

Title: IMPACT ASSESSMENT OF NEW DRUG CONTROL OF KHAT IA No: HO 0099 Lead department or agency: HOME OFFICE Other departments or agencies: DEPARTMENT OF HEALTH AND ITS AGENCIES MINISTRY OF JUSTICE LAW ENFORCEMENT AGENCIES	Impact Assessment (IA)		
	Date: 22/10/2013		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: Cyrille Marcel (Telephone: 0207 035 0618) (Email: Cyrille.Marcel2@homeoffice.gsi.gov.uk)			

Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
-£150m	-£36m	£3.4m	No N/A

What is the problem under consideration? Why is government intervention necessary?

Following consultation with the Advisory Council on the Misuse of Drugs (ACMD) and consideration of the risks and potential harms associated with khat use and the khat trade, the Government is seeking to control the khat plant as a Class C drug under the Misuse of Drugs Act 1971. The Government has concluded that the potential risks of harm associated with khat warrant proportionate drug control measures relating to its possession, supply, production and import/exportation with associated criminal sanctions.

What are the policy objectives and the intended effects?

To control khat in accordance with the terms of the Misuse of Drugs Act 1971. The intended effects are to deter the misuse of khat amongst the UK public, curb availability by removing the khat trade from the UK and remove opportunities for the onward trafficking of khat through the UK to countries where it is banned; and to enable law enforcement and regulatory authorities to take appropriate action to tackle the unauthorised activities of possession, production, supply and import/exportation of khat – with the expectation that the law enforcement response is proportionate to the related offence.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: No change

Option 2: Full Class C control of khat under the Misuse of Drugs Act 1971: all offences apply.

Option 3: Class C control of khat under the Misuse of Drugs Act 1971 where all offences apply, complemented by an escalation framework for the simple possession offence (similar to cannabis).

Option 3 is the preferred option as the most comprehensive and consistent approach to meet policy objectives and intended effects.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** ongoing

Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:	Non-traded:	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

James Brokenshire

Date: 25/10/2013

Policy Option 2

Description: Full Class C control of khat under the Misuse of Drugs Act 1971: all offences apply.

FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)		
Year 2011	Year 2014	Years 10	Low: -180	High: -120	Best Estimate: -150

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	1	13.4	120
High	0		20.5	180
Best Estimate	0		16.9	150

Description and scale of key monetised costs by 'main affected groups'

- Government revenue that would be lost from import duty and VAT when khat becomes illegal, £12.8m *per annum*.
- UK industry profit from the khat trade that would be lost when khat becomes illegal, £0.6m to £7.7m (best estimate £4.1m) *per annum*.

Other key non-monetised costs by 'main affected groups'

- Enforcement and CJS costs that would be incurred tackling illegal khat import/exportation, supply, production and possession. These costs are higher than under option 3 as there is no escalation policy for possession offences and the 3rd offence penalty has a higher CJS resource cost than 1st and 2nd offences.
- Potential regulatory costs to the research and other related sectors.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	1	NK	NK
High	0		NK	NK
Best Estimate	0		NK	NK

Description and scale of key monetised benefits by 'main affected groups'

None.

Other key non-monetised benefits by 'main affected groups'

- Reduction in the risks and potential harms associated with the use of khat and the khat trade.
- Reduction in the perception of social harms in communities affected by khat as well as in wider society.
- International relations benefits arise from having a khat policy which is consistent with control measures in most other Western countries who are signatories to the UN Conventions on drug misuse and trafficking.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

- No evidence that there is any legitimate production or medicinal use in the UK other than in the research and other related sectors. If there were, there would be a cost to these businesses in requiring them to purchase a licence to import/export/produce/supply/possess.
- Evidence from other countries which have controlled khat suggests that levels of demand may not reduce immediately after the ban comes into effect.

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 3.4	Benefits: 0	Net: -3.4	No	N/A

Policy Option 3

Description: Class C control of khat under the Misuse of Drugs Act 1971 where all offences apply, complemented by an escalation framework for the simple possession offence (similar to cannabis).

FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)		
Year 2011	Year 2014	Years 10	Low: -180	High: -120	Best Estimate: -150

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	1	13.4	120
High	0		20.5	180
Best Estimate	0		16.9	150

Description and scale of key monetised costs by 'main affected groups'

- Government revenue that would be lost from import duty and VAT when khat becomes illegal, £12.8m *per annum*.
- UK industry profit from the khat trade that would be lost when khat becomes illegal, £0.6m to £7.7m (best estimate £4.1m) *per annum*.

Other key non-monetised costs by 'main affected groups'

- Enforcement and CJS costs that would be incurred tackling illegal khat import/exportation, supply, production and possession. These costs are lower than under option 2 as the escalation policy for possession offences means that 1st and 2nd offence penalties have a lower resource cost to enforce than the 3rd offence thus reducing the risk of reaching the higher costs that can potentially arise under option 2.
- Potential regulatory costs to the research and other related sectors.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	1	NK	NK
High	0		NK	NK
Best Estimate	0		NK	NK

Description and scale of key monetised benefits by 'main affected groups'

None.

Other key non-monetised benefits by 'main affected groups'

- Government revenue from penalty notices for disorder of £60 paid for a 2nd time khat possession offence.
- Reduction in the risks and potential harms associated with the use of khat and the khat trade.
- Reduction in the perception of social harms in communities affected by khat as well as in the wider society.
- Reduction in the perception of the impact of control measures in communities affected by khat.
- International relations benefits arise from having a khat policy which is consistent with control measures in most other Western countries who are signatories to the UN Conventions on drug misuse and trafficking.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

- No evidence that there is any legitimate production or medicinal use in the UK other than in the research and other related sectors. If there were, there would be a cost to these businesses in requiring them to purchase a licence to import/export/produce/supply/possess.
- Evidence from other countries which have controlled khat suggests that levels of demand may not reduce immediately after the ban comes into effect.

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 3.4	Benefits: 0	Net: -3.4	No	N/A

Evidence Base

A. Strategic Overview

A.1 BACKGROUND

1. This Impact Assessment considers the proposal of controlling khat as a Class C drug under the Misuse of Drugs Act 1971 (Amendment) (N^o 2) Order 2013, with an escalation framework for the simple possession offence enabled by the Criminal Justice and Police Act 2001 (Amendment) Order 2013 to ensure a proportionate law enforcement response in local communities affected by khat in England and Wales.

Khat

2. Khat is a plant which consists of the leaves, stems or shoots of the plant of the species *catha edulis* which is consumed (chewed) for its mild stimulant properties. It contains naturally occurring active ingredients – cathine and cathinone – which are subject to international drug control and in the UK are controlled as Class C drugs under the Misuse of Drugs Act 1971 in pure form. ‘Fresh’ khat retains these stimulant properties only up to three to five days; this short shelf-life means that fast transportation from harvest in producer countries and through distribution networks to the point of sale is necessary to appeal to demand in receiver countries. Dried khat does not appear to be as popular, but can retain its stimulant properties for several years. The practice of khat use has spread into UK communities through diasporas from Horn of Africa countries (including Kenya, Somalia, Ethiopia, Yemen and Eritrea) where it naturally grows and is widely consumed. Use in the UK is mainly limited to these communities.

UK khat trade

3. Most Western countries which are signatories to the UN Conventions on drug misuse and trafficking control khat: Belgium; Denmark; Germany; Greece; France; Ireland; Italy; Latvia; Lithuania; Poland; Slovenia; Finland; Sweden; Norway; Switzerland; Czech Republic; Luxemburg; Romania; Austria; the Netherlands (Since January 2013); the United States and Canada. However, the UK has controlled its active ingredients under the Misuse of Drugs Act 1971 when in pure form (extracted from the plant).
4. The ACMD report states that the prevalence of khat use amongst relevant population groups is falling on the basis that the size of population groups associated with the consumption of khat has increased whereas volumes of imported khat have remained flat. Based on the British Crime Survey 2010, it was estimated that 0.2% of 16-59 year olds in the general population in England & Wales (no data for Scotland or Northern Ireland) used khat in the last year,

(around 60,000 -70,000 individuals)¹. Previous research has estimated use to be as high as around 50% amongst male Somalis – with up to 10% using khat daily.²

ACMD reviews of khat

5. The Advisory Council on the Misuse of Drugs (ACMD) previously advised the UK Government on khat in 1998 and 2005. In late 2010, in light of persistent concerns amongst UK communities and the international community and about the health and societal harms associated with khat use and the khat trade, the Government asked the ACMD to review the available evidence on harm and its advice on the control of khat. The ACMD published this advice on 23 January 2013³. The ACMD found insufficient evidence on harm associated with the use of khat to justify its control through classification. However, the ACMD acknowledged the limitations of the evidence base concerning the social and physical harms associated with khat use (other than in regard to evidence of liver toxicity) as well as the strength of public concern in some communities.

Government consideration of khat

6. The Government acknowledged the quality of the ACMD's assessment, but in light of the lack of robust evidence and the strength of community concerns has concluded that there is a risk that actual harm is being underestimated. Furthermore, the Government considered increasing evidence of khat trafficking activity within the UK, including new intelligence received after the khat ban in The Netherlands came into effect and the ACMD's report was subsequently published. The UK khat trade is increasingly at risk of becoming a regional hub for the international smuggling of khat to countries where it is banned, including most of the UK's EU and G8 partners.

A.2 GROUPS AFFECTED

UK businesses involved in the khat trade

7. Businesses targeted by the Government will be expected to comply with the law change or face the risk of prosecution alongside traffickers who have been operating under covert of the UK khat trade.

Government

8. It is expected that the costs to law enforcement, criminal justice and regulatory agencies will be subsumed into their existing operational costs in relation to similar drugs already controlled under the 1971 Act. Potential National Offender

¹ Hoare, J. and Moon, D. (2010) *Drug Misuse Declared: Findings from the 2009/10 British Crime Survey*. Home Office Statistical Bulletin 13/10. London: Home Office.

² Patel, S.L., Wright, S. and Gammampila, A. (2005) *Khat use among Somalis in four English cities*. Home Office Online Report 47/05. London: Home Office.

³ www.gov.uk/government/publications/khat-report-2013

Management Service costs arising from prison transfer applications from UK khat traffickers sentenced abroad who want to spend the remainder of related sentences in the UK are also expected to be minimal.

Individuals

9. The policy objectives are to protect the public against the risks and potential harms from khat use and the khat trade.

Minority groups and local agencies

10. The Government recognises that the proposal may affect some minority groups and local agencies where khat use and the khat trade are currently more prevalent. Previous research has estimated use to be as high as around 50% amongst male Somalis – with up to 10% using khat daily.⁴

Non-commercial organisations (other than law enforcement, CJS and regulatory agencies as described above)

11. Some non-commercial organisations which may be involved in khat-related activities (i.e. excluding human consumption) may also be affected by the law change. Following further consultation with the ACMD, the Department for Business, Innovation & Skills and the Medicines and Healthcare products Regulatory Agency, there is no evidence to suggest that khat has any recognised medicinal or legitimate use in the UK beyond research or other special purposes. This is consistent with activities relating to drugs listed in Schedule 1 to the Misuse of Drugs Regulations 2001, which are subject to Home Office licensing by application from a new producer/supplier (as well as for import/export activities).

B. Rationale

12. The Government is committed to protecting individuals, including minority groups and vulnerable members of UK communities, and the wider society from the risks and potential harms of khat use and the khat trade. Although the ACMD found insufficient evidence on social and physical harms to justify control through classification, the Government remains concerned about the potential risks of khat to users, the negative perception of khat in UK society, and the increasing evidence of international trafficking activity placing the UK at risk of becoming a single regional hub for khat smugglers to other Western countries where khat is banned.
13. In order to address these risks, the Government wishes to control khat as a Class C drug under the Misuse of Drugs Act 1971 as a precaution, although on this basis it will not be possible to quantify the benefits of policy options 2 or 3.

⁴ **Patel, S.L., Wright, S. and Gammampila, A.** (2005) *Khat use among Somalis in four English cities*. Home Office Online Report 47/05. London: Home Office.

This action is in line with the Government's overarching Drug Strategy to take a demand reduction, supply restriction, and recovery-based approach to drug-related issues supported by the consideration of available evidence and the advice of the ACMD. See Appendix A for the Home Secretary's written ministerial statement to Parliament.

C. Objectives

14. The intended effects are to deter the misuse of khat amongst the UK public, curb availability by removing the khat trade from the UK and remove opportunities for the onward trafficking of khat through the UK to countries where it is banned. Also, law enforcement and regulatory authorities will be enabled to take appropriate action to tackle the unauthorised activities of possession, production, supply and import/exportation of khat – with the expectation that the local law enforcement response is proportionate to the related offence.

D. Options

The options considered in this Impact Assessment are:

Option 1: Do nothing- no change, consistent with the ACMD's advice.

Option 2: Full Class C control of khat under the Misuse of Drugs Act 1971: all offences apply (production, possession, supply, importation and exportation), consistently with the current control of the active ingredients found in the leaves, stems or shoots of the plant of the species *catha edulis*.

Option 3: Class C control of khat under the Misuse of Drugs Act 1971 where all offences apply, complemented by an escalation framework for the simple possession offence (similar to cannabis).

15. Acknowledging the risk that the law change may have a higher impact within local communities affected by khat, Option 3 further proposes an escalation framework for policing khat possession offences. While control measures provide for a robust policing response to the illicit khat trade at UK borders and within communities, the escalation policy will provide for a proportionate law enforcement response in UK communities. The use of out-of-court disposals – namely, khat warnings and khat penalty notices for disorder of £60 for 1st and 2nd possession offences – can further deter misuse in a community setting while providing opportunities for local agencies to identify vulnerable members of their community and to work together to support them.

16. The law change will also support Government messaging on the risks and potential harms of khat, which has already been refined to reflect the ACMD's advice, by helping to curb availability and demand.
17. The Government's **preferred option is option 3**. This is in line with the statutory requirement to consult the ACMD for advice on harm under the Misuse of Drugs Act 1971 and the consideration of broader policy factors (including community concerns about khat and increasing evidence of international trafficking activity under covert of this trade). The primary aim of this option is to protect the public, communities and UK society from the risks, potential harms and negative perceptions associated with khat, with the expectation that the law enforcement response is proportionate to the circumstances of the related offence. Control measures are expected to curb availability of khat in the UK, deter the misuse of khat amongst the public and remove opportunities for the illicit international trafficking of khat in the UK.

Other options considered

18. Three other options were considered:

- import/exportation offence only.
- import/exportation and supply offences only apply.
- import/exportation, supply and production offences apply.

19. These options were not taken forward as the Government believes that they do not go far enough to fulfilling the objectives of the policy to deter the misuse of khat and to protect the UK public from the risks, potential harms and negative perceptions associated with khat.

E. Appraisal (Costs and Benefits)

GENERAL ASSUMPTIONS & DATA

Retail value of khat

20. Estimated **£63.8 million** per annum (2011/12). This is based on data suggesting 2.6 tonnes is imported each year^[1] and an estimated street value of a 5.5kg box of £120^[2], uprated to 2011/12 prices.

HMRC revenue from khat

21. HMRC are estimated to receive £2.8 million per annum from a 20% import duty on khat⁵. In addition, VAT charged at 20% on the £63.8 million retail value of khat

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/116260/occ95.pdf

[2] Anderson and Carrier (2011) and Carrier (2006)

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/116260/occ95.pdf

From 1st February 1998, HMRC reclassified khat as a 'stimulant drug', and so it became standard-rated for VAT as 20%. This is based on self-declarations of import value of shipments.

minus the £13.8 million import value (see paragraph below) would raise £10.0 million (20%*(63.8-13.8)). Total government taxation revenue from the khat industry is therefore estimated at **£12.8 million** per year.

Business profits from khat

22. Based on the import duty income, HMRC estimate the gross import value of khat to be £13.8 million per annum (2011/12). Deducting this value and taxation paid from the retail value estimate, this leaves gross business profits of £37.2 million per year. However we have no information on other costs such as rents, transport and staff wages that would allow net profit to be calculated.
23. Instead we make use of gross operating surplus data, applied to the retail value estimate. We assume an upper bound gross operating surplus equal to that for “other food service activities” from the Annual Business Survey (12%). But because the ACMD report repeatedly describes the khat industry as “low profit”⁶, we also modelled a lower bound of 1% gross operating surplus, and a best estimate of the midpoint (7%). This resulted in a range of business profits from khat of **£0.6m to £7.7m** per year, with a best estimate of **£4.1m** per year.

Medical harms

24. The ACMD report⁷ states that “khat has no direct causal link to adverse medical effects, other than a small number of reports of an association between khat use and significant liver toxicity.”
25. Other relevant statements from the ACMD report include:
- “the lack of robust evidence is a gap in the understanding of the harms of khat.”
 - “khat is a much less potent stimulant than other commonly used drugs, such as amphetamine or cocaine. However, it appears some individuals use it in a dependent manner.”
26. As there is no evidence of direct causal link (other than in a small number of liver disease cases) or any quantifiable results of medical harm associated with khat, we do not include any benefits from reduced medical harm in this appraisal (see para.12).

Social harms

27. The ACMD report states: “Anecdotal evidence reported from communities in several UK cities link khat consumption with a wide range of social harms. Research into these concerns has been undertaken but no robust evidence has

⁶ See paragraphs 64, 148, 149, 150.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/144120/report-2013.pdf

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/144120/report-2013.pdf

been found which demonstrates a causal link between khat consumption and any of the harms indicated.⁸

28. The review concluded that it is impossible to disentangle khat from the social situation of khat-using communities suffering from disengagement, unemployment, low attainment and family breakdown – whether khat use is associated as a cause or symptom of these issues. But as there is neither evidence of direct causal link, nor any quantifiable costs on the damage that khat might do to a community, we do not include any benefits from reduced social harms in this appraisal.
29. It is possible that there could be some benefits associated with a reduced *perception* of social harms, through the control of khat. However, there is no information that would allow this effect to be quantified.
30. This assessment does not take into account any second order effects such as substitution amongst buyers and sellers of khat for ‘next best’ alternatives. Such activity could, in theory, result in a partial recouping of business profits and tax revenue lost. But this would be a ‘general equilibrium’ approach to modelling which is not considered appropriate in impact assessment guidance.

Option 1: Do nothing

31. There are no additional costs and benefits to the baseline associated with the do nothing option.

Option 2: Full Class C control of khat under the Misuse of Drugs Act 1971: all offences apply

COSTS

Costs to business

UK industry profits from khat trade lost when it becomes illegal

32. This option would make all existing trade in khat illegal, costing UK business an estimated **£4.1million** per annum. This does not take into account evidence or suspicions of non-declaration, mis-description of khat consignments, diversion into the illegal trafficking trade and UK black economy.

Costs to the public sector (police/LAs/the courts)

Taxation revenue from the khat industry

33. Government revenue comes from import duty received by HMRC (£2.8million) and VAT/other taxation on sales of khat, 20% on the net retail value of khat (£50 million). Therefore total government revenue from khat is estimated to be **£12.8 million**. This would all be lost under Option 2.

⁸ Page 9, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/144120/report-2013.pdf

34. Note that some imported khat may be re-exported rather than sold in the UK. But we assume that the export value would be equivalent to the retail value and that VAT would remain payable because, in the absence of UK control or international restrictions on the exportation of khat, UK law enforcement have no powers to distinguish consignments on the basis of the destination countries' national approaches on khat. Therefore there is no evidence about the proportion of khat that is legally re-exported or smuggled, rather than sold in the UK, which would affect the estimate⁹.
35. Furthermore there is a possibility that VAT is not currently paid on the full estimated retail value of the khat market due to the likely prevalence of informal, 'cash' transactions. As our estimate is based on legitimately recorded imports of khat, we implicitly assume that all future transactions involving that volume of khat are subject to the appropriate VAT payments. 'Grey market' importations and subsequent 'hidden' transactions within the UK are not included in the calculations.

Enforcement resource cost

36. The supply offence may have an impact on law enforcement in tackling illicit activities or non-compliance. However, as khat is bulky, only has a shelf-life of four days and is very different in nature to other drugs, the opportunity for a 'black market' in khat supply to develop is limited. HMRC data on recorded imports of khat also indicate that demand for dried khat, which has a longer term shelf-life, remains comparatively low. Therefore we expect the number of illicit supply offences to be small, consistent with anecdotal evidence from other EU countries where khat is illegal. However we are unable to make a quantified estimate of the potential enforcement costs due to lack of information.
37. Under policy option 2, with no escalation policy, all offences of possession of khat will be given the equivalent of a 3rd offence. This means that they will all have an estimated average resource cost of between £250 and £1,400 (see Appendix B) to law enforcement and CJS agencies. The source for these data does not allow it to be broken down into individual agencies. As this would be an offence for a new substance that is not directly comparable with other controlled drugs, we have been unable to estimate the volume of offences that might occur.

National Offender Management Service

38. As mentioned elsewhere, we do not anticipate a great number of additional cases arising for possession, supply etc of khat, and what cases there may be are difficult to quantify. The National Offender Management Service reports just three prison transfer applications from UK traffickers of khat sentenced in Greece and Belgium over the past nine months and advises that the UK ban is unlikely to lead to a noticeable difference in numbers of such applications. In addition,

⁹ note that the proportion re-exported is expected to have grown as the ACMD refers to decreasing UK demand whereas imports remain stable.

details of the enquiries the service received indicated that sentences would not stray much above two to three years, which after remand time, remission and appeals tend to make the offenders ineligible for transfer to the UK criminal justice system due to a lack of time to serve. These costs are expected to be **negligible**.

BENEFITS

Benefits to the public sector (police/LAs/the courts)

Revenue from enforcement

39. For Class C drugs, the maximum penalties for the possession offence are:

On indictment:

Up to 2 years in prison or an unlimited fine or both.

On summary:

Up to 3 months in prison or a £1,000 fine or both.

40. All other Class C drug offences attract criminal penalties of up to three months in prison and a £2,500 fine on summary conviction, and up to 14 years in prison and an unlimited fine on indictment.

41. We expect criminal behaviour to be limited due to the fact that khat is very different from other illegal drugs (see paragraph 35) but we have insufficient information with which to inform an estimate of the potential scale of offending. Therefore we are unable to monetise these potential benefits.

International relations

42. Control measures to curb availability and harms of khat misuse and trafficking in the UK will have benefits across Government and society as a whole. It is expected that controlling khat under the Misuse of Drugs Act 1971 to restrict its importation and exportation will bring consistency in the border control of khat which will be aligned to most of the EU and G8 countries to tackle the illicit trafficking of khat.

Benefits to society

Social (community) harms

43. Criminalising khat-related activities may lead to non-quantifiable benefits in communities where there is khat use as well as in wider society. This could occur through a reduction in the perceptions of social harm associated with khat and from reducing the risk of societal harms linked to current khat trafficking.

Wider society (international)

44. The UK's position on khat will be consistent with the wider cooperation effort between signatories to the UN Conventions on drugs to tackle international drug trafficking. Non-monetised benefits are expected to arise from added consistency in the UK's legislative response to khat with other countries.

NET EFFECT

Table 1 – Estimated Net Present Value (NPV) for Option 2

	Average annual net benefits (£m)	NPV (£m)
Lower bound	-20.5	-180
Upper bound	-13.4	-120
Best estimate	-16.9	-150

The best estimate of the net present value of Option 2 is **-£150 million** discounted over 10 years. However, this does not include any of the non monetised benefits described above. It is not clear whether these benefits would outweigh the quantified costs.

ONE IN; TWO OUT (OITO)

45. N/A. The regulatory framework for controlling drugs is already in place. The control of khat is simply the result of bringing this drug under the definition of schedule 2 substances under the 1971 Act, due to the risks and potential harms it is associated with, rather than any change in the regulatory framework.

Option 3: Class C control of khat under the Misuse of Drugs Act 1971 where all offences apply, complemented by an escalation framework for the simple possession offence

COSTS

Costs to business

46. Costs are identical to option 2.

Costs to the public sector (police/LAs/the courts)

Taxation revenue from the khat industry

47. Costs are identical to option 2.

Enforcement resource cost

48. Escalation policy will reduce costs that would be incurred for 1st and 2nd possession offences (similar costs to those incurred for a 3rd possession offence), by retaining the potential deterrent effect of control and law enforcement thus reducing the risk of full costs (or delaying them) that would be incurred under option 2. Enforcement costs are therefore likely to be smaller with an escalation policy which uses community disposals for 1st and 2nd time offenders (for simple possession of khat).

49. The escalation policy means that the average cost of a possession offence is likely to be lower than under Option 2.

50. (See Appendix B for further details). This breaks down to:

- First offence: £10 to £20
- Second offence: £5 to £40
- Third offence: £250 to £1,400

National Offender Management Service

51. Costs are identical to option 2.

BENEFITS

Benefits to the public sector (police/LAs/the courts)

Revenue from enforcement

52. HMRC will receive revenue from financial penalties paid by those receiving a Penalty Notice for Disorder (PND) under the 2nd offence. It is intended that this financial penalty will be £60.

53. Other public sector benefits are identical to option 2.

Benefits to society

54. Identical to Option 2 except that civil/community disposals of first and second khat possession offences provide an avenue to engage with individuals misusing khat, refer them to local support services and aim to reduce any residual demand. Therefore there are likely to be additional unquantified benefits associated with Option 3.

NET EFFECT

Table 2 – Estimated Net Present Value (NPV) for Option 3

	Average annual net benefits (£m)	NPV (£m)
Lower bound	-20.5	-180
Upper bound	-13.4	-120
Best estimate	-16.9	-150

The best estimate of the net present value of Option 3 is **-£150 million** discounted over 10 years, the same as for Option 2. However, this does not include any of the non monetised benefits described above. It is not clear whether these benefits would outweigh the quantified costs.

ONE IN; TWO OUT (OITO)

55. N/A. The regulatory framework for controlling drugs is already in place. The control of khat is simply the result of bringing this drug under the definition of schedule 2 substances under the 1971 Act, due to the risks and potential harms it is associated with, rather than any change in the regulatory framework. It is not clear whether these benefits would outweigh the quantified costs.

F. Risks

Option 2

56. It is expected that the import/exportation industry will self-regulate and as a result the risk of prosecutions for trafficking offences will be marginally small despite the current misdescription and trafficking activities which are undertaken under cover of the licit khat trade.

57. No evidence of any medicinal or legitimate (non-recreational) use has been identified in the UK beyond research or other special purposes which may be permitted under Home Office licence. There is a potential risk that a medicinal or legitimate use may be found. In this case, businesses may have to buy import licences to conduct Import/exportation licences issued to businesses for up to four controlled drugs or preparations that cost £24 each. Fees are only incurred for these activities when related specifically to khat.

58. There is no evidence of khat medical research in the UK. However, if research were to be undertaken, there would be a potential cost limited to the cost of import/exportation licences (£24 each). Most organisations dealing with controlled drugs, including plants, thus licensed to undertake activities involving controlled drugs of a same schedule under the Regulations, will be able to undertake lawful activities relating to other drugs of the same schedule for the same purposes.

59. There is no evidence of khat medical research in the UK. However there are potential costs to business for the research sector if research were to be undertaken. There is no cost if an existing licence is suitable (i.e. for supply activities with drugs – including plants – subject to same control restrictions, with three suppliers of khat plants identified so far); an upgrade to a Schedule 1 licence for supply costs £1,371; a whole new licence costs £3,655 to £4,700.

60. There is no evidence of khat production in the UK. If there were production (or may be in the future) the added production offence may disrupt the whole khat supply chain in the UK and prevent domestic production to sustain potential demand and misuse and any of the potential illicit activities. There is no evidence of domestic production (cultivation) developing in countries which have banned khat.

61. Evidence from other countries which have controlled khat suggests that levels of demand may not reduce immediately after the ban comes into effect, if at all. This could mean that if offenders are caught, enforcement costs may be higher soon after the ban though they may fall afterwards. In addition, despite the lack of robust evidence to indicate a causal link between khat use and adverse medical harms, England & Wales drug treatment data provided to the ACMD suggests that there may be some additional costs to treatment and other support services to users citing khat alongside other substances which they misuse. These and other costs of misuse could potentially increase if users substituted khat for other harmful substances.¹⁰

Option 3

62. The risks are identical to option 2, albeit reduced risks of costs and delayed costs to law enforcement and CJS agencies arising from illicit possession offences through the escalation policy.

G. Enforcement

63. Enforcement of the proposed legislation will be undertaken by Border Force, police forces, the National Crime Agency, the Home Office Drug Licensing Unit and other relevant agencies responsible for implementing the legislative and regulatory framework for controlled drugs in the UK. Border Force will enforce controls at the border by seizing khat consignments as part of their wider border control role. Law enforcement by the police will form part of their wider approach to tackling already controlled drugs under the Misuse of Drugs Act 1971.

64. There will be no interference with the regulatory framework and processes implementing control measures in the law enforcement and regulatory agencies as part of their routine activities. Subordinate legislation will be amended and an update on the law changes communicated by the Home Office in the lead up to and beyond the control of khat under the 1971 Act coming into effect.

H. Summary and Recommendations

Table 3 – Summary of costs and benefits (best estimate)

Option	Costs	Benefits
2	<p>Monetised</p> <p>Lost profit from UK khat industry. £4.1 million</p> <p>Lost Government revenue from import</p>	<p>Monetised</p> <p>The benefits are unable to be monetised.</p>

¹⁰This risk is mentioned in a World Health Organisation report on khat: <http://www.who.int/bulletin/volumes/86/10/08-011008/en/>

	<p>duty and VAT. £12.8 million</p> <p>National Offender Management Service costs from prison transfer applications from khat traffickers. Negligible</p>	
	<p>Non-monetised</p> <p>Enforcement costs to law enforcement and CJS agencies if there are any illicit supply or possession offences.</p>	<p>Non-monetised</p> <p>Government may receive revenue from penalties resulting from illegal khat import/exportation or supply.</p> <p>International relations benefits arise from having a khat policy which is more consistent with key trading partners who are also signatories to the UN Conventions on drugs and trafficking.</p> <p>Reduction in the perception of social harms in communities where there is khat use as well as in wider society.</p>
	Costs	Benefits
3	<p>Monetised</p> <p>Lost profit from UK khat industry. £4.1 million</p> <p>Lost Government revenue from import duty and VAT. £12.8 million</p> <p>National Offender Management Service costs from prison transfer applications from khat traffickers. Negligible</p>	<p>Monetised</p> <p>The benefits are unable to be monetised.</p>
3	<p>Non-monetised</p> <p>Enforcement costs to law enforcement and CJS agencies if there are any illicit supply or possession offences.</p>	<p>Non-monetised</p> <p>Government revenue from financial penalties for 2nd time khat possession offences.</p> <p>Government may receive revenue from penalties resulting from illegal khat import/exportation or supply.</p> <p>International relations benefits arise from having a khat policy which is more consistent with key trading partners who are also signatories to the UN Conventions on drugs and trafficking.</p> <p>Reduction in the perception of social harms in communities where there is khat use as well as in wider society.</p>

65. Because there is no robust evidence to show a direct causal link between khat use and social harms, and a lack of information on which to base estimates of other potential benefits, the net present values of options 2 and 3 are negative. Nevertheless the Government believes that the risks of social harm and the wider implications for the UK such as the risks associated with the UK becoming a regional hub for khat smuggling to countries where it is banned warrant control. The Government is committed to fulfil its responsibilities to the international community in tackling the global drug trafficking trade.
66. Benefits come from law enforcement action to disrupt the khat trade and reduce demand or misuse and tackling the risk of health and social harms associated with khat use and the khat trade, including supporting users into recovery. International relations benefits arise from having a khat policy which is more consistent with key trading partners who are also signatories to the UN Conventions on drugs and trafficking.
67. **Option 3 is the preferred option.** The inclusion of escalation for possession offences could have the following effects:
- A proportionate response to offending, bringing benefits in terms of relationships between enforcement agencies and affected communities, and a better opportunity for engagement and information campaigns providing a more cost-effective means of reducing the prevalence of khat use.
 - Revenue through the financial penalty for a second possession offence, where such an offence occurs.
 - But a potential risk that deterrence is weaker than under Option 2.
68. On balance the Government considers that Option 3 better meets the objective of the policy.

I. Implementation

69. The Government plans to implement the law change via the affirmative resolution procedure of debates in both Houses of Parliament to seek approval of the Misuse of Drugs Act 1971 (Amendment) (No 2) Order 2013 for the control of khat and the Criminal Justice and Police Act 2001 (Amendment) Order 2013 to introduce the Penalty Notice for Disorder for the escalation framework to police khat possession offences amongst adults in England & Wales.

J. Monitoring and Evaluation

70. As part of its statutory duties under the 1971 Act the ACMD keeps the situation relating to drugs under review. The Home Office, as the regulatory authority on licensing of activities relating to all controlled drugs and as lead department working

with other Government departments to deliver the Drug Strategy, will continue to monitor the situation in relation to compliance with the regulatory framework, including through law enforcement and drug treatment partners collating seizure and user data, respectively.

K. Feedback

71. No feedback will be sought from suppliers or users as no evidence of any further legitimate or medicinal uses of khat have been identified. However, the Government will monitor treatment and seizure data through existing monitoring arrangements that apply for other drugs to keep under review.

K. Specific Impact Tests

Economic Impacts

Competition Assessment

72. It is expected that control measures in relation to the khat trade will apply equally to UK industry involved in the domestic trade of this drug as well as firms involved in its import/exportation.

Social Impacts

Health and Well-Being

73. Control under the 1971 Act reinforces Government measures to raise awareness and to reduce the risk and protect the public from the health and social impact of harmful drugs and their misuse. The legislative approach is supporting Government policies in demand reduction, law enforcement and public health.

Human Rights

74. Government intervention to protect the public from harmful drugs and the harms associated with their misuse by the introduction of controls to help limit their availability and curb demand constitutes an interference with qualified human rights. Article 1 Protocol 1 of the ECHR allows for the interference in the enjoyment of possessions in the public interest and subject to conditions provided by law. We believe control is in the public interest because of the risks of harm, or potential harm, represented by the drug in question, both to the physical and mental health of the individual users and to society.

Justice

75. It is expected that the khat industry will 'self-regulate' and that the intervention will curb availability. Therefore, the new legislation should amount to a minimal impact on the criminal justice system as part of its wider activities relating to the implementation of drug control.

Policy Equality Statement

76. See Appendix C.

Appendix A

Home Secretary written Ministerial statement to Parliament

E.R Wednesday 3rd July 2013

The Secretary of State for the Home Department (Theresa May)

The Government will control khat under the Misuse of Drugs Act 1971 as a Class C drug.

The Advisory Council on the Misuse of Drugs (ACMD) undertook a thorough and comprehensive scientific review which focused on the medical and social harms of khat consumption. The ACMD report gives considerable insight into the complexity of this matter and, based on the available evidence, it came to a reasonable conclusion in its recommendation to Government. Although it recommended that khat should not be controlled, the ACMD acknowledges that there is an absence of robust evidence in a number of areas and that there are broader factors for the Government to consider when making its decision. The decision to bring khat under control is finely balanced and takes into account the expert scientific advice and these broader concerns.

The whole of northern Europe – most recently the Netherlands – and the majority of other EU member states have controlled khat, as well as most of the G8 countries including Canada and the USA. In all these cases the exportation, importation, supply and possession or use of khat have been banned. Failure to take decisive action and change the UK's legislative position on khat would place the UK at a serious risk of becoming a single, regional hub for the illegal onward trafficking of khat to these countries. Seizures of khat transiting the UK en route to the Netherlands have already been increasing in size and frequency since the Dutch ban earlier this year. The ACMD report recognised the likelihood that some khat is being re-exported to countries where it is illegal. The ACMD could not determine the scale of this activity based on the available evidence and acknowledged that this concern forms part of Government consideration of the matter.

Khat continues to feature prominently amongst the health and social harms, such as low attainment and family breakdown, cited by affected communities and the police and local authorities working with them. The ACMD acknowledged that there was insufficient evidence to enable the ACMD to advise if khat use was a cause or a symptom of social harms. The Government is concerned that we risk underestimating the actual harms of khat in our communities owing to the limitations of the evidence base available to the ACMD. To ensure a proportionate and robust policing response, the Government will introduce an escalation framework for the possession of khat for personal use, similar to that in place for cannabis.

The Government will ban khat so that we can protect vulnerable members of our communities and send a clear message to our international partners and khat smugglers that the UK is serious about stopping the illegal trafficking of khat.

Appendix B

How Escalation Works for Cannabis (set out in ACPO guidance¹)

Escalation was introduced in 2009 to support cannabis reclassification to Class B, to provide a clear and consistent system to specifically deal with repeat offenders or where there are aggravating circumstances.

- *First offence* – cannabis warning (non statutory disposal “given” to the police in 2003).
- *Second offence* – a £90 (or other amount determined by Finance/MoJ colleagues and approved by Ministers) penalty notice for disorder².
- *Third offence* – arrest for a third offence, then to be considered for further action– including release without charge, caution, or prosecution. All subsequent offences are likely to result in arrest.

Officers are not precluded from immediately effecting arrest, for instance where there are aggravating circumstances present. It does not apply where there is any evidence of dealing or possession with intent to supply to others.

As a Class C drug, a second khat possession offence would attract the lower level of financial penalty – at £60.

PND (Penalty Notice for Disorder)

Penalty notices for disorder were introduced by the Criminal Justice and Police Act 2001 to provide the police with a swift, non-bureaucratic means of dealing with a specific range of offences. A recipient is required to pay a financial penalty (or can request a court hearing within 21 days). No admission of guilt is required and payment of the penalty means that its recipient discharges all liability for the offence. The offence is recordable onto the Police National Computer and details may be disclosed under an Enhanced Disclosure Certificate from the Criminal Records Bureau, but there will be no criminal record if the financial penalty is paid. These records may add to monitoring local and national levels of demand – recommended by the ACMD – when khat is controlled.

Estimation of the impact of an escalation system for khat

Comparison with cannabis data is limited as not the same population group, maybe less of a policing priority due to lower classification. In the absence of the khat trade, a high proportion of residual users could be dealt with in the community through khat warnings for the first offence and Penalty Notices for Disorder for the second offence – at £60.

¹ Scotland only has cautions available for out of court disposals (where there are no reported issues with khat).

² Cannabis warnings and PNDs (if paid) do not go on a person criminal record although warnings are currently recorded locally (to be national with roll out of Pentip) and PNDs are entered in to the Police National Computer the details of the PNC may be disclosed under an Enhanced Disclosure Certificate from the Criminal Records Bureau.

Table B.1 – Breakdown of average resource cost of offence³

1st offence	Upper	Lower	Best
Street-issued cannabis warning	£20	£10	£15
2nd offence			
Street disposal (PND)	£40	£5	£23
3rd offence			
Prosecution (amount depends on who took charging decision and the outcome)	£400	£1,400	£900
Simple caution or reprimand/warning <i>following</i> CPS advice	£300	£450	£375
Simple caution or reprimand/warning <i>without</i> CPS advice	£250	£350	£300
Conditional caution	£300	£450	£375
No further action following CPS advice	£300	£450	£375

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217353/out-of-court-disposals-june2011.pdf