



Psychoactive Substances Act 2016

Briefing Note: May 2016

Version 1.0

The Psychoactive Substances Act 2016 (the Act), comes into force **26th May 2016**. The Act does not replace the Misuse of Drugs Act 1971 or the Human Medicines Regulations 2012. Temporary Class Drug Orders can still be applied.

- **Offences under the Act** are:
 - producing (S 4 of the Act)
 - supplying, or offering to supply (S 5 of the Act)
 - aggravation of an offence under section 5 (e.g., if the supply is in the vicinity of a school, using couriers under 18 years of age to commit an offence or the offence occurs in a custodial institution. Note: the aggravated offence can only be committed by a person aged 18 or over (S 6 of the Act))
 - possession with intent to supply (S 7 of the Act)
 - importing or exporting (S 8 of the Act)
 - possession in a custodial institution (S 9 of the Act)

- **Simple possession is not an offence**, other than under S 9 of the Act.

- A psychoactive substance is any substance capable of producing a psychoactive effect in the person who consumes it, and it is not an exempted substance.

- 'Psychoactive substance' is an umbrella term for products that are intended to mimic the effects of controlled drugs.



- Substances presented as 'legal highs' often contain controlled drugs. The new Act will control all legal highs, and other substances that have been used as intoxicants for many years. Alkyl nitrites ('poppers') are **NOT** covered by the definition in the Act.
- Substances create a psychoactive effect by stimulating or depressing the person's central nervous system, effecting their mental functioning or emotional state (s 2(2) of the Act).
- Exempted substances are (S 3 and Schedule 1 of the Act):
 - controlled drugs
 - medicinal products
 - nicotine and tobacco products
 - alcohol
 - caffeine
 - food (including drink).
- To commit an offence under section 4, 5, 7, 8 and 9 the act must be intentional.
- Under section 4, 7 and 9 the defendant must have known or suspected, or ought to have known or suspected that the substance was a psychoactive substance. Under section 5 and 8 the defendant must only have known or suspected.
- Under section 4, 5 and 8 the defendant must know, or be reckless as to whether, the psychoactive substance is likely to be consumed by another person for its psychoactive effects.
- For a section 7 offence there must be an intention to supply for consumption for its psychoactive effects, and for a section 9 offence an intention to consume the substance for its psychoactive effect is required.

Powers of search and seizure.

- A **police officer** can:
 - **stop and search** a person where they have reasonable grounds to suspect that the person has committed, or is likely to commit, one of the main offences (S 36 of the Act)
 - **search vehicles, vessels and aircraft** (if not a dwelling) if an officer has reasonable grounds to suspect they contain evidence of an offence (S 37 and 38 of the Act)

- **enter and search premises** in accordance with a search warrant and may seize any psychoactive substances or other items that may be evidence of an offence under the Act (S 39 of the Act).
- Under ss36-38 of the Act a police officer can **seize an item found during the course of a search** (s 50), which was carried out in a place where the officer had lawful access without a warrant, and the officer reasonably believes the item seized:
 - is a psychoactive substance which, if it had not been seized, was likely to be consumed by an individual for its psychoactive effects, but is not evidence of an offence under this Act, and
 - the officer has no reason to believe, that at the time of the seizure, the item was being used for the purposes of, or in connection with, an exempted activity
- In these circumstances the officer may dispose of the seized item in whatever way they think is suitable (s 50 of the Act).
- It is suggested that seized substances should be treated as hazardous and should be packaged as though they are a controlled drug, using tamper, leak and bleed proof bags according to local force policy.
- A record the relevant circumstances should be made in a pocket book, preferably signed by the person from whom the substance has been seized. The item should be retained and disposed of in accordance with force policy for the disposal of controlled drugs.
- Where designated, a **Police Community Support Officer (PCSO)** may:
 - **seize and retain** a psychoactive substance where they are conducting a search under existing designated powers. The Act does not confer a power of search.
 - the PCSO must reasonably believe that it is unlawful for the person to have the substance in his or her possession, e.g., the person has enough substance in their possession for the PCSO to reasonably believe there is an intent to supply.
 - **require the person to provide his or her name and address.** Failure to provide this information is an offence.

- These powers are similar to those in relation to controlled drugs.
- A PCSO should comply with a police officer's instructions about what to do with any items seized

Further information

- Psychoactive Substances Act 2016
- Home Office (2016) Psychoactive Substances Bill: overarching documents [internet]. London: Home Office. Available from <https://www.gov.uk/government/publications/psychoactive-substances-bill-overarching-documents> [Accessed 20 May 2016]
- For further resources see also the POLKA Drugs community (this link is available to authorised users who are logged on to POLKA).

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