Psychoactive substances Bill

Home Office

RPC rating: Fit for purpose

Description of proposal

New psychoactive substances are currently sold online and through retailers known as 'head-shops'. The proposal will introduce a general ban on the sale, import, export and production of products with psychoactive effects. There will be exemptions for substances and professions where there are legitimate and currently lawful uses (for example in relation to alcohol or caffeine).

Psychoactive substances produce a psychoactive effect (such as mimicking the effects of controlled drugs), and can currently enter the market with little or no understanding of their effects on health. The current legislative framework, under the Misuse of Drugs Act 1971, can only put controls in place once the harm caused by a substance has been assessed. The current framework, therefore, takes time to respond to new substances emerging. Subsequent single substance bans have encouraged new and potentially more harmful substances to be created, as the new substances created to circumvent the legislation will not have been tested on humans or animals.

Impacts of proposal

The department estimates that the proposal will affect 335 head-shops and 115 online sellers (including a small number of importers). The department states that there is no evidence that new psychoactive substances are currently manufactured in the UK. On average, the department estimates that the ban will result in around £75,000 lost profit on average for each business each year, with an overall cost to business of around £33 million each year. These estimates derive from departmental calculations about average sales revenues for psychoactive substances. This translates into an equivalent annual net cost to business (EANCB) of £25.7 million.

If, during the passage of the Bill, it becomes clear that the proposals will result in new additional costs for other businesses (such as those operating premises where psychoactive substances may be obtained or conducting research) a revised IA for the Act will need to be submitted for validation.

Quality of submission

The IA states that there is considerable uncertainty regarding the number of businesses, the overall volume of sales, and the profit associated with those sales. The IA explains the approaches taken by the department to gather more information, including efforts to engage directly with businesses selling psychoactive substances. As the department received little response back from such businesses, despite repeated attempts to gain further information, the department has used estimates and assumptions based on the best available evidence. The RPC is able to validate the estimated impacts as robust, based on the currently available evidence.

Issues addressed following RPC's initial review

Net present value: as initially submitted, the IA did not explain in a single section the reasons for preferring an option with a negative net present value. The department has now included a revised section that brings together the arguments more clearly, in particular by articulating the range of non-monetised benefits that the proposal could deliver. These non-monetised benefits include reduced deaths where psychoactive substances are not the sole substance present, the potential for reduced longer term health costs of using psychoactive substances and the potential to avoid the harm caused by new substances becoming more significant.

Profits: the IA previously calculated the impacts on business using a net profit approach that was not consistent with the normal interpretations of the better regulation framework methodology. Following comments from the RPC, and to make the assessment comparable with other IAs, the department amended the analysis to use gross profits instead. In the revised IA, the department does not offset costs, such as wages or rent, which could not be directly attributed to the sale of psychoactive substances. The department previously used the proportion of turnover associated with psychoactive substance sales to estimate that costs of £10,000 per business each year were associated with psychoactive substance sales. However, as this could not be clearly attributed to the marginal costs of sales and there was no clear evidence that such fixed costs could be reduced by these proportions following the ban, this offsetting affect has now correctly been excluded from the EANCB calculation. This has resulted in the EANCB increasing by £4.5 million (from £21.2 million to £25.7 million).

Small and micro business assessment

The IA highlights that the significant majority of businesses selling psychoactive substances are likely to be small or micro. The department's assessment is that exempting small businesses from the ban would significantly, if not totally, undermine the ability of the proposal to deliver a ban on sale of such substances. This assessment appears to be sufficient.

Initial departmental assessment

Classification	IN
Equivalent net cost to business	£21.2 million
Net present value	-£100 million
Business net present value	-£281 million

RPC confirmation

Classification	IN
Equivalent net cost to business	£25.7 million
Small and micro business assessment	Sufficient

Michael Gibbons OBE, Chairman