

Economic Note	Number: HOEN007
Title of regulatory proposal	Control of three benzodiazepines under the Misuse of Drugs Act 1971 and under Schedule 1 to the Misuse of Drugs Regulations 2001 and the Misuse of Drugs (Designation) (England, Wales and Scotland) Order 2015.
Lead Department/Agency	The Home Office
Expected date of implementation	Summer 2021
Origin	Domestic
Date	10 March 2021
Lead Departmental Contact	Name: Sam Hardy, Drug Misuse and Firearms Unit 0207 035 1784
Departmental Assessment	GREEN

Rationale for intervention, objectives and intended effects

The listed benzodiazepines, flualprazolam, flunitrazolam and norfludiazepam, are capable of harm, similar to other benzodiazepines already controlled under Class C of the Misuse of Drugs Act 1971 ('the 1971 Act'). The rationale for government intervention is to make a legislative change to restrict their supply and disincentivise their misuse to reduce harm on drug takers and society.

Policy options (including alternatives to regulation)

Option 1 – Do nothing so that these compounds remain subject to the offences under the Psychoactive Substances Act 2016 ('the 2016 Act').

Option 2 – the Government's preferred option is to control, designate and schedule these compounds as Class C drugs under the 1971 Act and its subordinate legislation.

Costs and benefit summary

It is not possible to monetise costs and benefits due to a lack of relevant market data for the listed benzodiazepines. **Option 2** is expected to have minimal costs when implemented. There may be an increase in CJS costs, but these are expected to be minimal. Benefits to individuals and positive impacts on society may arise due to a reduction in potential harms through reduced availability. Benefits to others from benzodiazepine use include reduced: criminality, aggression and violence, plus risk-taking behaviours.

Total Cost £ PV	Transition Cost £	Cost to Business £	Total Benefit £ PV
2,200	2,200	0.0	0.0
NPSV (£)	BNPV (£)	EANDCB (£)	BIT Score (£)
-2,200	0.0	0.0	N/A
Price Base Year	PV Base Year	Appraisal period	Transition period
2021/22	2021/22	10 years	Year 1

Departmental sign-off (SCS):	Marcus Starling	Date: 9/03/2021
Chief Economist sign-off:	Tim Laken	Date: 9/03/2021
Better Regulation Unit sign-off:	Chris Batchelor	Date: 9/03/2021

Evidence Base

1. Background

An April 2020 report¹ published by the ACMD (Advisory Council on the Misuse of Drugs) reviewed the evidence of use and harms of thirteen novel benzodiazepines. Of these thirteen, three were recommended to be controlled under Class C of the 1971 Act, those being: flualprazolam, flunitrazolam and norfludiazepam. The ACMD advises the government on the control of dangerous or otherwise harmful drugs, including classification and scheduling under the 1971 Act and its regulations. The 1971 Act prevents the misuse of controlled drugs by imposing a complete ban on the possession, supply, manufacture, import and export of controlled drugs except as allowed by regulations or by licence. The Psychoactive Substances Act 2016 makes it an offence to produce, supply, offer to supply, possess with intent to supply, possess on custodial premises, import or export psychoactive substances; that is, any substance intended for human consumption that is capable of producing a psychoactive effect. Possession of a psychoactive substance is not an offence under the 2016 Act, except in a custodial institution.

2. The policy issue and rationale for government intervention

Given the harms associated with these substances, the ACMD has concluded that their misuse is having, or is capable of having harmful effects on those who take them and society. Government intervention is necessary to restrict their supply to prevent harm being caused.

There are negative consumption externalities associated with these benzodiazepines, meaning the harmful effect these have on society is not reflected in their price. Social harms and harms to others associated with benzodiazepine use include criminal activity, aggression and violence, risk-taking behaviours, suicidal thoughts/attempts and concurrent substance use disorders. The rationale for this intervention is to disincentivise the misuse of these benzodiazepines, thus reducing the harm they impart on drug takers and society.

Controlling these substances under the 1971 Act, as opposed to allowing the substances to be covered under the 2016 Act, provides a more effective restriction of their supply owing to the following:

- a. Control under the 1971 Act imposes stricter offences of production and supply where a Home Office issued licence is not held. This contrasts with the offences in the 2016 Act which only prohibit the production and supply of psychoactive substances where a person knows or is reckless as to whether such substances would be consumed for their psychoactive effect. Control of these substances under Class C of the 1971 Act therefore provides a clearer legal framework to restrict the supply of particular substances even more narrowly than the 2016 Act.
- b. The maximum penalty for the supply or production of a Class C drug is 14 years imprisonment. This contrasts with the seven-year maximum sentence under the 2016 Act. These higher tariffs may prove a stronger deterrent to the supply of these substances.
- c. The provisions in the 2016 Act apply to any compound which meets the definition of psychoactivity in the Act and which are not already controlled under the 1971 Act. The 2016 Act also contains a number of exemptions, most notably with regard to healthcare related activities and research.
- d. Control under Class C of the 1971 Act will also make it an offence to possess these compounds for which there is a maximum sentence of two years imprisonment. By advising

¹ [ACMD report – a review of the evidence of use and harms of novel benzodiazepines](#), April 2020

that these compounds should be subject to Schedule 1 of the Misuse of Drugs Regulations 2001, the ACMD has stated that these drugs have no known medicinal use. These differences reflect that:

1. Drugs controlled under the 1971 Act have been subjected to a full harms assessment by the ACMD.
2. That they are being, or appear to the ACMD as being, likely to be misused in a way that appears to them can have harmful effects sufficient to constitute a burden to society.

3. Strategic and policy objectives, and intended effects

3.A Strategic objective

Restore confidence in the criminal justice system

3.B Policy objective and intended effects

Controlling these substances under the 1971 Act and secondary legislation made under that Act, provides a more effective restriction of their supply as follows:

- The higher control under the 1971 Act provides a clearer legal framework to restrict the supply of particular substances more narrowly than the 2016 Act.
- The maximum penalty for committing an offence involving a Class C drug is fourteen years imprisonment. This contrasts with the seven-year maximum sentence under the 2016 Act. These higher tariffs **may** prove a stronger deterrent to the supply of these substances.
- Requires licences to be issued to allow lawful access to these substances which would only be permitted for research purposes.
- Control under the 1971 Act also involves the imposition of a possession offence, which restricts the scope to be in simple possession of these compounds further and again, only under licence.

4. Policy options considered, including alternatives to regulation

Option 1 – Do nothing and allow these compounds to continue to be dealt with under the 2016 Act.

Option 2 - Control designation and scheduling of flualprazolam, flunitrazolam and norfludiazepam as Class C under the 1971 Act and its subordinate legislation, the Misuse of Drugs Regulations 2001 and the Misuse of Drugs (Designation) (England, Wales and Scotland) Order 2015.

Option 2 is the Government's preferred option on the basis of the ACMD's assessment of evidence on the harms and misuse associated with these compounds. The 1971 Act provides a higher level of control with a possession offence, more strictly defined supply and distribution offences and wider powers for enforcement than the 2016 Act.

Non-regulatory options

As the ACMD has advised greater control, any non-regulatory options would be controversial.

5. Appraisal

General assumptions and data

The ACMD's report outlines the evidence of the harm of the three benzodiazepines discussed in this note, as well as evidence of their prevalence in the UK. To produce a **monetised** value for the likely impact of the analysis would require evidence regarding the:

- Likely change in consumption of the substances following the introduction of greater controls.
- Substitutability of these substances with other drugs
- Harms caused by the substances that would now be averted
- Number of businesses and other organisations that may be negatively impacted by the additional controls introduced for these substances

Without this information it has only been possible to:

1. Provide a narrative discussion of the potential costs and benefits of this legislative change.
2. Use what data is available to demonstrate that the economic impact is likely to be small.

Data regarding CJS costs are sourced from MOJ outcomes by offence tool². The CJS cost appraisal assumes that the regulatory change comes into effect at the start of 2021/22 and appraises the impacts over a ten-year period. A 3.5 per cent discount rate has been applied to costs each year beyond 2021/22 in line with Green Book guidance³. It is assumed that if individuals are sentenced to immediate custody for possession of any of the three benzodiazepines that that sentence length be the same as the average sentence length for other Class C drugs – 2.3 months. Data regarding familiarisation costs are sourced from ONS⁴. The price year is assumed to be 2021/22 as this is the year the regulatory change will come into effect.

Set-up costs

Familiarisation costs

Individuals and organisations will need to become familiar with the change in regulation. The circular outlining the change of government policy with respect to the 2016 benzodiazepine regulatory change was 1,418 words. Familiarisation costs only occur in year 1 and are estimated in 2021/22 prices. The median salary for a senior police officer in the UK in 20/21 was £27.71 an hour, this is assumed to increase by the rate of inflation as estimated by HMT⁵ to give £27.75 in 2021/22 prices. A central estimate is constructed by assuming 20 police officers in each of the 48 police forces (960 officers) in the UK read a circular of equivalent length (assumed to be 1,400) to the 2016 circular at a speed of 400 wpm. A high estimate is constructed by assuming there may be 20 per cent more readers (1,152 readers) than the central estimate that read at a speed of 240 wpm. A low estimate is constructed by assuming there may be 20 per cent fewer readers (768 readers) at a speed of 800 wpm. The familiarisation costs associated with the change are given in Table 1. Familiarisation cost is estimated as: time taken x wage rate x volume of staff.

² <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2018>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938046/The_Green_Book_2020.pdf

⁴ The wage is taken for Senior Police Officers, SOC 1172, see Dataset tab, Annual Survey of Hours and Earnings 2020.. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupationandjobvulnerabilitygroupswithpaydetail>

⁵ <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

Table 1: Familiarisation: volumes, reading speeds, costs £, 2021.

Scenarios (reading speed - words per minute and number of readers)	Cost for senior police officers to read a 1,400 word document (£)
High (240 wpm, 1,152 readers)	4,800
Central (400 wpm, 960 readers)	2,200
Low (800 wpm, 768 readers)	700

Source: Home Office, own estimates 2021. Reading tables from readingsoft.com.⁶

Note: wpm = words per minute

It is uncertain how many people will read documents communicating the regulatory change. **This analysis aims to demonstrate that the familiarisation costs are expected to be low.** The familiarisation costs are estimated to be in a **range of £700 to £4,800**, with a **central estimate of £2,200** in 2021/22 prices, in year 1 only. These are the total set-up costs as no other set-up costs are anticipated.

Ongoing costs

Criminal justice system costs

Analysis has been used to test the impact of this regulatory change if there are resultant increases in CJS costs. It is assumed that if people are sentenced to immediate custody for possession of any of the three benzodiazepines that that sentence length be the same as the average sentence length for other Class C drugs, 2.3 months. These data are obtained from the Ministry of Justice's (MoJ) outcomes by offence tool⁷. This appraisal assumes that the regulatory change comes into effect at the start of 2021/22 and appraises the impacts over a ten-year period. Table 2 gives the number of people proceeded against, found guilty and sentenced respectively for possession of Class C drugs between 2015-18. Given the low numbers of people convicted for this offence it is likely that any CJS cost changes as a result of controlling the listed benzodiazepines under Class C will be low.

Table 2: Outcomes of Class C possession drug offences by year

Possession of Class C offence outcomes	2015	2016	2017	2018
Cautions issued	324	247	225	219
Proceeded against	765	576	434	494
Convicted	691	524	398	451
Sentenced	695	527	399	453
Fine	243	214	161	190
Total Community Sentence	84	57	32	53
Suspended Sentence	16	21	16	9
Total Immediate Custody	39	31	37	30

Source: Criminal Justice System statistics quarterly: December 2018, outcomes by offence tool²

The MoJ estimate that the average cost per prisoner in the UK was £42,670⁸ in 2019/20. Inflating this value to 2021/22 price levels gives an average cost per prisoner of £44,431. The average custodial sentence length for possession of Class C drugs is 2.3 months, the cost of these prisoners in 2021/22 is £8,400.

Given that the cost to the CJS of all Class C offences in 2018, based upon the average custodial length, was just over £250,000. As such, the cost of any additional incarcerations and therefore

⁶ <http://www.readingsoft.com/>

⁷ <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2018>

⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929417/costs-prison-place-costs-prisoner-2019-2020-summary.pdf

costs to the CJS from this legislative change for the three listed benzodiazepines will be minimal or negligible. For example, if there was no change there would be zero additional CJS cost. Similarly, if there were, three additional incarcerations per year (~ 10% increase) then using the £8,400-unit cost would give an additional cost to the CJS of approximately £217,000 over 10 years, or a per year cost of about £25,200. However, these estimates are purely illustrative and are not included in the Net present Social Value (NPSV).

For context, in order for the cost to the CJS associated with this legislative change to exceed, for example, £5 million over a 10-year appraisal period, 70 people a year would need to be sentenced to prison for possession of these three controlled benzodiazepines. This would constitute a 233 per cent rise in the total number of people sentenced to immediate custody for Class C drug possession offences in 2018 assuming no suspended sentences result in custody. **There is no evidence to suggest that the three benzodiazepines are over two times as prevalent as all current Class C drugs, therefore this is an unlikely scenario.** By definition, this means that a significant cost over a single year is also highly unlikely.

Costs

a) Business

Following consultation with the Medicines and Healthcare products Regulatory Agency (MHRA), the benzodiazepines recommended for control by the ACMD have been identified as having no legitimate medicinal use. As a result, no wide impacts/costs on legitimate business are expected as a result of **Option 2**.

b) Public Sector (enforcement agencies, CJS, regulators)

Any real and opportunity costs associated with **Option 2** cannot be predicted due to limited data on the prevalence and use of the listed substances to be controlled in the UK. It is expected that the minimal costs arising from **Option 2** will be subsumed into the law enforcement and regulatory response to the control of other drugs under the 1971 Act. The law enforcement response can reasonably be managed within existing resources, informed by policy and operational prioritisation. The police and other law enforcement agencies will prioritise resources towards tackling crime, including drug related crime, with a focus on those offences which cause the most harm.

c) Personal consumption costs

It is unlikely that costs for users will differ significantly between **Options 1** and **2**, which both have a restrictive effect on the supply of these substances. It has not been possible to monetise these costs due to a lack of information on the market size of these substances. In 2018/2019, six per cent of individuals in substance abuse treatment said that they had a problem with benzodiazepines⁹. However, this is not disaggregated into specific benzodiazepines, so they may have referred to others that are not discussed in this Economic Note.

Benefits

a) Crime reduction

Table 3 gives the marginal cost associated with different criminal offences as published by the Home Office¹⁰. Table 3 gives unit cost values for the benefit to society that may be gained per crime that is not committed as a result of scheduling the listed benzodiazepines as Class C drugs. These benefits may be realised if: a) substance misuse of the three benzodiazepines specified in this economic note reduce as a result of this legislative change; b) users do not substitute these drugs

⁹ <https://www.gov.uk/government/statistics/substance-misuse-treatment-for-adults-statistics-2018-to-2019/adult-substance-misuse-treatment-statistics-2018-to-2019-report#background-and-policy-context>

¹⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732110/the-economic-and-social-costs-of-crime-horr99.pdf

with other drugs, and c) fewer of the crimes listed in Table 3 are committed as a result of this reduction in drug use.

Table 3: Unit cost of crimes associated with benzodiazepine use, 2021/22, England, £.

Types of Crime	Unit Cost (£)
Violence with Injury	15,300
Violence without Injury	6,400
Rape	42,700
Other sexual offences	7,100
Robbery	12,300
Domestic burglary	6,400
Theft from Person	1,500

Source: The economic and social costs of crime second edition¹¹

Benefits are expected to arise from ensuring consistency in enforcement and in the regulatory response to harmful substances: the three benzodiazepines are believed to have a similar level of harm to other controlled benzodiazepines (Class C) currently listed under the 1971 Act. In practical terms this provides enforcement agencies with a consistent set of powers to restrict the supply of benzodiazepines assessed to be harmful, rather than disparate regimes.

b) Reduction in drug misuse

Benefits to persons may arise due to a reduction in potential harms of these benzodiazepines through their reduced availability. As of March 2020, there had been a total of 12 flualprazolam-associated deaths in the UK recorded by regional statistical agencies in total. The time period for these deaths is not known. If the demand for this substance reduced as a result of legislative change then it is possible that further deaths could be averted. However, evidence around the degree to which demand is likely to fall, if at all, is not available.

Option 2 provides more stringent enforcement measures than **Option 1**, such as making the possession of these substances an offence and the higher maximum penalties for offences including supply and possession.

Value for money metrics

As discussed in the appraisal section, data required to offer an assessment of the value for money of this legislative change are not available.

Total costs and benefits, NPSV, BNPV and net cost to business

As outlined earlier, total costs, benefits and associated appraisal values have not been possible to estimate for this regulatory change. However, the minimal potential costs associated with the legislation in terms of familiarisation and criminal justice system have been outlined. The estimate of familiarisation costs in year 1 only, lies in a range of **£700 to £4,800**, with a **central estimate of £2,200** (2021/22 prices). As no other costs are monetised, these are the also the estimate of total cost. As benefits were not monetised, total benefits sum to zero. Again, as there is no cost to business then **both the Business Net Present Value (BNPV) and the net cost (EANDCB¹²) to business are zero.**

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954485/the-economic-and-social-costs-of-crime-horr99.pdf

¹² This is defined as the Equivalent Annual Net Direct Cost to Business and is the metric used by the Regulatory Policy Committee (RPC).

6. Risks and unintended consequences

There is a limited risk that voluntary, charity or private sector research organisations or institutions, manufacturers, distributors and wholesalers that produce, supply, import or export these substances or use them for the synthesis of non-controlled pharmaceuticals may become adversely affected by the potential costs of updating or applying for a licence. However, organisations dealing with permanently controlled scheduled drugs will already possess a licence to undertake activities involving those substances inserted into Schedule 1 of the Misuse of Drugs Regulations 2001. Due to the absence of evidence of legitimate business use and the negligible costs that would be associated with any use, the assumption is made that there are no cost implications to business.

There is a risk that individuals may substitute these benzodiazepines with other dangerous substances as a result of reduced supply. Increased control of the substances could also increase criminality associated with the drugs. If controls make supplying the substances more expensive, users could resort to acquisitive crime to fund their habit. Increased prices could also attract more sophisticated Organised Crime Groups to supply the substances. It is difficult to evaluate the likelihood of these risks, as data pertaining to the substitutability of these substances with other drugs and the likely impact of controls on prices are not available.

7. Implementation, monitoring and evaluation

The Government plans to implement changes to the 1971 Act via an affirmative resolution Order, subject to Parliament's approval, and changes to the Misuse of Drugs Regulations 2001 and the Misuse of Drugs (Designation) (England, Wales and Scotland) Order 2015 via negative resolution regulations, both of which would come into force on the same date.

As part of its statutory duties under the 1971 Act, the ACMD keeps the situation relating to the misuse of drugs under review. Together with the Government, they will continue to monitor the listed compounds by gathering data on their prevalence and misuse through UK drugs early warning systems, the health sector and the regulatory framework governing legitimate activities (predominately research) in relation to these drugs. The Home Office, as the regulatory authority on licensing of activities relating to all controlled drugs, will continue to monitor the situation in relation to compliance with the regulatory framework.

Specific Impact Test Checklist

Mandatory specific impact test - Statutory Equalities Duties	Complete
<p>The impact of these proposals on people who share a protected characteristic has been considered. These three compounds are not widely available and the likelihood of people coming across these compounds is very low. However, those aged 18-29 are the group most likely to seek to obtain these benzodiazepines, as highlighted by the ACMD in their report of 29 April 2020 on the basis that that group often misuse other types of benzodiazepines - including prescription benzodiazepines. As a result, individuals in this age group may be most likely to be affected by implementation of the ACMD's recommendations to classify these substances as Class C substances. We consider the effect of the implementing the ACMD's recommendations legislation to be proportionate to the legitimate aim of reducing supply and as a consequence, the potential harm to those in this age group most likely to seek these drugs in order to misuse them.</p> <p>The SRO has agreed these summary findings.</p>	<p>Yes</p>

Any test not applied can be deleted except **the Equality Statement**, where the policy lead must provide a paragraph of summary information on this.

The Home Office requires the **Specific Impact Test on the Equality Statement** to have a summary paragraph, stating the main points. **You cannot delete this and it MUST be completed.**

No other specific impact test was applicable in this case.