

Psychoactive Substances Bill

Fact sheet: International Comparators

1. As part of its review, the New Psychoactive Substances (“NPS”) Expert Panel examined a number of approaches for restricting the supply of NPS. In coming to its conclusions on the most appropriate way forward in the United Kingdom, the Panel looked at how these approaches had been applied in other jurisdictions and assessed their suitability in the UK context against a number of guiding principles as set out in Chapter 1 of its report¹. This fact sheet summarises some of the Panel’s key findings and conclusions about the approach taken in other countries.

USA

2. The US Federal Government has adopted an **analogue approach**; this controls substances on the basis of their chemical similarity to a drug already controlled. Under the Controlled Substance Analogue Enforcement Act 1986 (“the 1986 Act”) it is an offence to supply for human consumption a substance that is classed as a controlled substance analogue. To convict a person of trafficking under the 1986 Act it is necessary to show that the substance was intended for human consumption and: (i) that the substance has a chemical structure that is substantially similar to the chemical structure of a controlled substance; and either (ii) that the stimulant, depressant, or hallucinogenic effect on the central nervous system is substantially similar to or greater than that of a controlled substance; or (iii) that the defendant intended or represented that the substance has a similar or greater effect on the central nervous systems as a controlled substance. Prosecutions under this legislation have generally been very resource intensive, with juries being presented with differing expert evidence which they then have to weigh up and determine whether the substance in question should be treated as a controlled substance analogue.

¹ 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).

Expert Panel's conclusions

An analogue approach “would not develop current drug control mechanisms as it does not take the UK much further than its current position in terms of a legislative response to NPS². The approach also would not reduce the visible availability of NPS in the everyday high-street/retail environment. Nor would it minimise the overall costs and complexity to enforcement agencies and others.”

3. More recently the US Federal Government has also adopted a **neurochemical approach**. This approach seeks to control substances based on their effects on the brain. This is enshrined in the Synthetic Drug Abuse Prevention Act 2012 which brought certain synthetic cannabinoids or “cannabimimetic agents” within the framework of the Controlled Substances Act 1970.

Expert Panel's conclusions

“the Panel agreed that there is potential for an alternative mechanism for controlling synthetic cannabinoids.....However, the Panel also recognised that there were risks and possible unintended consequences with this approach. This might include increased numbers of users being potentially drawn into the criminal justice system.”

Ireland

4. Ireland (along with Poland and Romania) has tackled NPS through a **general prohibition on the distribution of non-controlled NPS**. The Irish Republic's Criminal Justice (Psychoactive Substances) Act 2010 (“the 2010 Act”) was enacted in response to the proliferation of head shops (high-street retail premises selling NPS). The 2010 Act makes it an offence to advertise, sell, supply, import or export a psychoactive substance, knowing or being reckless that it was for human consumption. The Act does not contain a production offence, nor does it include any offence for possession for personal use of these substances as it is targeted at those involved in trading in NPS rather than users.
5. As an alternative to a criminal prosecution, the Act conferred on the Garda Síochána (the Irish Police Force) civil powers to issue “prohibition notices”, and provided for court issued “prohibition orders” and “closure orders” where

² The UK has extensively used generic definitions in the Misuse of Drugs Act 1971 by which families of NPS has been classified under the Act.

a prohibition notice is not complied with. Prior to the passage of the 2010 Act there were 102 head shops operating in Ireland. Following the coming into force of the Act the head shop trade in Ireland has virtually disappeared with only a negligible number of such outlets continuing to trade, these continue to be monitored by the police for any breaches of the law.

Expert Panel's conclusions

“The Panel agreed that this approach best addressed the key elements of the guiding principles set out for the review, taking into account the opportunities and risks in the particular UK context. It 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...The approach would also provide enforcement agencies with the necessary powers to close down any UK-based online retailers of NPS.”

New Zealand

6. New Zealand sought to adopt a **regulatory approach** to tackle the country's NPS problem, with the introduction of the Psychoactive Substances Act 2013 (“the 2013 Act”). The legislation sought to place the onus on manufacturers to prove that their NPS products pose a low risk of harm, prior to receiving approval which allows the products to be legally manufactured and sold. The Act established the Psychoactive Substances Regulatory Authority to license any low risk products. Any approved products would be subject to a range of restrictions, including sale through licensed premises, restrictions on advertising, a bar on sales to persons under 18 years and labelling requirements.
7. In order to facilitate the transition to full regulation, an interim regime was established, which granted interim licences to 46 existing untested products that had been on sale six months previously and had not demonstrated any harms to users. Under new retail and licensing rules the number of retail outlets selling NPS fell from 3,000-4,000, which were mainly convenience stores, to 156 specialist stores. Over the interim period, however, it became clear that these products and outlets were having a negative impact upon communities, causing health problems and anti-social behaviour. These concerns resulted in the fast-track passage of the Psychoactive Substances Amendment Act 2104 which revoked the existing interim licences and introduced a ban on animal testing in clinical trials to determine the level of harm posed by an NPS. There was a moratorium on assessing applications

for product approvals and licences until the necessary regulations were in place.

8. Detailed product testing requirements were introduced and the application process opened in November 2014. As at May 2015, no applications have been submitted to the Regulatory Authority. As a result, what was intended to be a regulatory approach has, for the present, effectively become a prohibitive one.

Expert Panel's conclusions

“The Panel agreed that the regulatory approach addressed some of [the] requirements set out in the guiding principles in theory. It could potentially reduce harms, protect individuals from risks posed by untested, unknown substances, reduce the ease of availability in an everyday high-street/retail environment as premises would need to be licensed in order to be able to sell approved NPS, would maximise opportunities for compliance and help to develop the evidence base. However, the Panel also expressed concerns about how it would work in practice.it would be difficult to define ‘low risk’ from a legislative and harms perspective, it would not provide a proportionate response, as the infrastructure required to support the approach (following primary legislation) would take 12 to 18 months to develop based on new Zealand estimates and a mechanism for controlling NPS that were not ‘low risk’ would still be needed which could lead to confusing messages about NPS overall.”

**Home Office
August 2015**