

A simple (ish) guide to the Psychoactive Substances Bill

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What is it?: A Bill that, if it becomes law, will make it an offence to produce, supply or offer to supply any psychoactive substance with the exemption of nicotine, alcohol, caffeine and medicinal products.^{1,2} The main intention of the Bill is to shut down shops and websites that currently trade in 'legal highs'. Put simply any substance that can get you high regardless of its potential for harm will become illegal to produce or supply.

At what stage is the Bill?: The Bill has passed through the Committee stage³ and been amended.⁴ It will now go through a Reporting stage at which point further amendments can be made and other exemptions included. The Bill is expected to become law in April 2016.

Existing laws: The Bill doesn't replace the Misuse of Drugs Act (1971) so laws around existing illegal (controlled) drugs will remain the same. Temporary Class Drug Orders (TCDOs) can still be applied and the Human Medicines Regulations (2012) will remain the same. However the Intoxicating Substances Supply Act (1985)* will be scrapped.

At present a substance causing concern must be reviewed by the ACMD (the Advisory Council on the Misuse of Drugs) to assess any potential harm. The ACMD then advise the government on a course of action. The government do not have to take this advice, but are bound to consult the ACMD first. The ACMD will still have a role and a 'new' or emerging psychoactive substance can still be brought under the Misuse of Drugs Act, but this Bill was introduced without consulting the ACMD and (when it becomes law) will fundamentally change drug legislation.

Possession: Possession of a psychoactive substance **will not be an offence**, except in a 'custodial institution' (prison, young offender centre etc.). Possession with intent to supply, importing or exporting a psychoactive substance will all become offences.

Importation: The Bill does not include possession as an offence as the government did not want it to lead to the mass criminalisation of young people. It has however been pointed out by some commentators that the importing of a psychoactive substance would include buying a psychoactive substance from a non-UK based website, which may lead to individuals being prosecuted.

Supply and production: The main thrust of the Bill was intended to act against shops and websites supplying 'legal highs'. If the experience of similar legislation introduced in Ireland is repeated the visible outlets selling them will most likely disappear. The Bill is also quite specific in that the onus is on the sellers and producers of a substance to ensure it is not 'likely' to be consumed for its psychoactive effects.

*Made it an offence to sell volatile substances (e.g. glues, gases) to under 18s if it was believed they would be inhaled to cause intoxication.

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Penalties under the Psychoactive Substances Bill:

Offence	Summary (Magistrates Court)	Indictment (Crown Court)
Possession	Not an offence	Not an Offence
Possession in a custodial institution	Up to 12 months and/or a fine*	Up to 2 years and/or a fine
Possession with intent to supply	Up to 12 months and/or a fine*	Up to 7 years and/or a fine
Supply/offer to supply etc.	Up to 12 months and/or a fine*	Up to 7 years and/or a fine
Production	Up to 12 months and/or a fine*	Up to 7 years and/or a fine
Importation/exportation	Up to 12 months and/or a fine*	Up to 7 years and/or a fine
Failure to comply with a Prohibition or Premises notice	Up to 12 months and/or a fine*	Up to 2 years and/or a fine

*Summary convictions in Northern Ireland are up to 6 months and/or a fine.

Offences under the Psychoactive Substances Bill would be considered 'aggravated' if they involved supply to under 18s or near a school.

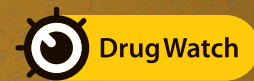
Powers of stop and search: Police will have powers of stopping and searching individuals and premises, however possession of psychoactive substances will not be an offence and which substances are actually psychoactive is far from legally clear at present.⁵ Currently the Association of Chief Police Officers (ACPO) guidance states that a 'legal high' should be treated like a controlled drug until proven otherwise. There will presumably be further ACPO guidance issued before April 2016.

Premises and Prohibition notices: Within the Bill there are quite detailed powers given to the police and local authorities for dealing with the licensees (owners etc.) of shops and UK-based websites, and penalties for failure to comply with notices issued under this section of the Bill.

Definition of psychoactive: Quite what constitutes a psychoactive substance is one of the most contentious issues in the Bill, which defines it as: *"any substance which (a) is capable of producing a psychoactive effect in a person who consumes it, and (b) is not an exempted substance"*. The government are confident that a psychoactive substance can be defined, tested simply and cost effectively and subsequently proven in court.⁵ The ACMD among others have argued consistently that the definition in the Bill is too broad and is unworkable in practice. The Home Secretary responded to the concerns of the ACMD in November 2015.⁶

Exemptions: Nicotine, alcohol and caffeine will be exempt from being classed as psychoactive substances. Medicinal products as defined by the Human Medicines Regulations (2012) will also be exempt. Other specific exemptions could still be defined before the Bill becomes law.

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Poppers: The Scottish National Party tabled an amendment to make an exemption for poppers (isopropyl nitrite etc.) because of their prevalence in LGBT communities and a fear that banning them would lead to the use of more dangerous substances. However this was rejected at the subsequent Committee stages³ of the Bill in the House of Lords.

Nitrous oxide: Nitrous oxide (when used as a propellant for whipped cream) would be exempt as a food preparation, but would be considered a psychoactive substance if it was sold with the likelihood of being used to get high. This is pretty much the situation at the moment, however the onus will be on the supplier to ensure the product was not intended for this purpose.

Food and drink: Nutmeg (which is psychoactive) is used as an example in the government's commentary document² of a psychoactive substance that would be classed as a food and be exempt unless it was specifically sold for psychoactive purposes. The evidence submission by Release and Transform⁷ points out the difficulties this issue may cause in practice. It also summaries most of the other main arguments/debates against the Bill, such as whether it will be workable or enforceable in practice and whether it will make things worse as (arguably) may have happened in Ireland and Poland where similar legislation was introduced.

Costs: In the current financial climate the cost of anything is a major issue and the onus of implementing various aspects of this Bill appears to fall on the police, Trading Standards and local authorities. In the debate at the Committee stage³ the issue of payment, for example the costs of testing, expert witnesses etc. was raised without any clear answers and certainly no commitment of funds coming from any new sources.

DrugWatch is currently an informal association of charities, organisations and individuals who share an interest in establishing a robust early warning system in the UK for all types of drugs.

References:

1. <http://services.parliament.uk/bills/2015-16/psychoactivesubstances.html>
2. <http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0063/en/16063en06.htm>
3. <http://www.publications.parliament.uk/pa/cm201516/cmpublic/psychoactive/151027/am/151027s01.htm>
4. <http://www.parliament.uk/documents/commons-public-bill-office/2015-16/compared-bills/Psychoactive-Substances-bill-151030.pdf>
5. A substance will be regarded as psychoactive if it tests positive to one of a series of 5 – 10 in vitro receptor assays (list of tests not yet in the public domain). A database of around 100 compounds that have already been tested will be updated as new compounds are discovered, identified and tested. A new compound will be tested and if positive added to the list and the law applied retrospectively.
6. <https://www.gov.uk/government/publications/home-secretary-letter-to-acmd-chair-psychoactive-substances-bill>
7. <http://www.release.org.uk/publications/joint-submission-public-bill-committee-psychoactive-substances-bill>