

# Criminal Justice (Psychoactive Substances) Bill 2010

## Regulatory Impact Analysis

### 1. Summary RIA

Summary of Regulatory Impact Analysis (RIA)	
<b>Department/Office:</b> Department of Justice and Law Reform	<b>Title of Legislation:</b> Criminal Justice (Psychoactive Substances) Bill 2010
<b>Stage:</b> Publication of Bill	<b>Date:</b> June 2010
<b>Related Publications:</b> Criminal Justice (Psychoactive Substances) Bill 2010 Explanatory Memorandum	
<b>Available to view or download at:</b> <a href="http://www.justice.ie">http://www.justice.ie</a>	
<b>Contact for enquiries:</b> Criminal Law Reform Division	<b>Telephone:</b> 01 602 8202
<b>What policy objectives have been pursued?</b>  Preventing the sale of psychoactive substances in head shops.	
<b>What policy options have been considered? Please summarise the costs, benefits and impacts relating to each of the option below and indicate whether a preferred option has been identified.</b>  1. Do nothing, leaving the sale of substances sold in head shops to be regulated by the Misuse of Drugs Acts and associated regulations.  2. Introduce legislation to prohibit the sale or advertisement of psychoactive substances other than medicine, intoxicating liquor, food, etc. which is sold in accordance with relevant legislation.  3. Introduce legislation to prohibit the sale of equipment used in connection with the cultivation of controlled drugs.  4. Introduce legislation to prohibit the sale of equipment and utensils for the use of controlled drugs or psychoactive substances.  5. Introduce legislation to enable An Garda Síochána to apply to court, having previously served a prohibition notice on a person, for an order prohibiting the sale of psychoactive substances by a specified person and/or from a specified place.  <b>Preferred Option:</b>  Introduce legislation to provide for 2, 3 and 5 above.	

OPTIONS			
	COSTS	BENEFITS	IMPACTS
1.	Ongoing public safety implications arising from the sale of new psychoactive substances which have not been controlled under the Misuse of Drugs Acts.	<ul style="list-style-type: none"> <li>No benefits.</li> </ul>	<ul style="list-style-type: none"> <li>Public concern about head shop activities continues.</li> <li>New substances will arrive on the market to replace those prohibited under the Misuse of Drugs Acts.</li> </ul>
2.	No significant direct costs	<ul style="list-style-type: none"> <li>Sale of all psychoactive substances (other than products which are regulated by other legislation) controlled.</li> </ul>	<ul style="list-style-type: none"> <li>Activities of head shops curtailed.</li> </ul>
3.	No significant direct costs	<ul style="list-style-type: none"> <li>Sale of equipment, utensils, etc. for cultivation of controlled drugs controlled.</li> </ul>	<ul style="list-style-type: none"> <li>Activities of head shops curtailed.</li> </ul>
4.	No significant direct costs	<ul style="list-style-type: none"> <li>Sale of equipment, utensils, etc. associated with use of controlled drugs and psychoactive substances controlled.</li> </ul>	<ul style="list-style-type: none"> <li>Activities of head shops curtailed.</li> <li>Possible difficulties for needle exchange programmes and services.</li> </ul>
5.	No significant direct costs	<ul style="list-style-type: none"> <li>Activities of head shops curtailed.</li> </ul>	<ul style="list-style-type: none"> <li>Activities of head shops curtailed.</li> </ul>

## 2. Policy Context and Objectives

**2.1** The proliferation of retail outlets commonly known as "head shops" in the State in recent times has increasingly become a matter of public concern. These shops sell a wide range of substances which are not controlled drugs but whose effects are intended to be similar to drugs controlled under the Misuse of Drugs Act 1977 such as cannabis or cocaine. The use of such substances has potentially serious health risks. There is also a concern that the use of the products sold in head shops may act as a gateway to the use of illicit drugs.

**2.2** Other issues which are of particular concern regarding the operation of head shops are that they are now often established in prominent locations or near drug clinics/services and places where young people gather such as near schools, etc., suggesting the targeting of more vulnerable potential users as customers. Of importance also are their hours of operation, often late into the night, and in some cases their offering of home delivery services.

**2.3** The primary vehicles for regulating psychoactive substances are the Misuse of Drugs Acts 1977 to 2007. While new substances can be controlled by means of Declaration Orders and regulations under the Misuse of Drugs Act 1977, suppliers are continuously developing new drugs and there is always a time lag before such new drugs are subject to proper controls. A major problem associated with the control of head shops in all jurisdictions is that the legislators are often left to play catch-up - as soon as one dangerous substance is banned in a country, another product is produced to take its place. These products are often produced for an international market and incredible chemical expertise and ingenuity is at play in constantly devising new products. It is proposed therefore to introduce more general control by way of criminal justice legislation to deal with head shop products as they emerge.

**2.4** The focus of the proposed legislation is on seeking to ensure that the sale or supply of substances, which may not be specifically proscribed under the Misuse of Drugs Act, but which have psychoactive effects, for human consumption will be a criminal offence. It is also proposed to give appropriate powers to the Gardaí and to the courts to intervene quickly to prevent these outlets from selling these products by way of appropriate prohibition notices and orders.

**2.5** The Minister's proposals are intended to operate in conjunction with a number of other avenues which are being pursued, including the regulations recently introduced by the Minister for Health and Children to prohibit the sale of the mainstream of head shop products. The activities of head shops are being closely monitored on an ongoing basis by An Garda Síochána and Revenue's Customs Service, with a view to ensuring that no substances that are currently illegal are being sold. The HSE, in association with partner agencies under the Drugs Strategy, is finalising a national drugs awareness campaign that will focus on the dangers of psychoactive substances available through head shops. The National Advisory Committee on Drugs has been asked to carry out some targeted research in this area. In addition, as part of the multi-pronged approach, relevant Government agencies are reviewing existing legislative provisions to establish if head shops are liable for prosecution under a range of legislation.

### **3. Identification and Description of Options**

The following options were considered:

1. Do nothing, leaving the sale of substances sold in head shops to be regulated by the Misuse of Drugs Acts and associated regulations.
2. Introduce legislation to prohibit the sale or advertisement of psychoactive substances other than medicine, intoxicating liquor, food, etc. lawfully sold).
3. Introduce legislation to prohibit the sale of equipment and utensils used in connection with the cultivation of controlled drugs.
4. Introduce legislation to prohibit the sale of equipment and utensils used in connection with the use of controlled drugs or psychoactive substances.

5. Introduce legislation to enable An Garda Síochána to apply to court, having previously served a prohibition notice on a person, for an order prohibiting the sale of psychoactive substances by a specified person and/or from a specified place.

#### **4. Analysis of Costs, Benefits and Impacts for ALL Options**

*1. Do nothing, leaving the sale of substances sold in head shops to be regulated by the Misuse of Drugs Acts and associated regulations.*

A failure to act would not be in the best interests of society at large. The operators of head shops are exploiting the availability of potentially dangerous products by selling them for human use. Such activity clearly seeks to undermine the legal framework for the control of drugs in this country. The public safety implications arising from the sale of psychoactive substances which are not currently controlled under the Misuse of Drugs Acts would continue and new substances will arrive on the market to replace those prohibited under the Misuse of Drugs Acts.

*2. Introduce legislation to prohibit the sale or advertisement of psychoactive substances for human consumption other than medicine, intoxicating liquor, food, etc.*

The main benefit of such an approach would be that the sale of any psychoactive substance, other than a substance regulated by other legislation, e.g. medicine, intoxicating liquor, would be prohibited. This overcomes the difficulty of the time lag between a new substance coming on the market and it being controlled under the Misuse of Drugs Acts. Care has been taken with the drafting of the relevant provisions to ensure that legitimate products are not brought within the scope of the prohibition, while ensuring that the current practice in head shops of marketing psychoactive substances as plant food, bath salts, etc., is covered. This approach would not have any significant direct cost implications. It would have the effect of significantly curtailing the activities of head shops.

*3. Introduce legislation to prohibit the sale of equipment and utensils used in connection with the cultivation of controlled drugs.*

Such equipment and utensils are currently offered for sale in head shops. It is considered that placing controls on the sale of such products would be beneficial. This approach would not have any significant direct cost implications.

*4. Introduce legislation to prohibit the sale of equipment and utensils used in connection with the use of controlled drugs or psychoactive substances.*

Such equipment and utensils are currently offered for sale in head shops. It is considered that placing controls on the sale of such products would be beneficial. This approach would not have any significant direct cost implications. However, as such a provision could create difficulties for needle exchange programmes and services, the Bill will not include such a provision.

*5. Introduce legislation to enable An Garda Síochána to apply to court, having previously served a prohibition notice on a person, for an order prohibiting the sale of psychoactive substances by a specified person and/or from a specified place.*

Such a provision will enable the Garda Síochána to deal effectively and quickly with those who sell psychoactive substances for human consumption. This approach would not have any significant direct cost implications. It would have the effect of significantly curtailing the activities of head shops.

Accordingly, it is proposed to make provision for options 2, 3 and 5 by means of primary legislation.

As regards other impacts, the proposed legislation will have a positive impact on health, public safety and young people. While the legislation will curtail very significantly the business of head shops, it is considered that the public safety and health risks associated with the unregulated sale of psychoactive substances in such establishments justify the proposed restrictions.

## **5. Consultation**

The Bill has been drawn up in consultation with the Departments of Health and Children, Agriculture, Fisheries and Food, Community, Equality and Gaeltacht Affairs, Enterprise, Trade and Innovation, the Office of the Revenue Commissioners, the Office of the Director of Public Prosecutions, An Garda Síochána, the Irish Medicines Board, the National Advisory Committee on Drugs and the Food Safety Authority of Ireland. Informal consultations have also taken place with a number of experts (chemists and pharmacologists) in the area of psychoactive substances.

## **6. Enforcement and compliance**

The provisions of the Bill concern the criminal law. Enforcement is therefore a matter for the Garda Síochána, the Revenue's Customs Service, the Director of Public Prosecutions and the courts.

## **7. Review**

The new provisions will be kept under ongoing review as to their practicality and workability as a matter of course.

## **8. Publication**

The Regulatory Impact Analysis will be published on the Department's website.

June 2010