

Psychoactive Substances Bill

Fact sheet: Overview of the Bill

1. The Queen's speech on 27 May 2015 included a commitment to bring forward "new legislation [to] ban the new generation of psychoactive drugs". The Psychoactive Substances Bill will protect people from the risks posed by untested, unknown and potential harmful drugs. The Bill will create a blanket ban which would prohibit and disrupt the production, distribution, sale and supply of new psychoactive substances ("NPS") in the UK.

Psychoactive substances

2. For the purpose of the Bill, a psychoactive substance is a substance which is capable of producing a psychoactive effect in a person who consumes it and is not an exempted substance (see paragraph 3). A substance causes 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.
3. Schedule 1 to the Bill lists a number of exempted substances which fall outside the definition of a psychoactive substance for the purposes of the Bill. Exempted substances are included in Schedule 1 either because they are already controlled through existing legislation (alcohol, tobacco and nicotine, medicines (including those subject to testing in clinical trials) and controlled drugs) or because their psychoactive effects are negligible (caffeine and foodstuffs). The Bill contains a power, by regulations (subject to the affirmative resolution procedure) to vary or add to the list of psychoactive substance. Before making regulations the Home Secretary is required to consult the Advisory Council on the Misuse of Drugs, the Government's scientific advisors under the Misuse of Drugs Act 1971.

Offences

4. The Bill makes it an offence to: produce; supply; offer to supply; possess with intent to supply; import or export a psychoactive substance. The maximum penalty, on conviction on indictment (that is, in the Crown Court), is seven years' imprisonment, an unlimited fine, or both. In line with the recommendation of the NPS Expert Panel (see separate fact sheet), there is no offence of simple possession.
5. No offence is committed under the Bill if the conduct is covered by an exception specified in regulation. Such regulations might provide for the exclusion from the ambit of the offences healthcare professionals (and those in the distribution chain) when acting in their professional capacity supplying to a patient a psychoactive substance which falls outside the exemption list.

Civil sanctions

6. There are four civil sanctions in the Bill: a prohibition notice, premises notice, prohibition order and premises order. These civil powers afford law enforcement agencies, such as the police and local authorities, an alternative route to criminal proceedings as a way of tackling the NPS supply chain. The use of these powers

will enable law enforcement officers to take action swiftly to nip a problem in the bud or to adopt a more proportionate approach to low-level offending. It will be a matter for the relevant law enforcement agency to determine which approach to adopt in any given circumstances. Where there is evidence of a criminal offence under the Bill, there is no requirement to apply the civil sanctions in the first instance as a criminal prosecution may be the appropriate action to take. Equally, if a prohibition notice or premises notice has been served and is then breached, the relevant law enforcement agency might proceed to a criminal prosecution or pursue a prohibition order or premises order, as the case may be.

7. Prohibition notices and premises notices may be issued by a senior police, National Crime Agency (“NCA”) or Border Force officer or by a local authority. A prohibition notice would require the subject of a notice to stop carrying out “prohibited activity”, that is producing, supplying, offering to supply, importing or exporting a psychoactive substance or assisting or encouraging such an activity. A premises order would require a person, for example the landlord of head shop (retail premises selling NPS), to take all reasonable steps to prevent prohibited activities taken place on the relevant premises. There is no direct penalty for breach of a prohibition or premises notice; they effectively act as a warning to the recipient of further consequences should they continue to undertake prohibited activities, or fail to prevent such activities taking place on premises for which they have some responsibility.
8. A prohibition order or premises order are made by the courts. These orders may contain such prohibitions, restrictions and requirements that the court considers appropriate. In particular, a prohibition order may require the subject of the order, for example a head shop proprietor, to hand over stocks of psychoactive substances. Both a prohibition order and a premises order may also include “an access prohibition” effectively closing specified premises for up to six months. Breach of a prohibition order or premises order is a criminal offence punishable by a prison sentence of up to two years, an unlimited fine, or both.

Powers of entry, search and seizure

9. The Bill enables police and NCA officers and customs officials to stop and search a person where they have reasonable grounds to suspect the person has committed, or are likely to commit, one of the main offences under the Bill (that is the offences of production, supply etc of a psychoactive substance or an offence of breaching a prohibition order or premises order). There are also powers to search vehicles, vessels and aircraft (if not a dwelling) if an officer has reasonable grounds to suspect they contain evidence of an offence. An enforcement officer (police and NCA officers, customs officials and local authority officer) also have the power to enter and search premises in accordance with a search warrant issued by a justice of the peace (or equivalent). In the course of a search an enforcement officer may seize any psychoactive substances or other items that may be evidence of an offence under the Bill. These items can be retained for the duration of an investigation after which they may either be destroyed or, in certain circumstances, returned to the person entitled to them.

10. For more information on the Bill and to view supporting documents, including other fact sheets, see the Bill web page on the GOV.UK website: (<https://www.gov.uk/government/collections/psychoactive-substances-bill-2015>).

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