

Temporary Class Drugs

The Misuse of Drugs Act 1971 has been amended to enable the Home Secretary to place a new psychoactive substance causing sufficient concern about its potential harms under temporary control by invoking a temporary class drug order. This new power is available from 15 November 2011.¹

What are the temporary control provisions under the Misuse of Drugs Act 1971?

The new key provisions are:

- the Home Secretary may make a temporary class drug order if:
 1. the drug is not already controlled under the Act (as a Class A, B or C); and
 2. the Advisory Council on the Misuse of Drugs has been consulted and determined that the order should be made, or the Home Secretary has received a recommendation from the Advisory Council that the order should be made, on the basis that it appears to the Home Secretary that:
 - a. the drug is being, or is likely to be, misused ; and
 - b. misuse is having, or is capable of having, harmful effects.
- A temporary class drug order will come into immediate effect and last for up to 12 months, subject to Parliament agreeing to it within 40 sitting days of the Home Secretary making the Order;
- A temporary class drug order will be a “controlled drug” within the meaning of the Misuse of Drugs Act 1971 and other legislation such as the Proceeds of Crime Act 2002 (unless otherwise stated);
- A drug placed under a temporary class drug order will be referred to as a “temporary class drug”;
- With the exception of the possession offence, all the offences under the Misuse of Drugs Act 1971 will apply.

Will the temporary control power be used every time a drug is considered for control under the Misuse of Drugs Act 1971?

The parliamentary procedure to permanently control a drug under the 1971 Act - following consideration of the Advisory Council on the Misuse of Drugs’ full advice on a drug’s harms and all available evidence - remains the preferred approach.

However, the use of the temporary control power will be considered if there is such concern about a drug that a faster legislative response is necessary to protect the public. Parliament retains full scrutiny over the use of the power under the parliamentary process adopted by the Government.

¹ The amendment to the Misuse of Drugs 1971 was made by the Police Reform and Social Responsibility Act 2011, Section 151 and Schedule 17.

How will a temporary class drug order work?

Action under the new temporary control provisions will enable the Government to take swift actions; to -

- Ban the unlawful importation, production and supply of a temporary class drug in the UK for 12 months, to protect the public from potentially harmful substances;
- Give the Advisory Council on the Misuse of Drugs time to provide full, independent and expert advice on the temporary class drug;
- Send out a clear public health message about the temporary class drug and, generally, on new psychoactive substances;
- Enable enforcement partners and the criminal justice system to take action against offenders;
- Make a decision on permanent control or other measures as deemed necessary following consideration of the full advice received from experts;
- As appropriate, seek Parliament's approval of a decision to permanently control a temporary class drug for such control to come into force before the temporary class drug order expires.

Further details on how the Advisory Council on the Misuse of Drugs and the Government work under a temporary class drug order are published in their joint Working Protocol².

What are the offences and penalties?

Offences committed under the 1971 Act in relation to a temporary class drug are subject to the following maximum penalties –

- 14 years' imprisonment and an unlimited fine on indictment, and
- 6 months' imprisonment and a £5,000 fine on summary conviction.

Simple possession of a temporary class drug is not an offence under the 1971 Act.

However, law enforcement officers have been given the following powers so that they can take appropriate action to prevent possible harm to the individual:

- search and detain a person (or vehicle etc) where there are reasonable grounds to suspect that the person is in possession of a temporary class drug;
- seize, detain and dispose of a suspected temporary class drug, and
- arrest or charge a person who commits the offence of intentionally obstructing an enforcement officer in the exercise of their powers here.

<http://www.homeoffice.gov.uk/drugs/temporary-class-drug-orders> will be updated as appropriate with details of drugs that are placed under a temporary class drug order.

² <http://www.homeoffice.gov.uk/publications/alcohol-drugs/drugs/>