

Psychoactive Substances Act

1 What is the Psychoactive Substances Act 2016?

The Psychoactive Substances Act 2016 (PSA) is a new piece of UK legislation introduced in an effort to control the proliferation of newer drugs, previously not covered by other legislation such as the Misuse of Drugs Act 1971. These unregulated compounds, previously called “legal highs” or “novel psychoactives substances” had become more widely available and were being sold via Headshops and other retail outlets, online and on the streets.

2 Has the PSA come in to force?

Yes, it came in to force on 26th May 2016.

3 What previous measures had been used to regulate NPS?

Prior to the PSA the following measures had been used to control the distribution of Novel Psychoactive Substances (NPS):

- **Adding drugs to the MoDA 1971:** drugs are assessed and added to Class A, B, or C depending on the perceived level of risk. This can be a slow process as each drug as the Government is obliged to consult the Advisory Council on the Misuse of Drugs (ACMD) before drugs can be added.
- **Temporary Class Drug Orders (TCDOs):** a faster measure than full classification. The Home Office notifies the ACMD of its intention to add drugs to the TCDO. Drugs remain in this category for 12 months, allowing the ACMD to research the drug. During this period production and supply is a criminal offence but possession is not.
- **Trading Standards:** where substances have been proven to be highly dangerous or have been mislabelled there is scope for Trading Standards to confiscate stock or fine retailers.
- **Community Protection Notices:** if a sales outlet is associated with significant disturbance then there is scope for imposing a CPN which is a bit like an ASBO. It could prevent selling of NPS and a breach could result in legal action.

These and other measures had been used with some success to restrict the distribution of NPS. However, each measure had limitations and the Government decided to introduce new Legislation.

4 Which substances are covered by the PSA?

The PSA covers all “psychoactive substances” unless exempt.

“Psychoactive substances” are defined in the legislation as any substance which “is capable of producing a psychoactive effect in a person who consumes it.”

A “psychoactive effect” is defined: “stimulating or depressing the person’s central nervous system, it affects the person’s mental functioning or emotional state; and references to a substance’s psychoactive effects are to be read accordingly.”

The PSA is a catch-all piece of legislation. New drugs don’t have to be added to the legislation. Anything psychoactive, whether already in existence or that could be invented in the future, is automatically covered unless the substance is exempt.

5 What substances are exempt:

Some specific groups of psychoactive substances, some of which are covered by other legislation, are exempt:

- **Controlled drugs** as they are covered by the Misuse of Drugs Act 1971
- **Medicinal products** covered by the **Human Medicines Regulations 2012 (S.I. 2012/1916)**
- **Alcohol** (ethyl alcohol, ethanol)
- **Alcoholic products:** containing ethanol but no other psychoactive substance.
- **Nicotine and tobacco products**
- **Caffeine or caffeine products.**
- **Food**

Other substances can be added to this list by the Home Office.

6 What are the key powers under the Act?

The Psychoactive Substances Act creates new Criminal and Civil offences. This means action can be taken to arrest and prosecute under the Criminal powers, but requires a greater level of proof to take a case forward.

The Act also creates Civil Powers which work more like the Antisocial Behaviour Act. Notices can be issued where there is some evidence of offences under the Act, but without the high standards of proof required to take forward Criminal charges. The Notices can require the prohibited activity stops. Breaches of these notices is a criminal offence.

7 What offences does the Act create?

The Act creates offences in relation to:

- Production
- Importing or Exporting
- Supplying or offering to supply or possessing with the intention of supplying
- Possession – in custodial settings only.

In order for an offence to exist, several things need to be in place.

8 Key components of an offence:

In order for an offence to be proven under the PSA, the following would need to be present:

- **Knowledge of the psychoactive nature of substance:** “the person **knows or suspects, or ought to know or suspect**, that the substance is a psychoactive substance.”
- **Knowledge that it will be used for intoxication:** “the person **knows**, or is **reckless** as to whether, the psychoactive substance is **likely to be consumed** by the person to whom it is supplied, or by some other person, for its **psychoactive effects.**”

9 Criminal or Civil?

In stronger cases where there is good evidence, there is a better chance that prohibited activities will result in arrest and charge. Where there is weaker evidence, it is more likely that the civil powers will be used to address activity, with the potential for criminal charges if Prohibition notices are breached.

10 Is POSSESSION of Psychoactive Substances illegal?

In most circumstances straight possession won't be an offence.

The two main exceptions are:

- 1) If the possession took place in Custodial settings or
- 2) The quantity or other circumstances suggested that there was an intent to supply the substance.

If someone is found in possession of an unknown substance, they could be arrested on suspicion of Possession of a Controlled Drug. If on analysis Controlled Drugs are indeed in the substance then the person could be prosecuted for possession of a Controlled Drug.

If, in non-custodial settings the substance is in truth not a Controlled Drug, then the person would not be charged with an offence.

As lots of mixes of unknown white powders contain Controlled Drugs, there is a reasonable chance that the person is in unwittingly in possession of CDs wrongly thinking they were previously lawful NPS.

11 Does the PSA make all Psychoactive Substances are now Controlled Drugs?

Controlled Drugs (CDs) has a specific meaning i.e. that they are listed under the Misuse of Drugs Act 1971. The PSA doesn't make anything a Controlled Drug within this meaning.

For a drug to become a Controlled Drug it would still need to be referred to the Advisory Council on the Misuse of Drugs who could advise Government that the substance should be made a CD.

Once a substance was made a CD it would become "exempt" from the PSA and no longer be covered by this piece of legislation.

12 People said that this legislation will make chocolate or nutmeg illegal; is this true?

No; these substances are considered as food-stuffs and so would be exempt.

13 How about glues, gasses and aerosols?

These are covered by the new legislation so when a shop sells such products and knows or is reckless they will be consumed, that would be an offence.

On the back of the PSA being passed, the Intoxicating Substances (supply) 1985 was repealed. This piece of legislation was passed to address "glue sniffing" and made it an offence to supply abusable products to under 18s if it was known or suspected that they would be inhaled for intoxication.

The new legislation makes it an offence to supply to anyone of any age where it is known or suspected that it will be used for intoxication.

This may have an impact on supply of butane gas refills to older users which up until now hadn't been regulated.

14 So what about Nitrous Oxide (Laughing Gas, Whippets)

This is a contentious subject. Nitrous Oxide is legitimately used as both a medicine (anaesthetic) and as a permitted additive in food (Whipped Cream propellant) and as such is likely to be exempt on this basis.

The Government however asserts that where supply takes place and the supplier knows or is reckless that it will be used for psychoactive effects, then enforcement action could be taken.

A criminal prosecution would determine this and until such a prosecution takes place we can't be certain as to how the law will be interpreted. The same uncertainty would apply to use of Civil Powers and legal clarification is required here.

15 How about Alkyl Nitrites (Poppers)?

Another contentious one. The Government originally rejected requests to exempt Poppers when the issue was discussed in Parliament. So Poppers are not specifically exempt.

However the ACMD, who reviewed evidence of Nitrites at the request of the Home Office, said "The ACMD's consensus view is that a psychoactive substance has a direct action on the brain and that substances having peripheral effects, such as those caused by alkyl nitrites, do not directly stimulate or depress the central nervous system...In the ACMD's view, alkyl nitrites do not fall within the scope of the current definition of a "psychoactive substance" in the Psychoactive Substances Act 2016." The Government has said "*We will ask law enforcement agencies to be guided by our agreement with your advice.*"

This interpretation means that at present, Poppers are not covered by the PSA. Importantly, this is a view, not a legal ruling and this issue could still be determined differently in a court.

16 Is Betel Nut now illegal?

Betel Nut (areca, paan, Gutkha) is certainly psychoactive and as such could be covered by the PSA. It is not generally considered a food or a medicine and hasn't been specifically exempted. The Home Office has been asked for clarification.

17 How does the PSA change things for Landlords/Hostels and other Premises?

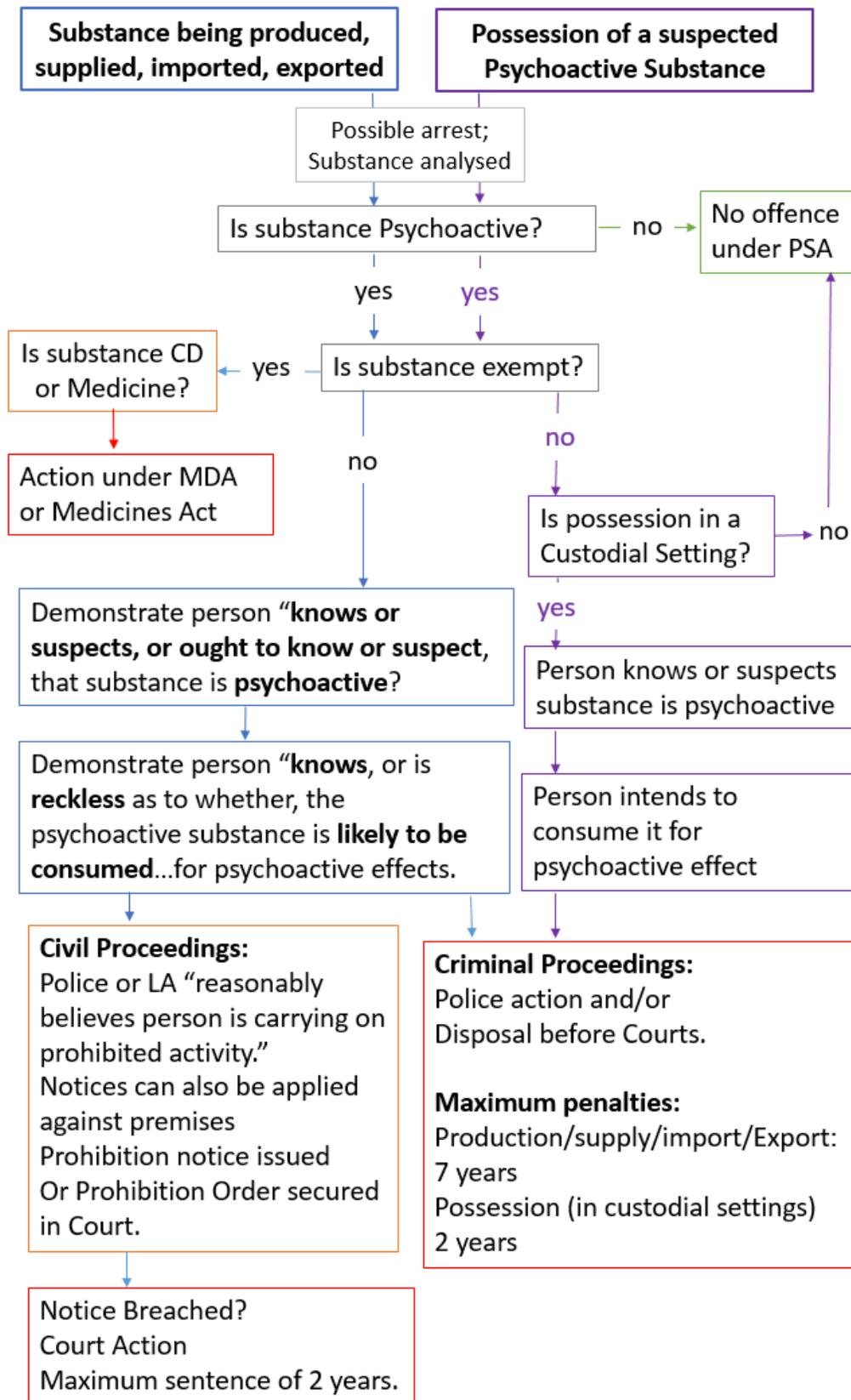
As the PSA doesn't make newer substances Controlled Drugs it doesn't bring the same legal obligations that would exist under Section 8 of the Misuse of Drugs Act. So where supply covered by the PSA takes place, there is no criminal offence under the MDA and no Section 8 offence.

The PSA creates powers to impose Premises Notices which work a bit like Closure Notices or Closure Orders under the Antisocial Behaviour Act. Premises Notices can restrict access to premises to a range of people, everyone except exempt people, or restricting access to anyone.

So if supply of NPS were taking place from buildings, there is scope for individuals to be prevented from entering that building, and there is scope to close some or all of that building.

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Application Chart



18 Will the PSA work?

It's hard to say. It's possible that NPS will still enter the UK and be sold on the streets. However, NPS lose two big unique selling points due to the law changes. They are no longer legal and they don't have the same high profile sales outlet via the UK internet and Head Shops. Price may also go up. As such drugs covered by the PSA now have to compete against more "traditional drugs."

19 Won't people just tweak a few molecules?

The big difference between the PSA and legislation that has gone before is that all molecular tweaks are automatically covered, if the end product is psychoactive. So instead of playing "catch-up," new products are automatically covered.

20 Won't sales just go underground?

Possibly, especially in the short term while existing stocks are sold off. This is likely to be a time of greater risk as products, out of packaging, are sold, mixed and dumped. The real test is, once these stocks are depleted, do more NPS get imported to replace them.

21 Where can I get more information:

Overview of the Psychoactive Substances Act and supporting documents:

<https://www.gov.uk/government/collections/psychoactive-substances-bill-2015>

Psychoactive Substances Act:

<http://www.legislation.gov.uk/ukpga/2016/2/contents/enacted>

Retailer Guidance:

<https://www.gov.uk/government/publications/psychoactive-substances-act-guidance-for-retailers/psychoactive-substances-act-2016-guidance-for-retailers>

Guidance from LGA for Councils:

http://www.local.gov.uk/documents/10180/7632544/4.5+Psychoactive+substances+act+guide_08WEB.pdf/56b010e1-c849-43fc-8441-84609c31b439

CPS Guidance:

http://www.cps.gov.uk/legal/p_to_r/psychoactive_substances/

Drugwatch Guide:

<http://www.drugwise.org.uk/wp-content/uploads/Psychoactive-SubstancesAct.pdf>

RELEASE:

<http://www.release.org.uk/law/2016-psychoactive-substances-act>