

Written Evidence submitted by the
All-Party Parliamentary Group for Drug Policy Reform

Evidence to the Home Affairs Committee Brief Inquiry on Psychoactive Substances

Introduction

The Psychoactive Substances Bill is a response to the proliferation of different forms of substance, coming onto the market in order to get around existing drug control legislation. When they appear the potential health harms of these substances both acute and chronic are unknown but emerging evidence suggests that they can represent greater harms than the substances that they are likely to replace. Synthetic cannabinoids appear to be more harmful than cannabis itself. Despite the very poor track record of drug control, both in the UK and elsewhere, in reducing the prevalence of recreational drug taking principally by young people, the Bill proposes further prohibition. The proposals are not evidence based and, as it stands, the Bill does not appear to be workable. However it does contain some positive elements which the APPG would like to highlight.

The Bill completed its passage through the House of Lords in July. We hope that the Government take on board the points raised by the ACMD, by members of the APPG and other Peers and also the report of the HAC following this Inquiry. This evidence will focus on the issues raised by the Government Bill but will be of general relevance to how best to respond to the growing problem of Synthetic Psychoactive Substances.

About the APPG for Drug Policy Reform

The All-Party Parliamentary Group, a group of 100 MPs and Peers, was formed in 2011 and re-constituted in June this year following the general election. It was set up to examine and assess drug policy, both globally and in the UK, with a health focus and based on available evidence. It has spent the last four years on this project and has concluded that the United Nations and many national drug policies are failing significantly to reduce: the prevalence of drug use; the harms associated with overdose, contamination and addiction; the catastrophic effects of prohibition on the life chances of young people; and the violence, corruption and corrosive effect of the international drugs trade on vulnerable government institutions in Latin America and elsewhere. The APPG has organised a number of international events bringing together Ministers, government officials and experts to take forward ideas for reform of current policies. It regularly contributes to Inquiries and Parliamentary debates on aspects of drug policy.

In 2012 it carried out an Inquiry into New Psychoactive Substances and published its report, [Towards a Safer Drug Policy](#), in 2013. The main conclusions of the report were:

That the Government should consider introducing a new classification for drugs of limited harm and which should be regulated rather than prohibited.

That the Temporary Class Drug Orders introduced by the previous coalition government should be of indefinite duration thus extending the period where possession is not penalised and allowing for comprehensive research into the harms associated with an emerging psychoactive substance.

That consideration be given to transferring the lead role on drug policy from the Home Office to the Department of Health.

That the Advisory Council on the Misuse of Drugs should become an independent decision making body.

It has also published reports on:

[Coca Leaf – A Political Dilemma](#) (on the significant medical and commercial potential of coca leaf apart from the production of cocaine)

[Regulating Cannabis for Medical Use in the UK](#)

It is currently working with a number of progressive governments to frame a positive contribution to the international debate on drug policy stimulated by the forthcoming United Nations General Assembly Special Session (UNGASS) on drug policy scheduled for 2016. As part of this work the Group has prepared Guidance on Interpreting the UN Drug Conventions in order to encourage experimentation and innovation in national drug policies which together, can build a credible alternative to the current prohibitionist paradigm.

Starting point for drug control legislation

The starting point for the APPG is to identify, based on available evidence, those approaches to drug supply and use which will most effectively reduce the harm of drugs to individuals, communities and nations. The aims of drug policy as set out in our report: [Guidance on Interpreting the UN Drug Conventions](#)¹, should apply equally to all psychoactive substances, whether legal or illegal.

Our proposed aims of drug policy in relation to supply and demand are:

On the Supply of Drugs: To reduce the social harms associated with supply, including violence, corruption, harm to individuals and communities; and the generation of profits for criminal gangs and terrorists.

On the possession and use of drugs: To reduce the incidence of drug addiction and the harms caused by drug use and by the regime for controlling drug use.

All drug policy should be evaluated with respect to the above aims. If we consider the Government's Psychoactive Substances Bill in this regard, it has not established that further prohibition will achieve the aims set out above which we are sure that the Government shares. It requires amendment if it is to succeed in meeting such aims. As it stands it can be expected to generate increased profits for criminal gangs and terrorists. It is also likely to increase the incidence of addiction to more dangerous substances. We will seek to explain these conclusions.

Responses to the HAC Questions

***Which groups will be particularly affected by a ban on psychoactive substances?
What steps can the Government take to educate these groups about the dangers?
How will the Government explain the change in the legal status of these substances?***

The group most affected by the ban will be young people and we think it is appropriate to consider how and why young people are associated with taking drugs.

Why do young people use psychoactive substances? According to the resource pack for informal educators produced by the Home Office the authors said that:

¹ https://drive.google.com/file/d/0B0c_8hkDJu0DOVYwMjUwS01NX3M/view

“Curiosity is one of the reasons that young people might be tempted to use NPS. Of course, for some people, we can’t ignore that the enjoyment of the effects of NPS products will be a key motivation for use. They can offer escapism, relaxation, shared social experiences and adventure”².

If those are the motives, the Government needs to be very careful not to end up criminalising people who are essentially law abiding. Very often we are talking about social activities that groups of young people perform. There is of course also the reality that teenagers and people a bit older often feel the temptation to rebel against authority. If they are banned from doing something that they enjoy and think is fun, and they do not understand why it should be criminalised, it is quite likely that they will rebel against the ban. People experiment as they grow up and mature, though some people continue to use such substances through the decades that follow, holding the view as they do—and as many highly competent scientists do—that the effects of individual controlled drugs and many new psychoactive substances are less harmful than the effects of alcohol or tobacco.

Overall, the safer course would be a proportionate approach: to legalise and regulate a selection of the safer substances rather than to attempt to ban the lot. This is not to encourage anybody to consume psychoactive substances but to avoid criminalising young people where possible. We should not damage their education, their careers, or their job prospects. . A disproportionate law risks alienating young people and in particular members of black and ethnic-minority groups.

Between 2009 and 2013, under the existing drug legislation, 60,000 young people were criminalised simply for possession, and there is a danger that this legislation will add to those numbers if the ban leads young people to revert back to traditional drugs following the ban.

Young people will also be affected by the criminalising of ‘social supply’ within the Bill. According to the ACMD -

“The Bill has the potential to both criminalise and apply disproportionate penalties to many otherwise law abiding young people and adults...An example is a young person being prosecuted for ‘supply and importation’ in a case of ‘social supply’ where a young adult has bought small quantities of Novel Psychoactive Substances on-line on behalf of a group of friends who have ‘clubbed together’. We agree with The ACMD who believe that criminal justice sanctions would be disproportionate to the harm caused by such acts”

Will young people be protected from harm by the ban?

Synthetic psychoactive substances are certainly harmful and some risk fatalities. The key question is whether such harms will be reduced by making supply illegal. The latest figures on drug related deaths published by the Government for 2014 were 3,346 which represented a 17% rise. The areas of greatest concern were a 66% increase since 2012 in deaths related to heroin use and the 46% increase in deaths where cocaine was implicated. These are both substances which have been controlled (banned) under the Misuse of Drugs Act (MDA) since 1971³.

² Home Office (2015): *New Psychoactive Substances (NPS): Resource Pack for Informal Educators and Practitioners* : Home Office 11th March 2015 <https://www.gov.uk/government/publications/new-psychoactive-substances-nps-resource-pack>

³ Office for National Statistics - Statistical bulletin: Deaths related to drug poisoning in England and Wales, 2014 registrations <http://www.ons.gov.uk/ons/rel/subnational-health3/deaths-related-to-drug-poisoning/england-and-wales---2014/deaths-related-to-drug-poisoning-in-england-and-wales--2014->

A widely publicised estimate of the number of deaths in 2012 due to the taking of synthetic psychoactive substances is 97⁴. According to the Office of National Statistics this number is closer to 60⁵. More important is that all but five of that number resulted from taking substances **that have already been banned** under existing legislation.⁶ Banning a substance does not end or even reduce the consumption of that substance. The most compelling evidence comes from Ireland where a ban on synthetic psychoactive substances was introduced in 2011. Use of synthetic psychoactive substances reported by young people is the highest in Europe and has increased since 2011.⁷ In Poland, too, which introduced a ban on psychoactive substances, the number of poisonings three years later had risen above the pre-ban level.⁸

Suppliers of legitimate goods that happen to have a mild mood altering effect

Such suppliers are another group that will be affected by the ban. One of the main concerns raised by members of the APPG as the Bill was being considered by the House of Lords was that the blanket ban being proposed would capture all kinds of foods, herbal remedies and other products that may happen to have a mild psychoactive effect. It is widely known that the Advisory Council for the Misuse of Drugs has raised this concern saying that is an impossible task to list all the desirable exemptions to the ban. The concern is shared by many other informed and eminent people including the Archbishop of Canterbury who is on record as saying “It is not possible to legislate against all psychoactive agents without criminalising the sale of harmless, everyday products that produce changes in mood”. The term ‘synthetic psychoactive substance’ was proposed by members of the APPG as a less broad definition for the Bill but which would encompass the substances causing concern. But many other concerns about the Bill remain.

What specialist treatment do users of psychoactive substances require?

One of the significant strengths of the Governments Psychoactive Substances Bill is the fact that it concentrates on banning the *supply* of such substances. The previous Coalition Government introduced the Temporary Drug Control Orders which decriminalised the possession and use of synthetic psychoactive substances for 12 months while the substance was assessed by the ACMD. At the end of that period psychoactive substances were placed under the control of the Misuse of Drugs Act 1971, thus reintroducing the criminalisation of users. The effect of the Psychoactive Substances Bill will be to extend the decriminalisation of possession and use of such substances beyond the 12 month period.

The importance of the innovation is considerable. We know from the Portuguese policy of decriminalisation, introduced some 15 years ago, that decriminalisation combined with good treatment and some pressure upon addicts to accept treatment, reduces the numbers of young people becoming addicted to drugs.

The treatment facilities in the UK for young people taking synthetic psychoactive substances are limited. It will be very important for resources to be devoted to such treatment.

registrations.html

⁴ Eg BBC <http://www.bbc.co.uk/news/uk-33412838>

⁵ Independent Scientific Committee on Drugs (Drug Science): Briefing on the Psychoactive Substances Bill <http://www.drugscience.org.uk/resources/psb2015/>

⁶ Op cit 4

⁷ European Commission Memo (26th June 2014): *New study shows increasing use of 'legal highs' among young Europeans*: http://europa.eu/rapid/press-release_MEMO-14-445_en.htm

⁸ NATIONAL REPORT "POLAND" 2013: New Development, Trends and in-depth information on selected issues REITOX: National Bureau for Drug Prevention

What can be done to counter a shift to using controlled drugs once there is a ban?

Very little can be done to counter a shift to using controlled drugs as by its very nature the form of the illicit drug market cannot be influenced. Following the Irish ban on psychoactive substances, headshops closed wholesale and the ban was initially regarded as a success although European data show that head shops account for only 10% of the market in psychoactive substances. However, the headshop market has been driven underground. The increasing number of young people in Ireland who are trying synthetic psychoactive substances are thus exposed to the full range of illicit drugs in the illegal market. The ACMD Advisory Committee letter to the Home Secretary expressed concern that the blanket ban could increase the use of more harmful drugs including cocaine and heroin⁹. Evidence of drug taking following the 2011 ban show that the web trade in synthetic psychoactive substances is also thriving in Ireland.

Do the enforcement agencies have the necessary powers and resources to effectively enforce the proposed new laws?

While the concept of a universal ban has a superficial simplicity there will be many practical difficulties in its implementation. It is not planned to make any new resources available to the police to implement the legislation¹⁰. According to a Police representative in Ireland they have had difficulty in mounting prosecutions due to difficulties in proving that the substances concerned were psychoactive.¹¹ Since the legislation was introduced into Eire in 2011 there have only been four successful prosecutions.¹²

Role of the ACMD

The Advisory Council for the Misuse of Drugs will have a crucial role in advising on all the questions raised by the HAC,

Under the MDA (1971) the ACMD was given the role of advising the government where: “the misuse is having or appears to them capable of having harmful effects sufficient to constitute a social problem”,

and in,

“preventing the misuse of such drugs or dealing with social problems connected with their misuse”.

That the ACMD is given no role within the original Bill and was not involved in its drafting is a matter of concern. In the Lords the Bill has been amended to give them a role to be consulted but as the principle of harms is not involved in the legislation their scope for advice will be limited. Their job is key to the application of the principle of harms within drug legislation. It is the principle of harms which can determine the level of response to controlled drugs in terms of education and prevention programmes, harm reduction and treatment services and to the systems of classification, penalties and sentencing which apply. Although there may be disagreements and different interpretations about how to assess harms and how to translate those assessments into policy responses the concept of

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441400/2-7-15-ACMD_advice_on_PS_Bill.pdf

¹⁰ The written answer by Mike Penning MP, The Minister of State Home Department to a question by Paul Flynn MP strongly suggested that no resources would be made available – Hansard 10th July 2015 <http://www.theyworkforyou.com/wrans/?id=2015-07-07.5856.h&s=>

¹¹ Statement by Detective Sergeant Tony Howard from Irelands Drugs and Organised Crime Bureau to the BBC <http://www.bbc.co.uk/news/uk-33226526>

¹² Op cit 11

harm related legislation is a well-established and sound principle. The alternative, if it is disregarded by the legislation, are arbitrary, inconsistent, disproportionate and potentially unjust enforcement practices.

Summary

In summary the views of the All-Party Group are that the Psychoactive Substances Bill, if enacted, will:

reproduce failing legislation from the Irish Republic;

do little to reduce the levels of use and levels of experimentation with synthetic psychoactive substances¹³;

do nothing to reduce the harms of synthetic substances and is likely to increase the use of existing controlled substances where significant harms are well established;

introduce legislation which does not rely on an assessment of harms, the principle behind all drug legislation based on the Misuse of Drugs Act (1971)(MDA);

impede much needed research in the area of synthetic psychoactive substances;

interfere with medical treatments involving medications with psychoactive properties;

sideline the expert body on drugs in the UK – the Advisory Council for the Misuse of Drugs (ACMD).

ALL-PARTY PARLIAMENTARY GROUP FOR DRUG POLICY REFORM

Co-Chairs - Caroline Lucas MP, Baroness Meacher

Vice Chairs – Paul Flynn MP, Lord Howarth, Paul Monaghan MP

Lord Norton, Baroness Stern. Treasurer – Lord Howarth

¹³ The term synthetic psychoactive substance is the term generally used in this submission and was suggested to the Government by the APPG during the passage of the Bill through the House of Lords as a term which captured the psychoactive substances of greatest concern coming on to the market but excluded a number of organic substances such as herbal remedies which are generally harmless but can have a mild mood-altering effect and would otherwise have to be individually excluded within the legislation.