

Background

The Misuse of Drugs Act 1971 ('the 1971 Act') controls drugs that are 'dangerous or otherwise harmful', primarily under a 3-tier system of classification (Classes A, B and C) which provides a framework within which criminal penalties are set with reference to the harm a drug has, or is capable of having, when misused and the type of illegal activity undertaken in regard to that drug.

Drugs which have no legitimate uses are "designated" and placed in Schedule 1 to the 2001 Regulations which means they are subject to the strictest levels of control. Khat is also 'designated' and listed in Schedule 1 to the 2001 Regulations, having no recognised legitimate use. The 2001 Regulations regulate the availability of those controlled drugs according to the legitimate uses that are recognised, as applicable, by placing them in 1 of 5 schedules to the Regulations.

The new control, classification, designation and scheduling of khat are predicated on an assessment of the respective risks and potential harms associated with the drug. This assessment was made following consultation with the Advisory Council on the Misuse of Drugs (ACMD) including the consideration of its 2013 report, 'Khat: A review of its potential harms to the individuals and communities in the UK', and subsequent advice on the scheduling and designation of khat, as well as the consideration of broader factors including community concerns about the prevalence of khat use and the international khat smuggling trade.

Khat is a plant mainly grown in the Horn of Africa. Its leaves, stems and shoots are chewed to produce a mild stimulant effect from its active ingredients, cathine and cathinone, which are subject to Class C drug control when isolated from the plant. The ACMD advises that there is no robust evidence to show a direct causal link between khat use and adverse medical effects, other than a risk of significant liver toxicity, and finds that it is often difficult to disentangle whether khat use is the source of community problems or its prevalence is symptomatic of the problems for some individuals and groups within the community.

The Home Secretary concluded, after considering the ACMD's advice and noting relevant community concerns, that the risk of actual harm of khat use could be underestimated owing to gaps in the evidence base and that, in the light of evidence on the international khat smuggling trade, the UK was increasingly at risk of becoming a single regional hub for the illicit khat trade. UK drug control will therefore address the identified risks and potential harms associated with khat.

The Government has also amended the provisions on penalty notices for disorder ("PND") in the Criminal Justice and Police Act 2001 to permit a PND to be given for the offence of possession of khat under section 5(2) of the 1971 Act. The only other drug related offence for which a PND can be given is possession of cannabis. A first-time khat possession offence will likely attract a 'khat warning' and a second such offence will likely attract a penalty notice for disorder, where possession is meant for personal use ('simple possession'). A PND will be available for khat possession offences only, not for possession with intent to supply or other offences. The level of the financial penalty will be £60 for khat possession. This is different from the level of the financial penalty for cannabis possession which remains at £90, and reflects the lower classification of khat under the 1971 Act.

Police Forces should refer to the national policing guidance specific to khat which has been published by the National Policing Crime Business Area, PND guidance by the Ministry of Justice and guidelines at Annex B.