

<b>Title:</b> Creation of a blanket ban on new psychoactive substances in the UK <b>IA No:</b> HO0187 <b>Lead department or agency:</b> Home Office <b>Other departments or agencies:</b> Ministry of Justice, Department for Health, Department for Communities and Local Government	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 18/05/2015		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> Desmond.Niimoi@Homeoffice.gsi.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion: GREEN</b>
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
-£100m	-£281m	£25.7m	Yes	IN

**What is the problem under consideration? Why is government intervention necessary?**

Current UK legislative drug controls are no longer considered able to keep up with the growing challenges posed by emerging new psychoactive substances (NPS). NPS mimic the effects of controlled drugs and are now appearing at a rate of over 2 a week in Europe. Substances enter the market with little or no understanding of their health and social harms. The threat to public health of some NPS may be comparable to that caused by controlled traditional illicit drugs, with deaths related to NPS in England and Wales doubling from 26 in 2009 to 60 in 2013. Whilst the Government can control individual or groups of drugs under the Misuse of Drugs Act 1971, controls can only be put in place once the substance's harms have been properly assessed, a parliamentary process that can take many months. Government intervention is necessary to provide a complete regulatory framework, to better control the NPS market and proactively prohibit the supply of all substances which have a psychoactive effect. Non-legislative actions to tackle NPS demand, supply and support recovery through HM Government's Drug Strategy will continue.

**What are the policy objectives and the intended effects?**

The policy objective is to reduce the harms caused by and associated with NPS whilst ensuring the UK's response to NPS is proportionate. The intended effects are: the end of the legal sale of NPS from high-street retailers and UK based websites, reducing NPS availability; greater public awareness of the risks of NPS from a clear legal stance; and a reduction in the harmful consumption of NPS.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Since 2010, the Coalition Government has delivered a raft of legislative and non-legislative measures to tackle NPS availability and use across the UK. In 2014, an expert panel concluded that the current legislative approach under the Misuse of Drugs Act 1971 was incomplete and needed to be strengthened. A range of legislative options (using international models such as the use of analogue, restricted availability and fully regulated legal approaches) were considered by the Panel, identifying their respective opportunities and risks against a number of specified themes. The Government wishes to take forward the panel's recommendation around a blanket ban on the distribution of NPS for human consumption, which is the only option fully appraised in this IA.

<b>Will the policy be reviewed?</b> It will be reviewed one year after enactment.					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  Date: 04/06/2015

# Summary: Analysis & Evidence

# Policy Option 2

Legislate to create a new criminal offence for the supply and importation of NPS. **FULL ECONOMIC ASSESSMENT**

Price Base Year 2015/16	PV Base Year 2015/16	Time Period Years 10 yrs	Net Benefit (Present Value (PV)) (£m)		
			Low: -£1,436m	High: £315.5m	Best Estimate: -£100m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
	Low	£0		
High	£0		£167m	£1437.7m
Best Estimate	£0		£32.7m	£281.4m

### Description and scale of key monetised costs by 'main affected groups'

The proposed blanket ban of NPS will prevent businesses from legally selling these products. We estimate that there are approximately 450 businesses in the UK for whom the sale of NPS is a major component of their turnover. The blanket ban will cost these businesses an estimated £32.6m annually in lost profit.

In addition to the costs to business, there will also be costs to the Criminal Justice System of approximately £60k in the first year of the ban and £50k in each subsequent year. These costs result from prohibition orders – a court order directing businesses to halt the sale of NPS – and also a small number of prosecutions under a new offence for the supply, importation and production of NPS.

### Other key non-monetised costs by 'main affected groups'

As well as the businesses identified above for which NPS is a primary component of their turnover, we estimate that there are approximately 210 additional small scale sellers of NPS. These businesses sell NPS in addition to a separate primary business (e.g. tattoo parlours, newsagents) and are therefore believed to be responsible for a small minority of the profit earned from the sale of NPS. We have no specific information on the exact extent of these sales to enable us to monetise the potential lost profits to these businesses.

There could also be an impact on the Exchequer, in terms of reduced revenue from VAT. This will not impact the NPV as it is considered a transfer.

Members of the public currently consuming NPS will be unable to legally do so in future, depriving them of any satisfaction from these products.

There will also be some additional costs to the Criminal Justice system as a result of prosecutions for obstructing an officer conducting a stop and search or exercising a search warrant in pursuit of NPS. This is estimated to cost £1,700 per defendant proceeded against. We lack the information on the volume of offences to estimate the total costs resulting from these offences.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
	Low	N/K		
High	N/K		£40.2m	£346.4m
Best Estimate	N/K		£21.1m	£181.6m

### Description and scale of key monetised benefits by 'main affected groups'

We estimate benefits of £20.9m from around 12 fewer fatalities per year. We also estimate benefits of around £0.2m per year to the NHS from fewer NPS-related hospital admissions.

### Other key non-monetised benefits by 'main affected groups'

There will be additional health benefits to individuals prevented from consuming NPS to those outlined above. This will also result in lower health costs to the state. While an attempt has been made to quantify some of these benefits, it is not possible to fully do so due to a lack of information on the total number of people consuming NPS, their dosage levels, the exact harms of currently available NPS and a lack of information on how consumption will change following this ban. In the long term there is the potential for savings to Police and local authorities through the more cost-effective approach to NPS this ban makes possible. These benefits were not quantified due to uncertainty surrounding how the NPS industry and consumers will respond to the ban.

### Key assumptions/sensitivities/risks

Discount rate (per cent)

3.5

Given that the NPS industry occupies a grey area between the licit and illicit market, there is considerable uncertainty surrounding the size of the industry, and thus the potential impact of the ban upon business. We lack exact information on the number, turnover, costs and profit of NPS sellers. There is therefore a wide range from the low to high cost of this policy.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £21.2m	Benefits: £0m	Net: -£21.2m		

# Evidence Base (for summary sheets)

## A. Strategic Overview

### A.1 Background

#### The meaning of a New Psychoactive Substance

1. Since around 2008/9, the UK has seen the emergence of new uncontrolled substances or products that are intended to mimic the effects of controlled drugs such as cannabis, cocaine, amphetamine, MDMA (ecstasy) and heroin. These are collectively known as “New Psychoactive Substances” (NPS). According to The New Psychoactive Substances Review Expert Panel (“the Expert Panel”), *“after years of stable and declining drug use, the emergence of NPS has been a “game changer”<sup>1</sup>*. The emergence of new drugs is not in itself a new phenomenon, however, the speed and scale at which substances are now emerging distinguishes the current NPS situation from previous epidemics.
2. There is no commonly used definition of a psychoactive substance. The Irish Criminal Justice (Psychoactive Substances) Act 2010 defines a psychoactive substance as:  
*“a substance, product, preparation, plant, fungus or natural organism which has, when consumed by a person, the capacity to—*
  - (a) produce stimulation or depression of the central nervous system of the person, resulting in hallucinations or a significant disturbance in, or significant change to, motor function, thinking, behaviour, perception, awareness or mood, or*
  - (b) cause a state of dependence, including physical or psychological addiction”.*
3. NPS are difficult to identify and regulate on a substance by substance – or even group basis - because of their diversity and the speed with which they develop to replace drugs that are controlled. According to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)<sup>2</sup>, 101 new substances were identified in the EU in 2014, continuing a five year upward trend, up from 81 in 2013. Not all these substances reach the UK, with 11 new substances identified in the UK in 2013.
4. Chemical structures can be tweaked to create a new substance which falls outside any drug control, coming onto the market relatively quickly before any understanding of their health and social harms can be developed. These substances are only legal at this point because they have not yet been made illegal and controlled – not because they are safe to use as most will not have been tested on either humans or animals. Additionally, the purity and composition of these products is typically unknown and there have been some examples of NPS containing controlled substances. The Home Office’s Forensic Early Warning System (FEWS) tested 968 samples of NPS obtained from head-shops in 2013/14, of which, 19.2% contained controlled drugs<sup>3</sup>. There are also examples where products with the same brand name (like ‘Black Mamba’ or ‘Sparklee’) purchased from the same supplier did not

<sup>1</sup> <https://www.gov.uk/government/publications/new-psychoactive-substances-review-report-of-the-expert-panel>

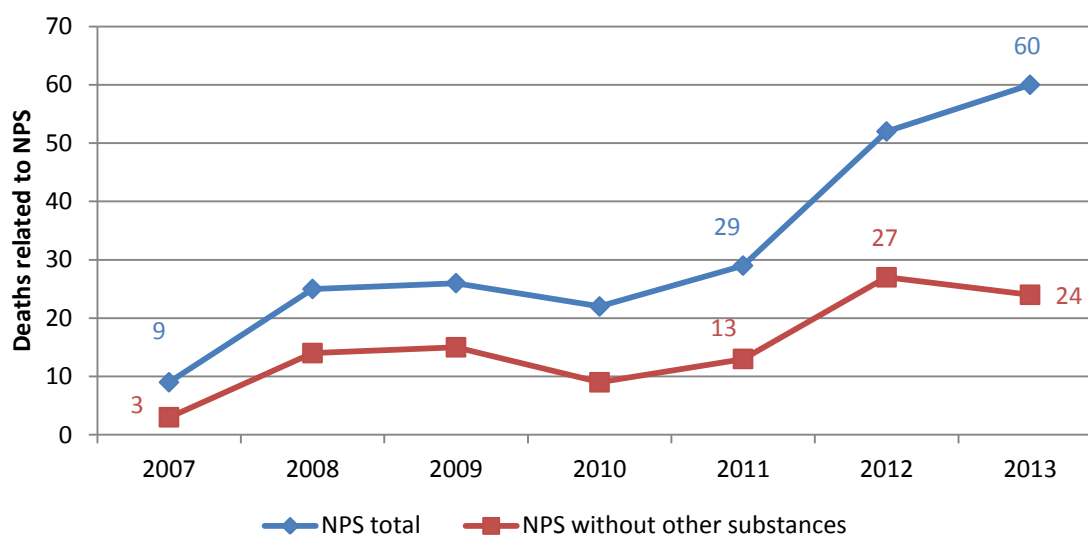
<sup>2</sup> [www.emcdda.europa.eu/news/2015/1/cnd-new-drugs](http://www.emcdda.europa.eu/news/2015/1/cnd-new-drugs)

<sup>3</sup> [http://www.rsph.org.uk/filemanager/root/site\\_assets/our\\_work/areas\\_of\\_work/legal\\_highs/rsph\\_legal\\_highs\\_positional\\_190315.pdf](http://www.rsph.org.uk/filemanager/root/site_assets/our_work/areas_of_work/legal_highs/rsph_legal_highs_positional_190315.pdf) - 19.2% of NPS found in the NPS samples collected by FEWS in 2013-14 contained controlled drugs. But this varies by collection source: a low proportion of controlled drugs were detected in NPS samples collected from headshops (4.3%) and the internet (3.0%), and a high proportion of controlled drugs were detected in NPS samples from festivals (88.1%). Additionally, number of samples collected varies for each source - headshops 352, internet 162, festivals 841.

necessarily contain the same mixtures of ingredients<sup>4</sup>. Many of these substances are labelled ‘not for human consumption’ and advertised as ‘research chemicals’. However as a 2011 ACMD report states, the marketing and sale of NPS is often “designed specifically to avoid legislation under the Medicines Act 1968”. The price of NPS and the fact that it is sold in head-shops that stock no other products related with medical research further undermines the argument that these products are intended for research.

5. The threat to public health of some new substances may be comparable to that caused by controlled illicit drugs. Deaths related, at least in part, to NPS in England and Wales doubled in the past four years from 26 in 2009 to 60 in 2013<sup>5</sup>, of which 24 involved NPS alone - albeit these numbers are low compared to the total of 1,957 deaths from drug misuse in England and Wales in 2013. There were 113 deaths from NPS in Scotland in 2013, although only 5 deaths solely involved NPS<sup>6</sup>. Unlike deaths, data is not centrally collected on NPS-related hospital admissions, although there are reports of hospital admissions related to NPS use.

### Deaths related to NPS, England and Wales 2007-2013



6. Mephedrone, one of the first legal highs and the most popular to date, highlights the dangers of allowing substances to develop a foothold. Although it was banned in 2010, the number of adults (18+) entering treatment continues to increase, from 839 in 2010/11 to 1,641 in 2013/14<sup>7</sup>. It should be noted that many of these users may have first tried mephedrone while it was legal; had the substance been illegal from its inception then it is possible that a significant user-base might never have developed.

<sup>4</sup> Home Office, 2014. Annual report on the Home Office Forensic Early Warning System (FEWS): A system to identify new psychoactive substances in the UK. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/344551/2014-08-12\\_-\\_FEWS\\_Annual\\_Report\\_Aug\\_2014\\_-\\_Final\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344551/2014-08-12_-_FEWS_Annual_Report_Aug_2014_-_Final_2_.pdf)

<sup>5</sup> Office for National Statistics, *Statistical bulletin: Deaths Related to Drug Poisoning in England and Wales, 2013*, 3 September 2014. Note that some NPS which contributed to deaths figure in the ONS bulletin in the UK have since been controlled.

<sup>6</sup> National Records of Scotland, 2013, *Drug Related Deaths in Scotland: 2013*, <http://www.nrscotland.gov.uk/files/statistics/drug-related-deaths/2013/drugs-related-deaths-2013.pdf> (Table NPS2 on page 66).

<sup>7</sup> Drug treatment activity in England 2013-14 <http://www.nta.nhs.uk/statistics.aspx>

7. A number of local authorities have also expressed concern that head shops in their areas are causing increases in anti-social behaviour through customers purchasing legal highs, and in some cases, using them close by.

### Existing UK drug legislation – the Misuse of Drugs Act 1971

8. The Misuse of Drugs Act 1971 is, and will remain, the cornerstone of UK drug policy, providing a robust legislative framework which supports effective measures to protect the public from drug harms. The Act creates a mechanism to classify drugs based on the consideration of evidence and expert advice. Criminal offences in the Act include the supply, possession and production of controlled drugs.
9. The Government has controlled over 500 new substances since 2010, as existing legislation has struggled to keep up with the rate at which NPS is entering the market. The now constant requirement to take action against specific substances, either on a group or individual basis, is a serious weakness of existing legislation.
10. The stimulant 4,4'-Dimethylaminorex (4,4'-DMAR) is an example that highlights some of the challenges that can be posed by NPS. 4,4'-DMAR was first detected in Holland in December 2012 and was sold as a “designer drug” across Europe, including in the UK (although not within head-shops), by mid-2013. The drug has since been linked, according to the Advisory Council on the Misuse of Drugs (ACMD), to 37 deaths in the UK<sup>8</sup>. The ACMD carried out an in-depth inquiry into the harms of 4,4'-DMAR, reporting in November 2014. They outlined that the substance is linked, as a cause or contributory factor, to serious health harms including agitation, convulsions and hyperthermia prior to deaths reported in the UK. As a result of the ACMD recommendation, the Home Office legislated to make 4,4'-DMAR a controlled Class A drug in March 2015, two years after the drug was first seen. Now this drug is controlled, there is nothing stopping the market developing a similar, yet slightly different, substance to replace 4,4'-DMAR providing it is outside 4,4'-DMAR's drug control.

### Action to date to tackle NPS

11. HM Government's 2010 Drug Strategy '*Reducing demand, restricting supply, building recovery: supporting people to live a drug-free life*'<sup>9</sup> balances three key themes: reducing the demand for drugs; restricting the supply of drugs and supporting individuals to recover from dependence. The Strategy put in place a comprehensive action plan, which has developed year on year, reflecting new approaches and responding to emerging threats and challenges. Along with legislation, the strategy sought to further enhance the Government's response to prevention, treatment, information sharing and enforcement. The strategy considered NPS a “threat” from the outset and committed to introduce reforms to tackle the problem.
12. In addition to banning more than 500 new substances since 2010, to tackle NPS specifically the Government has taken a range of actions, including:
  - i. **International** - actively working with international partners to encourage them to tackle the production and supply of NPS.
  - ii. **Identification and information sharing** –

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<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/374844/ACMD\\_44\\_-DMAR\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/374844/ACMD_44_-DMAR_final.pdf)

<sup>9</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/118336/drug-strategy-2010.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118336/drug-strategy-2010.pdf)

- a. created the Forensic Early Warning System to identify NPS in the UK, to support forensic providers and law enforcement
  - b. created the Drugs Early Warnings System to collect data on NPS harms.
- iii. **Enforcement** - updated guidance to local authorities on taking action against head shops selling NPS using existing legislation, including detailed examples of the legislation available to trading standards officers. National policing guidance on NPS is available, together with updated guidance on drug offences with the Crown Prosecution Service to now include NPS.
- iv. **Health, prevention and treatment** – examples include launching a Public Health England tool-kit to support local areas' response to NPS with information on prevention, monitoring and information sharing, including responses to acute problems and treatment interventions. Developing awareness campaigns such as 'Rise Above', a new online resilience building resource aimed at 11-16 year-olds providing resources to help develop skills to make positive choices for their health, including avoiding drug use. Developing evidence-based online tools for educators and commissioners including the Alcohol and Drug Education and Prevention Information Service which provides practical advice and tools based on the best international evidence. Launched a NPS resource pack for informal educators and frontline practitioners to use to prevent drug taking amongst young people and with Central and North West London NHS Foundation Trust and Project NEPTUNE (Novel Psychoactive Treatment UK Network) developed evidence-based clinical guidelines covering assessment and treatment needs of NPS users, as well as information on clinical management of harms resulting from acute and chronic use of 'club drugs' and NPS including intoxication, withdrawal and dependence.

### The driver for legislation

13. Despite a far-reaching response to NPS, the Home Office recognised that more needed to be done, including whether, and if so how, UK drug legislation could be enhanced to specifically tackle NPS.
14. As a result, the Home Office appointed a multi-disciplinary Expert Panel in December 2013 to consider this issue. The Expert Panel reported in September 2014<sup>10</sup>. A similar expert panel was convened in Scotland by the Scottish Government who reported in February 2015<sup>11</sup> and the National Assembly for Wales' Health and Social Care Committee<sup>12</sup> undertook an inquiry into NPS reporting in March 2015. Each review received evidence, orally and in writing, from a wide variety of sources, including from professionals and the public, including NPS sellers. The method and outcomes of each review are covered in section B. In conclusion, each review recognised the limitations of current UK drug legislation to tackle NPS and recommended the creation of a blanket NPS prohibition.

<sup>10</sup> Home Office, 2014. New Psychoactive Substances Review. Report of the Expert Panel. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/368583/NPSexpertReviewPanelReport.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368583/NPSexpertReviewPanelReport.pdf)

<sup>11</sup> <http://news.scotland.gov.uk/News/Way-forward-to-tackle-NPS-1675.aspx#downloads>

<sup>12</sup> <http://www.assembly.wales/laid%20documents/cr-ld10147%20-%20report%20by%20the%20health%20and%20social%20care%20committee%20on%20the%20inquiry%20into%20new%20psychoactive%20substances/cr-ld10147-e.pdf>

15. HM Government responded to the report of the Expert Panel in October 2014<sup>13</sup> committing to consider the feasibility of a blanket prohibition, ensuring it is robust yet proportionate. The response also recognised that such an approach would be a significant step for UK drug policy, but one that was needed to respond to a different type of drug problem from that of previous eras, namely a continual evolution of new, varied and untested substances which shows no sign of abating.

### The global response

16. NPS are a global issue with the United Nations Office on Drugs and Crime (UNODC) reporting that 94 countries<sup>14</sup> from all regions (out of 103 who responded to their questionnaire in December 2013) had NPS present in their drugs market. According to the Expert Panel, NPS are generally produced in China and to a lesser extent India.

17. Unlike established drugs, NPS are not generally covered by international conventions. The exception is Mephedrone (already a class B in the UK) and nine other NPS after the UK secured international control of them under the UN conventions in March 2015.

18. There are a variety of legislative approaches taken to tackling NPS overseas – none have been formally evaluated. These include:

- i. **USA** - adopted an 'analogue' approach to enforcement against the misuse of new substances based on their effects on the brain - the Synthetic Drug Abuse Prevention Act 2012.
- ii. **Republic of Ireland** - the Irish Criminal Justice (Psychoactive Substances) Act 2010 makes it a criminal offence to "advertise, sell, supply, import or export a psychoactive substance (not otherwise excluded), knowing or being reckless that it is for human consumption". The Act codifies a blanket ban on the trade of NPS, and resulted in the closure of all 102 head-shops and all Irish-based websites supplying NPS. Similar approaches have been taken in Poland and Romania. No formal evaluation of impact of the legislation has been undertaken. Prevalence data for 2014/15 will be available in 2015, allowing for comparison of trends in NPS use since 2010/11.
- iii. **Romania and Poland** – intensive enforcement action against head-shops which closed 900 of the country's 1000 shops was accompanied by a blanket ban in 2010. No formal evaluation has been conducted; however the ban was associated with a fall in poisonings in the short term, falling from 258 cases in October 2010 to 60 the following month.<sup>15</sup>
- iv. **New Zealand** - the Psychoactive Substances Act 2013 established a full regulatory regime around the production, supply and sale of all NPS, requiring manufacturers to prove that their NPS products are low harm. This has been beset with difficulties, essentially resulting in a prohibition model whilst the regulatory regime is developed. The proposed regulatory regime, administered by the new Psychoactive Substances Regulatory Authority, will require the NPS market to be individually licensed and NPS products require a product approval based on evidence that they pose no more than a low risk of harm. An interim licensing regime for NPS products was developed covering products that had been on sale six months previously which had not demonstrated any harm to users. The initial

<sup>13</sup> <https://www.gov.uk/government/publications/response-to-expert-panel-report-on-the-new-psychoactive-substances-review>

<sup>14</sup> World Drug Report, 2014

<https://www.unodc.org/mwg-internal/de5fs23hu73ds/progress?id=zOKeZQTGHLpL5ezzifBhpeWc0BWz9aEm50JvMon3PuQ>,

<sup>15</sup> European Monitoring Centre for Drugs and Drug Addiction (2014), Drug policy profile: Poland, EMCDDA Papers, Publications Office of the European Union, Luxembourg. [http://www.emcdda.europa.eu/attachements.cfm/att\\_227226\\_EN\\_TDAU14003ENN.pdf](http://www.emcdda.europa.eu/attachements.cfm/att_227226_EN_TDAU14003ENN.pdf)

impact was that the number of NPS retail outlets fell from 3,000–4,000, which were mainly convenience stores, to 156 specialist stores, and the number of legally available NPS products fell from 200 to 47. In April 2014, all of these temporary licences were revoked by the Ministry of Health following reports of adverse effects from approved products and nuisance and crime around retail stores. At present, no NPS products can be legally sold in New Zealand until the regulations for the full testing process are in place and products can prove that they can pass. A separate ban on animal testing has now made assessing NPS products near on impossible so there is no certainty how this regime can recommence. As a result, New Zealand now has a blanket ban.

- v. **Australia** - recently passed the Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015 which created a criminal offence to import NPS into Australia. The Australian constitution meant that further action could only be taken at State and Territory level, for example, New South Wales has implemented legislation covering the wider supply of NPS.

## **A.2 Groups Affected**

19. The groups that will be affected by this legislation are as follows:

### **i. NPS sellers**

There are three main sources of NPS for users: online retailers, high street retailers and non-retail vendors such as friends, family and street-level dealers<sup>16</sup>.

#### Online

The best available data on the number of NPS internet retailers comes from the EMCDDA Snapshots<sup>17</sup> which aims to identify the online availability of NPS to users within the EU. The January 2013 snapshot identified 651 online shops selling NPS and shipping to at least one EU member state. The EMCDDA 2011 snapshot<sup>18</sup> reports that, out of the 631 online shops identified selling to the EU, 121 of these were likely based in the UK. These findings are supported by Schmidt *et al.*<sup>19</sup> who identified 115 UK-based websites selling a total of 1,308 NPS products and the National Crime Agency who estimated there to be between 100 and 150 UK-based websites on the 'clearnet' claiming to sell non-controlled NPS<sup>20</sup>.

The 'quality' of websites appears to differ widely with some reliably delivering orders and offering a complete 'customer experience', using offers and vouchers to promote products and providing a rating opportunity, whilst others are 'ghost sites' which advertise goods and take money, but have no intention of delivering a product. There seems to be a move by suppliers selling non-controlled NPS on the 'clearnet' to stay within the margins of current drug control legislation, with considerably fewer NPS products on open sale being found to contain controlled substances than was the case in 2011.<sup>21</sup>

<sup>16</sup> Smith, S.W. and Garlich, F.M. (2013) Availability and Supply of Novel Psychoactive Substances In: Dargan, P.I. and Wood, D.M. (Eds) (2013) *Novel Psychoactive Substances: Classification, Pharmacology and Toxicology* London: Academic Press

<sup>17</sup> EMCDDA (2014a) *European Drug Report 2014: Trends and Developments* Available: <http://www.emcdda.europa.eu/publications/edr/trends-developments/2014>

<sup>18</sup> EMCDDA (2011) *Online sales of new psychoactive substances/'legal highs': summary of results from the 2011 multilingual snapshots* Available: [http://www.emcdda.europa.eu/attachements.cfm/att\\_143801\\_EN\\_SnapshotSummary.pdf](http://www.emcdda.europa.eu/attachements.cfm/att_143801_EN_SnapshotSummary.pdf)

<sup>19</sup> Schmidt, M.M., Sharma, A., Schifano, F. and Feinmann, C. (2011) 'Legal highs' on the net – Evaluation of UK-based websites, products and product information *Forensic Science International* vol. 206 pp 92-97

<sup>20</sup> Home Office, 2014. *New Psychoactive Substances Review*. Report of the Expert Panel.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/368583/NPSexpertReviewPanelReport.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368583/NPSexpertReviewPanelReport.pdf)

<sup>21</sup> Home Office, 2014. *Annual report on the Home Office Forensic Early Warning System (FEWS): A system to identify new psychoactive substances in the UK*. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/344551/2014-08-12\\_-\\_FEWS\\_Annual\\_Report\\_Aug\\_2014\\_-\\_Final\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344551/2014-08-12_-_FEWS_Annual_Report_Aug_2014_-_Final_2_.pdf)



NPS may also be sold on the “darkweb” – websites not openly available on the internet which can only be accessed with anonymising software. Evidence currently suggests that ‘darkweb’ sites play a small role in the supply of NPS to users, with illicit drugs such as MDMA and cannabis, as well as firearms, being most popular due to the challenges obtaining such unlawful products from other sources<sup>22</sup>.

### High street retailers

The extent to which NPS makes up a retailer’s trade differs hugely. Some NPS retailers have a primary business (eg body piercing, tattooing, convenience stores and take away restaurants) where NPS are a secondary part of the business. Others, referred to as head-shops, are orientated around the provision of NPS or other drug associated paraphernalia, although the entirety of their turnover will not consist of NPS.

On the high street, head shops are anecdotally considered the principal seller of NPS. Some head shops have traded for many years selling a range of so called “alternative lifestyle products”, whilst others have opened following the emergence of NPS. There is very little robust evidence on the number of head-shops in the UK, nor on how many of them are selling NPS. The Angelus Foundation estimated that there are over 250 head-shops in the UK<sup>23</sup> in 2013, an estimate they produced by reviewing internet sites and discussions with Trading Standards officers. The Angelus Foundation acknowledges that this estimate may be inaccurate. As part of this impact assessment, a further survey of Police forces and local authorities was conducted to establish the number of establishments selling NPS nationwide; the results of this survey are discussed in section E.

As well as head-shops, there are also smaller sellers of NPS, who typically have a different primary trade as a tattoo parlour, sex-shop or newsagents. There is even less information on these small sellers than on head-shops as they are generally harder to detect than head-shops and sell relatively low volumes. While little information currently exists on the number of these establishments and the profit they derive from NPS, part of our survey of Police forces and local authorities was in reference to these establishments, the results are discussed in section E.

Sellers are currently allowed to sell NPS providing that:

- the substance does not contain any controlled drug;
- they do not breach the Intoxicating Substances (Supply) Act 1985 by selling an intoxicating substance to an under 18 year old;
- they comply with the General Product Safety Regulations 2005, including ensuring products are safe and clearly labelled (both with health warnings and ingredients); and
- comply with other legislation/regulation such as ensuring no anti-social behaviour, compliance with lease requirements etc.

Some NPS sellers operate respectable trading practices and have no desire to break the law; indeed they are compliant with legislative changes and actively monitor government communications about changes to drug classifications. Some retailers demand proof of age and refuse sale to intoxicated customers. The Expert Panel heard that the NPS industry was mooting developing a voluntary code of practice in early 2014, but nothing has emerged in the public domain. Other sellers, however, do not and a raft of legislative action has been taken against them for offences listed above. Specific guidance to local

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<sup>22</sup> Barratt, M.J., Lenton, S. and Allen, M. (2013b) Internet content regulation, public drug websites and the growth in hidden Internet services *Drugs: Education, prevention and policy* vol. 20 (3)

<sup>23</sup> <http://www.prnewswire.co.uk/news-releases/over-250-headshops-in-uk-are-selling-legal-highs-says-angelus-foundation-232476221.html>

authorities on the powers available against headshops was updated and issued in March 2015.<sup>24</sup>

## ii. Local authorities

Local authorities currently work in partnership with other local organisations, including the Police, to ensure local legal compliance of the known NPS market including ensuring there is no selling of controlled drugs, selling of drugs paraphernalia, breaching of the Intoxicating Substances (Supply) Act 1985, breaching of consumer protection regulations and that any anti-social behaviour associated with NPS retailers is effectively tackled.

## iii. Police

Police forces work with local authorities to ensure the NPS market is legally compliant. This includes the National Crime Agency.

## iv. NPS users

NPS have very limited legitimate uses. We propose specifically exempting professions who may have a lawful use of NPS from the new offence such as medical, research, catering and industrial uses. These users should not notice any change or any additional regulatory burden(s).

However, NPS are also used by members of the public for “lawful” highs. NPS may be both displacing (i.e. taking the place of illicit drugs) and/or supplementing existing drugs (i.e. being used alongside illicit drugs). According to the Expert Panel there are a number of different reasons why NPS users use NPS over traditional drugs, ranging from its legal status, its lower price, its availability and its perceived higher quality. A blanket ban would stop current and future users having lawful access to these substances and tackle any perceived belief that these substances may be harm free. There may be a risk that they could shift to using other illegal drugs, although the available evidence suggests that most NPS users already

## v. Health

NPS cause health harms with health and treatment providers providing emergency treatment through to addiction services for NPS. NPS deaths and treatment presentations are low when considered against illicit drugs but increasing. In 2013, there were 60 deaths where an NPS was mentioned on the death certificate against 1,957 deaths from drug misuse overall. However, there have been increases in NPS related deaths in England and Wales over recent years with a sharp rise from 29 to 60 deaths from 2011 to 2013<sup>25</sup> and there were 113 deaths from NPS in Scotland in 2013, although only 5 deaths solely involved NPS<sup>26</sup>. The majority of these deaths was attributed to substances now controlled under the Misuse of Drugs Act 1971 – for example, Mephedrone and Phenazepam.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/410961/Guidance\\_for\\_local\\_authorities\\_on\\_taking\\_action\\_against\\_10.03\\_15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/410961/Guidance_for_local_authorities_on_taking_action_against_10.03_15.pdf)

<sup>25</sup> <http://www.ons.gov.uk/ons/rel/subnational-health3/deaths-related-to-drug-poisoning/england-and-wales---2013/index.html>

<sup>26</sup> National Records of Scotland, 2013, *Drug Related Deaths in Scotland: 2013*, <http://www.nrscotland.gov.uk/files/statistics/drug-related-deaths/2013/drugs-related-deaths-2013.pdf> (Table NPS2 on page 66).

## B. Rationale

### Problem under consideration and rationale for intervention

20. The misuse of drugs, including new psychoactive substances, imposes costs on society in terms of health and local community harms. Consumption also imposes health costs on the users themselves. The market does not take into account the costs that misuse of these drugs imposes on society. Uncontrolled NPS are sold openly in high streets and over the internet, at low risk and high reward for suppliers and retailers. The delay between when a substance comes onto the market and when legislative action can be taken to control a substance of harm is considerable and is why further legal recourse is needed to stop the general sale of these substances.
21. According to the Expert Panel: *“the NPS market is now more responsive to legislation in a way that appears to be driving the availability, if not the development, of new NPS with the indication that the faster controls are put in place the greater the rate of new NPS coming to market and in some instances, the greater the potency of these products”*, whilst the current legislative framework was described by the National Assembly for Wales’ Health and Social Care Committee as *“inadequate and too inflexible”*<sup>27</sup>. Government intervention is therefore necessary to protect the public from their harmful effects.
22. Whilst other legislation exists that covers the availability of NPS, they have limitations. The Misuse of Drugs Act 1971 provides a mechanism to control NPS by controlling and preventing the non-medical use of certain drugs. This procedure takes at least several months, is resource intensive and requires an assessment of harms by the ACMD which are often unknown for new NPS. The Police Reform and Social Responsibility Act 2011 created Temporary Class Drug Orders, a new procedure added to the 1971 Act. These orders provide a quicker response (weeks rather than months) to NPS where there is little knowledge of harms in order to prevent it gaining a foothold in the UK, balancing swiftness of response against sufficiency of evidence. These Orders focus on supply only, and control a NPS for up to 12 months following initial assessment by experts while they review its full range of harms. However, these orders are entirely reactive and fully assessing harms in 12 months can be difficult. According to the Expert Panel, TCDOs reduce rather than solve the problem. With suppliers continuously developing new drugs which are chemically different from controlled substances and a time lag before they become subject to proper controls, the UK has to play catch up and potentially harmful drugs are permitted to be sold freely across the UK.
23. The Home Office sought expert advice in December 2013 to consider how UK drug laws could be strengthened to tackle NPS. The outcomes of that Expert Panel, and similar in Scotland and Wales are considered below with each reaching a similar conclusion.
- i. The New Psychoactive Substances Expert Review Panel**
- December 2013 - appointed by the Home Office.
- September 2014 - reported to the Home Office.
- October 2014 - HM Government written response to panel’s recommendations.

#### Remit

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Panel appointed to review the issue of NPS and provide recommendations to the Government in particular on whether, and if so how, the legislative framework for responding to NPS could be enhanced beyond the current approach under the Misuse of Drugs Act 1971, as well as looking at how health and education responses could be developed.

### Membership

The Expert Panel was comprised of representatives from: medicine, social science, forensics, enforcement (Police, Border Force and the National Crime Agency), local authorities, prosecution, and education/prevention including from the voluntary sector. Several international representatives from a similar range of fields were also included. Separate subgroups were also established to contribute to the Expert Panel's findings made up of representatives from different sectors: i) Treatment and Intervention, ii) Information Sharing and iii) Education and Prevention.

### Method

The panel met six times over a six month basis. The Panel considered nationally and internationally available evidence through a literature review and expert witness presentations including presentations from Ireland, the USA and New Zealand on the legislative approaches they had taken to NPS. Written submissions for the Panel were received from government departments, devolved administrations and parliamentary and non-parliamentary groups. Sub group chairs invited experts from their wider networks to join each of the subgroups, including representatives from charities and academia. A number of head-shops were approached to provide an insight into their businesses. This contributed to the deliberations of the expert panel and its subgroups.

### Outcome

The panel agreed there was no "silver bullet" approach and made 31 recommendations covering legislation, enforcement, intervention, treatment, prevention, education and information sharing. In relation to legislation, the panel recognised "the biggest challenge of NPS is having in place a legislative response that can respond to emerging substances in a timely and effective way". The panel considered a range of different legislative solutions (enhance MDA 1971, analogue, neuro-chemical, blanket prohibition, full regulation and restricted availability) and recommended the Government introduced a blanket prohibition that focuses on the supply with a schedule of exemptions and a mechanism to add to this list for newly emerging substances where risks of harm can be adequately assessed.

## **ii. The Scottish Government's NPS Expert Review Group**

June 2014 – established by Scottish Government

February 2015 – Expert Panel reported

February 2015 – Scottish Government's verbal response to panel's recommendations.

### Remit

To review the current legal framework available to Scottish public authorities in tackling the sale and supply of NPS and to look at international approaches with a

view to considering whether these might work in a Scottish context. In addition, to take a practical and operational approach to its work, and in that regard, suggested what additional guidance or other forms of support could be made available to assist enforcement and other agencies in tackling the sale and supply of NPS.

### Membership

The Group was Co-Chaired by Director for Safer Communities, Scottish Government and Deputy Director for Criminal Justice, Scottish Government. Other members were drawn from: Police Scotland, the Crown Office and Procurator Fiscal Service, the Law Society for Scotland, the Faculty of Advocates, local authorities, the Scottish Government, COSLA, and Trading Standards Scotland. Multi-disciplinary subgroups were formed on Criminal and Civil Law, Planning and Licensing and Consumer Protection and Trading Standards.

### Method

The Group first met in August 2014 and agreed its remit, meeting a further 4 times, including hearing first-hand of the work going on to tackle NPS. At its final meeting in January 2015, the Group presented its initial conclusions to Paul Wheelhouse MSP, Minister for Community Safety and Legal Affairs.

### Outcome

The Group concluded that there are a number of legal mechanisms potentially available to tackle the sale and supply of NPS, and noted some success in the application of the law to date. The Group made six recommendations including agreeing an accepted NPS definition, better forensic analysis, information sharing, greater use of license powers and guidance for front line enforcement practitioners. In relation to legislation, the Group considered there was real merit in considering a new offence to deal with the sale or supply of NPS. Particular consideration was given to the type of approach adopted in Ireland (blanket ban), and it was agreed this would be preferable to the other approaches adopted internationally.

### **iii. National Assembly for Wales - Health and Social Care Committee – Inquiry into New Psychoactive Substances**

March 2015 – report submitted to Welsh Government and Home Office

### Remit

The Committee decided to undertake an inquiry to establish a better understanding of the scale of the NPS problem in Wales and to “shine a light on the practical steps that need to be taken to reduce the use of such substances among the Welsh population”. Particular areas of focus included:

- how to raise awareness of the harms associated with the use of NPS among the public and those working in the relevant public services;
- the capacity of local services across Wales to raise awareness of, and deal with the impact of, the harms associated with NPS use;
- the effectiveness of data collection and reporting on the use of NPS in Wales and their effects;
- the possible legislative approaches to tackling the issue of NPS use, at both Welsh Government and UK Government level;

- how effectively a partnership approach to tackling the issue of NPS use in Wales is being coordinated, both within Wales and between the Welsh and UK Governments; and
- international evidence on approaches taken to NPS in other countries.

### Membership

Politicians from Wales from Welsh Labour, Welsh Conservatives, Welsh Liberal Democrats and Plaid Cymru.

### Method

The Committee consulted widely. Six oral evidence sessions were held with evidence taken from twenty-six witnesses from twenty-two organisations including local and national Police, local and national government, health practitioners and the third sector. Separately, twenty-two local, regional and national organisations provided written evidence for the Committee's consideration and a further seven provided written information, including from the European Commission and the Government of Ireland. To inform the inquiry, the Committee also visited Caerphilly, Merthyr Tydfil and Wrexham to speak with service users and providers. The Committee also hosted two focus groups to ensure that those with direct experience of the impact of NPS use were able to share their views. To establish a better understanding of the prevalence of NPS use in Wales and the level of public awareness about NPS, the Committee conducted a public survey during summer 2014 which received 1,072 responses.

### Outcome

The Committee has made 14 recommendations to the Welsh Government covering information sharing, awareness raising, education including for parents and healthcare best practice. In relation to legislation, the Committee welcomed the creation of a blanket NPS ban and recommended that the Welsh Minister for Health and Social Services works closely with the UK Government to ensure early action is taken post election and agreed that the current legislative framework to tackle NPS was inadequate and too inflexible. They heard potential issues arising from a blanket ban, however, they concluded that a blanket ban was their preferred method for strengthening legislation.

## **C. Objectives**

The policy objectives are to protect UK citizens from the harms posed by untested, unknown and potentially harmful NPS sold by various outlets whilst ensuring a proportionate yet robust response to the problems caused by NPS.

24. The intended effects are the end of the legal sale of NPS from high-street retailers and UK based websites, reducing NPS availability; greater public awareness of the risks of NPS from a clear legal stance; and a reduction in the harmful consumption of NPS.

## D. Options

25. The Expert Panel considered possible legislative responses to tackle NPS including the current system under the Misuse of Drugs Act 1971, outlining the principle of each along with their potential opportunities and risks. The salient points are summarised below.<sup>28</sup>

Option	Principle	Opportunities	Risks
Misuse of Drugs Act 1971	Control substances once their harm has been assessed.	<p>Known system with case law</p> <p>Does not criminalise possession of NPS</p> <p>Voluntarily compliance among retailers – retailers obtain legitimacy in return for compliance with higher safety standards.</p> <p>Testing of substances only needs to prove it's a controlled drug rather than psychoactivity</p>	<p>Legislation may be driving the development of new NPS, including potentially more dangerous substances.</p> <p>Reactive approach including a knowledge time lag.</p> <p>Difficult for enforcement agencies to distinguish between controlled drugs, non-controlled NPS and temporarily controlled drugs, especially more complex samples.</p> <p>Difficult to take enforcement action against non-controlled NPS – alternative legislation that is being used was not designed for the NPS market.</p> <p>Continued perceived perception that “legal” drugs are safe.</p> <p>Unknown current and future health and social costs.</p>
Analogue	Controls substances based on the concept of “chemical similarity”.	<p>Deterrent effect could reduce supply and so reduce use</p> <p>Uncertainty over legality may deter sellers and users</p> <p>Once legal issues are worked through, a fairly comprehensive definition should be caught.</p> <p>May avoid need for repetitive drug controls</p> <p>Could potentially capture a wide number of substances.</p>	<p>No legal certainty that new substances would be illegal</p> <p>This approach could still drive the development of the market – potentially the creation of more dangerous substances.</p> <p>No evidence that analogue approach (which is used in the USA) has reduced NPS use</p> <p>Uncertainty over drug's legal status until proven in court</p> <p>Increase in demand for scientific experts to categorise substances – including possible battle of experts in court</p> <p>Confused public messaging – some NPS would remain “legal”</p> <p>Possible increase in CJS costs due to potential complexity in bringing a case.</p>
Neuro-chemical	Controls substances based on either i) their effect on the brain, or ii) their chemical structure – eg synthetic	<p>Could remove synthetic cannabinoids from open sale.</p> <p>Greater enforcement powers to tackle these substances.</p> <p>Relatively simple tests to determine psychoactive effect.</p>	<p>Could see displacement to other NPS products which will remain available – which may be more harmful.</p> <p>May see products developed which can evade the legislation</p> <p>May see growth of lower strength products.</p>

<sup>28</sup> All opportunities and risks identified by the expert panel can be found in [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/368583/NPSexpertReviewPanelReport.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368583/NPSexpertReviewPanelReport.pdf)



	cannabinoids	<p>Less need for experts in courts.</p> <p>Better defined than analogue – simple message.</p>	<p>Reactive</p> <p>Enforcement issues for other non-controlled NPS would remain.</p> <p>New testing process to be put into place.</p> <p>Need clear messaging to explain the approach – may not be easily understood by the public.</p>
General prohibition	Bans the supply including importation and exportation, of all psychoactive substances not specially controlled or exempted.	<p>Reduction in the availability and supply in NPS as all UK based retailers would not be able to supply them.</p> <p>Pro-active and future proof.</p> <p>Possible closure of headshops will make NPS less visible and remove its attention.</p> <p>Possible reduction in ASB behaviour associated with NPS retailers.</p> <p>Simple – not as complex as other legislative options.</p> <p>Could allow other future less harmful products to be exempted.</p> <p>Removes distinction between controlled and non-controlled drugs.</p>	<p>Drugs are no longer controlled on the evidence of harms.</p> <p>Risk of displacement to the internet and organised crime groups.</p> <p>Loss of any responsible retailing practices that may have existed in headshops.</p> <p>Clear definition determining psychoactivity of a substance would be required and could be open to legal challenge.</p> <p>Exemptions may not cover all legal products.</p> <p>Loss of (unknown) tax revenue from banning NPS sales.</p> <p>Risk of harms if users are displaced to other substances such as controlled drugs.</p>
Full regulation	Restriction on importation, manufacture and supply of new psychoactive substances, only allowing the sale of substances that can meet manufacturing and safety requirements and are deemed “low risk”.	<p>Availability, density, location and visibility of NPS could be controlled.</p> <p>Can drive good standards by removing licenses for non compliance.</p> <p>Possible self regulation by headshops to maintain/raise standards.</p> <p>Up to producers to prove “low harm” so reduces the burden of proof.</p> <p>Possibility for greater harm reduction messages, including on packages.</p>	<p>Does nothing about the availability of NPS and use of “approved” NPS may increase with “low risk” considered “safe”.</p> <p>Possibility that approved NPS may act as a gateway to illicit drugs.</p> <p>Risk of unregulated drugs being passed off as regulated.</p> <p>Regulatory body would need to be created – potentially costly.</p> <p>Challenging enforcement including need for substance testing and test purchases.</p> <p>Difficult to prove long term safety before products are authorised.</p> <p>Different harms depending on how “low risk” is defined.</p> <p>Legal risk if “low risk” products cause long term harms.</p>
Restricted availability	Restrictions around open sale of NPS including the licensing of retail outlets and controls around labelling, advertisement, place of sale, age and volume.	<p>Easier to take action against those operating outside license regime.</p> <p>Cost of licensing and compliance could be funded through a licence fee.</p> <p>Face to face service – so ensure no sale to under 18s.</p> <p>Licenses could be revoked for non-compliance.</p>	<p>Risk that untested, non-controlled NPS would still be sold unlawfully in high streets.</p> <p>Licensing may provide tacit approval and perception of safety.</p> <p>Products may not be tested or assessed so the harms of NPS would not be addressed.</p> <p>Ongoing need to test and identify controlled substances.</p> <p>NPS would still need to be controlled on a</p>

26. The Expert Panel additionally commented on the feasibility of each legislative option and whether it should be adopted in the UK. The Panel used the following guiding principles to inform its assessment and recommendations:

- align with the Government's 2010 Drug Strategy;
- reduce harms through early warning, prevention, early intervention, treatment and knowledge sharing, clear communications and legislation;
- protect individuals from the risks posed by untested, unknown and potentially harmful substances;
- provide a proportionate response supported by the evidence base which also minimises unintended negative consequences including legitimate development of medicines and other products;
- tackle the NPS market by responding to the ease of availability which portrays the message that drug use is acceptable and can undermine public confidence; maximising opportunities for compliance by the NPS retail market; increasing the risk and lowering the reward in the market; increasing successful outcomes of enforcement and prosecution actions; and limiting the involvement of organised crime and the interaction with the illicit drugs market;
- maintain/develop an effective and dynamic drug control mechanism by utilising the existing framework for controlling harmful drugs informed by advice from the ACMD through individual drug listings, broad (generic) definitions for families of NPS and, where required, rapid (temporary class drug order bans) responses;
- remove the risk that the legislative response drives the evolution of the NPS market;
- minimise the risk of successful legal challenge; and
- minimising overall costs and complexity to enforcement agencies and others.

The salient points from the Expert Panel's review of each option are below<sup>29</sup>:

Option	Summary of panel's conclusions
Analogue	<ul style="list-style-type: none"> <li>• Would not meet guiding principles.</li> <li>• Would not develop current drug control mechanisms.</li> <li>• Would not reduce the visible availability of NPS in the everyday high street/retail environment.</li> <li>• Could drive the evolution of new NPS.</li> </ul>
Neuro-chemical	<ul style="list-style-type: none"> <li>• Could be a potential mechanism for controlling synthetic cannabinoids and would meet a number of the guiding principles.</li> <li>• Would remove the risk of legislation driving the evolution of synthetic cannabinoids.</li> <li>• Possibility that sellers and consumers would not know the legal status of particular NPS – would cover substances which act on the CB1 receptor.</li> </ul>
General prohibition	<ul style="list-style-type: none"> <li>• Considered the approach that could best address the review's guiding principles.</li> <li>• Would respond to the widespread availability.</li> <li>• Remove the risk that legislation is driving evolution of NPS market.</li> <li>• Maximising opportunities for compliance including minimising complexity.</li> </ul>
Full regulation	<ul style="list-style-type: none"> <li>• Could meet some of the guiding principles including reducing harm, protect</li> </ul>

<sup>29</sup> Full conclusion by the expert panel can be found in [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/368583/NPSexpertReviewPanelReport.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368583/NPSexpertReviewPanelReport.pdf)

	<p>individuals from risk, reduce the ease of availability and would maximise compliance opportunities.</p> <ul style="list-style-type: none"> <li>• Issues with the model working in practice. For example, it would not develop an effective and dynamic control mechanism, would be difficult to define “low risk” which will create communication challenges and supporting infrastructure would take time and money to establish.</li> <li>• Such a system has not yet been fully implemented successfully in any country despite best efforts.</li> </ul>
Restricted availability	<ul style="list-style-type: none"> <li>• Would not sufficiently address the guiding principles.</li> <li>• Approach would fail to protect individuals from the risks of untested NPS and does not address the open sale.</li> <li>• Would not address the possibility that legislation could drive NPS market evolution.</li> <li>• May send confusing public messages.</li> </ul>

27. The Government, based upon the recommendation from the Home Office’s Expert Panel and supported by the outcomes of the Scottish Government’s Expert Panel and the Welsh Assembly’s Inquiry, and considering overseas approaches, therefore wishes to legislate to ensure that the supply of substances which have a psychoactive effect will be a criminal offence by introducing a blanket ban.

28. The purpose of proposed new legislation is to place a clear legal framework around NPS that are not, or not yet, controlled under the 1971 Act, on a general rather than substance by substance basis. The Government will still seek to control specific identified NPS through this Act once their harms have been properly assessed. We would expect the current need to add to the controlled drug list (with 2-3 Statutory Instruments per year) to slow down albeit not be removed.

29. The Irish Act is widely seen, including by the Home Office’s and Scottish Government’s Expert Panels and the Welsh Assembly’s Inquiry, as a model which should be adopted in the UK. Representatives of the Government of Ireland gave evidence to each inquiry to explain their approach and the reasons why. The blanket ban has been in place since 2010 and has closed down all known public NPS retailers. The Act has not been formally evaluated by the Irish Government; however, a report is expected during the summer 2015. On hearing the evidence, both expert panels and the Welsh Inquiry recommended that this approach should be taken.

### **Option 1 – Make no changes at present (do nothing)**

Do nothing, leaving the sale of NPS to be regulated by the Misuse of Drugs Act 1971 and allow local authorities and Police to use existing legislation not specifically designed for the NPS market to take action against headshops and other NPS retailers for unlawful behaviour.

### **Option 2 – Legislate to create a new criminal offence for the supply and importation of NPS.**

To create a new criminal offence, across the UK, to criminalise the supply of NPS – this includes the sale (whether or not for profit), importation, exportation and production. Appropriate enforcement powers will be provided including the power to enter, search, seize and destroy NPS. The legislation will provide proportionate and scalable civil and criminal sanctions including custodial sentences. The proposed definition of a psychoactive substance will be kept deliberately broad. Such a wide ranging approach, reliant upon showing a psychoactive effect as opposed to a particular chemical structure, will inevitably capture substances which are currently lawful and have legitimate uses (for example, both caffeine and alcohol would fall foul

of such a broad definition). Rather than complicate or confuse the definition of NPS by introducing provisos and exemptions into the definition, we will include a separate list of exemptions covering both substances and professions which can be amended by Statutory Instrument. Finally it should be noted that this Option will not make possession of NPS an offence, its sanctions are limited to the supply and importation of NPS.

## E. Appraisal

30. The following appraisal considers the costs and benefits associated with the implementation of the proposed policy option in comparison with the baseline 'do nothing' option. General assumptions and data used throughout the analysis are set out below. Further risks associated with the different options are laid out in Section F.

### GENERAL ASSUMPTIONS AND DATA

31. The Home Office has relied on the evidence gathering of the Home Office's Expert Panel, the Scottish Government's Expert Panel and the Welsh Assembly's Inquiry, who each heard evidence from a variety of local, national and international representatives including head-shops.

32. In order to learn more about the NPS market across the UK, the Home Office conducted a data gathering exercise. In March-April 2015 the Home office approached different stakeholders with a tailored survey, designed to gather information on the size of the UK NPS market, the level of enforcement activity already underway to tackle NPS sale and the trade of UK head-shops and NPS sellers. A tailored survey was emailed to:

- i. UK Police forces through the Drug Advisory Group and devolved administrations - 15 responses were received.
- ii. UK local authorities through the Association of Chief Trading Standard Officers and devolved administrations – 74 responses were received.
- iii. Head-shops by the Home Office to 54 head-shops across the UK whose email addresses were obtained either through a search on [www.headshopfinder.com](http://www.headshopfinder.com) or following a Google search for "NPS/legal high retailers in the UK" – 2 responses were received, one of which did not answer any of the questions posed.
- iv. The Alternative Trade Association (ATA), the unofficial representative body for head-shops.

This approach was judged to be the most appropriate way to gather information from Police forces, local authorities and head-shops. However, we acknowledge that there are a number of limitations of this approach:

- We do not know if non-responding areas are similar to areas that did not respond. It is highly likely that responses were biased towards Police Forces and Local Authorities with the greatest NPS problems, and so extrapolating from their responses could overstate the scale of the NPS trade nationally.
- Some questions were only completed by a small number of respondents.
- Some questions asked for estimates or opinions, and we are unable to verify the reliability of these estimates. Police Forces and Local Authorities will perhaps be unable to reliably estimate aspects such as turnover/profit without access to detailed information from head-shops themselves.
- Despite repeated requests, we did not receive a response to the survey sent to the ATA. We received one response from them seeking further information so the email account was active.

A summary of the results of this evidence gathering is below, much of which is used to inform the key assumptions.

## The Production of NPS

33. The expert panel review<sup>30</sup> suggests that no actual manufacture of NPS takes place in the UK and that instead these chemicals are imported from India and China. Based on engagement with stakeholders and experts, we believe that these chemicals are then packaged and distributed by UK or EU companies<sup>31</sup>, and that these companies also sell directly to the public. We are therefore assuming that there are no additional UK importers or distribution businesses beyond those identified by our survey of Police forces and local authorities, or implied through the NCA estimates of online sellers.

## The Number of sellers of NPS

34. In seeking to establish the number of NPS selling businesses, four factors are important:

- Firstly, the number of head-shops in the UK. Head-shops are counter-cultural stores associated with the sale of drug paraphernalia and associated cultural items.
- Secondly, the share of head-shops which sell NPS. Many, although not all, head-shops sell NPS, it is only these NPS selling head-shops which we are concerned with.
- Thirdly, the number of online sellers of NPS.
- Finally, the number of sellers of NPS who also have a separate primary business (e.g. tattoo parlour or piercing shop).

35. To estimate the number of head-shops and the share which sell NPS, Police forces and local authorities were asked to provide the number within their local area, and head-shops were asked to identify the number of branches their company ran:

- 13 Police forces estimated a total of 140 head-shops, of which approximately 118 sell NPS.
- 73 local authorities estimated a total of 164 head-shops, of which approximately 86 sell NPS.
- No head-shops provided an answer to this question.

36. We used the above estimates of the number of head-shops, combined with population data to generate an implied number of head-shops per million people of 8.9 based on the average of figures provided by local authorities, and 7.3, based on the average of figures provided by Police forces<sup>32</sup>. This figure was used to estimate the number of head-shops in areas where the Police or local authority didn't respond to the survey. Based on the population of those areas<sup>33</sup>, we estimate approximately 370 head-shops, based on local authority figures, and 330 head-shops, based on Police figures, *in addition* to those actually identified by the local authorities and Police forces.

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<sup>30</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/368583/NPSexpertReviewPanelReport.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368583/NPSexpertReviewPanelReport.pdf), page 9.

<sup>31</sup> Ibid.

<sup>32</sup> Using 2013 ONS Population Estimates: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-322718>.

<sup>33</sup> Approximately 19.4m of the population was covered by Police responses, and 13.2m by local authority responses. Based on a current UK population of 64.1m, the population not covered by Police responses is 44.7m, and by local authority responses is 50.9m.

37. Our survey also gives an indication of the share of head-shops which sell NPS. Based on the information above, 84%<sup>34</sup> of head-shops sell NPS (based on Police figures) and 52%<sup>35</sup> sell NPS (according to Local authority figures). We apply these ratios to our estimate of the number of head-shops in the rest of the country to generate the number which sell NPS: we estimate approximately 270 NPS-selling head-shops using Police figures and 190 using local authority figures, again in addition to those actually identified by the local authorities and Police forces.

38. The above estimates of NPS selling head-shops in the rest of the country are then combined with the numbers directly identified by Police and Local authorities to generate the total number of NPS selling head-shops. The total number of NPS selling head-shops in the UK is 390, derived from Police force estimates; and 280, derived from local authority estimates. This is higher than the figure estimated by the Angelus foundation, at 250; although the Angelus foundation did suggest that this was a minimum figure and that the reality is likely higher. We sought confirmation from the Alternative Trade Association (the unofficial trade body for the sector) and from the head shops who were emailed as part of the survey. No responses were received. **For our best estimate, we use a mid-point of our two estimates: 335 high-street head-shops.**

39. The number of online sellers of NPS represents a separate problem. As discussed above, the only estimates of the number of UK suppliers provided are 100 to 150 according to the NCA<sup>36</sup> and 115 according to an analysis by Schmidt et al<sup>37</sup>. The range provided in the NCA's estimate goes some way towards corroborating the figure presented in the published research. **For our best estimate, we use the estimate provided by Schmidt: 115.** This implies a best estimate of the total number of NPS sellers in the UK of 450. The table below summarises these calculations for clarity.

	Low Estimate	Best estimate	High Estimate
Total Number of High-street NPS-selling Head-shops	280	335	390
Actual Number of NPS-selling Head-shops	86		118
Estimated Number of NPS-selling Head-shops in the rest of the country	190		270
NCA ranged estimate of the number of online NPS sellers	100		150
Schmidt et al estimate of the number of online NPS sellers		115	
<b>Total Number of NPS sellers in the UK</b>	<b>380</b>	<b>450</b>	<b>540</b>

40. Finally, information gathered in the survey suggests that a number of miscellaneous businesses, such as newsagents, sex-shops and tattoo parlours also provide NPS on an ad-hoc basis. Establishing the number of these establishments is more difficult than establishing the number of head-shops. This is due to these sellers' low visibility compared to head-shops (meaning their number is difficult to establish), their low levels of stock and their intermittent sales. Despite this, 43 respondents to our survey

<sup>34</sup> 118 (Head-shops which sell NPS according to Police responses) / 140 (Total Number of head-shops according to Police responses) = 84% (Share of head-shops which sell NPS according to Police responses)

<sup>35</sup> 86 (Head-shops which sell NPS according to Local Authority responses) / 164 (Total Number of head-shops according to Local Authority responses) = 52% (Share of head-shops which sell NPS according to Local Authority responses)

<sup>36</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/368583/NPSexpertReviewPanelReport.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368583/NPSexpertReviewPanelReport.pdf)

<sup>37</sup> Schmidt, M.M., Sharma, A., Schifano, F. and Feinmann, C. (2011) 'Legal highs' on the net – Evaluation of UK-based websites, products and product information *Forensic Science International* vol. 206 pp 92-97

of local authorities provided an answer on the number of small sellers of NPS, identifying 35 overall. This implies approximately 3.4 small scale sellers per million of the population, leading to an estimate of approximately 210 sellers nationwide. There is no indication of the level of profit that is derived by these sellers from selling NPS; however we assume that due to their small sales these establishments are responsible for a minority of the profit generated from NPS. As a result, excluding them from the analysis in this impact assessment should not significantly weaken our estimate of the proposed policy's impact on business.

### Annual Head-shop turnover

41. Police forces, local authorities and head-shops themselves were all asked about typical annual head-shop turnover<sup>38</sup>. Ten responses were received:

- Six estimates of average turnover were received from the Police. One estimate, at £2.6m per year, is excluded from this analysis as an outlier, being double the next lowest estimate and nearly 20x the median estimate of typical turnover. Furthermore, the estimate was based on one shop, which was later prevented from selling NPS by the Police. It was thought that including this particularly high figure in the overall estimate would bias the figure upwards, reducing its accuracy.
- The remaining 5 Police responses produce an average of approximately £570k.
- Three estimates were received from local authorities, giving an average of approximately £90k.
- One turnover figure was received from an online head-shop owner: approximately £50k.

It is possible that local authority and Police responses may be biased upwards, as they are more likely to respond to the survey if they are currently facing a problem with NPS.

42. These responses give very different indications as to the average turnover of a head-shop. This is due to both the limited number of responses, itself evidence of the difficulty of gathering information on this industry, and the high degree of variation in the head-shop market. Some head-shops, particularly those engaged in the importing and packaging activities described above, are believed to generate large turnovers, other smaller operations generate much smaller turnovers. An attempt was made to obtain additional information on company turnover through Companies House; however NPS companies are generally too small to be required to provide significant financial information. We therefore form an estimate on the basis of the information provided in response to our survey.

43. To reach an estimate of the average turnover for head-shops, we first consider how best to form an average of the estimates provided. A simple un-weighted average (i.e. mean) of the nine valid responses would not be appropriate. The fact that the Police estimates of turnover are much higher than the head-shop and local authority estimates might be because the Police focus their limited resources primarily on the larger operators in the market, as would be expected. This would mean that their average of £570K is not representative of the typical head-shop, and we would therefore not want to over-represent this in our overall estimate of the average turnover. The most reliable figure is probably the one estimate provided by a head-shop, as this is the only figure provided directly by the industry. We would therefore wish to provide more weight to this figure than a simple average would allow. As the head-shop is an online retailer, which might generate different profits to high street retailers, we look to the proportion of the total industry that is online retailers to

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<sup>38</sup> For all sales, not just NPS.



determine the appropriate weighting. This is particularly appropriate given that the Police and local authorities might not consider online retailers when forming their estimates, because they are perhaps less likely to engage with online retailers compared to head-shops that present a physical presence on the high street. Using our best estimates of 115 online retailers compared to 335 high street head-shops, we get a weighting of about a quarter for the head-shop response (£50K). We divide the remaining three-quarters of the total weighting equally between the local authority and Police averages (£90K and £570K respectively) to we arrive at a **best estimate of £260K for the average annual turnover of a head-shop**. In the absence of any information on trends in consumption, we assume that this level of turnover remains fixed for the 10 year period being evaluated.

### Share of Head-shop turnover made from NPS

44. As well as asking for estimates of total head-shop turnover, we also asked local authorities, Police forces and head-shops what share of head-shop turnover is made from NPS. We only received two answers to this question. One Police force estimated 90% and one local authority estimated 50%. The one head-shop response failed to address this question. **Our best estimate is based on the average of these two figures, which is that 70% of head-shop turnover is from NPS sales.**

### Head-shop profit from the sale of NPS

45. Finally, we also asked how much profit head-shops typically generate from turnover on NPS. Most of the Police forces and local authorities that provided an estimate estimated the mark-up or the profit margin, rather than the actual amount of profit. For simplicity, we translate all figures into a mark-up, which is used to estimate the total profit. Additionally, these estimates of mark-up do not account for costs beyond the supply cost of the NPS itself, such as overheads and wages. We attempt to include these costs below.

46. Altogether, six mark-up or profit margin estimates were provided:

- One local authority estimated a mark-up of 15%, which was the lowest estimate received. A 15% mark-up would translate to a lower net rate of return<sup>39</sup> than the current UK average for retail companies, which is 14.8%<sup>40</sup>. This is surprising, given the legal and ethical issues surrounding NPS. We expect these issues to discourage firms from entering the market, resulting in lower competition and higher profits than the UK retail average. As a result, we do not consider 15% a representative estimate of profit margin for the whole of the UK and exclude it from informing our ranged estimate of profit resulting from NPS and from influencing the average estimate of mark-up.
- Another local authority estimated a turnover of between £10-15k, and a profit of £3-5k. Taking the mid-points of these two ranges implies a profit margin of 32%, which translates to a mark-up of 47%.
- The sole head-shop respondent estimated a profit-margin of 30%, which translates to a mark-up of 43%.
- Another local authority estimated a mark-up of 150%.
- The highest estimate we received was from a local authority which estimated a mark-up of 400%. This is considerably higher than the other estimates and seems unlikely to be representative of the typical mark-up. In line with the treatment of the

<sup>39</sup> Rate of return = Profit margin x (Sales / Average Assets).

<sup>40</sup> <http://www.ons.gov.uk/ons/rel/pnfc2/profitability-of-uk-companies/q3-2014/rft-pnfcs-ror-tables-q3-2014.xls>

15% estimate, we exclude it from informing our ranged estimate of profit and from influencing the estimate of average mark-up.

- The only Police force estimate was a 25% mark-up.

**Excluding the outliers of 15% and 400%, the average of these estimates is a 66% mark-up, which forms the basis of our best estimate.<sup>41</sup>**

47. Finally, we need to take into account costs to sellers of NPS beyond the cost of NPS itself, such as rent and wages. While the number of employees was one of the questions asked of Head-shops, the lack of responses means we will need to make a series of assumptions in order to take these costs into account. In order to ensure we don't over-estimate the costs involved and therefore under-estimate the lost-profit we assume that head-shops typically employ one full time equivalent (FTE) at the median salary for a retail employee: £12,557<sup>42</sup>. We apply a standard assumption of an additional 30% to account for overheads<sup>43</sup>. **This gives us an overall estimate of £16,325 in overhead costs, which we apply to each NPS-selling establishment.**

48. After generating our assumptions for the size and nature of the NPS industry, we attempted to have them confirmed by both the ATA and our sample of head-shops. No substantive responses were received.

## **COSTS AND BENEFITS**

### **Option 1 – Make no changes at present (do nothing)**

#### **COSTS**

49. There are no direct additional costs resulting from this option. NPS will continue to be sold legally in the UK, subject to some NPS continuing to be scheduled under the Misuse of Drugs Act 1971. There is also the risk that consumption of NPS and the related health and social costs would increase should these substances increase in popularity.

#### **BENEFITS**

50. There are no additional benefits resulting from this option. Members of the public currently consuming NPS and businesses currently selling NPS will continue to be able to conduct these activities.

### **Option 2 – Legislate to create a new criminal offence for the supply and importation of NPS.**

#### **COSTS**

51. Costs as a result of Option 2 fall primarily on business and consumers, although there will be some additional costs to the public sector.

#### **Costs to Business**

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<sup>41</sup> It should be noted that because only four values are used to calculate this average, the head-shop response is given the same weighting (one quarter) as it was in the calculation of the average total annual turnover of a head-shop.

<sup>42</sup> Based on ASHE 2013, Retail trade, except of motor vehicles and motorcycles, 2013. Up-rated to 2015 prices using the GDP deflator.

<sup>43</sup> International Standard Cost Model page 19, <http://www.oecd.org/gov/regulatory-policy/34227698.pdf>

52. Option 2 will prevent businesses from legally selling NPS, resulting in the loss of profit generated by this activity. As discussed above, it is extremely difficult to estimate the size of the UK market for NPS and the level of profit it produces. However based on available information, we attempt to provide a ranged estimate, based on the lowest and highest possible figures, together with a best estimate:
53. The first issue in estimating total profit from the sale of NPS is the number of NPS-selling establishments. Based on information provided by local authorities and Police forces discussed above, we estimate there to be between 280 and 390 high-street head-shops. For our best estimate, we use the mid-point: 335 This is in addition to the 100 to 150 online sellers; we use the former for our low estimate, the latter for our higher and 115 for our best estimate.<sup>44</sup> This means the total number of establishments is estimated to be between 380 and 540, with a best estimate of 450. In addition to head-shops and online sellers there are approximately 210 small establishments, for whom NPS is not one of their main sources of revenue. For the reasons discussed above, it is exceptionally difficult to estimate the profit of these small sellers; and as a result they are not included in the assessment here.
54. Secondly, we need to estimate the average turnover per establishment. We use the local authorities' average estimate of £90k as a low estimate and the Police forces average estimate of £570k as a high estimate. Our best estimate is generated using an appropriately weighted average of the available estimates: £260k.
55. The next step is to establish the share of turnover which is derived from the sale of NPS. We have two estimates: 50% and 90%. We use the former for our low estimate, the latter for our high estimate and the mid-point: 70%, for our best estimate.
56. **Our chosen figures therefore generate a low estimate of total annual NPS turnover for the industry of approximately £17.7m<sup>45</sup>, a high estimate of £278.3m<sup>46</sup> and a best estimate of £82m<sup>47</sup>.**
57. We then apply an estimated mark-up, in order to estimate gross profit from NPS. Our low estimate is a mark-up of 25%, implying a profit margin of 20%; our high estimate is a mark-up of 150%, implying a profit margin of 60%; and our best estimate is a mark-up of approximately 66%, implying a profit margin of approximately 40%.
58. **These different mark-up estimates result in an estimated range of the gross annual profit generated from NPS of £3.5m<sup>48</sup> to £167m<sup>49</sup>, with a best estimate of £32.6m<sup>50</sup>.**
59. Our best estimate implies an **Equivalent Annual Net Cost to Business (EANCB) of £25.7m a year.**
60. The low and high estimates of lost profits should be treated as extreme values, and unlikely to be representative of the cost to business of this option. They reflect the cumulative effect of downside or upside uncertainty in several assumptions. It is unlikely that the 'true' values of these different assumptions will *all* be high or *all* be low simultaneously. In particular, the highest estimate should be treated with caution, as it only uses figures supplied by Police forces. As discussed above, the Police will be most interested in the bigger operators in the market and their estimates are therefore likely to be influenced by the relative over-exposure that they have to these sellers. In order to provide a more meaningful picture of how the best estimate of the

<sup>44</sup> Schmidt, M.M., Sharma, A., Schifano, F. and Feinmann, C. (2011) 'Legal highs' on the net – Evaluation of UK-based websites, products and product information *Forensic Science International* vol. 206 pp 92-97

<sup>45</sup> 380 (number of NPS sellers) x £90k (estimate of average turnover) x 0.5 (share of turnover derived from NPS) = £17.7m.

<sup>46</sup> 540 (number of NPS sellers) x £570k (estimate of average turnover) x 0.9 (share of turnover derived from NPS) = £278.3m.

<sup>47</sup> 450 (number of NPS sellers) x £260k (estimate of average turnover) x 0.7 (share of turnover derived from NPS) = £82m.

<sup>48</sup> £17.7m (low estimate of turnover) x 0.2 (low estimate of profit margin) = £3.5m.

<sup>49</sup> £278.3m (high estimate of turnover) x 0.6 (high estimate of profit margin) = £167m.

<sup>50</sup> £82m (best estimate of turnover) x 0.4 (best estimate of profit margin) = £32.6m.

cost to business changes as *individual* assumptions change, we have conducted a sensitivity analysis in section F.

### Costs to Individuals

61. Those individuals currently consuming NPS will no longer be able to do so legally, meaning they would no longer be able to derive any satisfaction obtained through its use.

### Costs to the Criminal Justice System

62. There will be additional costs to the Criminal Justice System resulting from prosecutions under the new law. The experience of Ireland suggests that most headshops will comply with the ban without enforcement action being necessary, Ireland having had a minimal number of prosecutions since the ban was introduced in 2010. To ensure that enforcement actions are proportionate, a sliding scale of sanctions are planned, with the action taken accelerating in response to repeat offenders and those responsible for particularly serious harms. There will be four avenues for enforcement available to the Police: seizure of NPS, a prohibition/premises notice, a prohibition/premises order and a criminal offence for the production, importation, exportation, possession with intent to supply and supply of NPS. There will also be two supporting offences, which will prohibit people from obstructing an officer exercising a search warrant or conducting a stop and search. As well as individuals, corporations will also be liable for these crimes, creating the possibility that a company's director could be prosecuted for the above offences.
63. Descriptions of the different measures, together with some estimates of costs are outlined below. It should be noted that the figures provided are based on costs in England and Wales, whereas enforcement actions will take place across the UK. Enforcement costs in Northern Ireland or Scotland could be higher or lower than those provided.

#### Seizure/forfeiture:

64. Police will be able to seize NPS and items that can be reasonably thought to be relevant evidence for offence(s) from individuals and businesses. There will be no direct additional costs to the Criminal Justice System as a result of this measure. Applications for an order can be made to a magistrates' court in England and Wales, the sheriff in Scotland and a court of summary jurisdiction in Northern Ireland to: i) in the case of owners, to contest the item(s) forfeiture, ii) in the case of law enforcement officers, to seek the permanent forfeiture of the item(s). Appeals against such orders can be made, in England and Wales to the Crown Court, to the Sheriff Appeal Court in Scotland and a county court in Northern Ireland. This would imply some additional costs. It is not possible to determine the number of seizures, forfeiture orders or the number of appeals due to a lack of information on how sellers and consumers of NPS will respond to the proposed ban; however the experience of Ireland suggests that very few establishments will continue to sell NPS, limiting costs to the CJS.

#### Prohibition/premises notice:

65. Issued by a senior Police or local authority officer, a prohibition notice will require an individual or business to cease undertaking any prohibited activity (producing, supplying, possessing with intent to supply, importing and exporting NPS) and a premises notice will require a person to take all reasonable steps to prevent any prohibited activity from taking place at any premises specified. Failure to comply with a notice may result in a prohibition/premises order being sought. The

prohibition/premises notice itself will mean no additional costs to the Criminal Justice System. There is no right to appeal a prohibition/premises notice, but a prohibition/premises notice may be withdrawn at any time by the issuing Police force or local authority. Given the anticipated compliance with the blanket ban by the head-shop industry, it is likely that few notices will be required.

Prohibition/premises order:

66. A prohibition/premises order will be issued by a youth court or magistrates' court in England and Wales, the sheriff in Scotland and a youth court or court of summary jurisdiction in Northern Ireland. An order will be issued if: the court is satisfied on the balance of probabilities that the person failed to comply with a prohibition notice; or no prohibition notice has been issued, if the court considers an individual would fail to comply with one, and where a court considers such an order should be made for the purpose of preventing the person from carrying on any further prohibited activity. A prohibition order compels the individual or business in question to cease undertaking any prohibited activity and a premises order requires the ceasing of undertaking any prohibited activity from a specified premise. Failure to comply with either order will result in the business being in contempt of court, with a maximum punishment of 2 years in prison. Based on estimates provided by MOJ, the order is estimated to cost £300-500, we use £300 as our low estimate, £400 as our best estimate and £500 as our high estimate<sup>51</sup>. The experience of Ireland suggests that some enforcement actions may be required in the short-term, but that over-time the head-shops industry generally complies with the ban. To account for the fact that more enforcement actions may be necessary in the short term, we assume that 10% of the head-shop industry requires an order in the first year, 5% in the second year and 1% in each subsequent year. This implies 50 prohibition orders in first year, 25 orders in the second year and 5 orders for each subsequent year, the table below lays out the implied costs. As discussed above, some of these prosecutions may be directed against private companies, rather than individuals.

<b>Prohibition/Premises Orders</b>							
	Unit Cost	First year		Second year		Subsequent years	
		Numbers	Costs	Numbers	Costs	Numbers	Costs
Low	£300		£15,000		£7,500		£1,500
Best	£400	50	£20,000	25	£10,000	5	£2,000
High	£500		£25,000		£12,500		£2,500

67. As well as the costs of issuing the initial prohibition/premises order, there will be costs associated with prosecuting those businesses or individuals who fail to comply with an order. Breaching a prohibition or premises order will be triable either in a magistrates' or Crown court, with a maximum penalty of 6 months imprisonment in the magistrates' court and 24 months in the Crown court. The estimated average cost per defendant proceeded against is £2,500. This is based on a weighted average of CJS costs and based on a series of assumptions about the estimated split between Crown and magistrates' court, the conviction rate and the share of offenders who receive a custodial sentence. For a full list of these assumptions, see annex A. The full list of costs for each case includes<sup>52</sup>:

- Costs to the CPS of £500.
- Costs to HMCTS of £600.

<sup>52</sup> All costs in 2015/16 prices. Figures may not sum due to rounding.

- Legal aid costs of £400, assuming eligibility rate in the magistrates' court is 50% and the eligibility rate in the Crown Court is 100%.
- Costs to the prison service of £200, assuming an average custodial sentence length of 2.5 months, of which offenders will typically serve 1.5 months.
- Post-release probation costs of £200 and community probation costs of £500 per offender, for a combined cost of £700.

We have been unable to estimate the total costs of prohibition/premises orders being breached, as we have no indication as to the possible volumes. The experience of Ireland suggests that the number of cases, and therefore costs, will be minimal.

A criminal offence for the supply, possession with intent to supply, importation, exportation and production of NPS:

68. The offence will cover the supply, possession with intent to supply, importation, exportation and production of NPS and is intended for those businesses or individuals that continually ignore the above sanctions or engage in particularly egregious violations of the law. Offenders will be tried in either the Magistrate or Crown courts and the offence will carry a maximum possible sentence of 7 years in prison. As discussed above, some of these prosecutions may be directed against private companies, rather than individuals. The estimated average cost is £8,900 per defendant proceeded against. This is based on a weighted average of CJS costs based on a series of assumptions about the estimated split between Crown and Magistrate court, the conviction rate and the share of offenders who receive a custodial sentence<sup>53</sup>. For a full list of these assumptions, see annex A. The full list of costs includes<sup>54</sup>:

- A cost of £1,300 per case to the CPS.
- A cost of £700 per case to Her Majesty's Court and Tribunal Service.
- A cost of £1,300 per defendant to the Legal Aid Agency.
- An estimated cost to the prison service of £3,300 per defendant, based on an average custodial sentence length of 7.5 months.
- An estimated cost to the probation service of £2,100 per defendant, including £500 of post-release costs and £1,500 for community and suspended sentences.

69. In the five years since Ireland issued a blanket ban of NPS, it has had a single prosecution a year. This is from an original situation in which approximately 100 head-shops were operating within Ireland, implying a ratio of head-shops to yearly prosecution of 1%. Applying this experience to the UK implies approximately 5 prosecutions a year<sup>55</sup>, meaning **a total CJS cost of approximately £44,000 annually.**

70. Offenders convicted of this crime will be liable for confiscation orders, which are designed to recover illegitimately obtained profits from convicted criminals. This would involve additional CJS costs although there will also be some benefit from recovered criminal profits. We are not able to estimate the cost of the additional hearings required for confiscation orders, nor the overall fiscal impact of recovering the confiscation orders. This is due to a lack of information on the number of confiscation orders, the cost of hearings, the cost of enforcing confiscation orders and the rate at which they recover funds.

A criminal offence for the obstruction of an officer exercising a search warrant:

<sup>54</sup> All costs in 2015/16 prices. Figures may not sum due to rounding.

<sup>55</sup> 450 NPS sellers x 0.01 = 4.5 prosecutions a year.

71. As part of enforcing the blanket ban on NPS, officers may need to exercise a search warrant. In common with other pieces of legislation, the blanket ban of NPS contains an offence that prohibits obstructing an officer from conducting a search. The maximum penalty for obstructing such a search will be 6 months imprisonment. The average cost per defendant proceeded against is estimated to be approximately £1,700. This is based on a weighted average of CJS costs which includes costs to HMCTS, CPS and the Legal Aid Agency for summary only offences, and assumptions about the conviction rate and the share of offenders who receive a custodial sentence<sup>56</sup>. For a full list of these assumptions, see annex A. The costs for each case includes<sup>57</sup>:

- Costs to the CPS of £200.
- Costs to HMCTS of £300.
- Legal aid costs of £200, assuming eligibility rate in the magistrates' court is 50%.
- Costs to the prison service of £200, assuming an average custodial sentence length of 2.5 months, of which offenders will typically serve 1.5 months.
- Post-release probation costs of £200 and community probation costs of £500 per offender, for a combined cost of £700. We have also been unable to estimate the volumes of this offence, due to a lack of information on how the consumption of NPS will respond to the ban.

A criminal offence for the obstruction of an officer conducting a stop and search:

72. Similarly to the above offence of obstructing an officer from exercising a search warrant, this is a supporting offence which bars a member of the public from obstructing an officer who is conducting a stop and search. It is likely to be similar to the cost of obstructing an officer exercising a search warrant (around £1,700 per defendant proceeded against). We have also been unable to estimate the volumes of this offence, due to a lack of information on how the consumption of NPS will respond to the ban.

Police

73. As well as costs to the Criminal justice System, there will also be some additional costs to the Police in the short term. Our survey of stakeholders revealed that the Police already employ some resources in tackling NPS. While there may be an initial increase in enforcement costs, as the Police work to ensure the enforcement of the blanket NPS ban. We do not anticipate any long term increase in enforcement costs, as the experience of Ireland suggests that most of the legal-high industry will comply with the blanket ban. In fact as explained in the benefits section there is likely to be a decrease in resources needed to tackle NPS over time.

74. One additional cost to the Police is the testing of substances to confirm they are psychoactive. This test will be necessary for any prosecutions of the criminal offence to supply, import or produce NPS and to defend any prohibition notices or orders appealed against. While testing a substance for psycho-activity is known to be possible, no accepted methodology currently exists. Researchers from the Home Office's Centre for Applied Science and Technology and from the ACMD are currently tackling the problem. The only comparable test currently available is for the chemical structure of a substance, costed at £100, although testing for psycho-activity will likely cost more. Based on current assumptions around the number of prosecutions this implies an additional cost of at least £500 a year. As discussed above, the number of

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<sup>57</sup> All costs in 2015/16 prices. Figures may not sum due to rounding.

appeals against prohibition notices or orders is unknown, however given the number of NPS sellers currently operating in the UK, the cost of the test and the evidence of compliance from Ireland, the costs are expected to be minimal.

### Summary of Costs

**75. The cost to business from the proposed blanket ban are estimated to be £32.6m per year, costs to the public sector are estimated to be £60k in the first year and £50k for each subsequent year. The overall costs are therefore £32.7m annually.**

## **BENEFITS**

### Health Benefits

76. The chief benefit associated with a blanket ban of NPS is a reduction in the health harms associated with NPS. This will benefit both individuals, who would be expected to avoid harms, and will reduce costs to the National Health Service (NHS). Many NPS, seeking to emulate illegal drugs, have similar or in some cases more serious health harms than their illegal counterpart. The NPS ban will prevent NPS being sold on the high-streets and from UK based websites, reducing its availability. Additionally, banning NPS will likely discourage some members of the public from consuming NPS, both simply due to its illegality and because the ban may serve as a signal to the public of the harms associated with “legal highs”. Given the experience of the blanket ban in Ireland, it is believed that almost all existing sellers of NPS will self-regulate and comply with the blanket ban, with those reliant on NPS sales expected to close their establishments. Some NPS consumers will still be able to obtain NPS through illicit networks, however it is unlikely that all consumers will be able to do so, leading to a reduction in the availability of NPS and in turn use. It is not possible to exactly establish the benefit of this reduction in use due to:

- A lack of information on the total current number of users of NPS.<sup>58</sup>
- A lack of information on how many NPS users will continue to obtain and consume NPS through illicit networks. Meaning the overall reduction in NPS use is difficult to estimate.
- A lack of information on the current mix of NPS consumed by the public, nor on the exact harms caused by different NPS due to their inconsistent composition and the novelty of many of the substances involved.

77. Despite this, we have attempted to estimate some potential reduction in health costs using information from the National Poisons information service (NPIS). The service assists doctors dealing with the consequences of unknown or unusual substances. Figures from this service are not a direct measure of patient presentations or toxicity, as advice is more likely to be sought for sicker patients or when unfamiliar substances are involved. Additionally, the data relies on users and healthcare professionals providing accurate information on the substances, as toxicological confirmation is not usually available. Despite this, NPIS information gives a good indication of the

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<sup>58</sup> Forthcoming CSEW surveys will contain information on the usage of legal highs, to be released July 2015.



substances being encountered by NHS physicians, and therefore provides an indication of non-fatal intoxications from NPS.

78. Evidence from Loeffe<sup>59</sup> suggests that the banning of a psychoactive substance generates an 80% fall in the number of NPIS consultations. We assume that this is representative of the impact of a blanket ban of NPS; although it is possible that previous bans have simply displaced the consumption of one NPS to another and that sanctioning all substances will not have the same effect. Consumers may continue to obtain and consume NPS or substitute NPS for illegal drugs. The harms and benefits of this will depend on which substances a member of the public was initially consuming and which illegal drug they subsequently use. Health and social harms could decrease or increase, depending on the combination.
79. NPIS records show that it received 242 telephone enquiries about NPS in 2013/14<sup>60</sup>. Assuming the number of incidents involving legal highs has remained relatively constant; this would imply approximately 190<sup>62</sup> fewer admittances involving NPS each year. Estimating the benefit of this is difficult without knowing the exact nature of the hospital admittance. Given that calls to the NPIS tend to occur for the most serious incidents, we assume this implies a non-fatal drug overdose. These incidents are estimated to cost approximately £790, with 80% of them requiring a paramedic costing a further £200.<sup>63</sup> In total, this translates to **a benefit to the NHS of approximately £190k per year**. This is potentially an underestimate of the total possible benefits to the Health Service.
80. As well as the direct costs of treating patients following NPS overdoses, there are the broader health costs felt by individuals. In the extreme, this includes fatalities resulting from NPS use. NPS was associated with 173 deaths in England, Wales and Scotland in 2013, including 29 cases where it was the sole substance involved. The reduction in availability and therefore usage of NPS should reduce some of these health costs and fatalities, although the size of the impact is difficult to determine. The experience of mephedrone, discussed above, might suggest that banning a particular NPS does not necessarily halt or reduce consumption. It is possible however that the imposition of a ban slowed the rate of increase. Furthermore, the impact of the blanket ban on the consumption of NPS that emerge in the future may be very different than the prohibition of a drug which has already established itself with consumers. By preventing a particular NPS from becoming widely available to begin with, it will be more difficult for substances to establish a significant user-base that may later result in health or addiction harms. To take into account the uncertainties surrounding the potential benefits from prohibiting the sale of NPS, we present a range of estimates.

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<sup>59</sup> Loeffler, G. and Craig, C. (2013), The effect of legal bans on poison control center contacts regarding 'legal highs'. *Addiction*, 108: 1348–1349. doi: 10.1111/add.12194

<sup>60</sup> This only includes Legal Highs and Synthetic cannabinoid receptor agonists (SCRAs), the two most popular categories of NPS, the real figure is likely higher.

<sup>61</sup> National Poisons Information Service Annual Report, 2013/14, <http://www.npis.org/NPISAnnualReport2013-14.pdf>

<sup>62</sup>  $242 \times 0.8 = 193.6$

<sup>63</sup> NHS (2011) NHS Reference Costs 2010/11, Appendix NSRC5- NHS trust and PCT combined reference cost schedules. London: Department of Health. Available at: [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_131140](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_131140)

<sup>64</sup> Pg 72, Understanding organised crime: estimating the scale and the social and economic costs, Home Office Research Report 73, October 2013, Hannah Mills, Sara Skodbo and Peter Blyth, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/246390/horr73.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246390/horr73.pdf)

81. If we assume that a reduction in consumption has a similar proportional impact on the numbers of fatalities due to NPS as it does on the numbers presenting to hospital, as discussed above, then we could expect a similar reduction in fatalities as identified above for hospital admittances: 80%. This would result in approximately 23 fewer fatalities per year, assuming the number of deaths per year from NPS remains at 29, its 2013 figure. The likelihood of this reduction is unclear for a number of reasons, firstly it is not clear that fatalities have the same link with consumption as hospital admissions do. Secondly, it is not clear that a ban of all NPS will have the same effect as prohibiting a single substance. Finally, although only 5 deaths in Scotland were solely associated with NPS, a considerable number of additional deaths involved NPS. It is possible that by focusing on those deaths in which NPS was solely implicated we are underestimating the potential reductions in fatalities achievable by this ban. To account for this, our second estimate of the potential benefits assumes fatalities reduce by only 40%, resulting in 12 fewer deaths per year. Our third estimate is based on the lowest possible benefits: no reduction in fatalities as a result of the blanket ban of NPS. A final point to note with regards to potential reductions in fatalities is that we have assumed that the number of fatalities remains fixed at 2013 levels. In reality, it is possible that the number of deaths would increase in the absence of a blanket ban, as current trends suggest.
82. To monetise the benefit of this reduction, we use a unit cost of approximately £1.7m per prevented fatality. The value of a prevented fatality is taken from the Department for Transport's (2011) cost of a fatal casualty in a road accident, up-rated to 2015 prices<sup>65</sup>. This is a widely used figure and, while the cost of a drug-related death is not directly comparable with the cost of a road traffic accident death, it is considered the best available estimate. This implies an annual benefit of £40m from a reduction of 23 fatalities under our high benefit estimate, a benefit of £0 from no fall in fatalities under our low estimate and a benefit of £20.9m from 12 fewer fatalities under our best estimate. The actual number of fatalities prevented could be higher as this estimate is based on 2013 fatality figures, and the number of deaths per year from NPS has been steadily trending upwards for seven years. If this upwards trend were to continue under the Do Nothing option then a reversal in this trend would mean that even more fatalities could be prevented than we have estimated here.

### Police and Criminal Justice System

83. There are two potential benefits to the Police and Criminal Justice System. Firstly, our survey of stakeholders suggested that some areas are encountering NPS associated crime and anti-social behaviour. Reduced use of NPS should reduce these associated problems, although we lack accurate information on the number of NPS associated crimes, the link between NPS consumption and crime, and the potential fall in NPS consumption, which is needed to estimate the exact benefit from this change. As well as benefits to the Police and Criminal Justice System, a reduction of anti-social behaviour will also benefit local communities.
84. The second Police and criminal justice benefit will be a reduction over time in the resources needed to tackle NPS. Our survey of Police and local authorities suggested that both the Police and trading standards officers currently employ resources tackling the sale of NPS. These resources are not able to efficiently tackle NPS due to the
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lack of specialist legislation, something the blanket ban aims to rectify. By enabling quicker and more certain action against suppliers of NPS, the blanket ban should enable Police and local authority resources to be re-deployed over time away from NPS enforcement activity. Any remaining NPS suppliers will be indistinguishable from suppliers of regular illicit drugs, and can therefore be tackled as part of regular drug law enforcement work. It is not possible to estimate the size of these possible benefits due to a lack of information on the exact resources currently employed in tackling NPS and the impact the NPS ban will have on supply and consumption.

85. As well as the direct effect of enabling law enforcement to more efficiently tackle NPS, the blanket NPS ban will end the incentive to develop new substances to evade existing UK legal sanctions. Currently, only those substances listed under the Misuse of Drugs act are explicitly illegal, giving NPS suppliers an incentive to develop both variants on existing substances and new substances, which evade UK law. This innovation increases the risk of significantly harmful substances emerging either due to incompetence, ignorance or negligence, while meaning that harmful substances continue to emerge regardless of how many NPS are made illegal. This also means that the Police and trading standards are typically unable to achieve lasting successes against suppliers of NPS, as suppliers simply switch to providing another substance in the event of a ban.
86. It is, however, likely that the end of the incentive to evade UK law will not completely halt innovation in the drug market. The trade in NPS is international, meaning that there is still an incentive to evade other jurisdictions' legal sanctions.
87. There are quantified benefits of the proposed blanket ban from both fewer fatalities, £20.9m a year; and from a reduction in health service costs to the NHS, £190k a year. Combined total benefits are approximately £21.1m.

### Businesses

88. Whilst we have assessed the costs to businesses from this ban, it is also possible that there will be some indirect benefits to other businesses, which have not been assessed due to a lack of available information. As with the misuse of illegal drugs, it is likely that NPS consumption might be a cause of lost working days and lower productivity in the workplace, which represents a cost to businesses. A reduction in NPS consumption would reduce these costs, and thus a benefit could accrue to UK businesses.
- 89.

### **NET EFFECT**

90. For the best estimate, the overall net present value (NPV) of the proposed ban of NPS is negative; the estimated cost to businesses and the Criminal Justice system of £32.7m outweighs the potential monetised benefits of £21.1m from reduced fatalities and health service costs. The overall NPV for 10 years is -£100m. This figure is subject to significant uncertainty and also likely fails to capture all of the costs and benefits of the policy.
91. As discussed above, there is considerable uncertainty around the size of the NPS market, with little information forthcoming from the industry itself. As a result, it is

possible that we have overestimated both the number and turnover of head-shops, meaning that the impact on business could be smaller than anticipated.

92. Similarly for the impact on businesses, there are also uncertainties surrounding the potential benefits of the blanket ban of NPS. The potential benefits could be higher for a number of reasons:

- Estimates of the potential reductions in fatalities are based on the number of deaths in which only NPS were found in the deceased's body, ignoring deaths where more than one substance was found. If NPS was instrumental in other deaths, then the potential reduction resulting from the blanket ban may be higher.
- Estimates of the potential benefits assume constant levels of NPS consumption and in turn, constant harms in the absence of the blanket ban of NPS being enacted. Given that the number of deaths has been increasing over time, it seems likely that the actual benefits of the blanket ban could be higher.
- Estimates of the potential benefits do not include savings resulting from making interventions against head-shops considerably more efficient. As result, Police and local authority resources currently dedicated to tackling NPS could be re-tasked to other problems, generating a benefit.
- In addition to making work conducted by Police and local authorities against head-shops more efficient against NPS more efficient, there is also the potential for reductions in crime and anti-social behaviour, benefiting both the Police and CJS and local communities.
- We have not been able to monetise any additional benefits businesses may receive from increased productivity or reduced sickness days as a result of reduced NPS consumption.
- It has not been possible to monetise all of the health benefits to current consumers of banning NPS and the subsequent benefits to the NHS resulting from this change.

93. Given the range of benefits which we have not been able to monetise, and the uncertainty surrounding the impact on business, we believe that the blanket ban is justified despite the negative monetised NPV. The potential benefits to the public, the health service and Police and local authorities are expected to outweigh the impact on the head-shop industry.

## **ONE IN TWO OUT**

94. This policy will have an impact on businesses and is in scope for One-In-Two-Out. The business impact is accepted as an inevitable consequence of attempting to shut down the "legal high" industry in order to reduce the availability of NPS to the general public.

## F. Risks and Sensitivities

### **Option 1 – Make no changes at present (do nothing)**

#### *Risks and Uncertainties*

Risk	Mitigation
New NPS emerge which are outside drug controls.	Would be controlled through existing mechanisms: temporary through Temporary Control Drug Orders following advice from ACMD and permanently through Misuse of Drugs Act 1971 once a full assessment of their harms has been completed.  Continued public messaging to highlight harms of NPS.
Public believe “legal” means “safe”, especially if no further Government action	Continued public messaging to highlight harms of NPS, including with front line professionals.  Identify other non-legislative methods to control NPS supply.

### **Option 2 – Create criminal offence of supplying NPS.**

#### *Risks and Uncertainties*

Risk	Mitigation
NPS definition too broad or too narrow	Delegated power to amend the exempt list to include substances whose harm can be properly assessed. This will also future proof the legislation.  Consultation with ACMD and other government departments to ensure definition and exempt list on the Bill are properly constructed.
Diversification of market to create unknown psychoactive substances.	Definition framed deliberately wide to cover any substance which has a psychoactive effect. ACMD input into framing an appropriate definition.  Blanket ban will ensure these substances are immediately illegal and can be controlled under the Misuse of Drugs Act 1971 once their harms have been assessed.
NPS market moves to organised crime groups.	A reason for NPS popularity is their legitimate status. Making them unlawful, less visible and less available may reduce demand.  NCA and Police forces to be given enforcement powers and attuned to this risk. Possibility of concerted enforcement action, alongside wider drug activity, may be necessary.
Displacement from retail environments to online	Having NPS less visible on high streets and harder to obtain may reduce demand.  Border Force given powers to search and seize suspected NPS at the border.  NCA already working to tackle the illicit online drug market. Their expertise could be utilised to additionally tackle this market.
Possibility of stockpiling/clearance sales	Enforcement and public messaging plans needed for enactment to mitigate risk. Ireland’s Act was accompanied by significant and prolonged (months) enforcement activity which we would need to consider and possibility replicate.

<p>Head-shops and other NPS retailers may be forced to close following loss of profits.</p>	<p>This is an accepted consequence with public health concerns outweighing possible business impact.</p> <p>A number of head-shops are established businesses who sell NPS alongside a number of other products. The removal of NPS may see them diversify into other lawful products to make up trade.</p>
<p>NPS users shift to unlawful drugs once the Act is enacted to criminalise (this includes NPS which will be unlawful post enactment)</p>	<p>This risk needs to be considered and addressed in the implementation strategy to ensure NPS users are provided with appropriate health and education services to move them to a drug-free position.</p> <p>We will consider overseas approaches and how they dealt with the issue when they implemented legislative change.</p>

## SENSITIVITY ANALYSIS

95. In order to better understand the potential costs, we perform sensitivity analysis on the costs to business by varying each of our assumptions in turn, and examining the effect that this has on the overall costings, holding other assumptions at their best estimate values.

### Number of High Street Head-Shops

96. The first assumption we analyse is the number of high-street head-shops. Our current best estimate assumption is 335, derived from the mid-point between the Police force estimate of approximately 280 and the local authority estimate of approximately 390.

- i. If we were to use 280 as our best estimate assumption, while holding all of our other assumptions constant, the cost to business would drop from £32.6m to £28.5m. A 13% fall.
- ii. If we used the higher figure of approximately 390, while holding all of our other assumptions constant, the cost to business would increase from £32.6m to £36.8m. A 13% increase.

### Number of Online Sellers of NPS

97. The second assumption for sensitivity analysis regards the number of online sellers of NPS. Our best estimate is 115, based on work by Schmidt et al.<sup>66</sup>

- iii. If we were to instead use 100 as our best estimate, while holding all of our other assumptions constant, the cost to business would fall from £32.6m to £31.6m. A 3% fall.

<sup>66</sup> Schmidt, M.M., Sharma, A., Schifano, F. and Feinmann, C. (2011) 'Legal highs' on the net – Evaluation of UK-based websites, products and product information *Forensic Science International* vol. 206 pp 92-97

- iv. If we used the higher figure of 150, while holding all of our other assumptions constant, the cost to business would increase from £32.6m to £35.2m. An 8% increase.

### Size of Turnover

98. The third assumption to test regards the size of head-shop and online NPS seller turnover. Our best estimate assumption is approximately £260k, which is based on a weighted average of our responses.

- v. We could instead use approximately £90k, which is the average of those estimates provided by local authorities. This would result in a lower estimated cost to business of £11.8m, a fall of 64% from the current figure of £32.6m.
- vi. The higher turnover estimate of £570k, which is the average of estimates provided by Police forces, would result in a higher estimated cost to business of £71.7m. A 120% increase compared to the current best estimate of £32.6m.

### Proportion of Turnover related to NPS

99. The fourth assumption examined in this sensitivity analysis is the share of head-shop and online seller turnover derived from NPS. Our best estimate assumption is 70%, which is the mid-point of our two estimates.

- vii. Using the lower estimate of 50% would result in a lower estimated cost to business £23.3m. A fall of 29% from the current figure of £32.6m.
- viii. The higher figure of 90% results in a higher estimated cost to business of £42m. An increase of 29%.

### Mark-up on the sale of NPS products

100. The final assumption we test is the mark-up obtained by sellers of NPS. Our current best estimate assumption is 66%, the overall average of our different responses.

- ix. If we were to instead use our lowest reported estimate of mark-up, 15%, the estimated cost to business would fall to £10.9m. A fall of 67% relative to our original figure of £32.6m.
- x. Using the highest estimate of mark-up we have received, 400%, generates an estimated cost to business of £65.6m, an increase of 101%.

101. Overall, the assumptions least sensitive to changes based on the available evidence concern the number of high-street or online establishments. Varying any of the other assumptions generates a significant change in the estimated cost to business, in particular the size of turnover and the mark-up.

## **G. Small and Micro Business Assessment**

102. While the number of people currently employed was one of the questions put to head-shops, there were no responses, meaning we cannot exactly determine the number of small and micro businesses that will be affected by the NPS ban. Nonetheless, it seems likely that the majority of NPS retailers will be small or micro businesses. This is due to the primarily retail nature, which requires relatively few staff and the fact that most NPS sellers seem to be independent retailers, with relatively few chain stores dispersed nature of the industry which means most NPS selling businesses are fairly small.. As a result, almost all of the cost to business calculated above will fall on small and micro businesses.
103. Given that the chosen policy option is a blanket ban of NPS, with the intention of reducing its availability to the general public, in order to achieve the policy objectives through this option it would not be appropriate to provide concessions for small or micro businesses.

## **H. Summary and Recommendations**

104. Option 2 is the Government's preferred option on the grounds that the potential benefits of the blanket ban, in particular the health benefits to the public from reduced consumption of NPS, outweigh the potential harm to the NPS industry. The first duty of the Government is to protect the public, including from the harms of these compounds.

## **I. Implementation**

105. A full implementation plan will be needed for two purposes: i) to educate the public/NPS market as to the new criminal offence(s), the rationale and the harms associated with NPS; ii) to ensure enforcement activity is lined up to reduce the risk of any fire sales and swelling of NPS stocks onto the open market. Discussions will be needed with policing and law enforcement leads to put into place a prolonged enforcement campaign, drawing upon the lessons learnt by Irish enforcement colleagues in 2010. Communications will start as soon as the Bill is introduced in Parliament.

## **J. Monitoring and Evaluation**

106. Upon implementation, the Home Office will lead the monitoring of this new approach, working in partnership with law enforcement, local government and health representatives reporting to ministers. Measures of success will include:
- reduction in NPS use
  - reduction in the number of deaths and numbers in treatment NPS related;
  - reduction in the number of NPS substances found across the UK by law enforcement and health partners; and
  - closure of NPS markets – including both on the high street and online.
107. The Crime Survey of England and Wales includes questions on the use of psychoactive substances and where substances are sourced. These questions were first asked from April 2014 with the first data available in the summer 2015. This data will be used going forward to monitor new psychoactive substance use and the impact of this legislation.



**END**

**ANNEX B: MOJ Estimated Costs to the CJS**

**Progression of cases through the CJS<sup>67</sup>**

**Data from 2013 for the triable either way offence of supplying or offering to supply other class C drugs<sup>68</sup> was used to model the flow of the new importation/supply offences through the criminal justice system (CJS). This proxy offence has a maximum sentence of fourteen years imprisonment on conviction on indictment.**

**Data from 2013 for the triable either way offence of obstructing the exercise of powers of search etc or concealing books, drugs etc<sup>69</sup> was used to model the flow of the new failure to comply offence through the CJS. This proxy offence has a maximum sentence of two years imprisonment on conviction on indictment.**

**For the summary only obstruction offences, we have used a mixture of the data from the proxy offence above and magistrates court costs for CPS, HMCTS and legal aid.**

Assumptions	Risks
<p><b>Proportion of cases tried in the magistrates' vs. the Crown Court</b></p> <p><u>New importation/supply offences</u></p> <ul style="list-style-type: none"> <li>It is assumed that 46% of defendants are tried in the magistrates' court and 54% are tried in the Crown Court.</li> </ul> <p><u>Accompanying new offences</u></p> <ul style="list-style-type: none"> <li>Failure to comply offence: It is assumed that 85% of defendants are tried in the magistrates' court and 15% are tried in the Crown Court.</li> <li>Summary only obstruction offences: It is assumed that 100% of defendants are tried in the magistrates' court and 0% are tried in the Crown Court.</li> </ul>	<ul style="list-style-type: none"> <li>More defendants may be tried in the Crown Court where the costs of trials are more expensive.</li> </ul>
<p><b>Proportion of defendants found guilty</b></p> <p><u>New importation/supply offences</u></p> <ul style="list-style-type: none"> <li>It is assumed that 83% of defendants are convicted.</li> </ul> <p><u>Accompanying new offences (either way and summary only offences)</u></p> <ul style="list-style-type: none"> <li>It is assumed that 66% of defendants are convicted.</li> </ul>	<ul style="list-style-type: none"> <li>More defendants will be convicted which could lead to higher costs.</li> </ul>
<p><b>Disposals given:</b></p> <p><u>New importation/supply offences</u></p> <ul style="list-style-type: none"> <li>It is assumed that of those sentenced after conviction, around 24% of offenders are given a custodial sentence.</li> </ul> <p><u>Accompanying new offences (either way and summary only offences)</u></p> <ul style="list-style-type: none"> <li>It is assumed that of those sentenced after conviction, around 10% of offenders are</li> </ul>	<ul style="list-style-type: none"> <li>That the ACSL given is longer / shorter, meaning costs would be higher / lower.</li> <li>Actual costs of post sentence supervision may be lower than estimated.</li> </ul>

<sup>67</sup> All costs provided below have been rounded to the nearest £100 and are in 2013/14 prices.

<sup>68</sup> <http://www.legislation.gov.uk/ukpga/1971/38>

<sup>69</sup> <http://www.legislation.gov.uk/ukpga/1971/38/section/23>

given a custodial sentence.

**Average custodial sentence length (ACSL):**

New importation/supply offences

- It is assumed that the ACSL would be 15 months.

Accompanying new offences (either way and summary only offences)

- It is assumed that the ACSL would be 2.5 months.

**Post sentence supervision:**

- Offenders given a custodial sentence of under 24 months will serve half of their sentence in custody and a minimum of 12 months on licence or post-sentence supervision as set out in the Offender Rehabilitation Act 2014.
- It is assumed that the cost of this supervision would be equivalent to the cost for post release license.

**New policies**

- Our analysis does not take into account the possible interaction with other policies that have not yet been commenced.

- There is the risk that such policies, once commenced, could have an impact on the base case set out in this impact assessment. As a result, the associated impacts may be under or over estimated.

**Cost assumptions**

**CPS costs, advocacy costs:**

- The estimated CPS costs consist of two broad categories, advocacy costs and Activity Based Costings (ABC). The primary purpose of the ABC model is resource distribution, and has several limitations (see risks).

Source: CPS 2014; MoJ internal analysis, 2014

- **The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated.**

**HMCTS costs (magistrates' court):**

To generate the costs by offence categories, HMCTS timings data for each offence group were applied to court costs per sitting day. Magistrates' court costs are £1,100 per sitting day in 2013/14 prices. A sitting day is assumed to be five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2013-14. HMCTS timings data from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process.

Timings data for offence categories:

- The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a District Judge (magistrates' court) sits.
- The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a DJ(MC) sits.
- Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information available on admin time, however we have excluded it for simplicity.
- The timings are collection of data from February 2009. Any difference in these timings could influence costings.
- The timings data also excludes any adjournments (although the HMCTS ABC model does include them), and is based on a case going through either one guilty plea trial (no trial) or one effective (not guilty plea) trial. However a combination of cracked, ineffective and effective trials could occur in the case route. As a result the costings could ultimately be underestimates.
- Guilty plea proportions at the Initial hearing from Q2 in 2012 are used, based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)).

HMCTS average costs per sitting day:

HMCTS court costs used may be an

	<p>underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</p>
<p><b>HMCTS costs (Crown Court):</b></p> <p>Timings data for types of case (eg, indictable only, triable either way) were applied to Crown Court costs per sitting day. This was added to the cost of the initial hearing in the magistrates' court, as all criminal cases start in the magistrates' courts. Crown Court cost is £1,500 per sitting day in 2013/14 prices, assuming a sitting day is five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2013-14.</p>	<p>Timings data for types of cases:</p> <ul style="list-style-type: none"> <li>• The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing.</li> <li>• Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that costings are an underestimate.</li> <li>• The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results.</li> <li>• Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences.</li> </ul> <p>HMCTS average costs per sitting day:</p> <ul style="list-style-type: none"> <li>• HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</li> </ul>
<p><b>Legal Aid Costs:</b></p> <p><i>Cases in the magistrates' court</i></p> <ul style="list-style-type: none"> <li>• It is assumed for all of the new offences that the eligibility rate for legal aid in the magistrates' court is 50%.</li> <li>• The average cost per case is £500 and assumes that there is one defendant per case. This is based on the latest available legal aid statistics (Jan-Mar 2014), and is calculated by dividing total case value by total case volume. See: <a href="https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014">https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014</a> (Main tables, table 2.3).</li> </ul> <p><i>Cases in the Crown Court</i></p> <ul style="list-style-type: none"> <li>• It is assumed for all of the new offences that the eligibility rate for legal aid in the Crown Court is 100%.</li> </ul>	<p><i>Magistrates' court</i></p> <ul style="list-style-type: none"> <li>• Variance in the legal aid eligibility rate assumed for cases in the magistrates' courts would impact the costings.</li> <li>• More than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.</li> </ul> <p><i>Crown Court:</i></p> <ul style="list-style-type: none"> <li>• Assuming 100% eligibility for legal aid in the Crown Court carries several other risks. Firstly, an individual may refuse legal aid.</li> </ul>

<p><u>New importation/supply offences</u></p> <ul style="list-style-type: none"> <li>The average cost per defendant is around £2,200 in 2013/14 prices for this offence type.</li> </ul> <p><u>Accompanying new offences (either way offences)</u></p> <ul style="list-style-type: none"> <li>The average cost per defendant is around £1,000 in 2013/14 prices for this offence type.</li> <li>We assume one defendant per case. One defendant instructs one solicitor who submits one bill. As such, we use the cost per solicitor bill from the 2013/14 data as a proxy for the cost per defendant.</li> </ul> <p>Source: <a href="https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014">https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014</a></p>	<p>Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary.</p> <ul style="list-style-type: none"> <li>There is more than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.</li> </ul>
<p><b>Prison costs:</b></p> <ul style="list-style-type: none"> <li>It is assumed that an offender serves half of their given custodial sentence:</li> <li>For the new importation/supply offences, this means it is assumed that offenders will on average serve 7.5 months in prison.</li> <li>For the accompanying new offences (summary only and either way offences), this means it is assumed that offenders will on average serve 1.5 months in prison.</li> <li>The cost per prison place is approximately £26,700.</li> </ul> <p>Source: NOMS management accounts addendum (2013/14)<sup>70</sup>.</p>	<ul style="list-style-type: none"> <li>The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be relatively low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity then marginal costs would be significantly higher as contingency measures will have to be found.</li> </ul>
<p><b>Probation costs:</b></p> <p><b>Post release licence costs:</b></p> <ul style="list-style-type: none"> <li>It is assumed that post release probation costs are approximately £2,700 per year in 2013/14 prices.</li> </ul> <p><b>Community sentence costs:</b></p> <p>Costs for probation and community sentences are approximately £2,700 per year in 2013/14 prices. The probation costs are based on national costs for community order/ suspended sentence order,</p>	<ul style="list-style-type: none"> <li>It is assumed that the cost of this supervision would be equivalent to the cost for post release license. Actual costs of post sentence supervision may be lower.</li> <li>Costs reflect delivery by Probation Trusts prior to the restructuring and competition of probation services during 2014/15.</li> <li>The costs of post sentence supervision will vary depending on whether offenders are managed by the NPS (National Probation Service- for high risk offenders) or the CRCs (Community Rehabilitation Companies- for lower risk offenders). There may also be costs to the NPS for</li> </ul>

<sup>70</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf)

<p>found at NOMS, Probation Trust Unit Costs, Financial Year 2012-13 and updated in line with the GDP deflator of 1.84% (<a href="https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-september-2014-quarterly-national-accounts">https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-september-2014-quarterly-national-accounts</a>).</p> <p>Source: MoJ internal analysis, 2013/14.</p>	<p><i>production of pre-sentence reports to court and costs to prison, probation or through contracts such as Electronic Monitoring in relation to breach during the post-sentence supervision/licence period.</i></p>
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