# Psychoactive Substances Bill

## Factsheet: Overview of the Misuse of Drugs Act 1971

1. The provisions of the Psychoactive Substances Bill will build on and complement the existing legislative framework for the control of dangerous drugs as contained in the Misuse of Drugs Act 1971 ("the 1971 Act"). This factsheet provides an overview of the provisions of the 1971 Act.

**The Misuse of Drugs Act 1971**

2. The 1971 Act provides the legislative framework for the regulation of "dangerous or otherwise harmful" drugs; the Act applies to the whole of the United Kingdom. The 1971 Act implements the UK's international obligations under the United Nations Conventions for the prevention of drug misuse and trafficking, namely the Single Convention on Narcotic Drugs 1961[1] and the Convention on Psychotropic Substances 1971[2], which are complemented by the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988[3].

3. The 1971 Act applies to "controlled drugs". This includes substances or products specified in Schedule 2 to the Act. That Schedule divides controlled drugs into one of three Classes – A, B and C – broadly based on their relative harms, with Class A drugs considered the most harmful. Examples of each class of drug are: Class A - cocaine, methadone and opium; Class B - amphetamine, cannabis and ketamine; Class C - khat and temazepam. In addition, controlled drugs include any substance or product specified in a temporary class drug order as a drug subject to temporary control (see below).

4. The 1971 Act provides for a range of offences in relation to controlled drugs, including:

    - importation and exportation (section 3);
    - production, supply or offering to supply (section 4);
    - possession and possession with intent to supply (section 5); and
    - permitting premises to be used for certain activities, including the production or supply of a controlled drug and smoking cannabis (section 8).

5. Section 7 of the 1971 Act enables regulations to be made exempting specified activities from the scope of the above offences, for example where controlled drugs are produced and supplied by healthcare professionals for medicinal purposes.

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[1] http://www.unodc.org/pdf/convention_1961_en.pdf
[2] http://www.unodc.org/pdf/convention_1971_en.pdf
[3] http://www.unodc.org/pdf/convention_1988_en.pdf

6. The maximum penalties for the offences under sections 3 to 8 of the 1971 Act vary according to the class of the controlled drugs, with higher maxima applying for the more or most harmful drugs. The maximum penalties are as follows:

| **Offence** | **Maximum penalty on conviction on indictment: Class A drug involved** | **Maximum penalty on conviction on indictment: Class B drug involved** | **Maximum penalty on conviction on indictment: Class C drug involved** |
|---|---|---|---|
| Production | Life imprisonment | 14 years' imprisonment | 14 years' imprisonment |
| Supply or offering to supply | Life imprisonment | 14 years' imprisonment | 14 years' imprisonment |
| Possession | 7 years' imprisonment | 5 years' imprisonment | 2 years' imprisonment |
| Possession with intent to supply | Life imprisonment | 14 years' imprisonment | 14 years' imprisonment |
| Permitting certain activities to take place on premises | 14 years' imprisonment | 14 years' imprisonment | 14 years' imprisonment |

7. The 1971 Act established the Advisory Council on the Misuse of Drugs ("ACMD") to provide independent expert advice to the Government on the operation of the Act. The ACMD is responsible for:

    - considering any substances which are being, or appears to be, misused and which are having, or are capable of having, harmful effects sufficient to cause a social problem and making recommendations to the Government as to their control under the 1971 Act; and
    - carrying out in-depth inquiries into aspects of drug use that are causing particular concern in the UK, with the aim of producing considered reports that will be helpful to policy makers and practitioners.

**Temporary Class Drug Orders**

8. The advisory and then parliamentary process of classifying a new substance under the 1971 Act can be a lengthy one given the need to fully assess its harmful effects. With the emergence and proliferation of NPS, it became apparent that this process was not sufficiently responsive to the emerging harms posed by those substances that caused particular concern.

9. The Government sought to address this issue through the Police Reform and Social Responsibility Act 2011 which amended the 1971 Act to provide for temporary class drug orders ("TCDO"). Where it appears to the Home Secretary, having taken advice from or consulted with the ACMD, that a substance is one that is being, or is likely to be, misused, and that misuse is having, or is capable

of having, harmful effects, the substance can be made the subject of a TCDO. The effect of such an order is to classify a substance as a controlled drug for certain purposes under the 1971 Act for a period of up to 12 months. This allows time for the ACMD to further review the evidence and prepare advice on the harms of the temporary class drug and provide advice to the Home Secretary as to whether it should permanently be designated as a controlled drug under the 1971 Act. A TCDO comes into effect immediately once it is made, but thereafter must be approved by both Houses of Parliament within 40 sitting days[4].

10. A temporary class drug is subject to the restrictions in the 1971 Act on importation, exportation, production and supply (with the maximum penalty being those applicable to a Class C drug), but it is not an offence to have a temporary class drug in a person's possession (although it is an offence to posses a temporary class drug with intent to supply).

11. Four TCDOs have been made to date:

- The Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2012 came into force on 5 April 2012. This Order covered a group of substances commonly known as methoxetamine. Following this, the ACMD provided advice in October 2012 which concluded that the harms posed by these substances were commensurate with those posed by Class B substances. The Misuse of Drugs Act 1971 (Amendment) Order 2013, which came into force on 26 February 2013, duly classified these substances as Class B controlled drugs.

- The Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2013 came into force on 10 June 2013. This Order covered substances, including 251-NBOMe, 5 and 6-APB (benzofuran compounds) and other related substances. The ACMD then reviewed the harms posed by these substances and recommended that 251-NBOMe should be a Class A controlled drug and that the benzofuran compounds should be Class B controlled drugs. The Misuse of Drugs Act 1971 (Ketamine etc.)(Amendment) Order 2014, which came into force on 10 June 2014, gave effect to these recommendations.

- The Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2015 came into force on 10 April 2015. This Order covered methylphenidate-related materials and specified derivatives. This TCDO lapsed on 27 June 2015 and was replaced by a further Order (see below).

- Misuse of Drugs Act 1971 (Temporary Class Drug) (No.2) Order 2015 came into force on the 27 June 2015. This Order covers seven methylphenidate-based compounds and specified derivatives. It contains those drugs subject to control in the Order that came into force in April 2015, and two additional substances.

[4] No account is taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

12. The current regime has been successful in banning over 500 NPS, since 2010. However, the NPS Expert Panel commented in its report[5] that the classification of a drug, as seen with NPS over the past five years, is a repetitive advisory and parliamentary process with resource implications for the ACMD. The Panel further observed that the apparent consequences of the current approach to date appear to be an inevitable time lag between an NPS coming onto the market and a legislative response under the 1971 Act. Moreover, there was evidence to suggest that the more rapidly new controls are put in place the greater the rate of NPS coming onto the market and, in some instances, the greater the potency of these products. The Panel therefore concluded that the current legislative regime "is unlikely to get fully ahead of the NPS market" and that new legislation was needed to build on the existing provisions of the 1971 Act.

**Home Office**
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[5] See pages 18 and 21 of the Expert panel's report: https://www.gov.uk/government/publications/new-psychoactive-substances-review-report-of-the-expert-panel