



EXPLANATORY NOTES

Psychoactive Substances Act 2016

Chapter 2

£10.00

PSYCHOACTIVE SUBSTANCES ACT 2016

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Psychoactive Substances Act 2016 (c. 2) which received Royal Assent on 28 January 2016.

- These Explanatory Notes have been prepared by the Home Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act. So where a provision of the Act does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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Overview of the Act

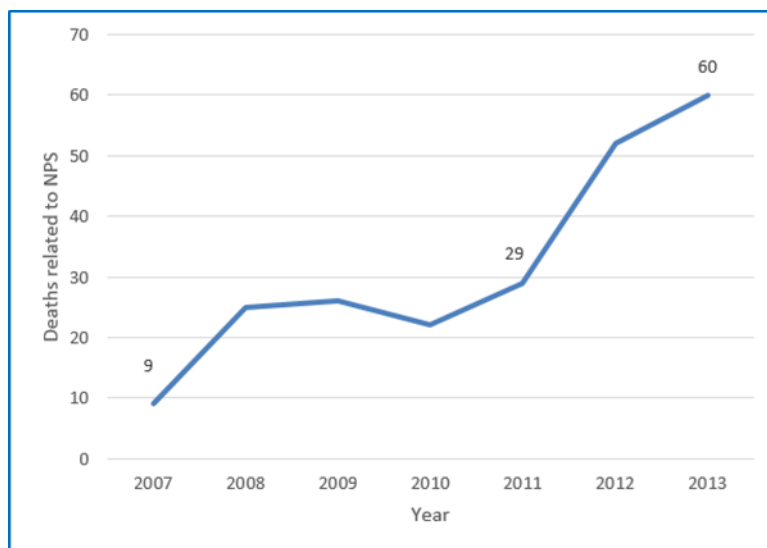
- 1 This Act creates a blanket ban on the production, distribution, sale and supply of psychoactive substances in the United Kingdom.
- 2 Section 2 defines a "psychoactive substance" for the purposes of the Act. Schedule 1 lists substances, such as food, alcohol, tobacco, caffeine, medicinal products and controlled drugs, which are excluded from the definition.
- 3 Sections 4 to 9 make it an offence to produce, supply, offer to supply, possess with intent to supply, import, export, or possess in a custodial institution psychoactive substances. The maximum sentence for all these offences is seven years' imprisonment, with the exception of possession in a custodial institution, which carries a maximum sentence of two years. Section 11 and Schedule 2 provide for exemptions to these offences, and enable regulations to be made to provide for further exemptions.
- 4 Sections 12 to 35 provide for four civil sanctions – prohibition notices, premises notices, prohibition orders and premises orders (breach of the two orders will be a criminal offence) – to enable the police and local authorities to adopt a graded response to the production, supply etc of psychoactive substances in appropriate cases.
- 5 Sections 36 to 54 provide for powers to stop and search persons, vehicles and vessels, to enter and search premises (under warrant) and to forfeit seized psychoactive substances and other items.

Policy background

- 6 Since around 2008/09, the UK has seen the emergence of new substances or products that are intended to mimic the effects of traditional drugs that are controlled under the Misuse of Drugs Act 1971 ("the 1971 Act") such as cannabis, cocaine, amphetamine, MDMA (ecstasy) and, more recently, opioids. These are collectively known as new psychoactive substances ("NPS").
- 7 These new substances - together with other substances that have been used as intoxicants for many years (for example, nitrous oxide) - are often referred to as "legal highs": which in the Government's view is inappropriate given that the chemicals in them are often neither legal nor safe for human consumption.
- 8 NPS are difficult to identify and currently have to be regulated on a substance by substance, or even group by group, basis because of their diversity and the speed with which they are developed to replace drugs that are controlled under the 1971 Act. Chemical structures can be modified to create a new substance which falls outside any existing drug controls. They are also coming onto the market before a full understanding of their health and social harms can be developed. According to the European Monitoring Centre for Drugs and Drug Addiction, 101 new substances were identified in the European Union in 2014, continuing a five year upward trend, from 24 in 2009. Not all these substances reach the UK; 11 new substances were identified in the UK in 2013.
- 9 Many NPS are only legal because they have not yet been assessed for their harms and considered for control under the 1971 Act – not because they are inherently safe to use. Most will not have been tested on either humans or animals, and the purity of the products is unknown. The Home Office's Forensic Early Warning System tested 968 samples of NPS in 2013/14, of which, 19.2% of NPS found within the samples were controlled drugs. And there are examples where products with the same brand name (like "Black Mamba" or "Sparklee")

purchased from the same supplier did not necessarily contain the same mixtures of ingredients. Many of these substances are labelled "not for human consumption" and advertised as "research chemicals", but it is clear that this is not their real purpose.

- 10 The threat to public health of some new substances may be comparable to that caused by controlled illicit drugs. Deaths related to NPS in England and Wales doubled in the past four years from 26 in 2009 to 67 in 2014. In 2014, there were also 62 deaths in Scotland where NPS were present in the body.
- 11 This table highlights the increase in the numbers of deaths related to NPS in England and Wales between 2007 and 2013:



- 12 In addition to the health risks, a number of local authorities have expressed concern that "head shops" (commercial retail outlets specialising in the sale or supply of NPS together with equipment, paraphernalia or literature related to the growing, production or consumption of cannabis and other drugs) in their areas are causing increases in anti-social behaviour. The local authorities are concerned that customers purchase psychoactive substances, and in some cases use them close by, with the resulting loss of inhibition causing them to act in an anti-social and sometimes criminal manner.
- 13 While the emergence of new drugs is not in itself a new phenomenon, the speed and scale at which substances are now emerging distinguishes the current situation from previous years in which the drugs market was relatively stable. In order to address this issue, in 2013 the Government commissioned the New Psychoactive Substances Review Expert Panel to review the existing legislative approach (see below). They stated that: "...after years of stable and declining drug use, the emergence of NPS has been a "game changer"".
- 14 In response to this threat the UK has a number of measures currently in place. Under the 1971 Act, substances can be controlled on an individual or on a group basis, following an assessment of their physical and social harms by the Advisory Council on the Misuse of Drugs ("ACMD"). Over 500 psychoactive substances have been permanently controlled since 2010, using the existing mechanism provided under the 1971 Act. One additional measure is the introduction of temporary class drug orders ("TCDO") in 2011, specifically to temporarily control NPS through a faster parliamentary mechanism (see below). Alongside this, a range of existing alternative legislation such as consumer protection and anti-social behaviour legislation has also been used (with limited success) to tackle the availability of non controlled NPS and associated issues. Despite these measures, the Government considers that the current approach to tackling psychoactive substances is both piecemeal and disjointed. In the view of

the Government, the ineffectiveness of the current approach is demonstrated by the fact that head shops and online retailers continue selling NPS openly.

- 15 Against this background, the Government announced, on 12 December 2013, the appointment of an Expert Panel to undertake a review into NPS (House of Commons, Official Report, columns 57WS-58WS).
- 16 The Expert Panel comprised representatives from: medicine, social science, forensics, law enforcement agencies (police, Border Force and the National Crime Agency), local authorities, prosecution, and education/prevention including from the voluntary sector. Several international representatives from a similar range of fields were also included.
- 17 The Expert Panel's terms of reference (as set out at page 4 of the Panel's report) were to:
 - analyse the problem to address and consider:
 - the nature of the NPS market;
 - the effectiveness and issues of the UK's current legislative and operational response;
 - identify legislative options for enhancing this approach;
 - consider the opportunities and risks of each of these approaches, informed by international and other evidence; and
 - make a clear recommendation for an effective and sustainable UK-wide legislative response to NPS.
- 18 In addition, the Panel was asked to consider the education, prevention and treatment response to NPS and make recommendations.
- 19 In its September 2014 report, the Panel found that the current UK legislative approach was unlikely to get ahead of developments in the NPS market. It concluded that the control process for substances under the 1971 Act was now a repetitive advisory and parliamentary process with significant resource implications. The process requires evidence of physical or social harms caused by a substance (or evidence that it is capable of causing such harm) to justify its banning under the 1971 Act, which is currently lacking, given how quickly psychoactive substances appear. It argued that the end result was an inevitable time lag between an NPS coming onto the market and a response under the 1971 Act.
- 20 The Panel considered that TCDOs have afforded the Government an additional legislative tool where there is a pressing need to legislate fast (that is, in weeks, not months), but that they were not designed to deal with the volume of NPS that continue to be identified. The Panel found that the use of consumer protection legislation has not provided a complete solution to tackle availability as it was not designed to deal with the particular issues that are associated with NPS. Whilst there have been some successes, there are a number of barriers preventing its effective use, and consequently it was not providing a sustainable response to this issue.
- 21 This led the Expert Panel to recommend that the Government should legislate to prohibit the distribution of non-controlled NPS, focusing on the supply, rather than those using NPS. The Panel also recognised the importance of building on the work of central and local government, the third sector and other providers to enhance the response to the challenges in relation to intervention and treatment, prevention and education, as well as information sharing. In its response to the Panel's report, the Government announced its intention to develop proposals

for a blanket ban similar to that introduced in Ireland in 2010 (House of Commons, Official Report, 30 October 2014, columns 28WS-29WS).

- 22 In May 2015, the Government was elected with a manifesto commitment to "create a blanket ban on all new psychoactive substances, protecting young people from exposure to so-called legal highs".
- 23 The Scottish Government separately appointed its own Expert Review Group in June 2014 to review the current legal framework available to govern the sale and supply of NPS. The Review Group's report was published in February 2015 and concluded that there were a number of benefits to the Irish model, which could strengthen the tools that are currently available and being used by agencies to tackle NPS supply in Scotland. The Review Group recommended that the Scottish Government and the Home Office should work in partnership to create new legislation that will be effective in Scotland. The Minister for Community Safety and Legal Affairs (Paul Wheelhouse) indicated that, on behalf of the Scottish Government, he was minded to accept the recommendations of the report (Scottish Parliament, Official Report, 26 February 2015, column 40).
- 24 The National Assembly for Wales Health and Social Care Committee launched an inquiry into NPS in June 2014. In its report, published in March 2015, the Committee welcomed the Home Office's Expert Panel's recommendation of a ban on the supply of NPS in the UK, similar to the approach introduced in Ireland. The Committee recommended that the Minister for Health and Social Services work closely with the UK Government to ensure early action is taken to progress the Expert Panel's recommendation (see recommendation 13 on page 76 of the report).

Legal background

The Misuse of Drugs Act 1971

- 25 The 1971 Act provides the legislative framework for the regulation of dangerous or otherwise harmful drugs in the UK. The 1971 Act applies to "controlled drugs" - there are two categories of controlled drugs. First, substances or products specified in Schedule 2 to the Act. That Schedule divides controlled drugs into one of three Classes – A, B and C – broadly based on their relative harms, with Class A drugs considered the most harmful. Examples of each class of drug are: Class A - cocaine, methadone and opium; Class B - amphetamine, cannabis and ketamine; Class C - khat and temazepam. The second category of controlled drugs is any substance or product specified in a temporary class drug order as a drug subject to temporary control (see below).
- 26 The 1971 Act provides for a range of offences in relation to controlled drugs, including:
 - importation and exportation (section 3);
 - production, supply or offering to supply (section 4); and
 - possession and possession with intent to supply (section 5).
- 27 Section 7 of the 1971 Act enables regulations to be made exempting specified activities from the scope of the above offences, for example where controlled drugs are produced and supplied for medicinal purposes.

28 The maximum penalties for the offences under sections 3 to 5 of the 1971 Act vary according to the class of the controlled drugs, with higher maxima applying for the more or most harmful drugs. The maximum penalties are set out below.

Offence	Maximum penalty on conviction on indictment: Class A drug involved	Maximum penalty on conviction on indictment: Class B drug involved	Maximum penalty on conviction on indictment: Class C drug involved
Production	Life imprisonment	14 years' imprisonment	14 years' imprisonment
Supply or offering to supply	Life imprisonment	14 years' imprisonment	14 years' imprisonment
Possession	7 years' imprisonment	5 years' imprisonment	2 years' imprisonment
Possession with intent to supply	Life imprisonment	14 years' imprisonment	14 years' imprisonment

Temporary Class Drug Orders

- 29 The Police Reform and Social Responsibility Act 2011, which inserted sections 2A and 2B into the 1971 Act, confers powers on the Secretary of State to make TCDOs if two conditions are met.
- 30 The first condition is that the substance is not a Class A, B or C drug. The second condition is that the Secretary of State has either consulted the ACMD, or in cases of urgency the chair of the ACMD, and has determined that the order should be made, or otherwise has received a recommendation to that effect from the ACMD. After carrying out such consultation the Secretary of State can only proceed to make the order if it appears that the drug is one that is being, or is likely to be, misused, and that misuse is having, or is capable of having, harmful effects. A corresponding requirement applies before the ACMD may make a recommendation for the making of such an order.
- 31 A TCDO expires at the end of 12 months unless, if earlier, the temporary class drug is brought under the permanent control of the 1971 Act by virtue of an Order in Council under section 2(2) of the 1971 Act or if the TCDO is revoked.
- 32 The restrictions on importation and exportation, production and supply apply to a temporary class drug (with the maximum penalty being those applicable to a Class C drug), but it is not an offence to have a temporary class drug in a person's possession, unless that possession is in connection with an offence or prohibition under other provisions of the 1971 Act. So the offence of possession with intent to supply applies to a temporary class drug.
- 33 Five TCDOs have been made to date:
- The Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2012 (SI 2012/980) came into force on 5 April 2012. This Order covered a group of substances commonly known as methoxetamine. Following this, the ACMD provided advice in October 2012 which concluded that the harms posed by these substances were commensurate with those posed by Class B substances. The Misuse of Drugs Act 1971 (Amendment) Order 2013 (SI 2013/239), which came into force on 26 February 2013, duly classified these substances as Class B controlled drugs.
 - The Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2013 (SI 2013/1294) came into force on 10 June 2013. This Order covered substances, including 251-NBOMe, 5 and 6-APB (benzofuran compounds) and other related substances. The ACMD then reviewed the harms posed by these substances and recommended that 251-NBOMe should be a Class A controlled drug and that the

benzofuran compounds should be Class B controlled drugs. The Misuse of Drugs Act 1971 (Ketamine etc.)(Amendment) Order 2014 (SI 2014/1106), which came into force on 10 June 2014, gave effect to these recommendations.

- The Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2015 (SI 2015/1027) came into force on 10 April 2015. This Order covered methylphenidate-related materials and specified derivatives. This TCDO lapsed on 27 June 2015 and was replaced by a further order (see below).
 - The Misuse of Drugs Act 1971 (Temporary Class Drug) (No. 2) Order 2015 (SI 2015/1396) came into force on 27 June 2015. This Order covered seven methylphenidate-based compounds and specified derivatives. The majority of these substances and products were made the subject of temporary control by the Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2015. That Order was made whilst Parliament was dissolved and lapsed on 27 June 2015 as there was insufficient Parliamentary time available for each House of Parliament to approve the Order. This Order replaced that Order and lists two additional substances.
 - The Misuse of Drugs Act 1971 (Temporary Class Drug (No. 3) Order 2015 (SI 2015/1929) came into force on 27 November 2015. This Order covers methiopropamine and its simple derivatives.
- 34 The Act is not a replacement for the 1971 Act and it is expected that some psychoactive substances will continue to be classified under it in circumstances where there is evidence of harms, assessed by the ACMD, which are considered sufficient to justify control with the application of the higher penalties and the offence of simple possession.

Territorial extent and application

- 35 The provisions of the Act extend to the whole of the United Kingdom.

Commentary on provisions of Act

Section 1: Overview

36 This section provides an overview of the structure of the Act.

Section 2: Meaning of "psychoactive substances" etc

37 *Subsection (1)* defines a "psychoactive substance" for the purposes of the Act as any substance which is capable of producing a psychoactive effect in a person who consumes it and is not an exempted substance (as defined in section 3).

38 *Subsection (2)* provides that a substance produces a psychoactive effect in a person if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state. The main effect of psychoactive substances is on a person's brain, the major part of the central nervous system. By speeding up or slowing down activity on the central nervous system, psychoactive substances cause an alteration in the individual's state of consciousness by producing a range of effects including, but not limited to: hallucinations; changes in alertness, perception of time and space, mood or empathy with others; and drowsiness.

39 *Subsection (3)* provides that an individual consumes a substance if the individual causes or allows the substance, or fumes given off by the substance, to enter the individual's body in any way. For example, this includes injecting, eating or drinking, snorting, inhaling and smoking.

Section 3: Exempted substances

40 *Subsection (1)* defines an "exempted substance" for the purposes of the Act as a substance listed in Schedule 1. These are substances which are capable of producing a psychoactive effect in an individual when consumed (and would therefore fall within the definition of a psychoactive substance in section 2), but do not constitute psychoactive substances for the purpose of the provisions in the Act. Exempted substances are included in Schedule 1 either because they are already controlled through existing legislation (alcohol, tobacco, medicines and controlled drugs) or because their psychoactive effect is negligible (caffeine and foodstuffs such as nutmeg and chocolate).

41 *Subsection (2)* confers a regulation-making power on the Secretary of State (in practice, the Home Secretary) to add to or vary the list of exempted substances and to remove any substance added to the list through the regulation-making power. It will therefore not be possible, under the regulation-making power, to remove any entry in its entirety from the list in Schedule 1 to the Act as enacted. The regulation-making power is subject to the affirmative resolution procedure (*subsection (5)*). The Secretary of State must consult the ACMD and such other persons as she or he considers appropriate before making any such regulations; such additional consultees may, for example, include regulatory bodies or other relevant experts (*subsection (3)*).

Schedule 1: Exempted substances

42 This Schedule lists exempted psychoactive substances.

43 *Paragraph 1* covers controlled drugs, namely a substance or product for the time being specified in Part 1, 2 or 3 of Schedule 2 to the 1971 Act, that is Class A, B or C drugs.

44 *Paragraph 2* covers medicinal products. "Medicinal product" is defined by reference to regulation 2 of the Human Medicines Regulations 2012 (S.I. 2012/1916), which provides:

(1) *In these Regulations "medicinal product" means—*

(a) any substance or combination of substances presented as having properties of preventing or treating disease in human beings; or

(b) any substance or combination of substances that may be used by or administered to human beings with a view to—

(i) restoring, correcting or modifying a physiological function by exerting a pharmacological, immunological or metabolic action, or

(ii) making a medical diagnosis.

(2) *These Regulations do not apply to—*

(a) whole human blood; or

(b) any human blood component, other than plasma prepared by a method involving an industrial process.

The new definition includes, but is not limited to, medicinal products for which a marketing authorisation or Article 126a authorisation is in force; investigational medicinal products; and homeopathic and herbal medicinal products.

45 *Paragraph 3* relates to alcohol or alcohol products.

46 *Paragraphs 4 and 5* relates to nicotine and tobacco products. Tobacco products are defined, in part, by reference to section 1 of the Tobacco Products Duty Act 1979 (*paragraph 8(a)*). That section defines "tobacco products" as any of the following products, namely: cigarettes; cigars; hand-rolling tobacco; other smoking tobacco; and chewing tobacco, which are manufactured wholly or partly from tobacco or any substance used as a substitute for tobacco. *Paragraph 8(b)* exempts any other product which contains nicotine, so long as it does not contain a psychoactive substance. This would include products which contain nicotine but do not contain any tobacco, for example e-cigarettes.

47 *Paragraph 6* covers caffeine or caffeine products.

48 *Paragraph 7* covers food (including drink), that is, any substance which is ordinarily consumed as food and does not contain a prohibited ingredient. The definition of a prohibited ingredient is such that naturally occurring substances which have a psychoactive effect, such as nutmeg and cocoa, fall outside the definition. Also excluded from the definition of prohibited ingredients are other substances the use of which in or on food is authorised under EU legislation. Such legislation relates to, amongst other things, extraction solvents and food flavourings. Nitrous oxide is authorised by EU legislation for use as a propellant, for example, to administer whipped cream given that it will leave traces in the cream and, as such, would not constitute a prohibited ingredient when used in this way. But the consumption of nitrous oxide gas from a canister for its psychoactive effect would not fall within the food exemption and therefore would constitute a psychoactive substance under the Act.

49 The list in this Schedule does not include psychoactive substances not intended for human consumption such as those contained in veterinary medicines or in industrial products. When produced, supplied etc for their intended purpose such conduct would not fall within the offences in sections 4 to 9, but when produced, supplied etc for human consumption those offences would be engaged.

Section 4: Producing a psychoactive substance

- 50 This section provides for an offence of producing a psychoactive substance. The conduct (actus reus) element of the offence is satisfied if a person produces a psychoactive substance. By virtue of section 59(2)(a), production for these purposes covers manufacture, cultivation or any other method of production.
- 51 There are then three mental (mens rea) elements of the offence. First, the prosecution must show that the production is intentional, so if a psychoactive substance was inadvertently created (for example, as an unintended by-product of research) the offence would not be made out. The defendant must also have intended to produce a psychoactive substance rather than any other substance. Second, the defendant must have known or suspected that the substance is a psychoactive substance. Third, the defendant must either intend to consume the psychoactive substance for its psychoactive effects, or know, or be reckless as to whether, the psychoactive substance is likely to be consumed by another person for its psychoactive effects.
- 52 For a person to have known that a substance is a psychoactive substance, the knowledge must be founded on a true belief; a person cannot be convicted of this offence on the basis that he or she "knew" the substance is a psychoactive substance if, in fact, it was another substance.
- 53 Suspicion is a subjective test and need not be based on reasonable grounds. There must be a possibility, which is more than fanciful, that the relevant facts exist. The courts have held that "a vague feeling of unease" would not suffice. But the suspicion need not be "clear" or "firmly" grounded and targeted on specific facts or based upon reasonable grounds (Da Silva [2006] EWCA Crim 1654).
- 54 A person acts recklessly when he or she is aware of a risk that it exists or will exist and, in the circumstances known to him or her, it was unreasonable to take the risk but nonetheless he or she did so. The onus will be on the prosecution to prove that this is the case. The recklessness test would therefore capture circumstances where a defendant claims he or she was manufacturing, say, "plant food" but knows that there is a substantial risk that the substance will in fact be consumed (indeed, that is the real intention) and proceeds to produce the substance heedless of that risk.
- 55 The offence does not apply where production is covered by an exemption provided for in Schedule 2 or in regulations made under section 11 (*subsection (2)*).
- 56 The generic secondary offences will apply to the offences in this section (and sections 5, 7, 8 and 9) as they apply to any offence. Accordingly it will be an offence to encourage or assist the offence of production of a psychoactive substance (see Part 2 of the Serious Crime Act 2007), to attempt to produce a psychoactive substance (see section 1 of the Criminal Attempts Act 1981), or to conspire to commit the offence of production of a psychoactive substance (see section 1 of the Criminal Law Act 1977).

Section 5: Supplying, or offering to supply, a psychoactive substance

- 57 This section provides for two separate offences, namely supply of a psychoactive substance and offering to supply a psychoactive substance.
- 58 For the supply offence, the conduct element is satisfied if a person supplies a substance to another person and that substance is a psychoactive substance. By virtue of section 59(2)(b), supplying for these purposes covers distribution. The transaction does not need to result in payment or reward and would include social supply between friends.
- 59 There are three mental elements of the supply offence. First, the prosecution must show that the supplying of the substance is intentional. Second, the defendant must have known or suspected, or ought to have known or suspected, that the substance is a psychoactive

substance. Third, the defendant must know, or be reckless as to whether, the psychoactive substance is likely to be consumed by the person to whom it is supplied or another person for its psychoactive effects. The recklessness test would prevent a head shop proprietor escaping liability by arguing that because the psychoactive substances sold in his or her shop were labelled as "plant food", "research chemicals" or "not for human consumption", he or she did not know that the substances were likely to be consumed.

- 60 The conduct element of the offering to supply offence is that the defendant offers to supply a psychoactive substance to another person. Such an offer could take the form of an advertisement, including a catalogue of psychoactive substances on display on a website with the facility to purchase online.
- 61 There is one mental element to the offer to supply offence, namely that the defendant knows, or is reckless as to whether, the substance that is being offered is likely to be consumed by the person to whom it is supplied or by another person for its psychoactive effects. This element of the offence is constructed in such a way so that it would capture circumstances where a person purports to offer to supply a psychoactive substance to another person but, in fact, either has no intention of fulfilling his or her side of the deal or intends to pass off some other substance as a psychoactive substance. *Subsection (3)* ensures that such conduct would still be caught by the offering to supply offence.
- 62 These offences do not apply where the supply or offer to supply is covered by an exemption provided for in Schedule 2 or in regulations made under section 11 (*subsection (4)*).

Section 6: Aggravation of an offence under section 5

- 63 This section provides for a statutory aggravating factor when sentencing an offender for an offence of supplying, or offering to supply, a psychoactive substance where the supply, or offer to supply, took place at or in the vicinity of a school, involved the use of a courier under the age of 18 or took place in a custodial institution. This section only applies where the offender was aged 18 or over (*subsection (1)*). Where one of three conditions is satisfied, the court is required to treat the condition as an aggravating factor when determining the sentence. The effect of this would be to increase the severity of the sentence passed, whether it is a custodial or community sentence, or a fine, or both (subject to the sentence maximum as provided for in section 10). In determining the appropriate sentence in such cases, the court would also take into account other aggravating or mitigating factors, including (in England and Wales) those set out in Sentencing Council guidelines.
- 64 The first condition is met when a person supplies a controlled drug on or in the vicinity of school premises (as defined in *subsection (5)*) when they are being used by children and young people and within one hour of any such time (*subsections (3) and (4)*). If the school day starts with a breakfast club at 07:30 and there are after-school sporting or other activities until 18:00, the relevant time would therefore be 06:30 to 19:00. The out of hours use of the school premises by a third party, for example, a yoga club for adults would not fall within the relevant time.
- 65 The second condition is met when a person causes or permits a child or young person under 18 to deliver a substance to a third person (for the reasons set out in paragraph 61 above the substance may not be a psychoactive substance) or to deliver a drug-related consideration to himself or herself, or to a third person, in connection with the offence of supply of a psychoactive substance (*subsections (6) and (7)*).
- 66 *Subsection (8)* defines a drug-related consideration. Such a consideration could be either a cash payment or a payment in kind.
- 67 The third condition is met when the offence was committed in a custodial institution.

(subsection (9)). Subsection (10) defines "custodial institution" to include prisons, young offenders institutions, specified immigration detention accommodation, and service custody premises.

Section 7: Possession of a psychoactive substance with intent to supply

- 68 This section provides for an offence of possession with intent to supply psychoactive substances. The conduct element of the offence is satisfied if the defendant is in possession of a psychoactive substance with a view to supplying it to another person for consumption. There are two mental elements of the offence. First, the defendant must know or suspect that the substance is a psychoactive substance. The second mental element is that the defendant must intend to supply the psychoactive substance to another person for its psychoactive effects. Inadvertently dropping a packet containing a psychoactive substance on the street which is then picked up by another person would not be caught by the offence. It is immaterial whether the psychoactive substance that is intended to be supplied is to be consumed by the immediate intended recipient or by a third person. Accordingly, the offence would be committed if the intended supply was to a go-between who then proposed to pass the substance on to a third person.
- 69 Whilst this is a possession offence, it is aimed at those in the supply chain. Simple possession of a psychoactive substance for personal use would not be caught by this offence and is only criminalised by the Act when it occurs in a custodial institution (section 9). The offence in this section would, however, cover social supply - that is, circumstances where a person acquires a psychoactive substance on behalf of a group of friends and then supplies the substance to those friends.
- 70 This offence does not apply where the possession with intent to supply is covered by an exemption provided for in regulations made under section 11 (subsection (2)).

Section 8: Importing or exporting a psychoactive substance

- 71 This section provides for two offences of importing or exporting a psychoactive substance. The conduct and mental elements are the same in each case, save that one relates to importation and the other to exportation.
- 72 The conduct element of the offences is satisfied if the defendant imports or exports, as the case may be, a substance and the substance is a psychoactive substance. There are three mental elements of the offences. First, the importation or exportation of the substance must be intentional. Second, the defendant must know or suspect, or ought to know or suspect, that the substance is a psychoactive substance. Third, the defendant must either intend to consume the substance him- or herself for its psychoactive effects, or must know, or be reckless as to whether, the substance is likely to be consumed by other individuals for its psychoactive effects. These offences therefore cover importation and exportation of psychoactive substances for personal use as well as for the purpose of supplying others.
- 73 Given the requirement of the conduct element of these offences, they do not cover the situation where a person imports or exports a controlled drug wrongly believing it to be a psychoactive substance. Subsection (3) provides that, in such a case, a person can still be convicted of the relevant offence in subsection (1) or (2) provided that the other elements of the offence are established.
- 74 Subsection (4) applies section 5 of the Customs and Excise Management Act 1979 for the purposes of this section. Section 5 of that Act defines how the point in time when goods are said to be imported or exported is to be determined, for example, in the case of items imported by sea, the time of importation is when the ship carrying the item comes within the limits of a port.

75 These offences do not apply where the importation or exportation is covered by an exemption provided for in Schedule 2 or in regulations made under section 11(5).

Section 9: Possession of a psychoactive substance in a custodial institution

76 This section provides for an offence of possession of a psychoactive substance in a custodial institution. It applies to anybody on such a premises, including prisoners, visitors, and staff.

77 The conduct element of the offence is satisfied if the defendant possesses a psychoactive substance in a custodial institution. There are two mental elements: first, the defendant must know or suspect that the substance is psychoactive; second, the defendant must intend to consume that substance for its psychoactive effects.

78 "Custodial institution" is defined in the same way as in section 6(10).

79 This offence does not apply when the possession inside a custodial institution is covered by an exemption provided for in Schedule 2 or in regulations made under section 11(5).

Section 10: Penalties

80 This section sets out the maximum penalties for the offences in sections 4 to 8 as detailed in the table below:

Offences	Maximum penalty on summary conviction in England and Wales	Maximum penalty on summary conviction in Scotland	Maximum penalty on summary conviction in Northern Ireland	Maximum penalty on conviction on indictment
Section 4 (production), 5 (supply and offering to supply), 7 (possession with intent), 8 (importation/exportation)	Six months' imprisonment (rising to 12 months once section 154 (1) of the Criminal Justice Act 2003 is commenced), an unlimited fine, or both.	12 months' imprisonment, a fine not exceeding the statutory maximum (currently £10,000), or both.	Six months' imprisonment, a fine not exceeding the statutory maximum (currently £5,000), or both	Seven years' imprisonment, an unlimited fine, or both.

This section also sets out the maximum penalties for the offence in section 9 as detailed in the table below:

Offence	Maximum penalty on summary conviction in England and Wales	Maximum penalty on summary conviction in Scotland	Maximum penalty on summary conviction in Northern Ireland	Maximum penalty on conviction on indictment
Section 9 (possession of a psychoactive substance in a custodial institution)	Six months' imprisonment (rising to 12 months once section 154 (1) of the Criminal Justice Act 2003 is commenced), an unlimited fine, or both.	12 months' imprisonment, a fine not exceeding the statutory maximum (currently £10,000), or both.	Six months' imprisonment, a fine not exceeding the statutory maximum (currently £5,000), or both	Two years' imprisonment, an unlimited fine, or both.

Section 11: Power to provide for exceptions to offences

81 Each of sections 4, 5, 7, 8 and 9 provides that those sections operate subject to this section. Where a person engages in any of the conduct prohibited by those sections for the purposes of an "exempted activity" listed in Schedule 2, no offence is committed. So, for example, a person who supplies a psychoactive substance to a body carrying out approved scientific research does not commit an offence under section 5(1). This exemption mechanism complements that

provided for in Schedule 1. That Schedule excludes from the ambit of these offences psychoactive substances which either have legitimate everyday usages or are controlled through other legislation.

- 82 *Subsection (4)* confers on the Secretary of State (in practice the Home Secretary) the power to specify further exceptions in Schedule 2 by regulations, subject to the affirmative procedure (*subsection (7)*). It also allows the Home Secretary to add or vary exceptions, and to remove exceptions that have been added by regulation. The Home Secretary cannot herself remove exempted activities that were not added by statutory instrument.
- 83 Before exercising the regulation-making power, the Secretary of State is under a duty to consult the ACMD and such other persons as she considers appropriate (*subsection (5)*). Such other persons might, for example, include regulatory bodies or other relevant experts as well as persons likely to be affected by the proposed regulations.

Schedule 2: Exempted activities

- 84 This Schedule lists exempted activities for the purposes of section 11.
- 85 *Paragraphs 1 to 2* exempt health care professionals acting in their professional capacity. "Health care professional" is defined in the same way as in regulation 8 of the Human Medicines Regulations 2012 (S.I. 2012/1916):

"health care professional" means—

- (a) a doctor;
- (b) a dentist;
- (c) a pharmacist;
- (d) a pharmacy technician registered in Part 2 or 5 of the Register of pharmacists and pharmacy technicians established and maintained under article 19(2) of the Pharmacy Order 2010;
- (e) a registered nurse;
- (f) a registered midwife;
- (g) a registered optometrist;
- (h) a registered osteopath as defined in section 41 of the Osteopaths Act 1993;
- (i) a registered chiropractor as defined in section 43 of the Chiropractors Act 1994;
- (j) a person registered as a member of a relevant profession within the meaning of article 2 and paragraph 1 of Schedule 3 to the Health and Social Work Professions Order 2001, other than a social worker, in the Health and Care Professions Council register; or
- (k) a person registered in the dental care professionals register established and maintained under section 36B of the Dentists Act 1984 as a member of a profession complementary to dentistry specified by regulation 2 of the General Dental Council (Professions Complementary to Dentistry) Regulations 2006

- 86 *Paragraph 3* exempts anybody carrying on an activity in respect of an active substance who is registered under regulation 45N of the Human Medicines Regulations 2012, or who is exempt from being registered under regulation 45M of those Regulations. "Active substance" is defined in regulation 8 of those Regulations as: "any substance or mixture of substances

intended to be used in the manufacture of a medicinal product and that, when used in its production, becomes an active ingredient of that product intended to exert a pharmacological, immunological or metabolic action with a view to restoring, correcting or modifying physiological functions or to make a medical diagnosis".

- 87 As the relevant offences of this Act only concern human consumption, all research on psychoactive substances which does not involve human consumption is already outside of the scope of the Act. *Paragraph 4* adds to this by exempting activities performed in the course of, or in connection with, approved scientific research as defined in that paragraph.

Section 12: Meaning of "prohibited activity"

- 88 Sections 12 to 35 provide for four civil sanctions: a prohibition notice, premises notice, prohibition order and premises order. These civil powers afford law enforcement agencies an alternative route to criminal proceedings as a means of tackling the production, supply etc. of psychoactive substances. The use of these powers will enable law enforcement officers to take action swiftly to nip a problem in the bud or to adopt a more proportionate approach to low-level offending. It will be a matter for the relevant law enforcement agency to determine which approach to adopt in any given circumstances. Where there is evidence of a criminal offence under sections 4 to 8, there is no requirement to apply the civil sanctions in the first instance as a criminal prosecution may be the appropriate action to take. Equally, if a prohibition notice or premises notice has been served and is then breached, the relevant law enforcement agency might proceed to a criminal prosecution or pursue a prohibition order or premises order, as the case may be.
- 89 This section defines the term "prohibited activity" for the purposes of the Act. The definition essentially covers the conduct elements of the offences in sections 4, 5 and 8, together with the secondary or inchoate offences of assisting and encouraging those offences. The definition does not include the act of possession with intent to supply a psychoactive substance given that, in practice, it would be difficult to demonstrate whether a respondent found to be still in possession of psychoactive substances had or had not stopped intending to supply them. Accordingly, it is sufficient that a prohibition notice or order would prohibit the supply of a psychoactive substance. The definition also does not include the act of possession of a psychoactive substance in a custodial institution on the grounds that the civil penalties are not appropriate in a custodial context.

Section 13: Prohibition notices

- 90 *Subsection (1)* enables a senior officer or local authority (the definition of a local authority in section 59 covers county, district and unitary councils) to issue a prohibition notice to a person if conditions A and B are met. A person in this context may be an individual over the age of criminal responsibility (see *subsection (5)*) or a body, such as a company. The definition of a senior officer in *subsection (7)* covers senior officers in territorial police forces in the UK, the British Transport Police, the National Crime Agency ("NCA") and Border Force.
- 91 The relevant conditions are set out in *subsections (3) and (4)*. Condition A is that the person issuing the notice reasonably believes that the respondent is carrying on, or is likely to carry on, a prohibited activity. Condition A might apply, for example, in relation to a company marketing psychoactive substances through a website or selling psychoactive substances through a head shop. Condition B requires the issuing officer to be satisfied that it is necessary and proportionate to issue the prohibition notice in order to prevent the respondent carrying on any prohibited activity. The police or a local authority may, for example, identify evidence of prohibited activity at one head shop and use a prohibition notice to tackle the supply of psychoactive substances from other, or all, head shops in the same retail chain.

- 92 A prohibition notice would require a person on whom it is served to desist from carrying out a prohibited activity (*subsection (2)*). Such a notice may be in general terms or be specific, for example, it could direct an online company to stop offering to supply psychoactive substances from a named website.
- 93 A prohibition notice will be of indefinite duration unless withdrawn (under the provisions in section 15, 18(5) or 19(3)) save in the case of a notice given to an individual under 18 years, in which case the notice must be for a maximum period of three years (*subsection (6)*).

Section 14: Premises notices

- 94 This section provides for premises notices. Premises notices provide a further means to tackle prohibited activity taking place from premises, for example, a head shop. Where the operator of such premises is known, the relevant law enforcement agency is expected to issue a prohibition notice to that person. But where the operator is unclear, or where the activities of the head shop in supplying psychoactive substances is tolerated by the owner of the premises, it will be open to the relevant law enforcement agency to serve a premises notice on any person who owns, leases, occupies, controls or operates the premises.
- 95 Once the senior officer or local authority has formed a reasonable belief that prohibited activity is being carried out on particular premises (Condition A), Condition B affords latitude to the issuing officer to take into account the need to deal with prohibited activity not just at the premises to which Condition A relates, but at other premises owned, leased, occupied, controlled or operated by the respondent.
- 96 Given that the respondent in relation to a premises notice will not normally be directly involved in a prohibited activity, the terms of such an order will be to require the respondent to take reasonable steps to prevent any, or specific, prohibited activities taking place at premises specified in the notice (*subsection (2)*). So, for example, if the respondent was the owner of premises being used by a third party as a head shop, a premises notice could be used to compel the owner to take action against the tenant operating the head shop.
- 97 Unlike prohibition notices, a premises notice may only be given to an individual aged 18 or over (*subsection (5)*).

Section 15: Prohibition notices and premises notices: supplementary

- 98 *Subsection (2)* sets out the information that must be included in a prohibition notice or premises notice: this would include the grounds for giving the notice (for example, evidence of the supply of psychoactive substances from particular retail premises) and an explanation of the possible consequences of breaching the notice. Such consequences could include, in particular, a prosecution for the relevant offence under the Act or the making of an application for a prohibition order or premises order, as appropriate. There are no direct consequences for breach of a notice in that there is no criminal offence or civil sanction attached to a failure to comply.
- 99 *Subsection (3)* provides for the withdrawal of a notice. A notice may be withdrawn if, say, the person and premises to which it relates are no longer trading as a head shop. It would be open to the respondent to make representations to the relevant enforcement agency to argue for the withdrawal of a notice where the circumstances which led to the issue of the notice had changed. A defective notice could also be withdrawn and *subsection (4)* ensures that, in such a case, a replacement notice could be issued. A new notice could also be issued in any other circumstances where an earlier notice had been withdrawn.

Section 16: Further provision about giving notices under sections 13 to 15

100 This section makes further provision about the service of a prohibition notice or premises notice or the withdrawal of such a notice. It is intended that notices will be given in writing. A notice takes effect when it is given (*subsection (2)*). Where the notice is handed to the respondent or left at the respondent's proper address, this means that it takes effect immediately. Service of a notice by post attracts the provisions of section 7 of the Interpretation Act 1978 which provides that the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. Where a notice is served by electronic means (and it may only be served by such means if the respondent has consented to service by this method), it will be deemed to have been given at 9am on the working day (the definition of which excludes weekends and public holidays in any part of the UK) after it was sent.

Section 17: Meaning of "prohibition order"

101 This section defines a prohibition order for the purposes of the Act. As with a prohibition notice, a prohibition order will include either a general prohibition on the respondent carrying out any prohibited activity, that is conduct to which the offences in sections 4 to 8 relate (or assisting or encouraging such conduct), or a prohibition on carrying out a specified prohibited activity (for example, a prohibition on an online company offering to supply psychoactive substances from a named website or on a retailer supplying psychoactive substances from a specified head shop). There are two routes for the making of a prohibition order, either an application to the courts by a relevant law enforcement agency under section 18, or on conviction of a person before the criminal courts for an offence under sections 4 to 8 (or an associated secondary offence).

Section 18: Prohibition orders on application

102 *Subsection (1)* enables the appropriate court (as defined in *subsection (9)*) to make a prohibition order against a person if either condition A or B is met and also condition C is met. A person in this context may be an individual over the age of criminal responsibility (*subsection (6)*) or a body, such as a company.

103 The relevant conditions are set out in *subsections (2) to (4)*. Condition A is that the court is satisfied to the civil standard, namely the balance of probabilities, that the respondent has failed to comply with a prohibition notice. Condition B applies where no prohibition notice has been given or such a notice is no longer in force because it has been withdrawn. In such a case the court may make an order if satisfied, to the civil standard, that the respondent is carrying on, or is likely to carry on, a prohibited activity and the court considers that the respondent would fail to comply with a prohibition notice. Condition C, which must be met alongside either condition A or B, requires the court to be satisfied that it is necessary and proportionate to issue the prohibition order in order to prevent the respondent carrying on any prohibited activity.

104 Where condition A applies and a court makes a prohibition order, the relevant prohibition notice will cease to have effect (*subsection (5)*).

105 A prohibition order will be of indefinite duration unless discharged (see section 28) save in the case of an order against an individual under the age of 18, in which case the order must be for a maximum period of three years (*subsection (7)*). This three year limit is absolute and cannot be extended by a court exercising its powers under section 28 or 29 to vary a prohibition order (whatever the age of the individual at the time of the variation).

Section 19: Prohibition orders following conviction

106 This section enables a criminal court when sentencing an offender for an offence under sections 4 to 8 (or associated secondary offences) to make a prohibition order in addition to any custodial or non-custodial sentence which the court may pass. The test for making an order is that the court considers it necessary and proportionate to make an order for the purpose of preventing the offender from carrying on any prohibited activity. The court may make an order of its own volition, but it will be open to the prosecution to make representations to the court in this regard.

Section 20: Premises orders

107 *Subsection (1)* enables the appropriate court (as defined in *subsection (9)*) to make a premises order against a person if either condition A or B is met and condition C is met. As with a premises notice, a premises order may only be made against an individual aged 18 or over (*subsection (7)*); an order may also be made against a body, such as a company.

108 The relevant conditions are set out in *subsections (3) to (5)*. Condition A is that the court is satisfied to the civil standard, namely the balance of probabilities, that the respondent has failed to comply with a premises notice. Condition B applies where no premises notice has been given or such a notice is no longer in force because it has been withdrawn and the court is satisfied (to the civil standard) that a prohibited activity is taking place on particular premises. In such a case, the court may make an order against the owner, lessee, occupier, controller or operator if the court considers that the person would fail to comply with a premises notice.

109 Condition C, which must be met alongside either condition A or B, requires the court to be satisfied that it is necessary and proportionate to make a premises order in order to prevent any prohibited activity being carried out on premises owned, leased, occupied, controlled or operated by the respondent. As with a premises notice, a premises order is intended to compel persons who have some responsibility for premises being used to carry on prohibited activity, for example as the owner of retail premises being used to sell psychoactive substances, to take action to stop such activity taking place on those premises.

110 Where condition A applies and a court makes a premises order, the relevant premises notice will cease to have effect (*subsection (6)*).

Section 21: Applications for prohibition orders and premises orders

111 This section makes provision about the persons who may apply for a prohibition order or a premises order and the form of such an application. Applications to the appropriate court for a prohibition order or a premises order may only be made by a chief officer of police of territorial forces in the UK, the chief constable of the British Transport Police (for example, in relation to premises at mainline train stations), the Director General of the NCA (for example, against serious and organised criminals involved in the importation of psychoactive substances), the Secretary of State insofar as he or she exercises functions in relation to customs (in practice, applications would be made by Border Force which has no separate legal persona from the Home Secretary), or a local authority (*subsection (1)*).

112 *Subsection (2)* provides that where an application is made to a court for a prohibition order or premises order following a breach of a prohibition notice or premises notice, the application must be made by the organisation which issued the original notice.

Section 22: Provision that may be made by prohibition orders and premises orders

113 In addition to a prohibition against the carrying on of prohibited activity (in the case of a prohibition order) or to a requirement to take reasonable steps to prevent prohibited activity

taking place on relevant premises (in the case of a premises order), a prohibition order and premises order may contain such other prohibitions, restrictions or requirements as the court considers appropriate (*subsection (1)*).

114 *Subsections (3) to (6)* set out specific examples of the type of prohibitions, restrictions or requirements that may be attached to a prohibition order or premises order; the provisions of this section operate without prejudice to the ability of the court to attach any such prohibitions, restrictions and requirements to an order as it considers appropriate (*subsection (2)*).

115 Prohibitions, restrictions or requirements that may be attached to either a prohibition order or a premises order may relate to the respondent's business dealings (*subsection (3)*). In the case of a prohibition order, such requirements may include, for example, a requirement on a respondent trading from retail premises or online to surrender unsold supplies of psychoactive substances or other items that have been, or are likely to be, used in carrying out a prohibited activity, for example, laboratory equipment used to produce psychoactive substances (*subsection (4)*). Any items handed over in accordance with such a requirement may not be disposed of until the time for lodging an appeal has elapsed and, if an appeal is lodged, until the appeal has been determined (*subsection (5)*).

116 *Subsections (6) to (9)* enable a prohibition order or a premises order to include an "access prohibition" closing the premises in question for initially up to three months (section 28(3) to (5) allows this to be extended for up to a further three months). Such an access prohibition can prohibit access by anyone, including the landlord, owner or habitual residents, but the court would have the discretion to frame the prohibition order or premises order in such a way to allow continued access for specified descriptions of persons, for example, habitual residents.

Section 23: Enforcement of access prohibitions

117 This section makes further provision in relation to the enforcement of a prohibition order or a premises order which includes an access prohibition. An authorised person (as defined in *subsections (2) and (3)*) is empowered to take necessary steps to secure the premises against entry (*subsection (1)(b)*). A power of entry is provided to enable access to the premises for such purposes (*subsection (1)(a)*). An authorised person can also enter the premises to carry out essential maintenance or repairs, for example to fix a leak (*subsection (6)*). Where necessary, an authorised person can use reasonable force in the exercise of the powers under this section, for example, to secure entry into the premises (*subsection (4)*).

Section 24: Access prohibitions: reimbursement of costs

118 This section enables the law enforcement agency (or its funding body, if different) managing premises subject to an access restriction to apply to the court for an order providing for the reimbursement of costs incurred as a result of clearing, securing or maintaining the premises (*subsection (1)*). An application for such an order must be served on the person against whom the prohibition order or premises order imposing the access prohibition was made (*subsection (5)*); this will then afford that person the opportunity to make representations to the court as to why an order for the reimbursement of costs should not be made or about the amount of such an order.

Section 25: Access prohibitions: exemption from liability

119 This section exempts law enforcement officers, and the relevant law enforcement agency, from liability for damages as a result of anything done (for example, damage to property), or not done (for example, failure to fix a leak), in the exercise of powers under section 23. The exemption from liability does not apply where the act or omission was in bad faith or was unlawful by virtue of section 6(1) of the Human Rights Act 1998 (that is, acting in a way that is

incompatible with the Convention rights).

Section 26: Offence of failing to comply with a prohibition order or premises order

120 *Subsection (1)* makes it an offence to fail to comply with a prohibition order or premises order. The offence will be triable either way. *Subsection (3)* provides for a defence where the defendant can show that he or she took all reasonable steps to comply with the order or otherwise had a reasonable excuse for his or her failure to comply. The maximum penalty is as follows -

Maximum penalty on summary conviction in England and Wales	Maximum penalty on summary conviction in Scotland	Maximum penalty on summary conviction in Northern Ireland	Maximum penalty on conviction on indictment
Six months' imprisonment (rising to 12 months once section 154(1) of the Criminal Justice Act 2003 is commenced), an unlimited fine, or both.	12 months' imprisonment, a fine not exceeding the statutory maximum (currently £10,000), or both.	Six months' imprisonment, a fine not exceeding the statutory maximum (currently £5,000), or both	Two years' imprisonment, an unlimited fine, or both.

Section 27: Offence of failing to comply with an access prohibition, etc

121 The offence in section 26 applies where the person against whom a prohibition order or premises order that contains an access prohibition fails to comply with the terms of that access prohibition. This section makes it an offence for any other person, without reasonable excuse, to remain on or enter premises in contravention of an access prohibition. The offence is summary only, with a maximum penalty of six months' imprisonment (12 months in Scotland) or a fine (up to the statutory maximum in Scotland and Northern Ireland or unlimited in England and Wales), or both.

Section 28: Variation and discharge on application

122 This section provides the courts with a power to vary or discharge a prohibition order or a premises order. An application to vary or discharge an order may be made by the person who applied for the order (that is, in the case of a prohibition order or a premises order made on application, the relevant law enforcement agency), by the appropriate law enforcement agency (in Scotland, the Lord Advocate or a procurator fiscal) in the case of a prohibition order made on conviction, by the respondent or by any other person significantly adversely affected by the order (*subsections (1) and (2)*). Generally, any application to vary or discharge a prohibition order or premises order should be made to the court that made the order. There are three exceptions to this. First, where a prohibition order was made following an appeal against a conviction, or after a person was committed or remitted to that court for sentencing, the jurisdiction moves to the court by which the person was convicted (*subsection (6)(b)*). Second, if a person was convicted by a youth court but is no longer under 18 at the time of the sentencing, the jurisdiction moves to a magistrates' court or a court of summary jurisdiction (*subsection (6)(c)*). Second, where the order was made in the youth court in England and Wales or Northern Ireland and the respondent has attained the age of 18 years, the jurisdiction moves to the magistrates' court or court of summary jurisdiction (*subsection (7)*).

123 *Subsections (3) to (5)* enable an access prohibition included in a prohibition order or a premises order to be extended, or further extended, beyond the initial three month limit, but the overall duration of an access prohibition may not exceed six months. Subject to this limitation, and the three year limitation on a prohibition order made against an individual under the age of 18 (see sections 18(7) and 19(4)), a prohibition order or premises order will have indefinite effect unless discharged.

Section 29: Variation following conviction

124 This section enables a criminal court, when sentencing a person for an offence under sections 4 to 8 (or an associated secondary offence) or section 26, to vary any prohibition order or premises order made against the offender which is currently in force. The court may act on its own motion but it would be open to the prosecution to make representations to the court in this regard.

Section 30: Appeals against making of prohibition orders and premises orders

125 *Subsection (1)* sets out the avenue of appeal by a respondent against a prohibition order made on application under section 18 or a premises order made on application under section 20. There is no right of appeal for the police or other law enforcement agency against the refusal of a court to make a prohibition order or premises order. Any appeal must be made within 28 days of the making of an order (*subsection (2)*).

126 The court hearing an appeal will consider the case afresh and either confirm, vary or revoke the original order (*subsection (3)*).

127 A prohibition order made on conviction may be appealed to the normal higher court as if it was part of the sentence imposed by the court (*subsection (5)*).

Section 31: Appeals about variation and discharge

128 This section provides for a right of appeal against the decision of a court to vary a prohibition order or premises order, or to decline to do so. There is also a right of appeal against a refusal to discharge an order. *Subsection (1)* specifies the appropriate appellate court in the case of an appeal against a decision of a court under section 28.

129 In Scotland, a sheriff will hear cases in both a civil capacity (in the case of prohibition orders on application (section 18) and premises orders (section 20)) and in a criminal capacity (in the case of prohibition orders following conviction (section 19)). In civil cases, the Sheriff Appeal Court will be the appellate court to hear any appeals from a sheriff. Where a sheriff imposes a prohibition order sitting in a criminal capacity in relation to summary criminal proceedings, the Sheriff Appeal Court will be the appropriate appellate court. Where the sheriff imposes a prohibition order sitting in a criminal capacity in relation to indictment proceedings, the appropriate appellate court is the High Court of Justiciary sitting as a court of appeal.

130 *Subsection (2)* confers the right of appeal upon the subject of the prohibition order or premises order in question and on any other person significantly adversely affected by the order. So, for example, if on an application by a chief officer of police a prohibition order was varied so as to add one or more prohibitions, restrictions or requirements, the subject of the order would be able to appeal that decision, but the chief officer would not be able to appeal a decision by the court not to vary the prohibition order. Any appeal must be made within 28 days of the making of the decision (*subsection (4)*).

131 *Subsection (5)* sets out the powers of the court when determining an appeal. It will be open to the court to revoke the order or to amend its provision.

132 *Subsection (7)* enables an offender to appeal against the variation on conviction of a prohibition order or premises order; the avenue of appeal will be the same as that for an appeal against sentence.

Section 32: Nature of proceedings under sections 19 and 29, etc

133 This section provides that proceedings under sections 19 or 29 in respect of the making of a prohibition order on conviction or the variation on conviction of a prohibition order or premises order are civil proceedings to which the civil standard of proof applies (*subsections (1) and (2)*). The court can consider evidence which was not admissible in the criminal proceedings. This could include hearsay or bad character evidence (*subsection (3)*). It is open to the court to adjourn proceedings in respect of the making or variation of a prohibition order or the variation of a premises order, for example, if it was necessary to hear further evidence at a later date about the appropriate prohibitions, restrictions or requirements to attach to a prohibition order. Accordingly it would be possible to consider the making of a prohibition order, or the variation of a prohibition order or premises order, after the offender has been sentenced for an offence under sections 4 to 8 (*subsection (4)*).

134 Subsection 5 provides for Acts of Adjournal to be made in relation to certain proceedings under sections 19 and 29, section 28 (the variation and discharge of a prohibition order made under section 19 on application) , section 30(5) (appeal against a prohibition order made under clause 19), section 31(1) (appeal against a decision made under section 28 in relation to a prohibition order made under section 19) and section 31(7) (appeal against a decision made under section 29 to vary a premises or prohibition order following a conviction).

Section 33: Special measures for witnesses: England and Wales

135 This section enables a court in England and Wales to give a special measures direction to protect vulnerable or intimidated witnesses in proceedings in respect of prohibition orders and premises orders. Such measures may include giving evidence behind a screen or by video link or in private. In relation to England and Wales, the relevant provisions of the Youth Justice and Criminal Evidence Act 1999 are modified for the purposes of this Act.

Section 34: Special measures for witnesses: Northern Ireland

136 This section makes equivalent provision to that in section 33 for the use of special measures in relation to proceedings in Northern Ireland. In Scotland, the provisions of the Vulnerable Witnesses (Scotland) Act 2004 will apply without the need for express provision in the Act.

Section 35: Transfer of proceedings from youth court

137 Where a respondent is under the age of 18 years, applications for the making, variation or discharge of a prohibition order will be heard in the youth court in England and Wales and Northern Ireland. Where there are ongoing proceedings in the youth court and the respondent turns 18, this section enables rules of court to determine which court continues to have jurisdiction for the case; such rules may either provide for the case to continue to be heard in the youth court or be transferred to a magistrates' court (or, in Northern Ireland, a court of summary jurisdiction).

Section 36: Power to stop and search persons

138 *Subsections (1) and (2)* confer powers to stop and search persons on a police or customs officer. The power is engaged where the officer has reasonable grounds to suspect that a person has committed, or is likely to commit, an offence under any of sections 4 to 9 and 26 of the Act. As the Act does not provide for a simple possession offence, there is no power to stop and search where an officer suspects that a person has in his or her possession a psychoactive substance intended for personal use; the officer will need to have reasonable grounds to suspect that the person has committed or is likely to commit an offence under the Act, for example, the person is likely to commit the offence of possession with intent to supply a psychoactive substance. A police or customs officer may also detain a stopped person for the purpose of carrying out the search.

139 The term "police or customs officer" is defined for the purposes of the Act in *subsection (4)* to include NCA officers designated with the powers and privileges of a constable or officer of Revenue and Customs (see the definition in section 59(1)) and authorised by the Director General of the NCA to exercise the powers of a police or customs officer under the Act. The intention is that NCA officers designated with the powers and privileges of a constable and/or the powers of an officer of Revenue and Customs (under section 10 of the Crime and Courts Act 2013) will have access to the powers contained in the Act. The scheme in the Crime and Courts Act 2013 operates in such a way that an NCA officer designated with the powers and privileges of a constable, officer of Revenue and Customs, or both would automatically be able to exercise the powers of a constable and/or Revenue and Customs officer (as the case may be), as conferred under statute or common law. The reference to an NCA officer in *subsection (4)* is drafted in such a way as to ensure that it is consistent with that general approach.

140 The stop and search powers are exercisable in any place to which the police or customs officer has access, this will include any public place and any premises that are the subject of a search warrant issued under section 39 or under any other enactment (for example, the Police and Criminal Evidence Act 1984 ("PACE")).

141 The power of a constable in England and Wales to stop and search under this section engages certain safeguards under Part 1 of the Police and Criminal Evidence Act 1984 ("PACE") or, in Northern Ireland, under Part II of the Police and Criminal Evidence (Northern Ireland) Order 1989 ("PACE NI"), including:

- The constable need not search a detained person if it subsequently appears to him or her: (i) that no search is required; or (ii) that a search is impracticable (section 2(1) of PACE and Article 4(1) of PACE NI).
- Where the constable contemplates a search, he or she is under a duty to take reasonable steps before he or she commences the search to bring to the attention of the detained person (section 2(2) and (3) of PACE and Article 4(2) and (3) of PACE NI) —
 - If the officer is not in uniform, documentary evidence that he or she is a constable; and whether he or she is in uniform or not, the matters specified below:
 - the constable's name and the name of the police station to which he or she is attached;
 - the object of the proposed search;
 - the constable's grounds for proposing to make it; and
 - the detained person's right to receive a record of any search conducted (section 3(7) of PACE and Article 5(7) of PACE NI).
- A constable has no power to require a detained person to remove any of his or her clothing in public other than an outer coat, jacket or gloves (section 2(9)(a) of PACE and Article 4(10) of PACE NI).
- A constable must make a record of the search in writing unless it is not practicable to do so. Where it is not practical to make a record at the time, the

constable must do so as soon as practicable after the completion of the search (section 3(1) and (2) of PACE and Article 5(1) and (2) of PACE NI).

- The provisions of the Code of Practice made under section 66 of PACE or Article 66 of PACE NI).

Section 37: Power to enter and search vehicles

142 *Subsections (1) and (2)* confer powers to stop and search vehicles on a police or customs officer.

The power is engaged where the officer has reasonable grounds to suspect that the vehicle contains evidence of an offence under any of sections 4 to 9 and 26 of the Act. The power does not apply where the vehicle is a dwelling (*subsection (1)(b)*); in such circumstances the provisions of section 39 would apply. A dwelling is not defined but is intended to be given its natural meaning; the exclusion would, for example, apply to a residential caravan. The power applies to vehicles whether or not a driver or other person is in attendance of the vehicle.

Where it is impractical for a stopped vehicle to be searched in the place it has been stopped, the officer may require the vehicle to be moved to another place before conducting the search (*subsection (3)*). This provision would apply, for example, where the vehicle has been stopped on a busy road and it would be safer to conduct the search in another location.

143 *Subsection (4)* places a duty on any person travelling in the vehicle or the registered keeper to facilitate the exercise of an officer's powers under this section, for example, the driver of the vehicle might be required to open a locked glove box or boot.

144 These stop and search powers are exercisable in any place to which the officer has lawful access, this would enable a vehicle parked in a garage on premises that are the subject of a search warrant under section 39 to be searched (*subsection (5)*).

145 The power of a constable in England and Wales to stop and search a vehicle under this section engages certain safeguards under Part 1 of PACE or, in Northern Ireland, Part II of PACE NI, including:

- The constable need not search a detained vehicle if it subsequently appears to him or her: (i) that no search is required; or (ii) that a search is impracticable (section 2(1) of PACE and Article 4(1) of PACE NI).
- Where the constable contemplates a search of an attended vehicle, he or she is under a duty to take reasonable steps before he or she commences the search to bring to the attention of the detained person (section 2(2) and (3) of PACE and Article 4(2) and (3) of PACE NI) —
 - If the officer is not in uniform, documentary evidence that he or she is a constable; and whether he or she is in uniform or not, the matters specified below:
 - the constable's name and the name of the police station to which he or she is attached;
 - the object of the proposed search;
 - the constable's grounds for proposing to make it; and
 - the right of the owner or person in charge of the vehicle to receive a record of any search conducted (section 3(8) of PACE and Article 5(8) of PACE NI).

- A constable not in uniform has no power to stop a vehicle (section 2(9)(b) of PACE and Article 3(10)(b) of PACE NI).
- A constable must make a record of the search in writing unless it is not practicable to do so. Where it is not practical to make a record at the time, the constable must do so as soon as practicable after the completion of the search (section 3(1) and (2) of PACE and Article 5(1) and (2) of PACE NI).
- The provisions of the Code of Practice made under section 66 of PACE or Article 66 of PACE NI.

Section 38: Power to board and search vessels or aircraft

146 This section contains powers to board and search vessels or aircraft analogous to those in section 36 in respect of entry and search of vehicles. A vessel is defined in section 59(4) and includes any ship, boat or hovercraft. The powers do not apply where the vessel or aircraft is used as a dwelling, for example, a house boat. Again, the provisions of sections 2 and 3 of PACE apply where the powers are exercised by a constable in England and Wales (*subsection (10)* of sections 2 and 3 of PACE apply the provisions of those sections to vessels, aircraft and hovercrafts as they apply to vehicles).

Section 39: Power to enter and search premises

147 This section provides for prior judicial authorisation of powers to search premises for evidence of an offence under any of sections 4 to 9 and 26 of the Act ("premises" is defined in section 59 and includes both residential and commercial premises and vehicles or vessels). Applications for a search warrant must be made, in England and Wales and Northern Ireland, by a relevant enforcement officer, or, in Scotland, by a relevant enforcement officer or the procurator fiscal. Unlike the powers to stop and search persons, vehicles and vessels in sections 36 to 38, the power to apply for and execute search warrants extends to local authority officers as well as police or customs officers (see *subsection (6)*). As the definition of premises (see section 59(1)) includes vehicles, vessels and aircraft, it is open to a local authority to apply for a search warrant to search vehicles, vessels and aircraft whether or not they are being used as a dwelling.

148 *Subsection (1)* enables a justice to issue a search warrant to a relevant enforcement officer that authorises that officer to enter premises specified in the warrant and search them for such evidence. A justice is defined in section 59 as a justice of the peace, sheriff and lay magistrate in England and Wales, Scotland and Northern Ireland respectively. There is a two-stage test for the grant of a search warrant (*subsections (4) and (5)*). The first element of the test is that the justice must be satisfied that there are reasonable grounds to suspect that evidence of an offence under any of sections 4 to 9 and 26 of the Act is to be found on premises covered by the warrant. In determining whether the "reasonable grounds to suspect" test has been satisfied, the justice will apply the civil standard of proof, namely the balance of probabilities. The second element of the test is that any of the conditions in *subsection (5)* are met. The nature of those conditions are such that a relevant enforcement officer should, where possible, secure entry into premises or access to items on the premises with the co-operation of the owner or occupier and only seek a warrant where such co-operation is unlikely to be forthcoming or where the purpose of the search would be frustrated or seriously prejudiced if immediate entry to the premises could not be secured using the authority of a warrant.

149 As with the provisions for search warrants in section 15 of PACE, a warrant issued under this section may be in relation to a single set of premises (a “specific-premises warrant”) or, in England and Wales and Northern Ireland only, an “all-premises warrant” where it is necessary to search all premises occupied or controlled by an individual, but it is not reasonably practical to specify all the premises at the time of applying for the warrant (see *subsection (3)*). An all-premises warrant will allow access to all premises occupied or controlled by that person, both those that are specified on the application, and those that are not; this allows for follow-up searches where evidence at one premises controlled by the named person identifies a second associated with that person.

Section 40: Further provision about search warrants

150 *Subsection (1)* allows persons applying for search warrants to do so without informing those persons who might be affected by it (for example, the owner or occupier of the premises or the owner of the substances in question) to avoid forewarning such a person of the impending search thereby affording an opportunity to remove or otherwise hide the psychoactive substances or other evidence of an offence. In coming to a judgment as to whether the test for the grant of a warrant is made out (see section 39(4)), a justice would weigh up the information supplied in the application (*paragraph 1(2)*) or in oral evidence (*paragraph 1(3)*).

151 *Subsection (4)* enables a search warrant to be executed by any relevant enforcement officer and not just the officer who applied for the warrant. If the search warrant so provides, *subsection (5)* enables authorised persons to accompany a relevant enforcement officer when executing a warrant. Such a person, for example, a Police Community Support Officer, has the same powers as those conferred on the relevant enforcement officer (*subsection (6)*).

152 *Subsection (7)* gives effect to Schedule 3 which makes further provision about applications for and the execution of search warrants in England and Wales and Northern Ireland. Scotland has similar provisions in its common law. Failure to comply with the requirements in Part 2 of Schedule 3 in respect of the execution of warrants in these jurisdictions would render the entry and search of premises unlawful (*subsection (8)*).

Schedule 3: Search warrants: England and Wales and Northern Ireland

153 Part 1 of this Schedule limits the application of this Schedule to England and Wales and Northern Ireland.

154 Part 2 of Schedule 3 sets out the procedure for applying for a search warrant under section 39 and various safeguards. *Paragraph 2* sets out the information that must be provided in an application. *Paragraphs 3 and 4* set out the information that must be contained in a search warrant, including whether the warrant authorises single or multiple entries into relevant premises. A warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which it was granted, for example, the search of a large warehouse.

155 *Paragraph 5* provides for the making of copies. These provisions are analogous to those in section 15(5) to (8) of PACE.

156 Part 3 of Schedule 3 makes provision for the execution of search warrants.

157 Where premises are entered and searched in pursuance of a warrant and such premises are not specified in the warrant, entry must be authorised by a relevant enforcement officer of the appropriate grade, as defined in *paragraph 7*. Where a warrant authorises multiple entries into a set of premises, any second or subsequent entry must be similarly authorised (*paragraph 8*).

Section 41: Powers of examination, etc

158 This section enables a relevant enforcement officer, when searching a vehicle or vessel (with or without a warrant) or any premises (under a warrant), to examine anything in the vehicle or vessel or on the premises. Such examination may extend to testing substances found (*subsection (3)*). The ability to test such a substance, for example to determine whether or not it is a psychoactive substance, will help avoid unnecessary seizures. *Subsection (6)* places a duty on any person in or on the premises to facilitate or assist the exercise of an officer's powers under sections 37 to 39 or under this section, for example, to open any locked container. If there is no such person on the premises to assist in such manner or that person refuses to do so, *subsection (5)* confers a power on a relevant enforcement officer to use force to break open a container or other locked thing (for example, a locked store room).

Section 42: Power to require production of documents, etc

159 This section enables a relevant enforcement officer, when searching a vehicle or vessel (with or without a warrant) or any premises (under a warrant), to require any person in the vehicle or vessel or on the premises to produce any document or record that is in the person's possession or control. The power is so defined as to extend to requiring a person to produce information held in electronic form, for example on a computer, so that it can be read. Such an examination may assist in providing additional evidence of criminal conduct, for example spreadsheets detailing various trades and supplies.

Section 43: Powers of seizure, etc.

160 This section enables a relevant enforcement officer to seize and detain any substance found in the course of a search which the officer reasonably believes to be a psychoactive substance or evidence of an offence under any of sections 4 to 9 and 26 of the Act. Items may also be seized for the purpose of determining whether any such offence has been committed. The power also extends to taking copies or extracts of any documents or records found on the premises that could be used as evidence of an offence. The power to seize and detain, remove, or take copies of or extracts from a document or record, extends to documents or records produced to the relevant enforcement officer under the powers in section 42. These powers apply to a relevant enforcement officer searching a vehicle or vessel (with or without a warrant) or any premises (under a warrant) or to a relevant enforcement officer who is lawfully on premises for some other purpose. The powers of seizure in this section do not extend to excluded items as defined in section 44.

Section 44: Excluded items

161 This section defines excluded items which fall outside the powers of seizure in section 43. In England and Wales, excluded items are:

- Items subject to legal privilege as defined in section 10 of PACE, broadly communications between a professional legal adviser and his or her client in connection with the giving of legal advice to the client or in connection with legal proceedings and for the purpose of such proceedings. Items held with the intention of furthering a criminal purpose are not subject to legal privilege.
- Excluded material as defined in section 11 of PACE, broadly personal records which a person has acquired or created in the course of any trade, business, profession or other occupation and which he or she holds in confidence; human tissue or tissue fluid which has been taken for the purpose of diagnosis or medical treatment and which a person holds in confidence; or journalistic material (that is, material acquired or created for the purpose of journalism)

which a person holds in confidence.

- Special procedure material as defined in section 14 of PACE, broadly material acquired or created in the course of any trade, business, profession or other occupation or for the purpose of any office and held subject to an express or implied undertaking to hold it in confidence or subject to a restriction on disclosure or an obligation of secrecy contained in any enactment; and journalistic material, other than excluded material.

162 Schedule 1 to PACE makes special provision for obtaining judicially authorised access to excluded material or special procedure material for the purpose of a criminal investigation.

163 *Subsections (3) and (4)* make analogous provision for Scotland and Northern Ireland.

Section 45: Further provision about seizure under section 43

164 This section contains an ancillary power to seize any containers in which seized items are stored (*subsection (1)*). Such containers may be packets in which psychoactive substances are sold or boxes containing relevant documents. *Subsection (2)* provides for the subsequent return of seized containers save where one of the conditions in *subsection (3)* is satisfied. *Subsection (4)* caters for circumstances where it is not practicable to seize all items at the time of the search of premises, for example, because the task proved to be more time consuming than expected or because of the volume of items that need to be removed. In such cases, the relevant enforcement officer can impose a duty on the person from whom an item is seized or any person on the premises to secure the items and not to tamper with them.

Section 46: Notices and records in relation to seized items

165 This section makes provision for the issue of a written notice, where an item is seized under section 43, to affected persons as defined in *subsection (2)*. If no such person is present on premises subject to a search warrant, a copy of the notice must be left on the premises (*subsection (3)*). This is to ensure that all persons with an interest in the seized items are properly informed of the seizure and of the provisions in sections 49, 50, 51 and 53 in respect of the retention and forfeiture or return of seized items. In addition to the notice of seizure issued at the time of the seizure, a record must be made of the items seized; such a record could be compiled after the search has taken place, for example, once the seized items have been taken to a police station (*subsections (5) and (6)*).

Section 47: Powers of entry, search and seizure: supplementary provision

166 *Subsections (1) and (2)* enable a relevant enforcement officer (or a person authorised to accompany them when executing a search warrant) to use reasonable force, if necessary, when exercising powers under sections 36 to 45, for example, to search a person or to enter premises to execute a search warrant (this mirrors section 117 of PACE).

167 *Subsection (3)* provides that the powers of entry, search and seizure conferred by the Act are without prejudice to the continued operation of any other powers conferred by or under any enactment or under common law.

Section 48: Offences in relation to enforcement officers

168 *Subsection (1)* makes it an offence for a person, without reasonable excuse, intentionally to obstruct a relevant enforcement officer in the exercise of his or her powers under sections 36 to 45.

169 *Subsection (2)* makes it an offence for a person, without reasonable excuse, to fail to comply with a reasonable requirement made or direction reasonably given by a relevant enforcement officer under sections 37 to 45. It is also an offence to prevent another person from complying with such a requirement or direction. Such a requirement or direction may be, for example, to open a locked door of a room within premises subject to a search warrant or to open a locked cabinet.

170 These offences extend to the obstruction of, or failure to comply with a requirement or direction given by, a person authorised to accompany a relevant enforcement officer (such as a police community support officer) to effect a search of premises (*subsection (3)*).

171 *Subsection (4)* provides for the maximum penalties for both offences, as follows -

Maximum penalty on summary conviction in England and Wales	Maximum penalty on summary conviction in Scotland	Maximum penalty on summary conviction in Northern Ireland
Six months' imprisonment (rising to 51 week once section 281(5) of the Criminal Justice 2003 comes into force), unlimited fine, or both.	12 months' imprisonment, a fine not exceeding the statutory maximum (currently £5,000), or both.	Six months' imprisonment, a fine not exceeding the statutory maximum (currently £5,000), or both.

Section 49: Retention of seized items

172 This section authorises the retention of items seized under section 43 for as long as is necessary and, in particular, either for use as evidence in a trial or to enable forensic examination (for example, to determine whether a seized substance is a psychoactive substance), or as part of an investigation for an offence under the Act.

Section 50: Power of police, etc to dispose of seized psychoactive substances

173 This section provides for a fast track procedure for the disposal of seized psychoactive substances where a psychoactive substance is seized during a search, carried out without a warrant, of a person, vehicle, vessel or aircraft under sections 36 to 38. Where, following the stop and search, the officer reasonably believes that there is no evidence of an offence under the Act (for example, where the officer concludes that the psychoactive substance seized is intended for personal use by the subject of the search), and the seized psychoactive substance was not being used for the purposes of, or in connection with an exempted activity (see section 11), the officer may dispose of the substance as he or she thinks fit, that is without the judicial process provided for in section 51. The procedure provided for in this section broadly mirrors that for temporary class drugs under section 23A(4) and (5) of the 1971 Act.

Section 51: Forfeiture of seized items by court on application

174 This section provides for the forfeiture and disposal of seized psychoactive substances and other items where the procedure in section 50 or section 54 does not apply. *Subsection (3)* requires a magistrates' court (in England and Wales), a sheriff (in Scotland) or a court of summary jurisdiction (in Northern Ireland) (see *subsection (11)*) to order the forfeiture of an item if the court is satisfied that it is a psychoactive substance likely to be consumed for its psychoactive effects (provided its use was not covered by an exemption specified in regulations made under section 11) and enables such a court to order the forfeiture of any other item if it has been used in the commission of an offence under the Act. The civil standard of proof, namely on the balance of probabilities, will apply to such proceedings. Where the court is so satisfied it is for the applicant (namely, an officer from the relevant enforcement agency) to arrange for the disposal of the forfeited item (*subsection (5)*). However, any action to dispose of the item is stayed pending the outcome of any appeal (*subsection (6)*). *Subsections (7) to (9)* detail the circumstances under which the item must be returned to the person entitled to it. The section also makes further provision, authorising the continued

retention of an item, pending the outcome of an application for forfeiture, or any appeal against a decision by the court to order the substance to be returned to the person from whom it was seized, or the owner of the item (*subsections (2) and (10)*).

Section 52: Appeal against decision under section 51

175 This section confers a right of appeal (see *subsection (3)* as to the appropriate higher court in each jurisdiction) against a decision under section 51 either to order the forfeiture of an item or to order its return to the person entitled to it. An appeal must be lodged within 28 days of the decision by the lower court (*subsection (4)*). The parties to the original proceedings and any persons entitled to the items (defined in *subsection (8)*) – if not present or represented at the original hearing – will be entitled to be heard at the appeal. On hearing the appeal, the court will determine the question afresh.

Section 53: Return of item to person entitled to it, or disposal if return impracticable

176 Where the retention of a seized item is no longer authorised under the Act, this section provides for the return of the item to the person entitled to it; if necessary, the appropriate court (as defined in *subsection (5)*) may make an order to this end (*subsection (1)(b)*). In any case where it has proved impossible to find the owner, or it is impractical for some reason to return the item (for example, because the owner refuses to accept receipt or it has deteriorated so that it has become dangerous), *subsection (4)* allows for the item to be disposed of by a relevant enforcement officer.

Section 54: Forfeiture by court following conviction

177 This section provides that where a person has been convicted for an offence under any of sections 4 to 9 and 26 of the Act (or an associated secondary offence), the sentencing court must make a forfeiture order in respect of any psychoactive substances relating to the offence and may make one in respect of other items that were used in the commission of the offence (*subsections (3) and (4)*). The convicted person and any other person who claims ownership of the items are entitled to make representations to the court (*subsection (6)*), and a forfeiture order does not take effect until the time for lodging an appeal has lapsed or until the outcome of any appeal (*subsection (7)*). *Subsections (8) to (10)* enable the court to make supplementary provision to give effect to a forfeiture order.

Section 55: Application of Customs and Excise Management Act 1979

178 This section ensures that Border Force officers can exercise the powers under the Customs and Excise Management Act 1979 (“CEMA”) when they intercept psychoactive substances entering or leaving the UK, particularly by post. Border Force customs officials routinely rely on CEMA powers to enforce restrictions on the importation (or exportation) of particular items. A number of the CEMA powers would automatically apply in any event, for example the power in section 159 of CEMA to examine any imported goods, but this section provides that other CEMA provisions are engaged.

179 *Subsection (1)* applies section 164 of CEMA which confers powers on customs officials to search persons where there are reasonable grounds to suspect that the person is carrying any article with respect to the importation or exportation of which any prohibition or restriction is for the time being in force under or by virtue of any enactment. By virtue of this subsection, psychoactive substances are deemed to be subject to such a prohibition or restriction for the purposes of section 164 of CEMA.

180 *Subsection (2)* makes a psychoactive substance liable to forfeiture if it is imported to or exported from the UK and it is likely to be consumed by any individual for its psychoactive effects. This has the effect of engaging other CEMA powers, in particular, the powers in section 139 and Schedules 2A and 3 to detain, seize and forfeit any thing “liable to forfeiture”.

Section 139 of CEMA provides that goods which are liable to forfeiture may be seized or detained. Schedule 2A to CEMA makes provision in respect of detained goods – essentially allowing Border Force time to investigate whether the goods in question are indeed liable to forfeiture. Schedule 3 to CEMA governs the process of seizure and forfeiture of goods. The CEMA provisions include similar safeguards regarding the issue of notices of seizure as are included with powers of seizure in the Act and also provide for judicial oversight. In summary, if, after a one month period from the time of seizure there has been no challenge to the legality of seizure, the goods are automatically condemned as forfeit. If someone challenges the legality of seizure, Border Force must bring condemnation proceedings to obtain an order for condemnation of the goods.

181 *Subsection (4)* applies section 5 of CEMA for the purposes of *subsection (2)*. Section 5 of CEMA defines the time of importation or exportation of goods for the purposes of the powers in CEMA, for example, in the case of items imported by sea, the time of importation is when the ship carrying the item comes within the limits of a port.

Section 56: Offences by directors, partners, etc.

182 In the case of an offence under the Act committed by a body corporate, this section extends liability for the offence to a person who is an officer of the body corporate (as defined in *subsection (2)*) where the offence has been committed with the connivance of that person, or was a consequence of any neglect attributable to that person (*subsection (1)*). This section mirrors provisions in section 21 of the 1971 Act.

Section 57: Providers of information society services

183 This section gives effect to Schedule 4 which contains provisions about the application of this Act in relation to persons providing information society services.

Schedule 4: Providers of information society services

184 Schedule 4 is designed to ensure that the provisions of the Act are compatible with the UK's obligations under the E-Commerce Directive.

185 Under Part 1 of Schedule 4 providers of information society services who are established in the UK are covered by the new offence of offering to supply psychoactive substances even when they are operating in another European Economic Area state. *Paragraphs 3 to 5* of the Schedule provide exemptions for information service providers from this offence in limited circumstances, such as where they are acting as mere conduits for any offer to supply (by facilitating an email) or are storing it as caches or hosts (for example, hosting a website). Part 2 of Schedule 4 similarly ensures that the Act in respect of prohibition notices and prohibition orders insofar as they impact on information service providers is compatible with the terms of the E-Commerce Directive.

Section 58: Review

186 This section places a duty on the Secretary of State to review the operation of the Act and lay a report of the review before Parliament within 30 months of the coming into force of sections 4 to 8. Accordingly, if those sections were commenced on 6 April 2016, the report would need to be laid before Parliament by 5 October 2018.

Section 59: Interpretation

187 This section defines various terms used in the Act.

Section 60: Consequential amendments

188 This section gives effect to Schedule 5 which makes amendments to other enactments consequential upon the provisions of the Act.

Schedule 5: Consequential amendments

- 189 *Paragraph 1* repeals the Intoxicating Substances (Supply) Act 1985 ("the 1985 Act"), and removes reference to that Act from the Regulatory Enforcement and Sanctions Act 2008 ("the 2008 Act"). Section 1 of the 1985 Act made it an offence to sell intoxicating substances to under 18s. The conduct element of the offence in the 1985 Act is covered by the offences of supplying or offering to supply a psychoactive substance in section 5 of this Act.
- 190 Schedule 3 to the 2008 Act specifies enactments for the purpose of the Secretary of State's and Welsh Ministers' functions under Part 1 of that Act. Those functions relate to the provision of guidance to local authorities about the exercise of their regulatory functions under the enactments listed in Schedule 3 to the 2008 Act. The purpose of these provisions is to support local authorities in carrying out their regulatory functions in a manner that is effective, does not give rise to unnecessary burdens and that complies with the principles of good regulation, namely that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, and consistent and should be targeted only at cases in which action is needed. *Paragraph 1* makes consequential amendments to the 2008 Act to repeal references to the 1985 Act, and adds the Psychoactive Substances Act to the list of enactments in Schedule 3 to the 2008 Act.
- 191 *Paragraph 2* amends Schedules 2 (which applies to England and Wales), 4 (which applies to Scotland) and 5 (which applies to Northern Ireland) to the Proceeds of Crime Act 2002 ("POCA") to add the offences in sections 4 to 8 of the Act to the list of "lifestyle offences" contained in each of those Schedules.
- 192 Part 2 of POCA provides for the making of confiscation orders to confiscate assets gained through criminal activity from offenders, after conviction. The purpose of confiscation proceedings is to recover the financial benefit that an offender has obtained from his or her criminal conduct. The court calculates the value of that benefit and orders the offender to pay an equivalent sum (or less where a lower sum is available for confiscation).
- 193 Section 6 of POCA makes provision for the making of confiscation orders by the Crown Court in England and Wales. In accordance with section 6, where the defendant is identified as having a "criminal lifestyle", the proceeds of the defendant's "general criminal conduct" are liable to confiscation. This means that an offender in relation to whom there are reasonable grounds to believe that he or she is living off crime will be required to account for his or her assets, and will have them confiscated to the extent that he or she is unable to account for their lawful origin. The criminal lifestyle tests are therefore designed to identify offenders who may be regarded as normally living off the proceeds of crime.
- 194 Under section 75 of POCA, a person has a criminal lifestyle if he or she satisfies one or more of the tests set out in that section. The first test is that he or she is convicted of an offence specified in Schedule 2 to POCA. Schedule 2 lists the offences which are so closely linked to a life of crime that a conviction for any of them will lead to the defendant being deemed to have a criminal lifestyle for the purposes of the confiscation regime in POCA. By including the offences in sections 4 to 8 of the Act in Schedule 2 to POCA, *paragraph 1* ensures that defendants convicted of these offences will be deemed to have a criminal lifestyle and will therefore be subject to the stricter regime in respect of calculating confiscation orders under the 2002 Act. Parts 3 and 4 of POCA make parallel provision for confiscation orders in Scotland and Northern Ireland respectively.

- 195 *Paragraph 3* amends Schedule 4 to the Police Reform Act 2002 so as to extend the powers of police community support officers ("PCSO"). Where a PCSO is conducting a search of a person and finds a psychoactive substance, the substance may be seized and retained if the PCSO reasonably believes that it is unlawful for the person to have the substance in his or her possession. This is not of itself a power to search a person, but only a power to seize and detain a psychoactive substance where a search is being conducted under other powers conferred by Schedule 4 to the Police Reform Act 2002. The PCSO may also in such circumstances require the person to provide his or her name and address. The power to require a person to give his or her name and address also applies where the PCSO reasonably believes that the person is unlawfully in possession of a psychoactive substance. Failure to comply with a requirement to provide a person's name and address is an offence (subject to a maximum penalty of a level 3 fine). These powers are similar to those in relation to controlled drugs as provided for in paragraphs 7B and 7C of Schedule 4 to the Police Reform Act 2002.
- 196 *Paragraph 4* makes a like amendment to that made by paragraph 2 to Schedule 2A to the Police (Northern Ireland) Act 2003 which sets out the powers and duties of police community support officers in Northern Ireland.
- 197 *Paragraph 5(2)* amends section 97 of the Licensing Act 2003. That section provides that a constable may enter and search club premises where he or she has reasonable cause to believe that an offence in respect of controlled drugs has been, is being, or is about to be, committed there or there is likely to be a breach of the peace. The amendment to section 97 extends the power of a constable to enter and search club premises where the officer has reasonable cause to believe that an offence of supplying or offering to supply psychoactive substances has been, is being, or is likely to be committed on the premises.
- 198 *Paragraph 5(3)* amends Schedule 4 to the Licensing Act 2003 so as to add the offences of producing, supplying, offering to supply, possession with intent to supply, importing and exporting psychoactive substances to the list of relevant offences contained in that Schedule. The significance of designation as a "relevant offence" is that a conviction for such an offence (or a comparable foreign offence), unless spent (under the terms of the Rehabilitation of Offenders Act 1974), must be taken into account by a licensing authority in its consideration of an application for the grant or renewal of a personal licence (in accordance with sections 120 and 121 of the Licensing Act 2003). If an existing personal licence holder is convicted of a relevant offence, his or her licence may be forfeited or suspended (see section 129 of the Licensing Act 2003).
- 199 *Paragraph 6* adds the offences of producing, supplying, offering to supply, possession with intent to supply, importing and exporting psychoactive substances to the list of relevant offences in Part 1 of Schedule 7 to the Gambling Act 2005. Under Part 5 of that Act, the Gambling Commission has power to take relevant offences into account when considering applications for operating and personal licences. Where an offence is a relevant offence, the Commission may consider such offences during the application process, even though they are spent under the terms of the Rehabilitation of Offenders Act 1974.
- 200 *Paragraph 7(2)* amends section 75 of the Armed Forces Act 2006 which confers powers on service police officers to stop certain persons and vehicles to search them for specified things, including controlled drugs. The amendment extends this power so that it also covers psychoactive substances. *Paragraph 6(4)* adds a definition of psychoactive substance to section 77 of the Armed Forces Act 2006.

201 *Paragraph 8* adds the offences of producing, supplying, offering to supply, possession with intent to supply, importing and exporting psychoactive substances to the list of serious offences in Schedule 1 to the Serious Crime Act 2007. Conviction for, or involvement in, one of these offences can trigger the making of a serious crime prevention order. Serious crime prevention orders are a form of civil order aimed at preventing serious crime. These orders are intended to be used against those involved in serious crime, with the terms attached to an order designed to protect the public by preventing, restricting or disrupting involvement in serious crime.

202 *Paragraph 9* amends section 34 of the Policing and Crime Act 2009. Part 4 of that Act makes provision for injunctions to prevent gang-related violence (“gang injunctions”). Gang injunctions are a preventative civil order that enable the police or a local authority to apply to a youth court, county court, or the High Court, for an injunction against an individual to prevent gang-related violence. Gang injunctions allow courts to place a range of prohibitions and requirements (including supportive requirements) on the behaviour and activities of a person (aged 14 or over) involved in gang-related violence. These conditions could include prohibiting someone from being in a particular place or requiring them to participate in rehabilitative activities. Section 51 of the Serious Crime Act 2015, which came into force on 1 June 2015, amended section 34 of the Policing and Crime Act 2009 to extend the circumstances in which a gang injunction may be made to include cases where a gang is involved in “drug-dealing activity”. This paragraph amends the definition of drug-dealing activity so that it covers the unlawful production, supply, importation or exportation of both controlled drugs (as now) and psychoactive substances.

Section 61: Power to make further consequential amendments

203 This section enables the Secretary of State (in practice, the Home Secretary), by regulations, to make further provision consequential upon the Act, including consequential amendments to other enactments. Any such regulations which amend, repeal or revoke provisions in primary legislation are to be subject to the affirmative resolution procedure, otherwise the negative resolution procedure applies.

Section 62: Extent

204 This section sets out the extent of the provisions of the Act (see Annex B for further details)

205 *Subsection (2)* enables the amendments to the Armed Forces Act 2006 made by *paragraph 7* of Schedule 5 to the Act to be extended, with or without modifications, to any of the Channel Islands and provides power to modify that Act, as amended by the Bill, as it extends to the Isle of Man or a British overseas territory.

Section 63: Commencement and short title

206 *Subsections (1)* and *(2)* provide for commencement (see paragraph 194 for further details). *Subsection (3)* enables the Secretary of State by regulations to make transitional, transitory or saving provisions in connection with the coming into force of the provisions of the Act. Such regulations are not subject to any parliamentary procedure.

Commencement

207 The general provisions in sections 59 and 61 to 63, along with the regulation-making powers in sections 3(2) and 11(1) come into force on Royal Assent. The remaining provisions of the Act will come into force by means of commencement regulations made by the Secretary of State. It is intended to commence the provisions of the Act on 6 April 2016.

Related documents

208 The following documents which are relevant to the Act are available at or from the Act page on the Home Office website at: <https://www.gov.uk/government/collections/psychoactive-substances-Act-2015>

- New Psychoactive Substances Review: Report of the Expert Panel, September 2014.
- Government response to new Psychoactive Substances Review Expert Panel report, October 2014.
- New Psychoactive Substances in England: A review of the evidence, Home Office, October 2014.
- New Psychoactive Substances Expert Review Group: review of the current legal framework available to govern the sale and supply of New Psychoactive Substances, Scottish Government, February 2015.
- Inquiry into New Psychoactive Substances, Health and Social Care Committee, National Assembly for Wales, March 2015.
- Impact assessment
- European Convention on Human Rights Memorandum
- Delegated Powers Memorandum

Annex A - Glossary

1971 Act	Misuse of Drugs Act 1971
ACMD	Advisory Council on the Misuse of Drugs
Affirmative procedure	Statutory instruments that are subject to the "affirmative procedure" must be approved by both the House of Commons and House of Lords to become law.
CEMA	Customs and Excise Management Act 1979
NCA	National Crime Agency
Negative procedure	Statutory instruments that are subject to the "negative procedure" automatically become law unless there is an objection from the House of Commons or House of Lords.
PACE	Police and Criminal Evidence Act 1984
PACE NI	Police and Criminal Evidence (Northern Ireland) Order 1989
PCSO	Police Community Support Officer
POCA	Proceeds of Crime Act 2002
TCDO	Temporary Class Drug Order

Annex B - Territorial extent and application

Provision	England	Wales	Scotland	Northern Ireland
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends to Scotland?	Extends to Northern Ireland?
Sections 1 to 27 and Schedules 1 and 2	Yes	Yes	Yes	Yes
Section 28	Yes	Yes	In part	Yes
Sections 29 to 32	Yes	Yes	Yes	Yes
Section 33	Yes	Yes	No	No
Section 34	No	No	No	Yes
Section 35	Yes	Yes	No	Yes
Sections 36 to 39	Yes	Yes	Yes	Yes
Section 40	Yes	Yes	In part	Yes
Schedule 3	Yes	Yes	No	Yes
Sections 41 to 63 and Schedule 4	Yes	Yes	Yes	Yes
Paragraph 1(2) of Schedule 5	Yes	Yes	No	No
Paragraph 1(3) of Schedule 5	No	No	Yes	No
Paragraph 1(4) of Schedule 5	No	No	No	Yes
Paragraph 2 of Schedule 5	Yes	Yes	No	No
Paragraph 3 of Schedule 5	No	No	No	Yes
Paragraph 4 of Schedule 5	Yes	Yes	No	No
Paragraph 5 of Schedule 5	Yes	Yes	Yes	No
Paragraph 6 of Schedule 5	Yes	Yes	Yes	Yes
Paragraph 7 of Schedule 5	Yes	Yes	Yes	Yes
Paragraph 8 of	Yes	Yes	No	No

These Explanatory Notes relate to the Psychoactive Substances Act 2016 (c. 2) which received Royal Assent on 28 January 2016

Provision	England	Wales	Scotland	Northern Ireland
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends to Scotland?	Extends to Northern Ireland?
Schedule 5				

Annex C - Hansard References

209 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Lords</i>		
Introduction	28 May 2015	Vol.762 Col. 29
Second Reading	9 June 2015	Vol. 762 Col. 734 to 786
Public Bill Committee	23 June 2015	Vol. 762 Col. 1477 to 1537, 1552 to 1589, 1937 to 2001 and 2016 to 2052
Report	14 July 2015	Vol. 764 Col. 463 to 520 and 536 to 566
Third Reading	20 July 2015	Vol. 764 Col. 903 to 904
<i>House of Commons</i>		
Introduction	21 July 2015	Votes and Proceedings
Second Reading	19 October 2015	Vol. 600 Col. 731 to 783
Public Bill Committee	27 October 2015	Vol. 601 Col. 1 to 98
Report and Third Reading	20 January 2016	Vol. 604 Col. 1437 to 1507
Lords Consideration of Commons Amendments	26 January 2016	Vol. 768 Col. 1156 to 1174
Royal Assent	28 January 2016	House of Commons Vol. 605 Col. 736
		House of Lords Vol. 768 Col. 1399

Annex D - Progress of Bill Table

210 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords	Bill as introduced in the Commons	Bill as amended in Committee in the Commons
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8	Clause 8	Clause 8	Clause 8
Section 9					Clause 9
Section 10	Clause 9	Clause 9	Clause 9	Clause 9	Clause 10
	Clause 10	Clause 10	Clause 10	Clause 10	
Section 11					Clause 11
Section 12	Clause 11	Clause 11	Clause 11	Clause 11	Clause 12
Section 13	Clause 12	Clause 12	Clause 12	Clause 12	Clause 13
Section 14	Clause 13	Clause 13	Clause 13	Clause 13	Clause 14
Section 15	Clause 14	Clause 14	Clause 14	Clause 14	Clause 15
Section 16	Clause 15	Clause 15	Clause 15	Clause 15	Clause 16
Section 17	Clause 16	Clause 16	Clause 16	Clause 16	Clause 17
Section 18	Clause 17	Clause 17	Clause 17	Clause 17	Clause 18
Section 19	Clause 18	Clause 18	Clause 18	Clause 18	Clause 19
Section 20	Clause 19	Clause 19	Clause 19	Clause 19	Clause 20
Section 21	Clause 20	Clause 20	Clause 20	Clause 20	Clause 21
Section 22	Clause 21	Clause 21	Clause 21	Clause 21	Clause 22
Section 23	Clause 22	Clause 22	Clause 22	Clause 22	Clause 23
Section 24		Clause 23	Clause 23	Clause 23	Clause 24
Section 25		Clause 24	Clause 24	Clause 24	Clause 25
Section 26	Clause 23	Clause 25	Clause 25	Clause 25	Clause 26
Section 27		Clause 26	Clause 26	Clause 26	Clause 27
Section 28	Clause 24	Clause 27	Clause 27	Clause 27	Clause 28
Section 29	Clause 25	Clause 28	Clause 28	Clause 28	Clause 29
Section 30	Clause 26	Clause 29	Clause 29	Clause 29	Clause 30

These Explanatory Notes relate to the Psychoactive Substances Act 2016 (c. 2) which received Royal Assent on 28 January 2016

Section of the Act	Bill as Introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords	Bill as introduced in the Commons	Bill as amended in Committee in the Commons
Section 31	Clause 27	Clause 30	Clause 30	Clause 30	Clause 31
Section 32	Clause 28	Clause 31	Clause 31	Clause 31	Clause 32
Section 33	Clause 29	Clause 32	Clause 32	Clause 32	Clause 33
Section 34	Clause 30	Clause 33	Clause 33	Clause 33	Clause 34
Section 35	Clause 31	Clause 34	Clause 34	Clause 34	Clause 35
Section 36	Clause 32	Clause 35	Clause 35	Clause 35	Clause 36
Section 37	Clause 33	Clause 36	Clause 36	Clause 36	Clause 37
Section 38	Clause 34	Clause 37	Clause 37	Clause 37	Clause 38
Section 39	Clause 35	Clause 38	Clause 38	Clause 38	Clause 39
Section 40	Clause 36	Clause 39	Clause 39	Clause 39	Clause 40
Section 41	Clause 37	Clause 40	Clause 40	Clause 40	Clause 41
Section 42	Clause 38	Clause 41	Clause 41	Clause 41	Clause 42
Section 43	Clause 39	Clause 42	Clause 42	Clause 42	Clause 43
Section 44	Clause 40	Clause 43	Clause 43	Clause 43	Clause 44
Section 45	Clause 41	Clause 44	Clause 44	Clause 44	Clause 45
Section 46	Clause 42	Clause 45	Clause 45	Clause 45	Clause 46
Section 47	Clause 43	Clause 46	Clause 46	Clause 46	Clause 47
Section 48	Clause 44	Clause 47	Clause 47	Clause 47	Clause 48
Section 49	Clause 45	Clause 48	Clause 48	Clause 48	Clause 49
Section 50	Clause 46	Clause 49	Clause 49	Clause 49	Clause 50
Section 51	Clause 47	Clause 50	Clause 50	Clause 50	Clause 51
Section 52	Clause 48	Clause 51	Clause 51	Clause 51	Clause 52
Section 53	Clause 49	Clause 52	Clause 52	Clause 52	Clause 53
Section 54	Clause 50	Clause 53	Clause 53	Clause 53	Clause 54
Section 55			Clause 54	Clause 54	Clause 55
Section 56	Clause 51	Clause 54	Clause 55	Clause 55	Clause 56
Section 57	Clause 52	Clause 55	Clause 56	Clause 56	Clause 57
Section 58			Clause 57	Clause 57	Clause 58
Section 59	Clause 53	Clause 56	Clause 58	Clause 58	Clause 59
Section 60	Clause 54	Clause 57	Clause 59	Clause 59	Clause 60
Section 61	Clause 55	Clause 58	Clause 60	Clause 60	Clause 61
Section 62	Clause 56	Clause 59	Clause 61	Clause 61	Clause 62
Section 63	Clause 57	Clause 60	Clause 62	Clause 62	Clause 63
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2					Schedule 2

These Explanatory Notes relate to the Psychoactive Substances Act 2016 (c. 2) which received Royal Assent on 28 January 2016

Section of the Act	Bill as Introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords	Bill as introduced in the Commons	Bill as amended in Committee in the Commons
Schedule 3	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 3
Schedule 4	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 4
Schedule 5	Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 5

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