

Police Reform and Social Responsibility Bill – Clause 152 / Schedule 17 – August 2011

Misuse of Drugs: Temporary Class Drugs

The Government set out a commitment in the Coalition Agreement to “...introduce a system of temporary bans on new “legal highs” whilst health issues are considered by independent experts”.

The Police Reform and Social Responsibility Bill includes Clause 152 and Schedule 17 which look to deliver this commitment by proposing an amendment to the Misuse of Drugs Act 1971 with provisions for ‘temporary class drug orders’.

What are temporary class drug orders?

It is proposed that the Secretary of State, the Home Secretary, will have the power to invoke a temporary class drug order under certain conditions. A drug made under such an order is to be called a ‘temporary class drug’.

The order will be made by statutory instrument, subject to Parliamentary approval under the negative resolution procedure. However, we are considering the recommendation by the House of Lords Delegated Powers and Regulatory Reform Committee to adopt the “made affirmative” procedure for temporary class drug orders.

The order will expire at the end of twelve months or earlier, if the temporary class drug is brought under the permanent control of the 1971 Act or the temporary class drug order is revoked.

What is the effect of a temporary class drug order?

A temporary class drug is a controlled drug within the meaning of the Misuse of Drugs Act 1971 and other relevant legislation. Importation, exportation, production and supply of a temporary class drug will be prohibited without lawful authority. Offences committed under the 1971 Act in relation to a temporary class drug will be subject to maximum penalties of 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. However, law enforcement officers will have powers to seize and destroy a temporary class drug.

What are the conditions that the Secretary of State has to satisfy?

Apart from being satisfied that the drug is not already subject to control under the Misuse of Drugs Act 1971, the Secretary of State is required to consult the Advisory Council on the Misuse of Drugs (ACMD) and determine that the order should be made, or receive a recommendation from the ACMD to that effect. The Secretary of State may then proceed to make the order if it appears that the drug in question is one that is, or is likely to be, misused, and that misuse is having, or is capable of having, harmful effects.

Why is the Government introducing temporary class drug orders?

The Government considers that a new approach to our drug laws is needed so that new psychoactive substances can be prohibited quickly if necessary, pending full advice from the ACMD: to protect the public, especially young people, and target suppliers and manufacturers who subvert our laws and advertise harmful substances as 'legal' and 'safe'.

Under the current arrangement for bringing a drug under control of the Misuse of Drugs Act 1971, the ACMD undertakes a full assessment of a drug's medical and societal harms, which can necessarily take between three and six months. In addition, the current method of Parliamentary control – a Privy Council Order made following the affirmative resolution procedure – can take at least 2 months unless Parliament expedites this process.

Temporary class drug orders will help to ensure that these potentially harmful drugs do not get a foothold in the UK's drug market and do untold harm. At the same time we will be sending a clear public health message and enable enforcement partners to take action against those caught breaching the law in relation to a temporary class drug order.

What are “legal highs” or new psychoactive substances?

'Legal highs' are psychoactive substances which produce the same, or similar effects, to illegal stimulant drugs, but are not controlled under the Misuse of Drugs Act 1971. They are mainly advertised at young people, for use as 'legal' and 'safe' alternatives to controlled drugs. Whilst most of these substances have never been tested for use by humans, it is becoming increasingly clear that they are far from harmless and can have similar health risks to drugs like cocaine, ecstasy and amphetamine. Recent examples of new psychoactive substances found in the UK which have been brought under the 1971 Act are synthetic cannabinoids and cathinones, including mephedrone and naphyrone.

Is the Government changing the way drugs become controlled?

These provisions do not replace the process by which a drug is brought under permanent control under the Misuse of Drugs Act 1971. They will complement it. The current process of seeking full advice from the ACMD on the harms of a drug in relation to controls under the 1971 Act will remain the preferred approach.

Who did you consult on these proposals?

The ACMD, UK-wide law enforcement and the Devolved Administrations, all of whom are supportive of the proposals, were consulted. Alongside this, as part of our targeted consultation on the Government's Drug Strategy in summer 2010, we sought the views of respondents, including members of the public, on '*factors to take into consideration when deciding to invoke a temporary ban on a new substance*'. The summary analysis of responses, including the responses on this issue, is published alongside the Drug Strategy at www.homeoffice.gov.uk.