

Psychoactive Substances Bill

Fact sheet: Background to the Bill

1. From around 2008/09, the UK has seen the emergence of new uncontrolled substances 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”). The chemical composition of these substances is deliberately designed to evade the controls in the Misuse of Drugs Act 1971 (“the 1971 Act”). These substances are often inappropriately referred to as “legal highs”: inappropriate given that the chemicals in them are often neither legal nor safe for human consumption. These substances have proliferated at an alarming rate and are being openly sold in head shops (retail businesses specialising in the sale of NPS and drug-related paraphernalia) on high streets across the UK and from internet sites with UK domains.
2. The threat posed by NPS is becoming increasingly apparent, at a regional, national and international level. The EU Drugs Agency reported that 101 new NPS were reported to the EU Early Warning System in 2014, a significant increase from the 24 in 2009¹. Whilst not all of these substances reach the UK, the year-on-year increases that have been witnessed over the last five years demonstrates the scale of challenge in controlling the sheer number of new substances.
3. Many NPS are only legal because they have not yet been assessed for their harms and considered for control under the 1971 Act – not because they are inherently safe to use. Most will not have been tested on either humans or animals, and the purity of the products is unknown. The Home Office’s Forensic Early Warning System tested 968 samples of NPS in 2013/14, of which, nearly one in five (19.2%) of NPS found within the samples were controlled drugs. And there are examples where products with the same brand name (like “Black Mamba” or “Sparklee”) purchased from the same supplier did not necessarily contain the same mixtures of ingredients. Many of these substances are labelled “not for human consumption” and advertised as “research chemicals”, but it is clear that this is not their real purpose.
4. The threat to public health of some new substances may be comparable to that caused by controlled illicit drugs. There were 60 NPS-related deaths in England and Wales in 2013 (up from 26 in 2009) and a further 60 in Scotland. The UK’s National Poison Information Service, which provides advice to health professionals through a telephone enquiry service and online access to its TOXBASE service, reported a 49% increase in the number of telephone enquires and a 128% increase in TOXBASE accesses relating to uncontrolled NPS between 2011/12 and 2012/13.
5. In addition to the health risks, a number of local authorities have expressed

¹ www.emcdda.europa.eu/news/2015/1/cnd-new-drugs

concern that headshops in their areas are causing increases in anti-social behaviour². For example, 80% of persons (both residents and businesses) who replied to a consultation by Lincoln city council in November 2014 said they had suffered problems caused by 'legal highs' in the area, while more than half (56%) said they had directly suffered from anti-social behaviour in the area. This led the City Council to introduce a Public Spaces Protection Order, under powers in the Anti-social Behaviour, Crime and Policing Act 2014, which bans people taking 'legal highs' in Lincoln city centre.³ A similar Public Spaces Protection Order has been introduced by Lambeth Council⁴.

The New Psychoactive Substances Review

6. 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 situation from previous years in which the drugs market was relatively stable. Whilst during the last Parliament, the Government put in place a forensic early warning system to monitor closely the availability of these substances and has banned over 500 NPS under the provisions of the 1971 Act, the availability of yet further new substances showed no sign of abating. In order to address this issue, in December 2013 the Government commissioned the New Psychoactive Substances Review Expert Panel to review the existing legislative approach.
7. The Expert Panel comprised representatives from: medicine, social science, forensics, law enforcement agencies (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.
8. The Expert Panel's terms of reference were to:
 - analyse the problem to address and consider:
 - the nature of the NPS market;
 - the effectiveness and issues of the UK's current legislative and operational response;
 - identify legislative options for enhancing this approach;
 - consider the opportunities and risks of each of these approaches, informed by international and other evidence; and
 - make a clear recommendation for an effective and sustainable UK-wide legislative response to NPS.

In addition, the Panel was asked to consider the education, prevention and treatment response to NPS and make recommendations.

9. The Expert Panel's report was published in October 2014⁵. The Panel indicated

² The Crime Survey for England and Wales 2014/15 found that 34% of 16-59 year olds typically sourced their NPS from a shop.

³ <http://www.lincoln.gov.uk/your-council/news-and-media/latest-news/news-archive/legal-highs-ban/124105.article>

⁴ <https://lambethnews.wordpress.com/2015/07/28/lambeth-becomes-the-first-borough-to-ban-laughing-gas/>

⁵ <https://www.gov.uk/government/publications/new-psychoactive-substances-review-report-of-the-expert-panel>

that “after years of stable and declining drug use, the emergence of NPS has been a “game changer””. The Panel considered the existing legislative response, including the use of temporary class drug orders (see separate fact sheet on the Misuse of Drugs Act 1971) and consumer safety legislation, but found that this was unlikely to get ahead of developments in the NPS market.

10. The Panel reviewed the main options for a different approach and examined legislative models in a number of other jurisdictions (see separate fact sheet). The Panel concluded that a general prohibition on the distribution of non-controlled NPS, as operated in Ireland, would best address the key elements of the guiding principles set out for the review⁶, taking into account the opportunities and risks in the particular UK context. They argued that this approach would tackle the NPS market by responding to the ease of availability of NPS in everyday high-street/retail environments; it would remove the risk that the legislative response is driving the evolution of the NPS market, particularly to more potent substances, whilst also maximising opportunities for compliance and minimising complexity from an enforcement and prosecution perspective (as the sale, advertisement, importation or exportation of all psychoactive substances would be banned). The approach would also provide enforcement agencies with the necessary powers to close down any UK-based online retailers of NPS. The Panel’s key legislative recommendation was therefore “to prohibit the distribution of non-controlled NPS, focusing on the supply, rather than those using NPS”. The Panel also recognised the importance of building on the work of central and local government, the third sector and other providers to enhance the response to the challenges in relation to intervention and treatment, prevention and education, as well as information sharing (as to which, see separate fact sheet).
11. In its October 2014 response to the Panel's report⁷, the Government announced its intention to develop proposals for a blanket ban similar to that introduced in Ireland in 2010. In May 2015, the Government was elected with a manifesto commitment to "create a blanket ban on all new psychoactive substances, protecting young people from exposure to so-called legal highs”.

Scotland

12. The Scottish Government separately appointed its own Expert Review Group in June 2014 to review the current legal framework available to govern the sale and supply of NPS. The Review Group's report was published in February 2015⁸ and concluded that there were a number of benefits to the Irish model, which could strengthen the tools that are currently available and being used by agencies to tackle NPS supply in Scotland. The Review Group recommended that the

⁶ The Panel agreed that an effective approach to tackling NPS would, amongst other things: align with the Government's 2010 Drugs Strategy; protect individuals from the risks posed by untested, unknown and potentially harmful substances; provides a proportionate response; and maintain/develop an effective and dynamic drug control mechanism (see page 5 of the Panel's report)

⁷ Government response to New Psychoactive Substances Review Expert Panel Report - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368498/ResponseNPSreviewExpertPanelReport.pdf

⁸ <http://www.gov.scot/Publications/2015/02/3802>

Scottish Government and the Home Office should work in partnership to create new legislation that will be effective in Scotland. The Minister for Community Safety and Legal Affairs (Paul Wheelhouse) indicated that, on behalf of the Scottish Government, he was minded to accept the recommendations of the report.⁹

Wales

13. The Health and Social Care Committee in the National Assembly for Wales launched an inquiry into NPS in June 2014. In its report, published in March 2015¹⁰, the Committee welcomed the Home Office's Expert Panel's recommendation of a ban on the supply of NPS in the UK, similar to the approach introduced in Ireland. The Committee recommended that the Minister for Health and Social Services work closely with the UK Government to ensure early action is taken to progress the Expert Panel's recommendation (recommendation 13).

Northern Ireland

14. The Northern Ireland Assembly held a debate on psychoactive substances on 18 May 2015. The Assembly adopted the following resolution: "That this Assembly expresses its concern at the impact of legal highs and in particular at the number of resulting deaths; and calls on the Minister for Health, Social Services and Public Safety to continue his work with the Home Office; and to work with his counterpart in the Republic of Ireland in order to consider the benefits of banning the supply of psychoactive substances regardless of chemical composition".

**Home Office
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⁹ Scottish Parliament, Official Report, 26 February 2015, column 40.

¹⁰ <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>