



House of Commons
Home Affairs Committee

Psychoactive substances

First Report of Session 2015–16



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to the report*

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The Home Affairs Committee

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1 Introduction

Psychoactive substances

1. New psychoactive substances (NPS), more commonly and inappropriately referred to as ‘legal highs’, is an umbrella term for products intended to mimic the effects of controlled drugs. The ‘legal highs’ market is characterized by the speed with which suppliers circumvent drug controls by offering new alternatives to restricted products and advertise them with aggressive and sophisticated marketing strategies (as air fresheners, herbal incenses, bath salts, plant fertilizers, collectors’ items etc.). The term ‘legal high’ is also a successful marketing instrument in and of itself, as it implies that these substances are not as dangerous as controlled drugs, thus boosting their popularity and sales. Substances presented as ‘legal highs’ often also include controlled drugs.

Prevalence of NPS

2. The European Monitoring Centre of Drugs and Drug Addiction (EMCDDA) is responsible for the European early warning system for NPS. Whenever a NPS is detected in a country, information on its manufacture, trafficking and use is sent by the State to Europol and EMCDDA. In 2014, 101 new substances were identified in the European Union, continuing the five year upward trend from 24 detections in 2009.¹

3. In terms of popularity, a European survey of youth attitudes estimated that 5% of young Europeans (aged 15–24) had used NPS at some time. The highest estimates were reported by Ireland (16%) followed by Latvia, Poland and the UK (10%).² The largest market for NPS in the EU is the UK (670,000 people in the age group 15 to 24, or 23% of the EU total), followed by Poland (17%) and France (14%). In some European countries (Ireland and Poland), the use of NPS among young people is greater than the use of other drugs, and in the UK, the levels are approaching those of other drugs, apart from cannabis.³

Public health concerns

4. Many NPS are only legal because they have not yet been assessed for their harms and considered for control under the Misuse of Drugs Act 1971, 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. Deaths related to NPS in England and Wales more than doubled from 26 to 60 between 2009 and 2013. In 2013, there were also 113 deaths in Scotland where NPS were present in the body (though this figure is not directly comparable with the figures for England and Wales).⁴

Background to our inquiry

5. Currently, under the Misuse of Drugs Act 1971, the Advisory Council on the Misuse of Drugs (ACMD) makes reports as to which substances should be “controlled drugs”

1 [Explanatory Notes to the Psychoactive Substances Bill \[Lords\]](#) [Bill 63 (2015–16) –EN], P3

2 European Monitoring Centre of Drugs and Drug Addiction, [The state of the drugs problem in Europe: Annual Report 2012](#), P91-92

3 United Nations Office on Drugs and Crime, [World Drug Report 2013](#), P72

4 [Explanatory Notes to the Psychoactive Substances Bill \[Lords\]](#) [Bill 63 (2015–16) –EN], P4, and Home Office ([PAS042](#))

(i.e. Class A, B and C), such as cocaine and heroin. The ACMD is also consulted when the Secretary of State wishes to make a temporary class drug order. This order was introduced specifically to enable the Government to temporarily control NPS through a faster parliamentary mechanism than under the Misuse of Drugs Act.

6. Home Affairs Committees in previous Parliaments have produced a number of Reports on drug control and related matters. In particular, our immediate predecessors published a report on *Drugs: new psychoactive substances and prescription drugs* in December 2013 which called for the introduction of tailored and specific legislation to shift the evidential responsibility for proving the safety and non-narcotic purpose of a substance onto the seller.⁵

7. In May 2015, the current Government introduced new legislation “to ban the new generation of psychoactive drugs”. Its stated purposes are to:

- (1) Protect hard-working citizens from the risks posed by untested, unknown and potential harmful drugs.
- (2) Create a blanket ban which would prohibit and disrupt the production, distribution, sale and supply of new psychoactive substances (NPS) in the UK.⁶

Under the Bill, new psychoactive substances will automatically be banned, unless they are exempted. The Secretary of State can add or vary the list of exempted substances, but only after consultation with appropriate persons, including the ACMD.

This inquiry and Report

8. We announced our terms of reference and issued a call for evidence in July 2015. We received around 50 written submissions from a range of organisations and individuals and held oral evidence sessions with four panels of witnesses. A full list of oral and written evidence is set out at the end of the report. In addition we visited the Central and North West London NHS Foundation Trust Club Drug Clinic. We are grateful to everyone who contributed to our inquiry, and we hope that this Report will inform the Commons stages of the passage of this important legislation.

⁵ Home Affairs Committee, Twelfth Report of Session 2013–14, [Drugs: new psychoactive substances and prescription drugs](#), HC 819, para 14

⁶ Prime Minister’s Office, [Queen’s Speech 2015: background briefing notes](#), P72

2 Consultation and formulation of the Bill

9. Since 2008, the UK has seen the emergence of new psychoactive substances (NPS) that are intended to mimic the effects of traditional drugs that are controlled under the Misuse of Drugs Act 1971. These NPS have become more prevalent and diverse, and have raised public health and anti-social behaviour concerns. In order to address this issue, in 2013 the Government commissioned the New Psychoactive Substances Review Expert Panel to review the existing legislative approach. In September 2014, the Panel reported that the current UK legislative approach was unlikely to get ahead of developments in the NPS market. It stated that: “after years of stable and declining drug use, the emergence of NPS has been a ‘game changer’”.⁷ The Panel recommended that the Government legislate to prohibit the distribution of non-controlled NPS, focusing on the supply, rather than those using them. An Expert Review Group established by the Scottish Government and an inquiry by the Health and Social Care Committee of the National Assembly for Wales reached similar conclusions.⁸

10. The Conservative party manifesto for the 2015 General Election included a commitment to “create a blanket ban on all new psychoactive substances, protecting young people from exposure to so-called legal highs”.⁹ On 26 May, the Home Secretary wrote to Professor Les Iversen, Chair of the ACMD, saying that a bill would be published “as soon as possible”, and that “there are a number of aspects of our proposed approach that would greatly benefit from the Council’s input”.¹⁰ The Psychoactive Substances Bill was introduced in the House of Lords on 28 May.

11. Some witnesses were concerned about the speed with which the Bill had been introduced. Release and Transform told us that the lack of pre-drafting consultation with the ACMD, civil society or industry had created problems.¹¹ Medical organisations pointed out that the Bill does not seem to exempt bona fide research, which “illustrates the importance of drawing early on a broad range of expert advice to inform the development of legislation, to ensure that the legislation is proportionate and that any unintended consequences are identified and addressed”.¹² The ACMD, replying to the Home Secretary, also expressed concerns “that the Bill, as drafted, may not achieve its aims and may produce serious unintended consequences”.¹³ It also raised a number of specific concerns about the content of the Bill, some of which we address later in this Report.

12. The ACMD Chair told us that he first saw the Bill when it was published, since when comments have been solicited from each of its 25 members.¹⁴ Whilst the ACMD was working constructively with the Home Office, this was being done through answering questions as they arose and offering advice, rather than any more systematic approach.¹⁵

7 [Explanatory Notes to the Psychoactive Substances Bill \[Lords\]](#) [Bill 63 (2015–16) –EN], P4

8 [Explanatory Notes to the Psychoactive Substances Bill \[Lords\]](#) [Bill 63 (2015–16) –EN], P6

9 [Explanatory Notes to the Psychoactive Substances Bill \[Lords\]](#) [Bill 63 (2015–16) –EN], P6

10 [Letter dated 26 May 2015, from Home Secretary to ACMD](#)

11 Release and Transform (PAS028)

12 Academy of Medical Sciences, British Pharmacological Society, Royal College of Psychiatrists, Royal Society, Royal Society of Biology and the Wellcome Trust (PAS031)

13 [Letter dated 2 July 2015, from ACMD to Home Secretary](#)

14 Q16

15 Q38

He would have preferred to have been “involved in the drafting of the Bill”. He believed that the current text of the Bill was “not the best possible”, and hoped that it would be improved.¹⁶

13. Rt Hon Mike Penning MP, Minister for Policing, Crime and Criminal Justice and Victims, Home Office, rejected the claim that there had not been sufficient consultation, saying “[t]hree members [of the ACMD] were on the advisory panel making the decision on policy”.¹⁷ He explained that he had recently met the Chair of the ACMD, and had “accepted the vast majority” of the concerns that had been raised.¹⁸ He acknowledged there was a lot of work to do to make sure the Bill did what was intended, but said that the Home Office would listen and amend the Bill, and that it was enabling legislation that would evolve, rather than being “a fixed entity”.¹⁹

Irish experience

14. Legislation on NPS was implemented in the Republic of Ireland in 2010. In its response to the Expert Panel’s 2014 report, the Government announced its intention to develop proposals for a blanket ban similar to that introduced in Ireland.²⁰ The Minister told us that the Irish legislation was “working very well”. However, we have received conflicting views on its effectiveness. Rudi Fortson QC stated that “there has been a lamentable paucity of reliable information concerning the operation of that Act and its effectiveness or otherwise”.²¹ The Local Government Association said that anecdotal evidence in Ireland indicated that, since the ban, there had been a fall in the number of hospital admissions and the people attending drug treatment services in respect of problematic NPS.²² However, Mentor, Release and Transform contended that NPS use had increased since the ban.²³

15. Professor Iversen told us that the Irish example was “really what we are basing our legislation on”, but, as there has not been any formal report on the impact of the Irish legislation, the only available evidence was anecdotal.²⁴ This showed that most of the ‘head shops’ (outlets selling NPS) in Ireland had closed down.²⁵

16. The Minister told us that “the whole of Europe is looking at how we are doing this”, and that he was working closely with the Irish Justice and Police Minister, “so that we can have a better legislation than they have”.²⁶ He too referred to the closure of ‘head shops’ in Ireland, and also noted that there had been “a remarkable lack of prosecutions”.²⁷ He did regret that there was not more evidence on the impact of the Irish legislation, but said he was not willing to postpone legislating whilst more people “have their lives destroyed” through NPS use.²⁸

16 Qs 44 and 39

17 Q135

18 Q122

19 Qs 125 and 136

20 [HC Deb, 30 October 2014, col 28-30WS](#)

21 Rudi Fortson QC ([PAS050](#))

22 Local Government Association ([PAS015](#))

23 Mentor ([PAS003](#)) and Release and Transform ([PAS028](#))

24 Qs 55 and 58

25 Q57

26 Qs 122 and 137

27 Q126

28 Q134

Evaluation

17. In the absence of broad consultation prior to the publication of the Bill, or a detailed analysis of the impact of the Irish legislation, several organisations have called for a thorough evaluation of the Bill. This is to ensure that, once enacted, the legislation and any associated guidance are being appropriately implemented, and in particular that the issue of medical research has been satisfactorily addressed.²⁹

18. In a letter to the ACMD, the Home Secretary confirmed there would be a review of the operation of the Act post-implementation. The Bill was amended in the House of Lords, and now places a duty on the Home Secretary to conduct a review and publish a report within 30 months of the commencement. The Home Office has said it is keen to work with the ACMD to discuss the scale and scope of the review, and how to make best use of existing data and evidence.³⁰

19. The Royal College of Psychiatrists told us that an evaluation should examine the impact on the use of controlled drugs and banned substances, on scientific research, and on law enforcement.³¹ Dr Owen Bowden-Jones of the Central North West London NHS Foundation Trust told us that evaluation was absolutely critical as this legislation was “uncharted territory”. He explained that a range of metrics was required so that changes could be understood from different perspectives. In particular, he referred to assessing harms from NPS “across the full extent of the health front-line” which are not currently being recorded on a national basis.³²

20. Britain has the largest usage of psychoactive substances of any country in Europe. The public is shocked when it hears of a case of a young person who has died as a result of using these substances on a night out. The scenario is every parent’s worst nightmare. The Government is right to legislate on this issue. However, the speed at which the Government has brought forward this legislation, without any consultation on the specific detail of the Bill, has resulted in some weaknesses in the legislation being identified. We would have preferred the concerns to have been addressed in a less piecemeal manner. Communication with the Advisory Council on the Misuse of Drugs (ACMD) has been unsatisfactory, which has required months of letters back and forth to try and resolve the issues that have arisen.

21. On 15 September, the Minister indicated to us that second reading of the Bill would be in November. Since then the Government has moved ahead with the Parliamentary stages of the Bill, such that this Report was not available to Members at the second reading debate which took place on 19 October. Furthermore, it is intended that the Committee stages will be completed before the end of October. It is regrettable that the Government has proceeded with such speed, without the benefit of our Report. In general, limiting the time available for effective scrutiny by committees of the House reduces the opportunity for concerns to have been addressed, and most importantly, for improvements to be made to legislation. We welcome the Minister’s statement during the second reading debate, when he said “I look forward to the report, not least because of the excellent work that I know has been carried out not only by the Chairman

29 Academy of Medical Sciences, British Pharmacological Society, Royal College of Psychiatrists, Royal Society, Royal Society of Biology and the Wellcome Trust ([PAS031](#))

30 Letter dated 11 July 2015, from the Home Secretary to the ACMD

31 Royal College of Psychiatrists ([PAS014](#))

32 Q165. See also Central North West London NHS Foundation Trust ([PAS020](#))

and other Members but by my hon. Friend the Member for Enfield, Southgate (Mr Burrowes)”).

22. This Bill is based on legislation introduced in Ireland in 2010. It would have been preferable to legislate in the UK with the benefit of an assessment of the effectiveness of legislation introduced in Ireland. This Committee has not seen any evidence that any such assessment is available or would have been available in the timescale within which the Government wished to operate.

23. *To be effective, it is essential that the Government draws more extensively on the experience and expertise of key stakeholders. That is what they are there for. Even at this late stage, the Government must consult with stakeholders. We recommend that the Government begins to work closely with them to draw up the guidance which will accompany the legislation. We also recommend that stakeholders are involved fully in establishing the scale and scope of the statutory review into the operation of the legislation, once it is enacted.*

3 Definition of psychoactive substance

24. Clause 2 of the Bill defines a ‘psychoactive substance’ as any substance which is capable of producing a psychoactive effect in a person who consumes it, and is not on the Government’s list of exemptions. A substance produces a psychoactive effect in a person if, by stimulating or depressing the person’s central nervous system, it affects the person’s mental functioning or emotional state. The Explanatory Notes to the Bill state that the range of effects include, but are not limited to: hallucinations; changes in alertness, perception of time and space, mood or empathy with others; and drowsiness.³³

25. Most of the written evidence we have received acknowledges that a broad definition of a psychoactive substance has been intentionally established in order to keep ahead of the pace at which these substances can be created and altered. However, there are concerns that the breadth of the definition might have unintended consequences. Pharmaceutical organisations are concerned that it will have an adverse effect on producers of legitimate medicines; retailers want clarity on the products they can stock; and religious organisations are concerned that use of incense in places of worship will be criminalised.³⁴

26. The Government has taken some steps to assuage these concerns. The Home Office has confirmed that guidance will be provided on how the Bill will affect retailers, and that the Government is committed to ensuring that bona fide medical and scientific research is exempted.³⁵ However, it remains unclear whether a range of substances will be banned by the proposed legislation. Rudi Fortson QC told us that “the definition not only encompasses drug substances that are in fact harmful, but also those substances which may be beneficial to a person’s well-being”. He has questioned whether the Government can be confident that substances which are beneficial will not be criminalised, whether prosecutorial discretion will be relied upon, and whether guidelines would be issued.³⁶

27. Mr Penning told us he was aware of these concerns, but dismissed them, describing some of the comments about this as “just, frankly, ludicrous.”³⁷ Following the oral evidence session, he wrote to us explaining that the Bill already contains the list of exempted substances, that any other substance falling within the definition of a psychoactive substance would be caught by the blanket ban, and that “it is not feasible to produce a comprehensive and stable list of all affected psychoactive substances”.³⁸

28. From a policing perspective, Commander Simon Bray, the National Police Chiefs’ Council lead on psychoactive substances, told us that the police were confident that the definition had worked in other jurisdictions, and that it was as clear as possible for police officers and law enforcement to operate and for the public to understand.³⁹ He added that there would be a common-sense approach from law enforcement and prosecutors on what

33 [Explanatory Notes to the Psychoactive Substances Bill \[Lords\]](#) [Bill 63 (2015–16) –EN], 96

34 [Napp Pharmaceuticals \(PAS007\)](#), [Association of the British Pharmaceutical Industry, the British Generic Manufacturers Association and the Proprietary Association of Great Britain \(PAS040\)](#); [Association of Convenience Stores \(PAS017\)](#), [National Federation of Retail Newsagents \(PAS025\)](#), [Association of English Cathedrals \(PAS002\)](#)

35 Home Office supplementary [\(PAS055\)](#)

36 Rudi Fortson QC [\(PAS050\)](#)

37 Q123

38 Home Office supplementary [\(PAS055\)](#)

39 Q6

cases were pursued, that guidance would be disseminated, and that “a logical and sensible approach that does not come up with silly prosecutions” would be taken.⁴⁰

29. Despite this, the ACMD have also raised concerns about the broad definition, which has been the subject of a series of letters with the Home Office, and which Home Office officials are working with the ACMD to strengthen.⁴¹ Professor Iversen told us:

In a Bill to ban psychoactive substances, you must have some means of defining what a psychoactive substance is. Just to say that a psychoactive substance is something that causes psychoactivity in human beings is really not adequate. We have tried to address that issue and tried to be helpful in coming up with an alternative definition.⁴²

He explained that the ACMD had recommended including the word ‘novel’ but this had been rejected by the Government on the basis that it could not be defined legally with sufficient precision.⁴³ The ACMD had therefore offered further alternative definitions “which might provide a legally defensible ‘meaning of psychoactive substance’”, recommending the following definition because it retains the concept of the assessment of harm, and it is also closest to that used by the Expert Panel

Psychoactive substances which are not prohibited by the United Nations Drug Conventions of 1961 and 1971, or by the Misuse of Drugs Act 1971, but which may pose a public health threat comparable to that posed by substances listed in these conventions.⁴⁴

30. Professor Iversen told us “We would stand by our belief that the existing definition of psychoactivity in the draft Bill that we have seen is not workable”. He believed that the definition that the ACMD had come up with was “an improvement” on the existing “very loose definition of what is meant by psychoactivity”.⁴⁵

31. The terminology used to describe substances of this nature has long been ill-defined. The use of the term ‘legal highs’ is both misleading and inappropriate. It sends out a message to young people that these substances are both ‘legal’ and will have a ‘desirable’ effect. This has tempted people to experiment with these substances, sometimes with disastrous consequences.

32. *Regarding the terminology contained in the Bill, there has been no consultation on the definition of psychoactive substances. We recommend that the Government reconsider the definition of a psychoactive substance, with the benefit of the advice the ACMD have provided.*

40 Q10

41 [Letter dated 2 July 2015, from ACMD to Home Secretary](#), [Letter dated 13 July 2015, from the ACMD to the Home Secretary](#); Home Office (PAS042)

42 Q20

43 Q27

44 [ACMD Advice on definitions of scope for the “Psychoactive Substances Bill”](#)

45 Qs 34 and 82

4 Proving psychoactivity

33. Some of the written submissions we received highlighted that, for the criminal offences provided for in the Bill, the burden will be on the prosecution to prove beyond reasonable doubt that a substance has ‘psychoactive effects’.⁴⁶ Amber Marks, a lecturer in criminal law, said that this “will be a “difficult and unworkable task””, whilst Rudi Fortson QC questioned how this would be proved in the absence of human clinical trials.⁴⁷

34. Newcastle City Council have raised concerns that substances would have to be tested in order to prove that they are ‘psychoactive’, and so caught by the legislation.⁴⁸ The Chartered Trading Standards Institute argued that this would require “rigorous scientific testing and analysis to obtain a toxicology report detailing the specific chemical components found in the drug”. They estimate that it would cost £100 per substance to conduct a basic test, and that typical ‘head shop’ investigations require multiple tests to be conducted as the contents of a substance may differ between packets. They are therefore concerned that there will be significant cost implications for enforcement agencies, which has been echoed in other written submissions.⁴⁹

35. Police Scotland and the Scottish Government believe that the definition of a psychoactive substance might be problematic in ensuring a successful conviction. They argue that a successful case would require evidence from a qualified expert with experience of working with NPS to be able to identify the substance and prove its psychoactivity. However, given that the substances continually evolve they anticipate that the knowledge base would take a considerable amount of time to generate. Furthermore, they state that every case that involved NPS offences would require the suitably qualified medical expert to provide their evidence in court, which would incur a substantial cost.⁵⁰

36. In response, the Minister referred to the experience in Ireland:

There has been a remarkable lack of prosecutions, interestingly—I think only five have ended up in the courts—where they have used their forensic teams to prove that the product was [psychoactive] and then the courts have accepted that.⁵¹

However, Release and Transform told us that the Irish authorities had experienced difficulties in proving psychoactivity.⁵² They referred to comments from Detective Sergeant Tony Howard from Ireland’s Drug and Organised Crime Bureau, who told the BBC that “there are problems. It is not perfect legislation”. He described how police scientists were having problems proving the ‘psychoactive’ nature of a substance, and said “we are relying on scientists to assist us with these prosecutions and, unfortunately, they haven’t been able to provide the evidence to us”.⁵³

⁴⁶ Rudi Fortson QC ([PAS050](#)), Amber Marks, Lecturer in Criminal Law and Evidence, Queen Mary, University of London ([PAS012](#)), Chartered Trading Standards Institute ([PAS027](#))

⁴⁷ Amber Marks, Lecturer in Criminal Law and Evidence, Queen Mary, University of London ([PAS012](#)); Rudi Fortson QC ([PAS050](#)),

⁴⁸ Newcastle City Council ([PAS023](#))

⁴⁹ Chartered Trading Standards Institute ([PAS027](#)); see also Dr Richard Stevenson ([PAS011](#)), YMCA England ([PAS032](#)), London Drug and Alcohol Policy Forum ([PAS041](#))

⁵⁰ Police Scotland ([PAS029](#)), The Scottish Government ([PAS024](#))

⁵¹ Q126

⁵² Release and Transform ([PAS028](#))

⁵³ “[Call to halt legal highs ban based on ‘flawed’ Irish system](#)”, BBC News, 22 June 2015

37. This issue is one of the range of concerns that the ACMD has raised with the Home Office. It has argued that the psychoactivity of a substance cannot be unequivocally proven, because “the only definitive way of determining psychoactivity is via human experience, which is usually not documented”. While most psychoactive drugs share similar mechanisms of action, which can be determined by in vitro neurochemical tests, the ACMD are wary that such proxy measures may not stand up in a court of law.⁵⁴ However, Professor Iversen suggested that if the ACMD’s proposed definition of psychoactive substances were to be accepted, the tests required could be written into the Bill and this would then be definitive without requiring medical experts to be available in the court.⁵⁵

38. If the legislation is to achieve its aims, it must deter producers and suppliers from making psychoactive substances available. According to Police Scotland, it is questionable how this will be done if these people cannot be successfully prosecuted. It appears that the ACMD might have provided a solution through their definition of psychoactive substances, and we call on the Government to assess whether this approach would result in more successful prosecutions.

⁵⁴ Letter dated 2 July 2015, from ACMD to Home Secretary

⁵⁵ Q36

5 Concept of harm

39. As stated above, one of the principal purposes of the Bill is to “protect hard-working citizens from the risks posed by untested, unknown and potential harmful drugs”.⁵⁶ This message was reiterated by the Minister in the Lords, Lord Bates, who said “success would mean reducing the harms caused by new psychoactive substances”.⁵⁷ However, a number of written submissions have highlighted that, unlike the Misuse of Drugs Act, the Bill does not feature the concept of harm.

40. Amber Marks notes the absence of the concept of harm, despite the fact that not all psychoactive substances are harmful, and suggests that offences that were based on harm might be more appropriate than the current basis of psychoactivity.⁵⁸ Written evidence from a group of academics goes further stating “this bill does not calibrate for harm, and indeed exempts known harmful substances whilst banning substances which are not harmful simply because they are psychoactive” which they believed should be a secondary issue.⁵⁹

41. Rudi Fortson QC argued that this might cause difficulties in that a sentencing court would wish to determine a just penalty, commensurate with the offence, having regard to the harm associated with the drug in question. He has highlighted the Government position, that it does not intend to be disproportionate with the sentencing, but contends that “in the absence of drug classification, or an expert’s opinion (if accepted) as to harm, the courts will have little option but to assume that all psychoactive substances are equally harmful”.⁶⁰ In correspondence with the ACMD, the Home Secretary explained that law enforcement agencies would give priority to policing “those sources of supply which caused the most harm to communities in terms of crime and disorder or where connected with organised crime”. Additionally, enforcement guidelines would be developed with an emphasis on “the more serious incidences, where organised crime, acquisitive crime, disorder or harm to others are involved”. Furthermore, the Bill contains both criminal and civil sanctions which will enable law enforcement agencies to adopt a proportionate response, including the option of pursuing out of court disposals in appropriate cases.⁶¹ In oral evidence the Minister reiterated the view that the Government did not wish to be disproportionate with sentencing.⁶²

42. Professor Iversen told us that the problem with including a definition of harm was that it would take time to amass the evidence, which takes away the proactive nature of the Bill.⁶³ However, he reiterated that if a substance banned under the new Bill was shown to be still being used and to be causing harm, it might then be brought under the Misuse of Drugs Act.⁶⁴

56 Prime Minister’s Office, [Queen’s Speech 2015: background briefing notes](#), P72

57 [Letter from Lord Bates to Lord Rosser, 15 June 2015](#)

58 Amber Marks, Lecturer in Criminal Law and Evidence, Queen Mary, University of London ([PAS012](#))

59 Professor Julian Savulescu et al ([PAS022](#))

60 Rudi Fortson QC ([PAS050](#))

61 [Letter dated 11 July 2015, from the Home Secretary to the ACMD](#)

62 Q127

63 Q52

64 Q53

Alkyl nitrites

43. We received written evidence from the National Aids Trust, who argued that alkyl nitrites should be exempted from the legislation. More commonly known as ‘poppers’, alkyl nitrites are widely used by gay men. The National Aids Trust argued that the harms from ‘poppers’ were low, because effective regulatory action had already been taken against particular compounds, such as amyl nitrite and butyl nitrite, which had raised health concerns. The Trust was concerned that a ban on the sale of alkyl nitrites would not end their use, but simply drive retail and use ‘underground’. It argued that this would take the use of alkyl nitrites outside any regulatory regime which might successfully protect gay men from particular compounds, leading to an increased risk of health harms, and even possibly deaths. In addition, if the sale of ‘poppers’ is displaced to drug dealers, there could be a further risk of migration to the use of other drugs.⁶⁵ The Gay Men’s Health Collective stated that banning ‘poppers’ would result in increased class A and B drug use, and increased transmission of STIs.⁶⁶

44. Dr Owen Bowden-Jones told us his clinic had seen lots of people who use ‘poppers’, and that “[a]s far as I can speak as a clinician, I do not think I have ever seen anybody come [to our clinic] with harms related to ‘poppers’” (although he recognised that there was a link between ‘poppers’ and eye damage).⁶⁷ Professor Iversen told us that under the ACMD’s proposed alternative definitions any synthetic psychoactive chemical would be banned, which included ‘poppers’.⁶⁸ However, he said that in the past the ACMD had not seen sufficient scientific evidence for harm in the case of ‘poppers’ to justify a recommendation under the Misuse of Drugs Act, and that he was not aware of any growth in the use of ‘poppers’.⁶⁹ Professor Iversen subsequently wrote to us stating that, when the Council last assessed the harms associated with ‘poppers’ it concluded that the misuse of ‘poppers’ was “not seen to be capable of having harmful effects sufficient to constitute a societal problem.”⁷⁰ Despite this assessment, the Minister told us that ‘poppers’ will be banned as part of the blanket ban.⁷¹

45. We accept the evidence given by Professor Iversen, the National Aids Trust, and the Gay Men’s Health Collective on alkyl nitrites, also known as ‘poppers’. Professor Iversen said ‘poppers’ were “not seen to be capable of having harmful effects sufficient to constitute a societal problem” and therefore we recommend they should not be banned. If in the future there is any evidence produced to the contrary, then ‘poppers’ should be removed from the exempted list or controlled under the Misuse of Drugs Act.

Nitrous oxide

46. The Home Office’s written evidence said that the definition of a psychoactive substance in the Bill will include nitrous oxide, also known as laughing gas. It states that in 2013/14, nitrous oxide was the second most popular drug among young adults (7.6%),

65 National Aids Trust ([PAS006](#))

66 Release and Transform ([PAS028](#))

67 Q148

68 Qs 71-72

69 Qs 73-74

70 Advisory Council on the Misuse of Drugs ([PAS053](#))

71 Qs 123 and 128

with use higher than powder cocaine (4.2%), ecstasy (3.9%) and amphetamines (1.6%), but lower than cannabis (15.1%).⁷²

47. Professor Iversen told us that since nitrous oxide is made by synthesis and produced in quantities for legitimate and misuse reasons it could be included in the Bill.⁷³ Recently the ACMD had advised on the harm of nitrous oxide, and did not see sufficient scientific evidence for harm to justify a recommendation under the Misuse of Drugs Act. However, he said that he would like to review the social harm of nitrous oxide use since it had grown remarkably in the last two years, and that the Advisory Council might now come to a different view.⁷⁴

48. Given the growth in the use of nitrous oxide, otherwise known as 'laughing gas', and the associated social harms, we recommend that the ACMD be asked to review whether it should be controlled under the Misuse of Drugs Act. If it does not reach that threshold, we are content that it should be covered by the provisions of the Bill, which should slow the growth in its consumption as a psychoactive substance. If in the future there is any evidence produced that indicates it might be added to the list of exemptions, this should be taken into consideration. Nitrous oxide does have genuine benefits when used legitimately, particularly within the dentistry profession and for pain relief during childbirth.

49. We accept the evidence that there is a lack of clarity in the Bill with regard to the relative harm associated with different types of NPS and the appropriate sentence commensurate with the offence. We recommend that the Sentencing Council be requested to produce appropriate sentencing guidelines taking account of relative harms.

72 Home Office ([PAS042](#))

73 Q71

74 Q73

6 Displacement of sales

50. An expected impact of the Bill is the closure of ‘head shops’. These are the main high street outlet for NPS and the Home Office has estimated that there are around 335 in the UK. We have also heard of the sale of NPS from fast food outlets, newsagents, corner shops, and flea markets.⁷⁵ The Home Office said that they and enforcement organisations “are alert to possible displacement once the Bill is enacted as high street outlets close”.⁷⁶ Newcastle City Council highlighted the strong branding and profitability of NPS which will provide incentives on both the demand and supply side for the market to continue away from the high street.⁷⁷ Mr Tim-Jake Gluckman thought this would result in “the NPS scene [becoming] something of a jungle” as the current, fairly transparent, retailing and wholesaling disappears.⁷⁸

Displacement to controlled drugs

51. We have received conflicting evidence about how NPS users, who wish to continue using drugs, might change their behaviour. For example, Portsmouth NPS Working Group did not believe there would be a large shift to the use of drugs controlled under the Misuse of Drugs Act (e.g. heroin, cocaine, ecstasy), whilst Dr Richard Stevenson said that nearly all users of NPS already had used, or continue to use, these controlled drugs.⁷⁹ Centrepont told us that those who were addicted to NPS would risk danger and criminal activity to obtain NPS or other illegal drugs.⁸⁰ The Edinburgh Division of Police Scotland believed that it was inevitable that entrenched habitual users would shift to controlled substances, which came with high risks. For example, if users reverted to heroin there was a danger of overdose as their tolerance would have lowered. Therefore, a harm reduction strategy was required.⁸¹

52. We were also told that the market for NPS would adapt to the new laws. YMCA England said that while NPS would be harder to access they would become available via alternative means, most probably known dealers.⁸² Newcastle City Council told us that traditional drug markets had already started to sell NPS in parts of the country.⁸³ Jeremy Sare, Director for Communications and Operations of the Angelus Foundation, told us “dealers who are dealing now in substances like cocaine and ecstasy [...] will be tempted to take some of the market”.⁸⁴

53. The ACMD raised with the Home Office its concern that closing ‘head shops’ would result in the market moving to illegal dealing networks, which had been seen when mephedrone was banned. They suggested that targeted ‘demand reduction’ information, education, brief interventions and treatment might be required to prevent users switching

75 Dr Richard Stevenson ([PAS011](#))

76 Home Office ([PAS042](#))

77 Newcastle City Council ([PAS023](#))

78 Mr Tim-Jake Gluckman ([PAS039](#))

79 Portsmouth NPS Working Group (PAS034; Dr Richard Stevenson ([PAS011](#)))

80 Centrepont ([PAS026](#))

81 Edinburgh Division of Police Scotland ([PAS030](#))

82 YMCA England ([PAS032](#))

83 Newcastle City Council ([PAS023](#))

84 Q140

to other, potentially more harmful, substances or incurring problems due to a rapid cessation of use.⁸⁵ We consider harm reduction later in this Report.

NPS purchase on the internet

54. Some submissions said that in comparison with high street retailers, the impact of the Bill on internet based retailers was less certain.⁸⁶ The London Drug and Alcohol Policy Forum pointed out that it was not clear who would police internet sales, and there was an added difficulty in that online sellers might be based outside the UK jurisdiction. However, Police Scotland thought that whilst there was wide availability to obtain NPS online, for young people in particular purchasing on the internet would present additional challenges associated with parental scrutiny around providing bank account and delivery details.⁸⁷

55. The Minister told us that there did not seem to be a huge amount of evidence that sales were likely to go online when the ‘head shops’ vanish, and that this did not seem to have been the Irish experience; currently “only about 6% of these products are sold online” and websites are closed down on a regular basis.⁸⁸

56. However, the ACMD have suggested that the market in NPS might move to the internet.⁸⁹ This was a view shared by Jeremy Sare of the Angelus Foundation, who explained the difficulty in relying on survey data about buying NPS online. He said that the substances being sold through small-scale dealers and friends could originally have been purchased online.⁹⁰ Release and Transform expressed their concern that the removal of ‘head shops’ could increase the number of people buying NPS from the internet, forcing them to become their own and their friends’ dealers, and consequently committing more serious offences.⁹¹

57. The Bill was amended in the House of Lords to provide powers to tackle the importation of psychoactive substances through the post. These powers should address the circumstances discovered by BBC Scotland, whereby chemical laboratories in China routinely send psychoactive substances to the UK using courier services.⁹² In addition, the Home Office has emphasised that the Government and law enforcement agencies are working with internet providers to stop the unlawful advertising and sales of drugs on the internet, including through the closure of UK-based websites.⁹³

58. The National Crime Agency (NCA) explained the challenge of identifying and removing websites selling or advertising NPS. Since the start of 2015, the NCA has identified over 80 websites of this kind based in the UK, whilst the EMCDDA identified 651 online suppliers operating within the EU in the previous year. Over the last five years, the NCA have removed over 100 websites. However, operators of such sites often control more than one domain, and may move from one to another in the event that one site is suspended. More problematically, operators on the Darknet (the encrypted part of the internet) do not own domains, but instead place adverts on marketplace platforms. A dip sample by

85 [Letter dated 2 July 2015, from ACMD to Home Secretary](#)

86 London Drug and Alcohol Policy Forum ([PAS041](#)), The Scottish Government ([PAS024](#))

87 Police Scotland ([PAS029](#))

88 Qs 130 and 133-4

89 [Letter dated 2 July 2015, from ACMD to Home Secretary](#)

90 Q145

91 Release and Transform ([PAS028](#))

92 “Organised gangs in China shipping legal highs to UK”, BBC News, 5 October 2015

93 [Letter dated 11 July 2015, from the Home Secretary to the ACMD](#)

the NCA shows that NPS are being advertised on all of the major Darknet marketplaces. The NCA assesses that the current small scale movement of sales to the Darknet reflects the activity by dealers who are trying to “claim a market share in the illicit marketplace [...] in order to continue selling them in an ‘anonymous’ illegal manner”.

59. The NCA told us that without specific legislation in respect of NPS sales, it is difficult for law enforcement to close websites selling substances advertised for apparently legitimate purposes, such as those advertised as research chemicals. The internet can also offer suppliers a high degree of anonymity, and there are limits to what UK law enforcement can do to remove websites that are registered in overseas jurisdictions.⁹⁴

60. It is expected that the implementation of the Act will result in the closure of ‘head shops’, the main retail outlets for NPS. This should substantially reduce the ease of access to NPS. Furthermore, removing them from the high street should counter the perception that these are safe substances. We expect that this may result in potential users no longer choosing to experiment with these substances. However, established users are likely to seek to continue using NPS, either through choice or dependence. Therefore it is highly conceivable that the market will continue away from the high street.

61. There is substantial evidence that the market for NPS is already moving online, which, due to the anonymity that the internet can provide, is a challenge for prosecuting authorities to monitor and control. Enactment of this legislation will enable the closure of UK websites selling NPS, but it does not address those in overseas jurisdictions. We recommend that, within one month of Royal Assent of the legislation, the Government and the police publish an action plan setting out how they will tackle the challenges of displacement of sales to the internet, including by working with internet providers and overseas jurisdictions. We are particularly concerned about the importation of psychoactive substances via courier services. The Government must ensure that the amendments already made to the Bill will cover this supply route.

7 The role of enforcement agencies

Resources

62. The Bill creates a range of criminal offences⁹⁵ and provides for four civil sanctions.⁹⁶ It is intended that these will enable the police and local authorities to adopt a graded response in appropriate cases. The Local Government Association told us that, whilst the police would take the lead on major criminal activity relating to NPS, the four civil powers offered scope for the continued involvement of trading standards teams to deal with lower level offending.⁹⁷ However, Trading Standards Scotland believed that the Bill would shift the role of enforcement towards the police.⁹⁸

63. The Home Office state that UK enforcement organisations already deliver a range of enforcement action to tackle unlawful behaviour by NPS retailers. Therefore, they have estimated that “after an initial peak in enforcement activity, enforcement of this Bill should be cost neutral with possible cost savings over time once the NPS market has been tackled and detection/enforcement becomes business as usual.”⁹⁹

64. Many of the written submissions we received did not share this view. Some said that the introduction of additional legislation would stretch scarce resources further, running the risk that it would be “toothless”.¹⁰⁰ Additionally, a number of submissions referred to extra costs incurred through testing substances in order to prove their psychoactive effect, as discussed in chapter 4.¹⁰¹

65. Given the pressure on budgets, some submissions suggested resources would not be available to make the enforcement of the Bill a priority.¹⁰² Newcastle City Council questioned whether police forces had the capacity to take a consistent approach across their area, and whether this would be a priority within each area’s local policing plan.¹⁰³ Release and Transform argued that enforcement was “unlikely to be placed at the top of the policing list”, and referred to the position taken in the Durham Police Force area where the Police and Crime Commissioner (PCC), Ron Hogg, announced that the Durham force had deprioritised prosecuting those who use cannabis or grow plants for personal use. They quoted Mr Hogg as saying “There’s a resource issue, we must also be clear about that, but we are doing it because it’s the right approach”. This approach has been backed by the PCCs from Derbyshire and Dorset.¹⁰⁴

66. We remind the Government that in our previous Report we suggest that more effective action be taken by trading standards against retailers. The powers contained in the Bill will provide enforcement agencies with the tools to address the problems associated with NPS more effectively and we would expect that in areas where the sale

95 Producing a psychoactive substance; supplying, or offering to supply, a psychoactive substance; possession of psychoactive substance with intent to supply; and importing or exporting a psychoactive substance

96 Prohibition notices; premises notices; prohibition orders; and premises orders

97 Local Government Association ([PAS015](#))

98 The Scottish Government ([PAS024](#)), Trading Standards Scotland - Cosla ([PAS036](#))

99 Home Office ([PAS042](#))

100 Chartered Trading Standards Institute ([PAS027](#)), Crew ([PAS010](#)), Portsmouth NPS Working Group ([PAS034](#))

101 Dr Richard Stevenson ([PAS011](#)), Newcastle City Council ([PAS023](#)), London Drug and Alcohol Policy Forum ([PAS041](#))

102 London Drug and Alcohol Policy Forum ([PAS041](#))

103 Newcastle City Council ([PAS023](#))

104 Release and Transform ([PAS028](#))

and supply of NPS is high, the new powers will be welcomed by enforcement agencies. However, the level of priority accorded to this in each area (of England and Wales) will be decided by the Police and Crime Commissioner. We urge PCCs carefully to consider the significant risk which NPS can present, particularly to young people in their communities, when making these assessments. Chief Constables should also inform the public of the steps that they have taken with regard to NPS by publishing an action plan on their websites.

8 Education and harm reduction

67. The Bill provides enforcement agencies with new powers to help them to address the sale and supply of NPS. However, if the proposed legislation is to achieve its aim of protecting people from the risks posed by NPS, this will need to be accompanied by measures to communicate the changes, to improve drug education and to support harm prevention.

Education

68. Mentor (which provides the Government backed Alcohol and Drug Education and Prevention Information Service (ADEPIS)), believes firmly that the legislative controls in the Bill on their own will not be sufficient to arrest the growing use of NPS. They have pointed to the experience of Ireland, where NPS use increased despite the blanket ban introduced in 2010. They recommend two forms of intervention: universal prevention and targeted early intervention. Mentor argues that universal school-based programmes would promote attitudes and behaviours proven to reduce the likelihood of problematic drug use, whilst targeted interventions, with young offenders and children in care, have shown the long-term benefit of conducting focused work with young people who face multiple disadvantages.¹⁰⁵

School based programmes

69. YMCA England emphasised that early education was key to young people making informed decisions and limiting the use of NPS.¹⁰⁶ The Angelus Foundation told us that their activity was concentrated mainly on the 14 to 18 year-old group, but that they had been told by pupils that this education was required at age 11 or 12, and this was echoed in other evidence we received.¹⁰⁷

70. YMCA England stressed that messages at school had to be given in an engaging way, particularly as many young people thought Personal, Social and Health Education (PSHE) was used as a 'filler' class rather than a meaningful lesson. They believed that the use of peer mentors, volunteers and recovering users who could speak on a more individual level would help to break down barriers between young people and service providers. Additionally, social media should be included in any Government education strategy.¹⁰⁸

71. The Government has invested in a range of resources to support schools, for example ADEPIS provided by Mentor UK which provides practical advice and tools, including briefing sheets for teachers.¹⁰⁹ However, Home Office figures show that Government spending on education and prevention campaigns for NPS between 2013 and 2015 was only £180,556.¹¹⁰

72. Jan King told us that the Angelus Foundation and other voluntary sector organisations had also created a variety of materials for schools, including films, which had had a positive

¹⁰⁵ Mentor ([PAS003](#))

¹⁰⁶ Centrepoint ([PAS026](#))

¹⁰⁷ Q159 and 161, Newcastle City Council ([PAS023](#)), Dr Richard Stevenson ([PAS011](#))

¹⁰⁸ Centrepoint ([PAS026](#))

¹⁰⁹ Home Office ([PAS042](#))

¹¹⁰ [HC Deb, 2 June 2015, c 269](#)

impact in providing young people with information to which they did not otherwise have access. However, she was concerned that the information was not yet distributed widely enough and that it did not have the necessary weight of Government backing needed to promote effective education and wide awareness.¹¹¹

73. The Minister acknowledged that the legislation was “not going to be perfect” and that a lot of work with the voluntary sector and schools was required to make sure young people were educated about the dangers of NPS.¹¹² It therefore seems inevitable that additional public funds will need to be allocated to education programmes if they are to be effective in reducing NPS use and harm.

Targeted interventions

74. Targeted action has a key role to play for those most at risk or already misusing drugs. The Government has launched an online resilience building resource ‘Rise Above’, which is aimed at 11 to 16-year-olds, to help develop skills to make positive choices for their health, including avoiding drug misuse. The Government has also developed the role of Public Health England to support local areas through sharing evidence to support commissioning and the delivery of effective drug prevention activities.¹¹³

75. Jan King of the Angelus Foundation told us that it was trialling a piece of targeted work which aimed to make those in a deprived community much more resilient to the issues that affected them, so that they did not resort to the misuse of drugs. Other NGOs were trying other approaches, but greater focus was needed on sharing knowledge of what works, and then spreading that throughout the UK.¹¹⁴

76. Successive governments’ spending on education on the dangers of NPS has been shockingly inadequate to date. Action must be taken now, to educate young people about NPS, through stronger and wider public information campaigns. There is already a range of materials, produced by voluntary sector organisations, notably the Angelus Foundation, which could be used more effectively. We recommend that the Government oblige schools, with the assistance of the voluntary sector, to promulgate these existing resources as a matter of urgency.

Prisons

77. HM Inspector of Prisons (HMIP) told us there has recently been a rapid increase in the availability of NPS within prisons. While to some extent this reflects their greater use in the community, NPS are also an attractive alternative to controlled drugs because they are difficult to detect.¹¹⁵ The concern about use within prisons has resulted in the National Offender Management Service commissioning a study to detect and identify which compounds are being used.¹¹⁶ HMIP is also preparing a thematic report on substance misuse, which has found that ‘Spice’, a synthetic cannabinoid, was the new ‘drug of choice’

111 Q158

112 Q133

113 Home Office ([PAS042](#))

114 Q160

115 HM Inspectorate of Prisons ([PAS019](#))

116 Newcastle City Council ([PAS023](#))

in prisons in England.¹¹⁷ Between 2010 and 2014, finds of ‘Spice’ in prisons increased from 15 to 436.¹¹⁸

78. Due to this rapid increase in use, there is a particular need to improve education on NPS within prisons. HMIP told us that, due to testing methods not detecting many NPS, prison officers required training in recognising markers of intoxication.¹¹⁹ They also informed us about effective prison education programmes which resulted in a reduction in the number of NPS-associated medical emergencies in several prisons.¹²⁰

Front line clinicians

79. We were told that many professionals feel ill-equipped to deal with substance misuse issues, which has increased with the emergence of NPS, and this can mean that opportunities for positive intervention can be missed.¹²¹ However, the London Drug and Alcohol Policy Forum emphasised that, while the emergence of NPS can appear baffling to many, the substances do fit within the context of traditional drugs of misuse. Therefore, de-mystifying NPS would help young people, professionals, parents and the public to understand the nature of the problem and to guide positive responses.¹²² The Central North West London NHS Foundation Trust told us that developing a clinical network, spanning the clinical frontline, should be a priority.¹²³ This would assist those dealing with behavioural emergencies, and drug-induced psychoses, which often leads to multi-agency involvement.¹²⁴ Furthermore, Professor Iversen told us that a system for recording NPS and their harmful effects would be useful. The current system in place in hospitals to categorise drugs does not recognise NPS as a class, and therefore hospitals do not collect data on NPS use as they do for controlled drugs.¹²⁵

80. *The Government must take a lead role in developing and commissioning appropriate and credible resources aimed at the clinical frontline so that professionals feel equipped to deal with issues related to NPS use. This should include the development of a clinical network, including drug services, sexual health services, emergency rooms, mental health services, primary care and prisons. This would enable services from across the country to share their experience specifically relating to NPS harms.*

81. *It has been suggested to us that data on the harmful effects of NPS would be useful. However, we were told that this data was not collected in hospitals, because the system for categorising drugs does not allow NPS to be entered as a class. We do not see any reason why the category of NPS cannot be added to the existing system, and we therefore recommend that, as soon as possible, NPS data be collected at hospitals in a similar way to that which already happens for controlled drugs. If there are any practical difficulties, we would expect them to be overcome by the time the new legislation is commenced.*

117 HM Inspectorate of Prisons ([PAS019](#))

118 Prison Reform Trust ([PAS033](#))

119 HM Inspectorate of Prisons ([PAS019](#))

120 HM Inspectorate of Prisons ([PAS019](#))

121 London Drug and Alcohol Policy Forum ([PAS041](#))

122 London Drug and Alcohol Policy Forum ([PAS041](#))

123 Central North West London NHS Foundation Trust ([PAS020](#))

124 Dr Richard Stevenson ([PAS011](#))

125 Q67

Harm reduction

82. Education programmes may be appropriate in alerting people to the risks associated with NPS, and for diverting those who might be tempted to experiment. However, for existing users, the focus needs to be on harm reduction, with a view to a longer-term cessation in use.

83. One of the challenges in providing a harm reduction strategy for NPS is that a new population of users has emerged. In addition, as the Royal College of Psychiatrists explained, NPS describes a range of different substances with strikingly different effects, which appeal to different groups of users and as such there is no ‘typical’ NPS user. Instead, there is a mosaic of different social groups including students; clubbers; prison populations; young professionals; ‘psychonauts’ (a person who explores the psyche through the use of hallucinogens); and the LGBT communities.¹²⁶ YMCA England believed that it is important that users whose drug use is particularly entrenched are taught how to mitigate some of the dangers associated with drug use so as to reduce harm and increase the likelihood of them accessing more intensive services at a later date.¹²⁷

84. The Home Office told us that effective intervention and treatment is at the heart of the Government’s Drug Strategy. They cited a “well-embedded and comprehensive drug treatment system” within which there is a range of services responding to the challenges and harms posed by NPS.¹²⁸ However, other witnesses pointed out that many people who use NPS are reluctant to approach traditional drug treatment services for help, because they believe these services only cater for alcohol, heroin and crack users.¹²⁹

85. Dr Owen Bowden-Jones told us that NPS also presents a challenge for conventional treatment services because those services have relatively poor knowledge of NPS, including how NPS work, the people who use them, the context in which they are used, and ways of engaging NPS users. As a result, a small number of specialist services, such as the Club Drug Clinic, have been established and have been successful at engaging NPS and club drug users.¹³⁰ He said that drug services were there to meet the needs of the local population, so if a location had a particular level of NPS problem, a similar service to that offered by the Clinic might be required. However, there was a need to maintain the focus on heroin and crack, whilst also being skilled to manage the new harm of NPS.¹³¹

86. The Royal College of Psychiatrists (RCPsych) referred to steps that can be taken so that traditional drug services can meet the needs of NPS users. Firstly they can “widen the front door” so that they make the needs of NPS and club drug users part of their ‘core business’. The second step is to “support the front line” by educating drug service staff to manage harm related to NPS and club drug use. The third is to “connect the front line”; because of the negative perceptions of existing drug services, NPS users draw on a range of health services, including emergency and urgent care departments, acute care hospitals, mental health services and sexual health clinics. The RCPsych believes that these non-specialist services need to establish much better links with drug services so that specialist

126 Royal College of Psychiatrists ([PAS014](#))

127 YMCA England ([PAS032](#))

128 Home Office ([PAS042](#))

129 Royal College of Psychiatrists ([PAS014](#)), Central North West London NHS Foundation Trust ([PAS020](#)), YMCA England ([PAS032](#)), Portsmouth NPS Working Group ([PAS034](#))

130 Central North West London NHS Foundation Trust ([PAS020](#))

131 Q147

support and expertise can be shared, onward referrals can be made more effectively and intelligence and insight can be exchanged.¹³²

87. Harm reduction via the provision of sexual health services has been highlighted by the EMCDDA in the context of hepatitis and HIV transmission, with the injecting of ketamine being linked to pronounced sexual health risks. Additionally, the European Drug Report 2015 identified needle and syringe exchange facilities as helping to reduce harm. These programmes are seen as an important response to the challenges posed by NPS.¹³³ The Edinburgh Division of Police Scotland told us that needle exchanges could also promote the use of Noxalone for those who are returning to using heroin after a period of NPS use. They and the British Pharmacological Society have highlighted a danger of overdose as tolerance levels will be lowered.¹³⁴

88. The alarming increase in the use of psychoactive substances has seen the emergence of a new population of users, who are reluctant to approach traditional drug services. Nor are existing drug services always confident in recognising the harms associated with these types of drugs. It is important that the focus on treating controlled drugs is not lost, particularly heroin and crack addiction, and specialist NPS services will not be required everywhere. Nevertheless, NPS use has the potential to create significant problems in some localities and drug services need to do more to recognise this and adapt. We recommend that those who run our existing drug services develop the necessary skills to deal more effectively with the challenges that NPS users present and take steps to ensure that their services are accessible and relevant to this new group of users.

89. We are at risk of being overwhelmed by the sheer scale of the use of new psychoactive substances. We are dealing with unscrupulous people, involved in activities thousands of miles away, who tweak a chemical formula to create a new substance every time action is taken to ban an existing harmful one. This Bill is only one staging post in tackling this problem; but this must not be the end.

¹³² Royal College of Psychiatrists ([PAS014](#))

¹³³ Amira Guirguis and Dr Christine Heading ([PAS008](#))

¹³⁴ Edinburgh Division of Police Scotland ([PAS030](#)), British Pharmacological Society ([PAS016](#))

Conclusions and recommendations

Consultation and formulation of the Bill

1. Britain has the largest usage of psychoactive substances of any country in Europe. The public is shocked when it hears of a case of a young person who has died as a result of using these substances on a night out. The scenario is every parent's worst nightmare. The Government is right to legislate on this issue. However, the speed at which the Government has brought forward this legislation, without any consultation on the specific detail of the Bill, has resulted in some weaknesses in the legislation being identified. We would have preferred the concerns to have been addressed in a less piecemeal manner. Communication with the Advisory Council on the Misuse of Drugs (ACMD) has been unsatisfactory, which has required months of letters back and forth to try and resolve the issues that have arisen. (Paragraph 20)
2. On 15 September, the Minister indicated to us that second reading of the Bill would be in November. Since then the Government has moved ahead with the Parliamentary stages of the Bill, such that this Report was not available to Members at the second reading debate which took place on 19 October. Furthermore, it is intended that the Committee stages will be completed before the end of October. It is regrettable that the Government has proceeded with such speed, without the benefit of our Report. In general, limiting the time available for effective scrutiny by committees of the House reduces the opportunity for concerns to be addressed, and most importantly, for improvements to be made to legislation. We welcome the Minister's statement during the second reading debate, when he said "I look forward to the report, not least because of the excellent work that I know has been carried out not only by the Chairman and other Members but by my hon. Friend the Member for Enfield, Southgate (Mr Burrowes)". (Paragraph 21)
3. This Bill is based on legislation introduced in Ireland in 2010. It would have been preferable to legislate in the UK with the benefit of an assessment of the effectiveness of legislation introduced in Ireland. This Committee has not seen any evidence that any such assessment is available or would have been available in the timescale within which the Government wished to operate. (Paragraph 22)
4. To be effective, it is essential that the Government draws more extensively on the experience and expertise of key stakeholders. That is what they are there for. Even at this late stage, the Government must consult with stakeholders. We recommend that the Government begins to work closely with them to draw up the guidance which will accompany the legislation. We also recommend that stakeholders are involved fully in establishing the scale and scope of the statutory review into the operation of the legislation, once it is enacted. (Paragraph 23)

Definition of psychoactive substance

5. The terminology used to describe substances of this nature has long been ill-defined. The use of the term 'legal highs' is both misleading and inappropriate. It sends out a message to young people that these substances are both 'legal' and will have a

‘desirable’ effect. This has tempted people to experiment with these substances, sometimes with disastrous consequences. (Paragraph 31)

6. Regarding the terminology contained in the Bill, there has been no consultation on the definition of psychoactive substances. We recommend that the Government reconsider the definition of a psychoactive substance, with the benefit of the advice the ACMD have provided. (Paragraph 32)

Proving psychoactivity

7. If the legislation is to achieve its aims, it must deter producers and suppliers from making psychoactive substances available. According to Police Scotland, it is questionable how this will be done if these people cannot be successfully prosecuted. It appears that the ACMD might have provided a solution through their definition of psychoactive substances, and we call on the Government to assess whether this approach would result in more successful prosecutions. (Paragraph 38)

Concept of harm

8. We accept the evidence given by Professor Iversen, the National Aids Trust, and the Gay Men’s Health Collective on alkyl nitrites, also known as ‘poppers’. Professor Iversen said ‘poppers’ were “not seen to be capable of having harmful effects sufficient to constitute a societal problem” and therefore we recommend they should not be banned. If in the future there is any evidence produced to the contrary, then ‘poppers’ should be removed from the exempted list or controlled under the Misuse of Drugs Act. (Paragraph 45)
9. Given the growth in the use of nitrous oxide, otherwise known as ‘laughing gas’, and the associated social harms, we recommend that the ACMD be asked to review whether it should be controlled under the Misuse of Drugs Act. If it does not reach that threshold, we are content that it should be covered by the provisions of the Bill, which should slow the growth in its consumption as a psychoactive substance. If in the future there is any evidence produced that indicates it might be added to the list of exemptions, this should be taken into consideration. Nitrous oxide does have genuine benefits when used legitimately, particularly within the dentistry profession and for pain relief during childbirth. (Paragraph 48)
10. We accept the evidence that there is a lack of clarity in the Bill with regard to the relative harm associated with different types of NPS and the appropriate sentence commensurate with the offence. We recommend that the Sentencing Council be requested to produce appropriate sentencing guidelines taking account of relative harms. (Paragraph 49)

Displacement of sales

11. It is expected that the implementation of the Act will result in the closure of ‘head shops’, the main retail outlets for NPS. This should substantially reduce the ease of access to NPS. Furthermore, removing them from the high street should counter the perception that these are safe substances. We expect that this may result in potential

users no longer choosing to experiment with these substances. However, established users are likely to seek to continue using NPS, either through choice or dependence. Therefore it is highly conceivable that the market will continue away from the high street. (Paragraph 60)

12. There is substantial evidence that the market for NPS is already moving online, which, due to the anonymity that the internet can provide, is a challenge for prosecuting authorities to monitor and control. Enactment of this legislation will enable the closure of UK websites selling NPS, but it does not address those in overseas jurisdictions. We recommend that, within one month of Royal Assent of the legislation, the Government and the police publish an action plan setting out how they will tackle the challenges of displacement of sales to the internet, including by working with internet providers and overseas jurisdictions. We are particularly concerned about the importation of psychoactive substances via courier services. The Government must ensure that the amendments already made to the Bill will cover this supply route. (Paragraph 61)

The role of enforcement agencies

13. We remind the Government that in our previous Report we suggest that more effective action be taken by trading standards against retailers. The powers contained in the Bill will provide enforcement agencies with the tools to address the problems associated with NPS more effectively and we would expect that in areas where the sale and supply of NPS is high, the new powers will be welcomed by enforcement agencies. However, the level of priority accorded to this in each area (of England and Wales) will be decided by the Police and Crime Commissioner. We urge PCCs carefully to consider the significant risk which NPS can present, particularly to young people in their communities, when making these assessments. Chief Constables should also inform the public of the steps that they have taken with regard to NPS by publishing an action plan on their websites. (Paragraph 66)

Education and harm reduction

14. Successive governments' spending on education on the dangers of NPS has been shockingly inadequate to date. Action must be taken now, to educate young people about NPS, through stronger and wider public information campaigns. There is already a range of materials, produced by voluntary sector organisations, notably the Angelus Foundation, which could be used more effectively. We recommend that the Government oblige schools, with the assistance of the voluntary sector, to promulgate these existing resources as a matter of urgency. (Paragraph 76)
15. The Government must take a lead role in developing and commissioning appropriate and credible resources aimed at the clinical frontline so that professionals feel equipped to deal with issues related to NPS use. This should include the development of a clinical network, including drug services, sexual health services, emergency rooms, mental health services, primary care and prisons. This would enable services from across the country to share their experience specifically relating to NPS harms. (Paragraph 80)

16. It has been suggested to us that data on the harmful effects of NPS would be useful. However, we were told that this data was not collected in hospitals, because the system for categorising drugs does not allow NPS to be entered as a class. We do not see any reason why the category of NPS cannot be added to the existing system, and we therefore recommend that, as soon as possible, NPS data be collected at hospitals in a similar way to that which already happens for controlled drugs. If there are any practical difficulties, we would expect them to be overcome by the time the new legislation is commenced. (Paragraph 81)
17. The alarming increase in the use of psychoactive substances has seen the emergence of a new population of users, who are reluctant to approach traditional drug services. Nor are existing drug services always confident in recognising the harms associated with these types of drugs. It is important that the focus on treating controlled drugs is not lost, particularly heroin and crack addiction, and specialist NPS services will not be required everywhere. Nevertheless, NPS use has the potential to create significant problems in some localities and drug services need to do more to recognise this and adapt. We recommend that those who run our existing drug services develop the necessary skills to deal more effectively with the challenges that NPS users present and take steps to ensure that their services are accessible and relevant to this new group of users. (Paragraph 88)
18. We are at risk of being overwhelmed by the sheer scale of the use of new psychoactive substances. We are dealing with unscrupulous people, involved in activities thousands of miles away, who tweak a chemical formula to create a new substance every time action is taken to ban an existing harmful one. This Bill is only one staging post in tackling this problem; but this must not be the end. (Paragraph 89)

Formal Minutes

Tuesday 20 October 2015

Members present:

Keith Vaz, in the Chair

Victoria Atkins
James Berry
David Burrowes

Tim Loughton
Stuart C. McDonald
Mr David Winnick

Draft Report (*Psychoactive substances*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 89 read and agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 21 October at 2.00 pm

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at www.parliament.uk/homeaffairscom.

Tuesday 8 September 2015

Question number

Commander Simon Bray, National Police Chiefs' Council lead on psychoactive substances

[Q1-13](#)

Tuesday 15 September 2015

Professor Les Iversen, Chair, Advisory Council on the Misuse of Drugs

[Q14-84](#)

Rt Hon Mike Penning MP, Minister for Policing, Crime and Criminal Justice, Home Office

[Q85-138](#)

Dr Owen Bowden-Jones, Consultant Psychiatrist and Lead Clinician for Club Drug Clinic, Addictions Directorate, Central and North West London NHS Foundation Trust, **Jan King**, Chief Executive, and **Jeremy Sare**, Director for Communications and Operations, Angelus Foundation

[Q139-168](#)

Published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page at www.parliament.uk/homeaffairscom. PAS numbers are generated by the evidence processing system and so may not be complete.

- 1 Academy of Medical Sciences et al ([PAS0031](#))
- 2 Advisory Council on the Misuse of Drugs ([PAS0053](#))
- 3 All-Party Parliamentary Group for Drug Policy Reform ([PAS0052](#))
- 4 Amber Marks ([PAS0012](#))
- 5 Angelus Foundation ([PAS0037](#))
- 6 Angelus Foundation supplementary ([PAS0046](#))
- 7 Association of Convenience Stores ([PAS0017](#))
- 8 Association of English Cathedrals ([PAS0002](#))
- 9 Association of the British Pharmaceutical Industry et al ([PAS0040](#))
- 10 British Pharmacological Society ([PAS0016](#))
- 11 Central North West London NHS Foundation Trust ([PAS0020](#))
- 12 Centrepont ([PAS0026](#))
- 13 Chartered Trading Standards Institute ([PAS0027](#))
- 14 Churches' Legislation Advisory Service ([PAS0001](#))
- 15 Crew ([PAS0010](#))
- 16 Dr Christine Heading ([PAS0008](#))
- 17 Dr Richard Stevenson ([PAS0011](#))
- 18 DrugScience ([PAS0043](#))
- 19 Edinburgh Division of Police Scotland ([PAS0030](#))
- 20 HM Inspectorate of Prisons ([PAS0019](#))
- 21 Home Office ([PAS0042](#))
- 22 Home Office supplementary ([PAS0055](#))
- 23 Local Government Association ([PAS0015](#))
- 24 London Drug and Alcohol Policy Forum ([PAS0041](#))
- 25 Mentor ([PAS0003](#))
- 26 Mr Andrew Audley ([PAS0013](#))
- 27 Mr George Entecott ([PAS0004](#))
- 28 Mr Tim-Jake Gluckman ([PAS0039](#))
- 29 Napp Pharmaceuticals ([PAS0007](#))
- 30 National Aids Trust ([PAS0006](#))
- 31 National Crime Agency ([PAS0054](#))
- 32 National Federation of Retail Newsagents ([PAS0025](#))
- 33 Newcastle City Council ([PAS0023](#))
- 34 Night Time Industries Association ([PAS0009](#))

- 35 Police Scotland ([PAS0029](#))
- 36 Portsmouth NPS Working Group ([PAS0034](#))
- 37 Prison Reform Trust ([PAS0033](#))
- 38 Professor Julian Savulescu ([PAS0022](#))
- 39 Release and Transform ([PAS0028](#))
- 40 Royal College of Psychiatrists ([PAS0014](#))
- 41 Rudi Fortson QC ([PAS0050](#))
- 42 Simpson House Counselling and Recovery ([PAS0049](#))
- 43 The Psychedelic Society ([PAS0018](#))