



House of Commons  
Home Affairs Committee

---

**Psychoactive  
substances:  
Government Response  
to the Committee's  
First Report of Session  
2015–16**

---

**Fourth Special Report of Session  
2015–16**

*Ordered by the House of Commons  
to be printed 19 January 2016*

**HC 755**  
Published on 20 January 2016  
by authority of the House of Commons  
London: The Stationery Office Limited  
£0.00

## Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

### Current membership

Rt Hon Keith Vaz MP (Labour, Leicester East) (Chair)  
Victoria Atkins MP (Conservative, Louth and Horncastle)  
James Berry MP (Conservative, Kingston and Surbiton)  
Mr David Burrowes MP (Conservative, Enfield, Southgate)  
Nusrat Ghani MP (Conservative, Wealden)  
Mr Ranil Jayawardena MP (Conservative, North East Hampshire)  
Tim Loughton MP (Conservative, East Worthing and Shoreham)  
Stuart C. McDonald MP (Scottish National Party, Cumbernauld, Kilsyth and Kirkintilloch East)  
Naz Shah (Bradford West)  
Mr Chuka Umunna (Streatham)  
Mr David Winnick MP (Labour, Walsall North)

The following were also members of the Committee during the Parliament.

Keir Starmer MP (Labour, Holborn and St Pancras)  
Anna Turley MP (Labour, Redcar)

### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk)

### Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/homeaffairscom](http://www.parliament.uk/homeaffairscom)

### Committee staff

The current staff of the Committee are Carol Oxborough (Clerk), Peter Stam (Committee Specialist), Duma Langton (Committee Specialist), Kunal Mundul (Committee Specialist), Andy Boyd (Senior Committee Assistant), Iwona Hankin (Committee Assistant) and Jessica Bridges-Palmer (Select Committee Media Officer).

### Contacts

All correspondence should be addressed to the Clerk of the Home Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 2049; the Committee's email address is [homeaffcom@parliament.uk](mailto:homeaffcom@parliament.uk)

## Fourth Special Report

---

On 23 October 2015 the Home Affairs Committee published its First Report of Session 2015-16, *Psychoactive substances* (HC 361). The Government's response to the Report was received on 19 January 2016, and is published as an Appendix to this Special Report.

## Appendix: Government response

---

### **Letter from Rt Hon Mike Penning MP, Minister for Policing, Crime, Criminal Justice and Victims, dated 19 January 2016**

I am grateful to the Home Affairs Select Committee for its report on the Psychoactive Substances Bill, published on 23 October 2015.

I welcome the Committee's important contribution to the scrutiny of this Bill. I agree that this legislation is needed, and that the Bill must be drafted very carefully to ensure that it has the desired effects. In that vein, I have carefully considered the Committee's conclusions and recommendations, to which I set out the Government's responses below.

As you know, Report stage of the Bill has been scheduled for 20 January. I would therefore be very grateful if the Committee could arrange publication of this response before then.

#### **Conclusion/recommendation 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.**

**Taken with**

#### **Conclusion/recommendation 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)".

Taken with

#### **Conclusion/recommendation 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.

#### **Government response**

The Government wholeheartedly agrees with the Committee that it is right to legislate on this issue. The Committee has called for action for a number of years. In its Twelfth Report of Session 2013/14, the Committee said that "the creation of new psychoactive substances will continue to increase in the future unless immediate action is taken" (paragraph 9) and that "The Home Office should introduce a new legislative model, taking into account the benefits of other systems in use abroad" (paragraph 14). The Committee clearly understands the urgency of this problem, and the speed at which the Government has brought forward this legislation reflects this. That said, the Government has proceeded in a measured way. The New Psychoactive Substances Review Expert Panel was appointed in December 2013 to examine the options for legislating in this area. The Expert Panel's report was published in October 2014 and the legislation only introduced in the Lords at the start of the new session on 28 May. The Bill was brought from the Lords on 21 July. The Bill will not complete its parliamentary stages until late January, some eight months after introduction and 16 months after the Expert Panel reported.

The Government has consulted extensively on the specific detail of the Bill with a number of stakeholders, including the Department of Health, the Medicines and Healthcare Products Regulatory Agency, the Academy of Medical Sciences, the devolved administrations, the Advisory Council on the Misuse of Drugs (ACMD), and the National Policing Lead on Psychoactive Substances, Simon Bray.

Indeed, engagement with stakeholders has been at the heart of the development of this Bill, even in its embryonic stages. The Expert Panel, which considered a range of legislative options drawing on international evidence, included representatives from the Police, National Crime Agency, Border Force, the Local Government Association, the Crown Prosecution Service, DrugScope and the European Monitoring Centre for Drugs and Drug Addiction. The Panel also included individuals with a background in medical and social sciences.

We greatly value the ACMD's input, and we have been in close contact with them throughout the passage of this Bill. In addition to the exchange of correspondence between the Home Secretary and the Chair of the ACMD, Prof. Les Iversen, the Home Secretary met with Prof. Iversen in September to discuss the issues raised by the Advisory Council. We are confident that we have given the ACMD the opportunity to raise any issues in respect of the drafting of the Bill and we continue to work with them as we move towards the implementation of the legislation. In addition, we will work closely with the ACMD on scoping the statutory review of the operation of the Bill as provided for in clause 58.

This engagement with the ACMD and others, together with the debates throughout the passage of the Bill, reflects the value of the scrutiny process both in and outside Parliament. The fact that we have made amendments to the Bill during its passage is a positive demonstration that we have been open to representations as to how the drafting of this legislation could be improved.

We will continue to work closely with our other stakeholders to ensure that the guidance accompanying the legislation is clear and effective, and to establish the scale and scope of the review, which (under clause 58 of the Bill as amended in Committee) must be laid before Parliament within 30 months of the main offences coming into force.

### **Conclusion/recommendation 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.**

### **Government response**

It is clear that the approach adopted in the Republic of Ireland has been beneficial. The Irish Government and Garda National Drugs Unit gave evidence to the Expert Panel which showed the positive impact of the blanket ban in Ireland. Prior to the introduction of the Criminal Justice (Psychoactive Substances) Act 2010 there were 102 head shops operating in Ireland – none are now left in operation, nor are there any Irish domain websites selling these substances.

It is a matter for the Irish Government to review the operation of their own legislation. While the Government agrees that a formal assessment of the 2010 Act would have been a valuable contribution to the work of the Expert Panel and our own consideration of how best to take forward their recommendations, given the expert evidence presented by the Expert Panel in their report, it is incumbent on the Government to take forward this legislation as expeditiously as possible in order to reduce the harms caused by the widespread availability of non-controlled psychoactive substances.

### **Conclusion/recommendation 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.**

### **Government response**

The Government fully agrees with the Committee's finding that the term "legal highs" is a misleading and inappropriate term. Describing these substances as 'legal' can be incorrect – many of them contain controlled drugs which are banned under the Misuse of Drugs Act 1971. "Legal highs" can also convey a message of "safety", when in fact these substances are potentially dangerous. It is for these reasons that it is not the Government's terminology of choice. If we do use the terminology in our communications, we do so sparingly and often with heavy qualification.

The enactment of the Psychoactive Substances Bill, whereby the trade in these substances will be unlawful, will further reinforce the inappropriate nature of this term and provide opportunities to shift the nomenclature used by the media and the public, including young people, to more accurate terminology and consequently, a new basis for a better understanding of the harmful nature of these drugs.

### **Conclusion/recommendation 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.**

### **Taken with**

### **Conclusion/recommendation 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.**

### **Government response**

The Government did not develop the definition of a psychoactive substance in isolation. Its framing was informed by similar legislation in Ireland, New Zealand and at state and federal level in Australia, and consultation with the Governments in those countries. Legal and scientific advice also influenced the form of the definition adopted in clause 2 of the Bill.

We have fully considered the advice received from the ACMD, including that set out in its most recent letter of 23 October<sup>1</sup>. The Home Secretary's response to the ACMD of 27

---

<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/470421/ACMD\\_definitions\\_advice\\_final-23-October-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470421/ACMD_definitions_advice_final-23-October-2015.pdf)

October<sup>2</sup> sets out the Government's further consideration of the ACMD's advice and recommendations.

In summary, the Government's view is that the definition in the Bill is fit for purpose. The definition provides that a substance must be capable of producing a psychoactive effect. It is the Government's view that this is legally robust and that it will be possible to evidence the offences in the Bill to the requisite criminal standard. It is worth noting that in relation to the making of prohibition orders and premises orders the civil standard of proof will apply and the test for the exercise of the stop and search powers in clause 36 is that the police or customs officer has "reasonable grounds to suspect" that a person has committed, or is likely to commit an offence under clauses 4 to 9 or 26. In both instances, the test is lower than which is required to be met to secure a criminal conviction.

The underpinning science and testing techniques to establish psychoactivity of substances are key elements of the Bill's implementation. The Government is building on the success of the Home Office's Forensic Early Warning System (FEWS) to ensure that the UK continues to have world-leading capability and capacity to meet the forensic requirements of the Bill.

We are therefore developing a bespoke forensic strategy to accompany the implementation of the Bill. This work is progressing well, led by the Centre for Applied Science and Technology with valuable input from the ACMD. The ACMD advise that the forensic strategy that we are currently putting in place will reflect the best available science in this area.

The ACMD's latest and final advice provides additional, not alternative, text to the definition by setting out how psychoactivity could be measured and providing a non-exhaustive list of the classes of drugs covered by the definition. While the Government is not persuaded that these additions are required or are suitable for inclusion on the face of the Bill, they can steer and strengthen the forensic strategy.

The forensic strategy will continue to be developed in consultation with the ACMD to ensure its scientific input is reflected in the operation of the Bill. We will work with the Council to understand the application of its proposed text at a policy and operational level, for inclusion in the forensic strategy as well as any other relevant document(s).

In parallel with the definition, the scope of the Bill is also managed through the exemptions in Schedules 1 and 2 to the Bill. As a result of the scrutiny of the Bill in the House of Lords, the Government brought forward amendments to Schedule 1 to strengthen the exemption for medicinal products. These amendments will ensure that the regulatory framework for psychoactive substances and human medicines complement rather than overlap with each other, with the Medicines Healthcare products Regulatory Agency (MHRA) enforcing compliance with the requirements under the Human Medicines Regulations.

#### **Conclusion/recommendation 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**

---

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/471366/2015\\_10\\_27\\_HS\\_-\\_Prof\\_Les\\_Iversen\\_Psychoactive\\_Substances\\_Bill\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471366/2015_10_27_HS_-_Prof_Les_Iversen_Psychoactive_Substances_Bill_.pdf)

**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.**

### **Government response**

The Government has given careful consideration to the inclusion of the alkyl nitrites in the Bill, mindful of the evidence of their harms and prevalence of use.

There are a number of specific, recognised health harms associated with “poppers”, some of which could result in death. These include:

- chemical burns and irritation around the nose and mouth;
- feelings of sickness, faintness, disorientation and weakness, including drop of blood pressure to a dangerous level;
- injury to red blood cells and reduced oxygen supply to vital organs; and
- temporary or permanent loss of vision.

The Government’s understanding of these harms aligns with the evidence of expert witnesses to the Committee, including Professor Iversen and Dr Owen Bowden-Jones. Professor Iversen noted that the ACMD is aware that “the use of ‘poppers’ can lead to methaemoglobinaemia in users which may cause significant tissue hypoxia, leading to severe, potentially life-threatening clinical features and/or death”<sup>3</sup>. There have been 20 deaths since 1993 where alkyl nitrites were mentioned on the death certificate. Whilst the Committee quoted, at paragraph 44 of the report, the first part of Dr Owen Bowden-Jones’s oral evidence on this issue, the transcript of his oral evidence (Q148) shows that he went on to say, ”Having said that, there are associated harms. As we see with a lot of NPS harms, they tend to be unpredictable. When ketamine came out, we had no idea it was going to damage the bladder. Who would have thought? Now we are getting a link between poppers and eye damage and, again, it is just the sort of thing that is unpredictable”.

On the advice of the ACMD, the alkyl nitrites group are not controlled under the Misuse of Drugs Act. This is not because they are harmless, but because they do not meet the high threshold required under that Act.

However, in recognition of these harms, the supply and sale of several substances in the group have been subject to controls under various domestic legislation over the years. In England and Wales and Northern Ireland, for example, the sale of alkyl nitrites to under 18s has been caught by the Intoxicating Substances (Supply) Act 1985 (the 1985 Act will be repealed by the Bill in recognition of the fact that the offence in section 1 of that Act overlaps with the supply offences in the Bill). As with many psychoactive substances, we have seen a game of cat and mouse, with manufacturers tweaking the chemical structure of poppers to create new substances which evade more specific prohibitions set out in other regulations, such as cosmetic and dangerous substances laws. Furthermore, in order to

---

<sup>3</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/psychoactive-substances/written/22358.pdf>



avoid consumer protection legislation, these substances are often marketed as “room deodorisers” or other similarly misleading descriptions.

Other countries have also had restrictions on alkyl nitrites for some time. They are caught by Ireland’s blanket ban, and controlled in Canada, where they cannot be sold without a licence by Health Canada. France has prohibited the sale of products containing certain substances in the group since 1990. All non-medicinal alkyl nitrites were outlawed in America in 1988.

The inclusion of alkyl nitrites under the Bill will bring a more comprehensive, yet proportionate, legal framework (having regard to the lower maximum penalties for the offences in clauses 4 to 8 of the Bill as compared with those in the 1971 Act, and the absence of a general possession offence) to address the supply of alkyl nitrites as a group. It will ensure that our focus is on those who manufacture and supply “poppers”, rather than criminalising users.

However, the Government recognises that representations have been made to the effect that ‘poppers’ have a beneficial health and relationship effect in enabling anal sex for some men who have sex with men, amid concern about the impact of the ban on these men. In consultation with the Department of Health and the Medicines and Healthcare products Regulatory Agency (MHRA), the Home Office will now consider whether there is evidence to support these claims and, if so, whether it is sufficient to justify exempting the alkyl nitrites group (or individual substances in the group). Clause 3 of the Bill enables the Home Secretary, by regulations (after statutory consultation with the Advisory Council on the Misuse of Drugs and subject to the affirmative procedure), to add to the list of exempted substances in Schedule 1 to the Bill. The Government intends to complete such consideration in time to enable any such draft regulations to be laid before both Houses and approved before the summer recess should the Government conclude that a case had been made to include alkyl nitrites in the list of exempted substances. Subject to parliamentary approval of the Bill, it remains the Government’s intention to bring its provisions into force from April.

#### **Conclusion/recommendation 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.**

### Government response

The Government shares the concerns of the Committee and those expressed by the ACMD (in their letter to the Home Secretary of 4 March<sup>4</sup>) about the misuse of nitrous oxide. We are committed to protecting people from the harms that it can cause.

Alongside the Psychoactive Substances Bill, the Government is taking a number of actions to tackle its supply for recreational purposes, outlined in the Government's response (16 September) to the ACMD's advice. These include highlighting the risk associated with nitrous oxide to festival organisers, working with major online retailers to implement mechanisms which discourage the sale of nitrous oxide for recreational use on their websites, and working through NHS Protect to ensure that NHS Trusts and associated medical facilities are fully informed about the issue of misappropriation of medical gas cylinders.

Together with the ACMD, the Government will keep the harms and prevalence of the recreational use of nitrous oxide under review. However, the current consensus is that the Psychoactive Substances Bill is the most appropriate legislative vehicle to restrict availability on the recreational market, following the ACMD's recent assessment that the individual and societal harms are not sufficient to warrant control under the Misuse of Drugs Act 1971. While the substance has widespread industrial use, the offences in the Bill have been framed such as to target the reckless trade in nitrous oxide for recreational purposes, and will have no adverse impact on legitimate industrial use.

Any medical use of nitrous oxide is also out of the scope of the Bill. In circumstances where it is supplied with the intention of having a beneficial effect on health, and not simply to induce a state of intoxication, nitrous oxide falls under the exemption in Schedule 1 to the Bill. In addition, as a "belt and braces" approach, the Government amended the Bill in Public Bill Committee to explicitly exempt all healthcare-related activities.

### Conclusion/recommendation 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.**

### Government response

The Bill provides a proportionate way of dealing with psychoactive substances which are yet to have their harms assessed. First, outside of a custodial institution, it will not be a criminal offence simply to possess psychoactive substances. Second, the Bill provides for civil sanctions in order to allow law enforcement agencies to employ a graded response to offending behaviour. Third, the maximum penalty for the offences in clauses 4 to 8 of the Bill is seven years' imprisonment, whereas under the Misuse of Drugs Act 1971, the maximum penalties range from 14 years' imprisonment for supply of a class C drug to life imprisonment for supply of a class A drug.

---

<sup>4</sup> <https://www.gov.uk/government/publications/acmd-advice-on-nitrous-oxide-abuse>

Once harms have been assessed by the ACMD, the Government can decide to control a particular psychoactive substance under the Misuse of Drugs Act where it considers the substance to be harmful enough to justify the higher penalties.

When sentencing a person for an offence under the Bill, the Government is satisfied that the courts will have no difficulty in determining the appropriate penalty, subject to the statutory maximum, based on the circumstances of the case and relevant aggravating and mitigating factors.

Under section 125(1) of the Coroners and Justice Act 2009, every court must follow any sentencing guideline when sentencing an offender which is relevant to the offender's case unless the court is satisfied that it would be contrary to the interests of justice to do so.

The concept of harm is already fully embedded in these sentencing guidelines. Indeed, section 121(3) of the Coroners and Justice Act refers expressly to sentencing guidelines specifying sentencing ranges by reference to, among other things, "the harm caused, or intended to be caused or which might foreseeably have been caused, by the offence".

The drug offences guidelines identify a number of harm-related factors increasing the seriousness of an offence, including the quantity of the drug supplied and any established evidence of community impact. The guidelines also identify various statutory and non-statutory aggravating factors. These factors will equally be relevant to the sentencing of offenders for offences in this Bill.

The Minister for Policing, Fire, Criminal Justice and Victims will write to the Sentencing Council to draw its attention to the Committee's recommendation and to the debates on sentencing which have taken place both in the House of Lords and in Public Bill Committee in the House of Commons.

#### **Conclusion/recommendation 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.**

**Taken with**

#### **Conclusion/recommendation 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.**

### **Government response**

The Government agrees with the Committee that this legislation is not a silver bullet. However, we do believe that the Bill contains valuable tools to restrict supply of psychoactive substances to complement the work that we are already doing to reduce demand.

According to the 2014/15 Crime Survey for England and Wales, less than 1% of adults who used drugs in the last 12 months sourced them from the internet. We acknowledge that this may increase once the Bill comes into force and the more readily available sources of supply are closed down. However, this will be mitigated by the civil powers for enforcement agencies and local authorities provided by the Bill, which will help to deal with suppliers whether the psychoactive substances are sold through head shops, street dealers, or websites. The criminal offences outlined in the Bill also apply to internet sales, and are likely to be highly effective on domestic websites – as we have seen in Ireland. The National Crime Agency has a good relationship with Internet Service Providers, who have been happy to assist in law enforcement by taking down websites selling controlled drugs; we expect that relationship to extend to websites selling substances covered by this Bill. In Keith Bristow’s letter to the Committee of 2 October 2015, he noted that over 100 websites selling “controlled NPS” have been taken down under the Misuse of Drugs Act.

To deal with websites based abroad, the UK continues to work with international partners to develop an effective response to the supply of drugs and to react swiftly to emerging threats. The UK is recognised as a global leader of international efforts against the supply of psychoactive substances and works bilaterally and through the G7, UN, and EU to this end. We engage in particular with China and India, two of the largest producers of psychoactive substances, to tackle supply at the source. This work will continue once the ban on psychoactive substances comes into force. There is also ongoing work with the EU and other international regulatory agencies to ensure that, wherever possible, offending websites are compelled to comply with the law.

Even when overseas websites have not been taken down, the unambiguous powers that the Bill provides for Border Force under clause 55 will make it much easier for them to seize psychoactive substances at the border. This makes it far less likely that psychoactive substances bought from abroad will reach the intended recipient.

As is the case with all items subject to importation restrictions, the potential for importation of psychoactive substances using postal or courier services is a concern for us. In order to combat this, clause 55 of the Bill applies certain powers under the Customs and Excise Management Act (CEMA) 1979. These powers will enable customs officials to tackle the trade in psychoactive substances at the border by operating a standard and familiar set of powers in relation to psychoactive substances as that already available to them in respect of other goods subject to customs control. Crucially, by applying the CEMA framework of enforcement powers, it will mean customs officials have the requisite

lawful authority to intercept and take appropriate enforcement action in respect of psychoactive substances contained in international postal packets.

The enforcement of the Bill is an operational matter for the police and other law enforcement agencies rather than for the Government. We have drawn the Committee's recommendation to the attention of the National Policing Lead for Psychoactive Substances, Commander Simon Bray, who is already preparing an action plan to ensure that the Bill is implemented consistently across the country.

### **Conclusion/recommendation 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.**

### **Government response**

We are working closely with law enforcement agencies across the UK to ensure that plans are in place for them to have the necessary guidance and tools to enforce this legislation. The National Police Chiefs' Council (NPCC) is chairing a monthly working group to ensure that there is co-ordinated police activity across the country after Royal Assent and subsequently after the provisions come into force.

In addition, the Home Office is chairing a cross-agency working group on implementing the Bill. The meeting is attended by all those with a role in enforcing the legislation, such as the police, the Local Government Association, the devolved administrations, the National Crime Agency and Border Force, so that plans for implementation are mutually supportive and that there is consistency of delivery.

In February, we will be holding two workshops, jointly with the NPCC, on the implementation of the legislation. Police officers and trading standards officers will be invited to attend. Police and Crime Commissioners will be represented at the event which will enable them to be fully briefed on the legislation.

As indicated in our response to recommendation 12, the enforcement of the Bill is an operational matter for the police and other law enforcement agencies rather than for the Government or Police and Crime Commissioners. We have also drawn this recommendation to the attention of the National Policing Lead for Psychoactive Substances.

**Conclusion/recommendation 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.**

**Government response**

We take a broad approach to the prevention of substance misuse, in line with international evidence and recent evidence provided by the independent experts, the ACMD. It combines universal action with targeted action for those most at risk of already misusing drugs. This includes investing in a range of evidence-based programmes, which have a positive impact on young people and adults, giving them the confidence, resilience and risk management skills to resist drug use. Resilience-building activities have the best evidence for helping people to avoid drugs and drug problems.

We recognise that effective drugs education plays a critical role in helping to ensure that young people are equipped with the information they need to make informed, healthy decisions and to keep themselves safe. We want to see all young people leave school prepared for life in modern Britain. This means ensuring that young people receive a rigorous academic education and helping them to develop personal and emotional wellbeing. In addition to drugs education being part of national curriculum science at key stage 2 and key stage 3, many schools include drugs education as part of their personal, social, health and economic (PSHE) education. We do not, however, want to prescribe exactly which issues schools should have to cover in PSHE or other related parts of the curriculum or to specify which resources they should use. Teachers are best placed to understand the needs of their pupils and we believe that it is for schools to tailor their local PSHE programme to reflect the needs of their pupils.

The Government has also invested in resources to support schools. For example, Mentor UK runs the Alcohol and Drug Education and Prevention Information Service which provides practical advice and tools based on the best international evidence, including briefing sheets for teachers on best practice. The Department for Education has published an evidence paper for teachers: *Personal, Social, Health and Economic (PSHE) Education: A Review of Impact and Effective Practice*<sup>5</sup>, which summarises the best evidence on effective PSHE practice for teachers including on drugs education.

Public Health England (PHE) has published a guide to evidence-based prevention for people who commission, develop and implement prevention strategies which summarises the UN Office for Drug Control prevention standards.

Going forward, we are developing a strategic communications plan to support implementation leading into the Bill's commencement in April 2016. In developing our plans, we recognise the value in raising public awareness of the harms of drug misuse but

---

<sup>5</sup> <https://www.gov.uk/government/publications/pshe-education-a-review-of-impact-and-effective-practice>

we need to be mindful of the evidence base here. It is clear that mass media campaigns on their own are ineffective and – at worst – are associated with increased drug use. It is therefore critical that any such awareness raising activity is targeted and part of a wider strategy.

The amount of Government spend referred to in the report (paragraph 71) relates only to two Home Office summer communications campaigns aimed at raising awareness of the risks, consequences and harms of psychoactive substances and signposting FRANK as a source of information. The campaigns were targeted towards those already contemplating using or dabbling in psychoactive substances, and cost a total of £180,556. The latest estimates (2011/12) suggest that the Government spends around £341m on early interventions and education on tackling drug misuse.

The Government funds some important online resources which can help young people to be more aware of drug dangers, build resilience and prevent them developing problems. These include:

- Rise Above, a national campaign run by PHE to build resilience and healthy behaviour in young people<sup>6</sup>.
- Talk to Frank, which is a trusted source of advice on drugs<sup>7</sup>.

In relation to prisons (paragraph 78 of the report), the National Offender Management Service (NOMS) has already introduced a number of measures to tackle the use of psychoactive substances, including a major push on prison communications to make sure that offenders are aware of the consequences of taking psychoactive substances, as are visitors who attempt to bring them in. This has been issued alongside a series of articles and briefings to Governors and staff to improve our corporate knowledge of the dangers associated with psychoactive substances. NOMS has been working with PHE on the development of a toolkit for health practitioners and operational staff in prisons, which was issued earlier this month<sup>8</sup> and provides staff with a comprehensive source for understanding the behaviours associated with psychoactive substance use and practical advice on referral to, and treatment by, health colleagues.

In addition there have been a number of local initiatives involving prisons, the NHS, PHE and substance misuse providers to tackle this issue and raise awareness of the very serious risks that these substances present.

#### **Conclusion/recommendation 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.**

---

<sup>6</sup> <http://riseabove.org.uk/>

<sup>7</sup> <http://www.talktofrank.com/>

<sup>8</sup> <http://www.nta.nhs.uk/uploads/new-psychoactive-substances-in-prisons-a-toolkit-for-prison-staff.pdf>

## Government response

High quality treatment is fundamental to helping people recover from their dependency. We have a well-embedded and comprehensive drug treatment system and within this there are a range of services responding to the challenges and harms posed by psychoactive substances.

The Government continues to work with our partners to develop our understanding and consider how we can best support those working in the treatment field to manage those who have taken a psychoactive substance. This includes:

- developing world leading evidence-based clinical guidelines through Project NEPTUNE to aid in the detection, assessment and management of users of psychoactive substances. This is aimed at clinicians working in a range of frontline settings, such as hospitals, sexual health services, primary care and drug treatment services. The Government has shared this approach internationally, including with the World Health Organisation, United Nations and the G7;
- developing on-line learning and clinical tools in phase 2 of NEPTUNE, as well as exploring how the guidance might be adapted for staff working in non-medical settings;
- publishing a toolkit<sup>9</sup>, supported with regional events, to help local areas to prevent and respond to the use of psychoactive substances. The toolkit gives a broad overview of the challenges and provides commissioners with resources and advice to inform a suitable local response; and
- setting up a clinical network as a reference group to look at the feasibility of sharing intelligence on psychoactive substances and drug-related adverse reactions and harms. PHE is developing a NPS information system to help clinicians and other front-line workers access accurate and up-to-date information about NPS. Part of this work is exploring the feasibility of piloting a system for recording adverse drug effects (similar to MHRA's Yellow Card Scheme) to cover NPS and other drugs.

### Conclusion/recommendation 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.**

## Government response

Data on hospital admissions and attendance is collected using the International Classification of Diseases (ICD). The ICD is the international standard diagnostic

<sup>9</sup> <http://www.nta.nhs.uk/uploads/nps-a-toolkit-for-substance-misuse-commissioners.pdf>



classification for diseases and other health problems and enables the storage and retrieval of diagnostic information for clinical, epidemiological and quality purposes. It also provides the basis for the compilation of national mortality and morbidity statistics by World Health Organization Member States. The classification provides high level categories for mental and behavioural disorders due to psychoactive substance abuse, but does not specifically identify psychoactive substances as defined in the Bill.

It is unlikely that the data collected would be robust, as the reports of psychoactive substance users are unreliable; they have no way of knowing if what they took was the substance they thought it was. Furthermore, the cost of testing everyone who presents at hospital in an intoxicated state to see if a known psychoactive substance is implicated would be disproportionate and not clinically justified; such information is not normally needed in these circumstances, as the treatment focuses on the symptoms rather than the substance.

The National Poisons Information Service already collects data on acute problems caused by psychoactive substances. This information is available to clinicians when required through the Toxbase system<sup>10</sup>.

PHE is developing a psychoactive substances information system to help clinicians and other front-line workers access accurate and up-to-date information about psychoactive substances. Part of this work is exploring extending the national system of recoding adverse drug effects (the MHRA's Yellow Card Scheme) to cover psychoactive substances and other drugs.

#### **Conclusion/recommendation 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.**

#### **Government response**

The key to effective treatment is ensuring the approach is personalised to an individual's specific needs and tailored as they progress on their treatment journey. Drug treatment services can largely adapt current approaches to existing drugs to treat those presenting after taking a psychoactive substance.

Local authorities are responsible for assessing local need and commissioning services to meet that need, including services for psychoactive substance users and staff with the skills

---

<sup>10</sup> <https://www.toxbase.org/>

to meet the needs of users of psychoactive substances. Some large drug treatment providers are already leading the way in ensuring their workforce is skilled up to meet requirements.

As indicated above, PHE has launched a toolkit to help local areas to prevent and respond to the use of psychoactive substances. The toolkit gives a broad overview of the challenges, and provides commissioners with resources and advice to inform a suitable local response.

We will continue to work with our partners to take further action, including enhancing Project NEPTUNE which will move into Phase II to develop on-line learning and clinical tools, as well as exploring how the guidance might be adapted for staff working in non-medical settings. PHE is committed to using its networks and other resources to share the findings and advice of Project NEPTUNE.

#### **Conclusion/recommendation 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.**

#### **Government response**

The Government agrees that the Psychoactive Substances Bill is only one strand, albeit an important strand, of a wider strategy needed to tackle the threat posed by these harmful substances. We will continue to work with a wide range of stakeholders to ensure that we provide effective prevention and treatment services to complement the Bill's approach of criminalising those engaged in production, supply, importation or exportation of psychoactive substances. Further, the ACMD will continue to support us throughout the implementation of the Bill, and will directly assist us in evaluation and in developing the bespoke forensic strategy.