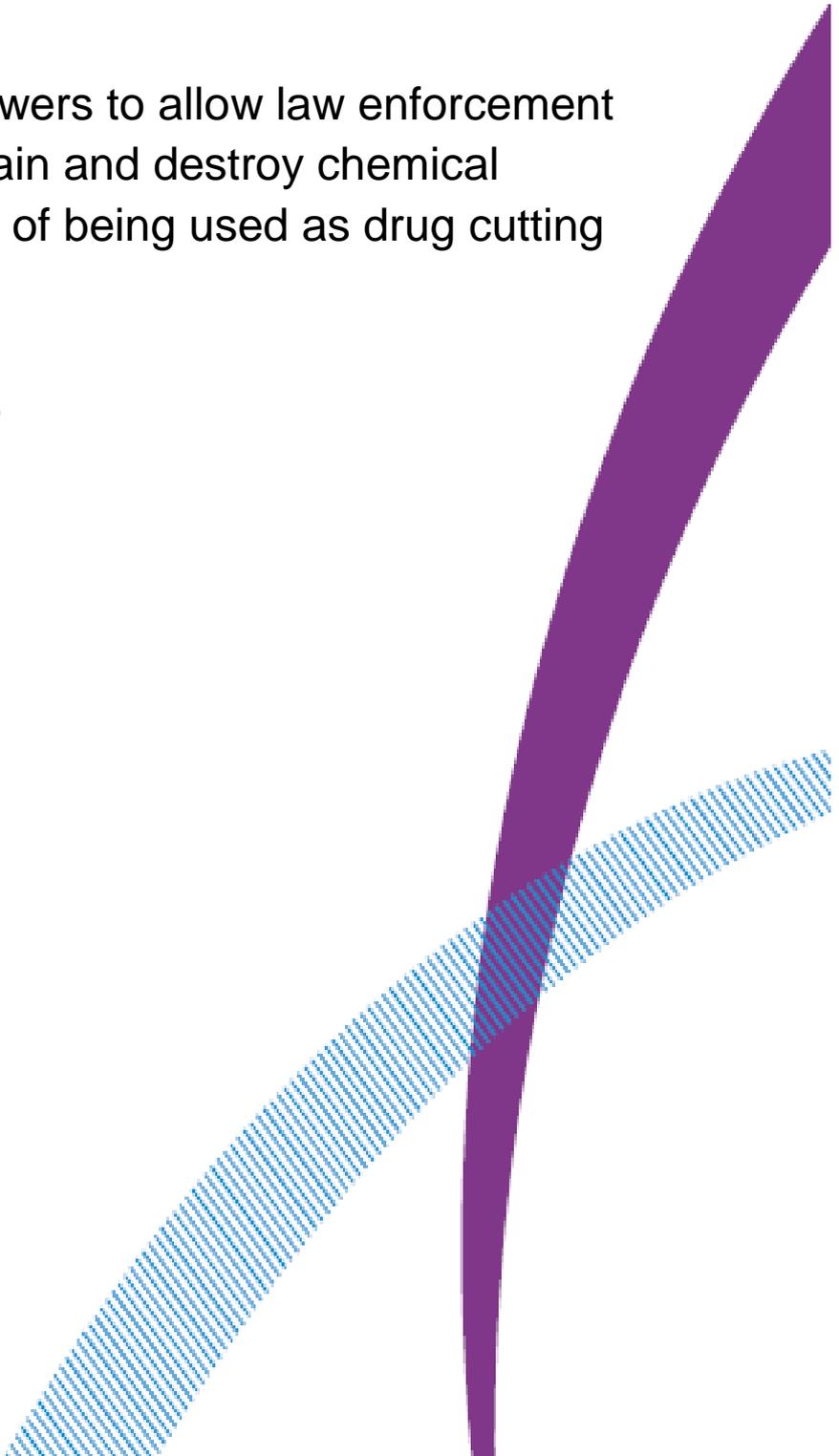


Introduction of new powers to allow law enforcement agencies to seize, detain and destroy chemical substances suspected of being used as drug cutting agents.

Consultation response



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## **Executive summary**

1. From 28 May – 7 July 2013, the Government ran a consultation which sought views on the introduction of new civil powers to allow law enforcement agencies to tackle the trade in chemical substances used as cutting agents to bulk the volume of illegal drugs.
2. The proposal is to use primary legislation to give law enforcement explicit new powers to enter and search premises, with a warrant, for substances if there are reasonable grounds to suspect they are intended for use in unlawful conduct. Law enforcement will also have the power to seize, detain and destroy such substances. The proposals which were consulted on involved extending the powers only to particular chemicals specified in secondary legislation. These chemicals were benzocaine, lidocaine and phenacetin (with the option of adding more if necessary), as these are currently the most common cutting agents which mimic the effects of cocaine, allowing for maximum adulteration.
3. There were 24 responses to the consultation, the majority of which were supportive of the proposals. The main concern from respondents was that the market in cutting agents would shift to new substances. With these concerns in mind, we have amended the proposals such that law enforcement will have the power to seize any chemical they suspect of being used as a cutting agent, rather than only those listed in secondary legislation. The next steps will be to introduce these new powers through primary legislation. We will do this as soon as parliamentary time allows.

## Introduction

4. This consultation sought views on the introduction of new civil powers to allow law enforcement agencies to seize, detain and destroy chemicals that are reasonably suspected of being intended for use as cutting agents to bulk the volume of illegal drugs. Cutting agents allow drug dealers to increase their profits, which are used to fund further drug dealing and other criminal activities. Stronger powers to deal with cutting agents will therefore make the UK a more hostile environment for drug dealers to operate in. In the UK, benzocaine, lidocaine and phenacetin are among the most common chemicals used to 'cut' illegal drugs, most commonly cocaine. This is because they are 'active' chemicals which mimic some of the effects of cocaine, as well as resembling it in appearance. This enables dealers to maximise profits by allowing a more significant increase in adulteration of the illicit drug than would be possible with inert substances such as glucose. As such, the proposals which were consulted on suggested initially extending the new powers only to these three substances, which would be specified in secondary legislation to allow more to be added relatively quickly if necessary.

5. There are currently no laws or regulations that specifically target the domestic trade in cutting agents. Consequently, the Government considers that there needs to be an explicit legal basis for the seizure and detention of cutting agents that are suspected of being used in unlawful conduct. This will ensure that law enforcement agencies do not have to return previously seized cutting agents which could in all probability be used to facilitate the supply of illegal drugs. The Government intends to introduce new powers to allow law enforcement agencies to seize, detain and destroy suspected cutting agents.

6. We would envisage these powers being available to the National Crime Agency (NCA), UK police forces, and the Border Force. They would include:

- a power to enter and search premises for chemicals, with a warrant, if a law enforcement officer has reasonable grounds to suspect they are intended for use in unlawful conduct;
- a power to seize suspected cutting agents and detain them for an initial period of 30 days; and
- a power to apply to a magistrates court for a further 30 days detention and for forfeiture and destruction of the substances.

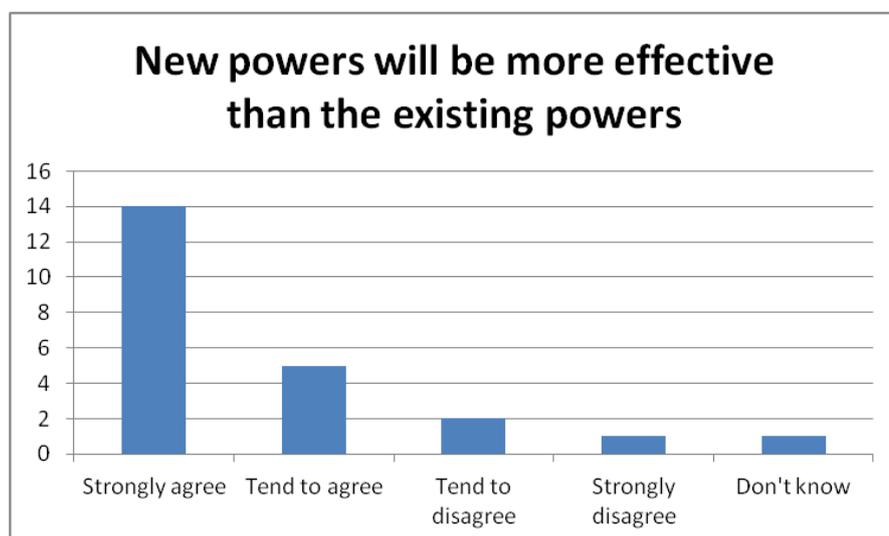
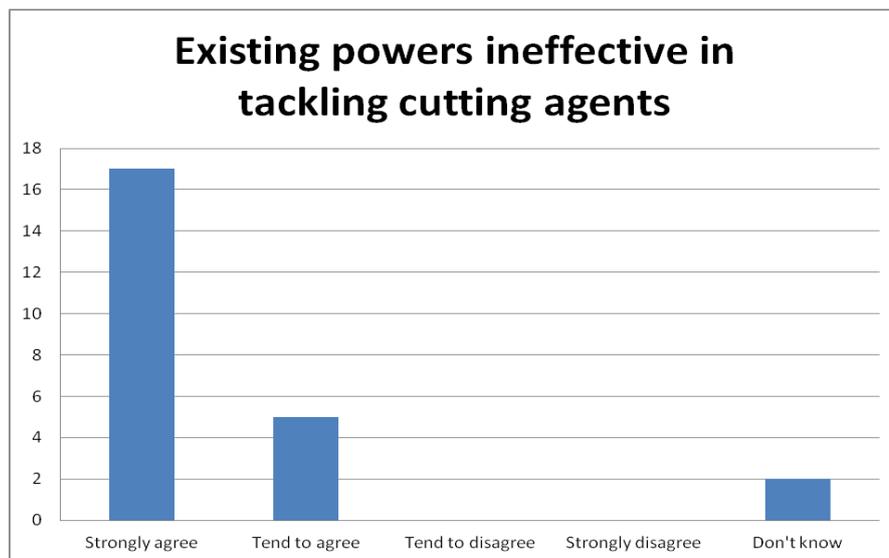
7. A six week consultation was launched on the dedicated Drug Strategy consultation page of the Home Office website on 28 May 2013, finishing on 7 July 2013. This document provides a summary of the responses, considers the substantive points raised and the Government's reply to these points, and outlines next steps.

## Summary of responses

8. We received 24 responses to the consultation. 16 were from various organisations such as law enforcement, pharmaceutical industry bodies and other professional bodies, five were from individuals working in relevant fields such as healthcare, one was from a member of the public, and two did not specify.

9. Overall, respondents were broadly supportive of the proposals. 92% strongly agreed or tended to agree that the current powers used to tackle the trade in cutting agents are not effective. As well as recognising the problem, the majority of respondents believed that the Government had a good solution, with 79% agreeing or tending to agree that the proposed new powers would be more effective than the existing regime. Moreover, 88% strongly agreed or tended to agree with the proposed approach for the execution of the new powers, in that they will follow a similar process to that which is used for seizing illicitly obtained money under the Proceeds of Crime Act 2002.

10. The two graphs below illustrate the strong support for two key features of the consultation: that the current powers available to law enforcement agencies are ineffective at tackling the trade in cutting agents, and that the proposed new powers would be more effective at dealing with this illicit market.



## Substantive responses

11. The responses below are grouped according to the three main themes of the consultation:

- The ineffectiveness of current powers to tackle the trade in cutting agents
- The potential effectiveness of the powers being proposed
- The impact on business and other costs

### The ineffectiveness of current powers to tackle the trade in cutting agents

12. We argued in our consultation document that there is a need for explicit powers for law enforcement agencies to tackle the trade in cutting agents. There was widespread agreement among respondents (92%) that the current legislative framework is not effective in addressing this problem.

Advisory Council for the Misuse of Drugs (ACMD): *'the ACMD agrees that the UK needs a robust and accountable legislative framework in which to take civil action against the illegal trade.'*

Police: *'At present those in possession of such cutting agents are difficult to prosecute.'*

13. One respondent, a trade body representing pharmacists, pointed out that the absence of effective controls of these chemicals has led to an online marketplace:

*'The purchase of these materials has become an industry in its own right with a whole range of uncontrolled supplies available on the internet.'*

14. A respondent who works in the dental anaesthetics industry and has frequently been an expert witness in cases involving the importation of benzocaine also agreed that greater legal clarity is needed in this area. Thus there is agreement from a variety of respondents – the police, the pharmaceutical industry, the ACMD and others – that the status quo is ill-suited to addressing the problem of cutting agents.

### The potential effectiveness of the powers being proposed

15. While acknowledging the inadequacies in the current legislative framework, the majority (79%) of respondents strongly agreed or tended to agree that the proposed powers would be more effective than the existing powers.

ACMD: *'It will provide law enforcement with an important tool to tackle the illegal trade which actively fuels the UK illegal drugs market.'*

Police: *'We strongly agree with the new proposed powers, they will be more effective especially if linked to POCA and to the civil standard of proof.'*

16. Of the respondents who disagreed that the new powers would be more effective, the main concern was that since the proposals identify three specific chemicals, dealers would simply switch to new chemicals, which may be more harmful, for use as cutting agents.

Professional body for pharmacists: *'The new legislation would result in individuals using potentially more toxic materials for this purpose [cutting agents] (eg. Ajax).'*

Health professional: *'It is better that safe, recognised cutting agents are used than the possibility of un-policed alternatives being used.'*

17. Despite their legitimate use in the pharmaceutical industry, benzocaine and lidocaine are not 'safe' substances – an emergency medicine doctor responded to the consultation saying that s/he

had treated people for benzocaine toxicity who had thought they were taking cocaine. Nevertheless, we recognise the risk of the market shifting to the use of new chemicals as cutting agents. This is why we have amended the proposals, such that law enforcement will have the power to seize any chemical they suspect of being intended for use as a cutting agent, rather than only those listed in secondary legislation.

18. One respondent argued that the cutting agents should be controlled under the Misuse of Drugs Act 1971 (MDA), saying that a number of legitimate pharmaceutical chemicals, such as diazepam, are controlled under this Act without it having a negative impact on licensed trade. It would not be appropriate to control these chemicals in this way. The MDA is only intended to impose controls on narcotic or psychotropic drugs which are likely to be misused and are capable of causing harmful effects to an individual sufficient to constitute a social problem. Cutting agents are not primary drugs of misuse and therefore cannot be controlled under the MDA.

### **The impact on business and other costs**

19. The proposed measures are intended to have a minimal impact on legitimate business. The consultation sought to establish whether the companies involved in the trade of three of the most common cutting agents (benzocaine, lidocaine and phenacetin) agreed that the powers would not adversely affect their activities. There was broad agreement on this from respondents where the chemicals are intended for use on humans, which applies to the vast majority of the market in these three chemicals (phenacetin is no longer used as it is carcinogenic). This was largely due to the requirement, under the Falsified Medicines Directive 2011/62/EU (FMD), for all companies importing active substances for human use to register with the Medicines and Healthcare products Regulatory Authority (MHRA). In normal circumstances there would be no reason for law enforcement agencies to seize cutting agents if they were owned by a registered, licence-holding business.

Professional body for pharmacists: *'We are not aware of any additional costs on businesses.'*

Manufacturer of dental anaesthetics and pharmaceuticals: *'This will have no impact on our, or other legal trades.'*

20. However, as mentioned above the proposed powers now cover all suspected cutting agents, rather than specifying particular ones in secondary legislation. This may lead to an increased impact on the chemical industry in the future if there is a move away from active pharmaceutical substances, which require MHRA registration, to other substances which do not, such as inert substances or active substances which are not used on humans. Nevertheless, we believe that any future impact will be limited. This is because the initial proposals have been further developed such that the burden of proof will fall to the prosecuting authority to show that the chemical is intended for use as a cutting agent, rather than to the owner of the substance to prove that it is not. Thus law enforcement agencies are unlikely to seize a chemical without strong suspicion that it will be used illicitly. Furthermore, in the unlikely scenario that the property of a legitimate business is seized causing financial loss, the business will be able to apply for compensation.

21. One respondent asked whether there will be additional costs to law enforcement through the cost of storing the chemicals. Our impact assessment suggested that in fact the new powers will lower storage costs. This is because the powers will allow law enforcement to apply for the destruction of the substances, whereas currently law enforcement often find it necessary to store the substances for extended periods, leading to high storage costs.

## **Conclusions and next steps**

22. We are pleased that a large majority of respondents to the consultation agreed with the proposals. There is consensus between law enforcement, pharmaceutical industry bodies, the ACMD and other organisations that the current powers regulating drug cutting agents are inadequate and that the proposed new powers will be more effective. We are conscious of the concerns raised by some respondents that if the initial proposals were to succeed in restricting the supply of the cutting agents listed in secondary legislation, dealers may turn to potentially more harmful chemicals to bulk illicit drugs. This is why we have amended the proposals to extend the powers to any suspected cutting agents, which should prevent displacement to potentially more harmful chemicals.

The next steps will be to introduce these new powers through primary legislation. We will do this as soon as parliamentary time allows.