned to do in response to the dangers of legal highs. It provided three central themes to the approach:

- Reducing the demand for NPS
- Restrict the supply of supply NPS
- Promote services that provide effective treatment and support lasting recovery

The strategy highlighted the use of the forensic early warning system, promotion of sources of information and support such as [FRANK](#), and legislative control options.

### 8.2 Early Warning Systems

The Home Office [Forensic early warning system](#) (FEWS) was set up in January 2011 to improve the speed of identification of NPS and monitor their use. This information could then be used to inform the ACMD's considerations and Government response in general. It targets internet sales, festivals and head shops and collects samples for testing to provide a greater awareness to police, and health professionals of what substances are available for sale in the UK. The 2014 FEWS annual report stated that 4676 samples had been collected and analysed since the inception of the system.<sup>155</sup>

The Government's Drug Early Warning System (DEWS) is a national, regional and local system of sharing information about substances and their harms. This system works alongside FEWS.

The UK also works with the [EU early warning system](#) to identify new NPS across Europe in order to introduce timely legislation against risks to the UK. This Europe based early warning system is one of the approaches introduced by [Council decision 2005/387/JHA](#) which called for rapid and effective action on legal highs.

In its response to the expert panel report on NPS, the Government committed to consider how data collected by DEWS and FEWS could be shared more widely.

Other early warning and information sharing systems, for both health professionals and the general public, include Drugwatch<sup>156</sup>, an

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<sup>155</sup> Home Office, [Annual report on the Home Office Forensic Early Warning System \(FEWS\), A system to identify New Psychoactive Substances in the UK](#), August 2014

<sup>156</sup> Drugscope, [UK Drugwatch](#)

international non-profit organisation and Wedinos<sup>157</sup> (Welsh Emerging Drugs and Identification of Novel Substances Project).

### 8.3 Information and education

The Government uses its drug information website, [FRANK](#), to provide regularly updated information and education on NPS. They also offer a helpline for those needing further advice.

The Home Office have produced an NPS resource pack to be used by informal educators such as youth workers and probation services.<sup>158</sup>

### 8.4 International cooperation

The previous Government recognised the need for international cooperation in tackling NPS. This includes collaborating with the EU Early Warning System as noted above.

In June 2013 the Government announced an agreement with the G8 to share data on the emergence of psychoactive substances:

We believe that a balanced, comprehensive and integrated approach is required to tackle the challenges posed by NPS. We are committed to strengthening our international partnerships with a view to developing our understanding of NPS and implementing evidence-based approaches to tackle them. We, therefore, acknowledge our shared responsibility to work together in developing a better understanding of this issue, and are committed to reducing the production, manufacture, distribution and demand for NPS.<sup>159</sup>

The statement outlined that the signatories agreed to develop integrated approaches to the detection and identification of new psychoactive substances, share information and good practice approaches and ensure a good flow of information between local, national and international early warning systems.

However, in January 2014 the previous Government decided to opt out of the European Commission's proposals for regulation and a new Directive on NPS. The former Minister for Crime prevention, Norman Baker said that the new controls would fetter the UK's discretion to control NPS. The Government disputed the evidence from the EU that suggested that 20% of NPS have a legitimate use. Mr Baker highlighted the ongoing review into NPS and that the Government were looking at a range of options.<sup>160</sup>

### 8.5 Drug services and clinical guidance

In November 2014, Public Health England (PHE) published a [new toolkit](#) for substance misuse commissioners on NPS. This aimed to help local

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<sup>157</sup> [Wedinos.org.uk](#)

<sup>158</sup> Home Office, [New psychoactive Substances: Resource pack for informal educators and practitioners](#), March 2015

<sup>159</sup> [G8 Statement of Intent Collection and Sharing of Data on NPS](#), 25 June 2013

<sup>160</sup> [HC Deb 13 January 2014 c22WS](#)

CCGs and NHS England when responding to NPS use and problems in their areas.

The Director for Alcohol, Drugs and Tobacco at PHE explained that this toolkit responded to demand from local authorities for guidance to help tackle the challenge of NPS:

New psychoactive substances (NPS) are rightly a cause for concern. We have responded to local authority demand by developing a toolkit to help them tackle the challenge of understanding NPS problems and to support them in planning evidence based solutions and services.

“NPS harms are impacting on emergency services. Some NPS users are developing seriously damaged health and even dependency, and an increasing number are turning to treatment for these drugs. The numbers remain small compared to heroin and crack addiction or to those seeking help with cannabis use, but services need to be geared up to meet these emerging challenges. Those seeking treatment stand a very good chance of overcoming their problems, so we would encourage anyone who needs help to seek it.

“Good local responses involves action on many levels. PHE will continue to support local areas and improve data, intelligence and information sharing systems, to ensure prevention and treatment are as effective as they can be in this ever evolving drugs market.”<sup>161</sup>

Project Neptune (Novel Psychoactive Treatment UK Network) has produced [clinical guidance](#) on the management of harms resulting from the use of club drugs and NPS. In its response to the expert panel report in 2014, the Government stated that PHE had committed to support the dissemination of Project Neptune’s clinical advice.

In 2014, the Royal College of Psychiatrists highlighted the challenges in treating users of club drugs and NPS.<sup>162</sup> It reported that substance misuse services currently cannot meet the needs of these users and that these patients may be unlikely to access traditional drug services. They recommended, amongst other measures, the use of a clinical network, improved information sharing to ensure a wide range of front line staff are better prepared to treat the users of NPS, and increasing research funding into new interventions for these drug users.

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<sup>161</sup> PHE, [NPS toolkit to help local areas respond to the latest drug challenge](#), 2014

<sup>162</sup> Royal College of Psychiatrists, [One new drug a week. Why novel psychoactive substances and club drugs need a different response from UK treatment providers](#), September 2014

## 9. Further reading

### Home Office Documents

- [Overview of the Bill](#), August 2015
- [Overview of the Misuse of Drugs Act 1971](#), August 2015
- [Background to the Bill](#), August 2015
- [Prevention, treatment and intervention response to psychoactive substances](#), August 2015
- [International Comparators](#), August 2015
- [Impact assessment: creation of a blanket ban on new psychoactive substances in the UK](#), May 2015
- [New Psychoactive Substances review: Report of the expert panel](#), September 2014
- [Government response to New Psychoactive Substances Review Expert Panel Report](#), October 2014
- [New psychoactive substances in England: a review of the evidence](#), October 2014

### Other sources

- EMCDDA, [New psychoactive substances in Europe, an update from the EU Early warning System](#), March 2014
- EMCDDA, [European Drug Report 2015](#), June 2015
- EMCDDA, [Best practice in drug interventions: New Psychoactive drugs](#),
- EMCDDA, [Drug Report 2014: Trends and developments](#), May 2014
- Drugscope, [Not for human consumption: An updated and amended report on new psychoactive substances \(NPS\) and 'club drugs' in the UK](#), 2015
- [New Psychoactive substances review: Report of the Expert panel](#), September 2014
- HM Government, [Government response to New Psychoactive Substances review Expert panel report](#), October 2014
- ACMD, [Consideration of the Novel Psychoactive Substances \('legal highs'\)](#), October 2011
- Frank, [Legal highs](#).
- Royal College of Psychiatrists, [One new drug a week, Why novel psychoactive substances and club drugs need a different response from UK treatment providers](#), 2014
- Philippa Watkins, [No to 'legal highs'! Tackling new psychoactive substances](#), In Brief, National Assembly for Wales Research service, 12 May 2015
- House of Commons Home Affairs Select Committee, [Drugs: new psychoactive substances and prescription drugs](#), December 2013

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