



HM Government

Government response to New Psychoactive Substances Review Expert Panel Report

October 2014

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New Psychoactive
Substances Review
Expert Panel Report

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Background

In December 2013, the Home Office appointed an expert panel to consider how we can best tackle the issue of New Psychoactive Substances (NPS). In the Government's written ministerial statement at the time, we made clear that we are prepared to enhance the UK-wide legislative framework to ensure that our law enforcement agencies have the best available powers, sending out the clearest possible message that the trade in these substances is reckless and that these substances can be dangerous, even fatal.

This review has had a significant legislative focus. We also recognise the importance of continuing to focus on our wider, balanced approach to ensure that we invest in all strands of our Drug Strategy. This is why we asked the Panel to also consider our wider approach to prevention, treatment and information sharing.

The Panel's report is published alongside our response to its recommendations. The Home Office is also publishing a review of the evidence of NPS in England, to complement the Panel's understanding of the nature and the challenge of NPS.

Context

The availability of NPS has posed a new and significant challenge over the last few years. These drugs have similar effects to traditional illicit drugs, are designed to evade drug laws, sold openly in our high streets and over the internet, at low risk and high reward for suppliers and retailers, and often pose serious risks to public health and safety. This is not a problem unique to the UK. The global marketplace of the internet has made the distribution of NPS easier and given people of all ages access to these new drugs.

The Government strategy focuses on reducing the demand for all drugs, restricting the supply of drugs and supporting individuals to recover from their dependence. There are positive signs that this approach is working with a long-term downward trend in drug use over the last decade. Although NPS use and associated harms are lower than for traditional illicit drugs, the harms of NPS appear to be increasing.

The Government has been proactive in tackling these new drugs over the last few years. Indeed, the UK has a range of approaches recognised as world-leading. We have already banned 350 substances and have been quicker to respond to this challenge than most other countries. We have continued our commitment to the Forensic Early Warning System (FEWS), which enables us to identify new substances swiftly. We have led successive communications campaigns to raise awareness of the risks in taking so-called 'legal highs' amongst young people, worked with law enforcement agencies on a concerted programme of action and led the international effort to tackle the availability of these new drugs. Frontline services have also made an important contribution, by raising awareness of the problems of NPS and rapidly developing clinical and other responses to them.

We recognise that there is no easy answer to this matter. There are considerable gaps in our knowledge and understanding of NPS. There will remain a range of residual and future challenges that will need to be addressed, as there may be with traditional illicit drug use. However, our ambition to have a real impact on this emerging threat remains high.

Actions under our current legislative and enforcement approach

The Panel recognises that the biggest challenge in tackling NPS is having a legal framework that can respond to new substances in a timely and effective manner as they continue to be developed and come on the market. The Panel acknowledges the strengths of our current approach to tackle NPS and was keen to see this built on, rather than disregarded.

The Misuse of Drugs Act 1971 will remain the cornerstone of our response to the most harmful drugs where the evidence of prevalence and harms or potential harms are such that they justify this level of control. The Panel identified that the use of the group – or generic – definitions in the Act gives a good level of coverage over new substances. **We will continue to update the group definitions used in the Misuse of Drugs Act 1971, where appropriate.** Such controls will continue to be informed by independent, expert advice through a system of regular reviews by the Advisory Council on the Misuse of Drugs (ACMD).

The Panel identified a number of actions to support the existing legislative and enforcement approach. Temporary class drug orders (TCDOs), introduced by this Government in 2011, are a useful additional tool which enables the Government and Parliament to expedite the control of emerging NPS which are causing particular concern. We will consider how the ACMD has gathered additional evidence within current timeframes to inform further advice for permanent control following the making of a TCDO. **Together with the ACMD we will look at how the Council has worked under TCDOs. We will consider the benefits of extending the length of a TCDO from 12 to 24 months, thereby giving the ACMD a longer window within which to advise.**

The Government fully endorses the Panel's recommendation for guidance to support the law enforcement workforce and prosecuting authorities to address the challenges that NPS pose for those working in this field. This is a complex and fast-developing area. This guidance should address issues that might arise in prosecutions for NPS including any relevant defences that may be raised and alternative routes of prosecution. **We will work with the Crown Prosecution Service to update its existing guidance on drug offences to include controlled NPS and with the Local Government Association to update the guidance issued in 2013 to reflect the latest cases and developments.** Guidance for local authorities already highlights the joint-working opportunities between trading standards officers and the police. National policing guidance on NPS will be refreshed.

Enhancing our UK-wide legislative approach

The Panel's view was that there is a case for an enhanced legislative approach to tackle NPS. Both the Panel and the Government recognise that the process for controlling drugs remains inherently reactive to developments in the NPS market and, at worst, may be driving its development. Legislation, not specific to drugs, such as consumer protection legislation, has been used to good disruptive effect on a case-by-case basis, yet on its current application has its limitations and does not provide the full and sustainable response we are looking to achieve in the UK.

All options for new legislation identified by the Panel come with risks and opportunities. The Panel was clear that the risks and unintended consequences of the recommended approaches should not be underestimated and will need to be carefully managed and then monitored if these approaches are taken forward. The Government has been fully mindful of this in responding to the Panel's recommendations.

The Government welcomes the Panel's recommendation to introduce a general prohibition on the distribution – supply, importation, exportation – of any non-controlled NPS for human consumption. This is the approach that best meets our overarching objectives. It would give law enforcement agencies greater powers to tackle NPS on a general, rather than a substance-by-substance, basis. Based on international experience, it would remove the open sale and availability of non-controlled NPS in high street 'retail outlets' and on UK domain websites. The Panel identified that this approach could lead to a reduction in NPS use, particularly for those who are unable or unwilling to access criminal markets, leading to a downward pressure on harms related to NPS.

As the Panel reflects, a move to a general ban instead of a substance-by-substance one would be a significant step for drug policy. However, it is a step to respond to a different type of drug problem from that of previous eras, namely a continual evolution of new, varied and untested substances which shows no signs of abating.

The Government will look at the feasibility of a general prohibition on the distribution of non-controlled NPS for human consumption. We will explore how new legislation can be framed to ensure it is robust and proportionate. We will consider whether there should be an escalation through civil measures as well as criminal offences. The Government will consider the Panel's view that this approach should target the NPS supply and trade.

The Government recognises that the 'general prohibition' would capture a large range of current and future psychoactive substances and there is potential for unintended consequences. As the Panel recommends, the Government will explore how to put in place a schedule of exemptions and make provision to add to these where the risks of health and social harms can be adequately assessed. The Government does not underestimate the challenge of developing a robust framework to manage the scope of this legislation and will work closely with a range of scientific, regulatory and other expert partners in developing proposals and testing their feasibility.

In parallel, and in the context of continuing to use the Misuse of Drugs Act 1971 to respond to the more harmful NPS, **the Government will take forward the Panel's call to explore a**

new basis by which synthetic cannabinoids (which mimic cannabis) might be controlled, by reference to their effects on the brain rather than their chemical structure. We will consult the ACMD in line with its statutory responsibilities under the 1971 Act. Our experience with this NPS family in particular shows that as one set of controls is introduced, minor modifications to the chemical structure are then made by unscrupulous manufacturers. These new cannabinoids then fall outside of our controls and are often more potent.

Basing controls on the effects of a drug would be new and innovative. However, we now know a great deal more about how these substances affect the brain. We also have a significant body of knowledge about synthetic cannabinoids, which demonstrates the clear link between their effects and harms. We will look at how this approach can work in practice, taking into account the issues highlighted by the Panel as we take this forward. These include the need to have a robust definition in legislation and an implementation process that manages medicinal products and continuing research into cannabinoids.

Strengthening our wider response

Restricting supply alone is not a total solution. A balanced approach is needed in line with our Drug Strategy. Here too, the Panel acknowledge the good work and processes already in place. It recommends building on these existing systems and processes to enhance the Government's response in relation to treatment and intervention, prevention and education and information sharing.

Understanding availability

The Government understands the importance of having a local, as well as a national picture of NPS availability. We continue to develop the intelligence picture for illicit NPS; this work is led by the Drugs Organised Crime Threat Group and is supported by the National Police Working Group on NPS. We are also working collaboratively with the UN, EU and wider partners through the International Narcotics Control Board (INCB) Project Ion taskforce to improve the intelligence around the international trade and market in NPS.

The Panel called for the development of tools to monitor internet activity concerning NPS and for the need to understand local markets, including through 'headshops', retail outlets, prisons and local police assessment.

In respect of the Panel's recommendation to develop tools to monitor NPS activity on the internet there are already a number of tools that have been developed by academia for the purpose of researching drugs activity on the internet, including the darkweb. **We will look to harness the best of these capabilities to develop a thorough understanding of the scale of the threat from the internet, the capability of law enforcement agencies to counter it, and put in place a strategic response to the darkweb by April 2015.**

The internet is a significant enabler in NPS supply and we recognise the importance of not just addressing NPS activity in offline retail outlets but also online. Law enforcement agencies continue to build on activities to disrupt and close down websites selling illicit substances or otherwise in breach of the law. For the first time, the UK has a dedicated Cyber Crime Unit within the National Crime Agency (NCA) which is working to identify, locate and arrest cyber criminals who pose the greatest threat. The NCA instigates operational activity against those suspected of being concerned in the importation and distribution of controlled NPS in the UK.

At a local level we have been working closely with the Local Government Association, the Association of Chief Trading Standards Officers and the Trading Standards Institute to develop a mechanism for local areas to share intelligence in order to increase the understanding of the NPS trade at a local level. In parallel, we are supporting local intelligence gathering under the FEWS 2014/15 programme of work. This includes a number of targeted work packages including 'headshops', as well as specific settings such as prisons and the night-time economy. Such evidence gathering continues to add to the overall understanding of NPS availability.

In keeping with the points raised by the Panel, Public Health England (PHE) centres will work with local authorities and police to support them in responding to local issues, utilising national and local intelligence to the best possible effect.

There is ongoing work to understand and manage NPS use amongst offenders and its impact on reoffending. The Ministry of Justice will work with partners to see how testing for NPS can be developed and will continue to work to determine methods of tackling NPS use amongst offenders.

Prevention and education

The Panel's recommendations about prevention and education seek to build on the Government's existing drug and NPS education and prevention approach. The range of recommendations that the Panel made look to ensure that any preventative campaigns are informed by what we know about NPS, their users and the settings in which they are used; that targeted campaigns are developed with the help of NPS users; and that preventative information can be easily accessed online. The Panel's recommendations recognise the important role played by FRANK (www.talktofrank.com) as a trusted source of information on drugs. Support for schools and the wider education system is vital in providing young people with the information they need to build their resilience.

The Government recognises the importance of prevention and education in reducing drug use and is refreshing its approach to the reducing demand strand of the Drug Strategy. We intend to take action across a wider range of groups at risk, ensure that we are responding to new challenges including NPS use and capitalise on the role of PHE in supporting local commissioners and practitioners to implement evidence-based prevention activity.

The second round of our NPS communications campaign to raise awareness of the risks and harms of NPS was carefully targeted at those who have considered taking NPS, or taken them once or twice, through targeted music and lifestyle websites and radio. We are also currently developing a Home Office NPS resource pack with support from partners including DrugScope, Mentor and frontline practitioners such as Youth Offending Teams. The pack is intended to be used by informal educators, such as youth workers and probation services, who work with young people from a lower socio-economic background and young offenders. The pack will enable them to have conversations with this group intended to prompt them to reflect on the risks, consequences and harms caused by 'legal highs' and help them to break the cycle of use. We will evaluate the impact of this pack.

The Government welcomes the Panel's recognition of the important part FRANK plays in engaging with young people to provide them with reliable and balanced information on drugs.

It is a trusted brand and is established as the leading place to go for drugs information. FRANK will continue to be updated to reflect new and emerging patterns of drug use including NPS, ACMD advice and the latest available evidence. It will be evolved to remain in line with young people's media habits.

Rise Above is also a key complement to FRANK. This is a new youth campaign which PHE will launch in November to build young people's resilience and empower them to make positive choices for their health (including drugs, alcohol, smoking, body confidence, relationships and exam stress). Aimed at 11- to 16-year-olds, Rise Above builds young people's skills by encouraging them to complete a range of situational tools and skills-based resources rather than providing information only. This approach is in line with the evidence base and PHE will be working with key academics to assess the effectiveness of the programme.

Having access to drugs information online is important not just for young people but also for their parents, teachers, youth and social workers and others who may come into contact with users. These individuals and organisations rely on the information provided by FRANK and other organisations to advise and support users or those at risk of becoming users. **We are working with the UK Council for Child Internet Safety Working Group to ensure that access to websites providing helpful and educational content on drugs (including NPS) is not blocked by family-friendly filters.**

Education plays an important role in helping to ensure that young people are equipped with the information they need to make informed, healthy decisions and to keep themselves safe. Drug education is part of national curriculum science at key stage 2 and key stage 3 and teaching in this area can be built on through Personal, Social, Health and Economic (PSHE) education. In the introduction to the national curriculum, we reaffirmed that PSHE should be used to develop important life skills.

The Government draws a clear distinction between what is prescribed in the statutory curriculum and the wider curriculum that reflects the ethos of individual schools and responds to the needs of their pupils. Both aspects are important to young people's education. We believe that schools are best placed to understand their pupils' needs with regard to PSHE and to tailor their curricula accordingly.

We agree that schools should be able to draw upon expert advice to help design and deliver their PSHE curriculum and develop evidence-based practice. In March 2013 we launched a new drug and alcohol information and advice service for practitioners (ADEPIS – <http://mentor-adepis.org/>), which provides practitioners and commissioners with accurate, up-to-date information and resources on what works. This has included a briefing paper to give advice and support to teachers to specifically cover the topic of NPS.

We will continue to work with partner organisations such as the newly formed PSHE expert subject group, and to promote high-quality resources and examples of good practice to schools.

In 2014/15 PHE will explore the benefits and possible risks or unintended consequences of providing young people with self-assessment tools to assess risks of using NPS. PHE will consult with any relevant and newly established clinical networks, relevant partners and young people to fully assess the feasibility of this proposal. The quality and accuracy

of information on the health harms caused by NPS will also have a significant bearing on the feasibility of this recommendation, so this will also be an important area of exploration.

Information sharing

The Panel called for a number of actions: to improve information recording and sharing on drug- and NPS-related health and social harms through local and national professional/practitioner networks; to better support these networks by sharing information gathered through FEWS and the Drugs Early Warning System (DEWS) more widely where appropriate; and to disseminate effective practice in drug treatment and intervention.

We acknowledge the importance of understanding NPS and drug-related prevalence, use and health and social harms. We also acknowledge the importance of this information being shared systematically at a local and national level in a timely manner to ensure that our response and those of other organisations are informed by the best available and most up-to-date information. **PHE is working with local areas to understand their approaches to information sharing. Most local areas will have existing networks of clinicians that should share NPS information and those which do not will be supported by PHE to introduce an appropriate model. One example of this is the DrugWatch Model, a local professional information network which could be shared as effective practice.** This is a ground-up approach in which interested professionals collaborate electronically to rapidly share information across their local area, their region and nationally, using the local arms of national bodies such as PHE to facilitate collection, filtering and dissemination of information. **PHE's proposed NPS tool-kit (see below) will be launched in November 2014. Further work based on the development work being undertaken by PHE in the north of England will provide advice. PHE centres will support local areas on how to develop a local professional intelligence network.**

We are clear that more should be done to disseminate effective practice from existing work. The Central and North West London NHS Trust is leading work on Project NEPTUNE (Novel Psychoactive Treatment UK Network). This project looks to develop the UK's first set of clinical guidelines for NPS care bundles and a UK clinical network to upscale the competence of clinicians in detection, assessment and management of NPS users. It is an example of effective practice in dealing with the harms of NPS. This is exactly the sort of information we would expect to see being shared via local and national networks and that is why **PHE has committed to using its networks and other resources to support the dissemination of project NEPTUNE's findings and advice. PHE will work with project NEPTUNE and other partners to ensure that the proposed updates to the 2007 Clinical Guidelines reflect NEPTUNE advice.**

But we agree there is more to be done. In 2014–15 PHE will develop a pilot to establish a network of clinicians to share intelligence on NPS and drug-related adverse reactions and harms. To build on this, in 2015–16, PHE will also examine the feasibility of piloting a national system for clinicians and outreach workers to report such intelligence (similar to the Medicines and Healthcare Products Regulatory Agency Yellow Card Scheme for adverse medication reactions).

The Government is clear that FEWS and DEWS are already working well in discharging the purposes for which they were established. We recognise that further work is needed to maximise the use of this information. **The Government will consider how data collected under the FEWS and DEWS systems can be accessed and used more widely.** Together with PHE, we will explore the use of a central depository for all collected information provided by key health and law enforcement partners in response to DEWS requests for information, as well as other sources about specific NPS. PHE will work to ensure that any existing networks of clinicians that work with substance misuse issues appropriately focus on NPS use and share information on prevalence, harms and appropriate responses.

Skills and workforce

The Panel recognised the existing skills base of staff working in the drugs field and acknowledged the need for staff to better understand how these existing skills could be applied to the NPS field where NPS are likely to fall into the similar five main drug-effect types/presentations. The Panel identified a need for an evaluated programme to ensure every local area is able to provide an identification and brief advice approach on drugs (including NPS) in line with evidence of effectiveness. The Panel also called for the continued development of guidance and/or tool-kits to support local responses, the commissioning of evidence-based prevention tools and resources and to develop and share evidence-based tools with clinicians for the assessment and management of harms.

The Government understands the importance of having a competent and confident workforce with access to core skills that enable them to address the needs of the people they come into contact with in terms of helping to identify any problematic NPS use and provide brief advice where necessary. To address this need, **by the end of this year PHE will develop its guidelines and resources to support identification and brief advice-type approaches for identifying and responding to any drug use (including NPS), which can be used by staff in any non-drug specialist setting.** As PHE develop this approach and the evidence base for it, it will support the roll-out of appropriate guidance and tools in 2015–16 and beyond.

PHE will work with the Substance Misuse Skills Consortium to understand and promote the competencies, including cultural competencies, needed to work with the various groups of people who use NPS, and will support commissioners to ensure that their services are tailored according to local need. PHE is also already providing an ongoing series of briefings for local areas on different priority groups, the first of which is men who have sex with men, and will consider NPS use in these groups for these briefings. These briefings are primarily aimed at substance misuse treatment services, and **PHE will work with relevant professional bodies, such as the Royal College of Nursing, to ensure that other relevant audiences for briefings for local areas on different priority groups are reached as appropriate.**

PHE is developing an NPS tool-kit for local authorities, which will be published in November 2014 following other data and guidance that supports the Joint Strategic Needs Assessment support pack. It will draw together all relevant resources which support local areas to respond appropriately to local need. **PHE will support the royal colleges, service providers, academics and others to develop clinicians' tools and will use established networks of practitioners to share and promote these tools.**

However, there is still more that could be done, which is why, in 2015, PHE will explore the feasibility of a pilot scheme with a local area or service provider to identify the necessary training required to ensure that all appropriate healthcare staff (not just drugs workers) are able to identify NPS and drug issues in their patients.

The Ministry of Justice will continue to work with partners in health to improve our understanding of the risks NPS present for offenders and provide appropriate information, guidance and support to offenders and those working with them in prison and the community.

Data collection and research

The Panel's recommendations on NPS-related research and data collection revolve around the need to collect information on NPS patterns, motivations of use and harms from a range of health, criminal justice system, education and other settings. They also identify the need to collect this information in relation to the general population and subgroups of the population, for example prisoners, children and young people, those who take part in the night-time economy and others.

The Government acknowledges the Panel's recommendation to develop and improve what is known about NPS use and associated harms. Any new work in this area should build upon and learn from work already underway across government and the wider academic community, some examples of which are described below.

In terms of data collection, the Home Office has continued to fund early identification of NPS through FEWS. This complements data received from the European Monitoring Centre for Drugs and Drug Addiction. FEWS is undertaking a range of collection plans and continues to support law enforcement and commercial forensic providers to identify emerging NPS in the UK effectively and efficiently. Current activity includes scoping work with the National Offender Management Service (NOMS) on the testing of prison drug finds. There is work planned to look at how available forensic, toxicology and social science data can be matched and triangulated to help inform communications of emerging risks and trends in NPS use or harms.

The Government also funds two large-scale surveys of drug use, the School Survey of Smoking, Drinking and Drug Use and a module in the Crime Survey for England and Wales, which currently collect some data on prevalence of NPS. New questions designed to capture a more complete picture of the prevalence of NPS in the general population have been included in the 2014/15 Crime Survey which will report in summer 2015. PHE collects substance misuse treatment data on people entering prisons who have drug problems, as part of the National Drug Treatment Monitoring System (NDTMS). The dataset collects information on the drugs that the client identifies as problematic including NPS.

PHE has a number of existing and pilot surveillance systems which inform our collective understanding of patterns of NPS use in subgroups such as injectors of image and performance-enhancing drugs, young people and men who have sex with men. In future, informed by the Panel's recommendation, PHE will pilot a screening tool in key settings such as A&E departments, sexual health clinics and secure settings. Further thought will be given to other environments where it may be valuable to collect NPS data, for example other criminal justice settings, further education and the night-time economy.

The Government anticipated the need for new research in the field of NPS. In August 2013 the NHS National Institute for Health Research, Public Health Research (PHR) Programme issued a call for research on the patterns of NPS use in the UK and the associated harms. It is anticipated that recommendations for research based on these applications will be made by the end of 2014. Alongside this response, the Home Office has also published a review of the evidence base on NPS. This includes a section on some of the remaining evidence gaps for research, some of which are: the lack of a general population measure of the total level of NPS use; the use of NPS among subgroups other than in the night-time economy; and the extent to which NPS use drives social harms.

Taken together, the activities around research and data collection will inform the continuous development of targeted prevention, treatment and supply reduction work. The Government accepts that there remain evidence gaps, particularly around the acute and long-term health harms of NPS as well as the effectiveness of treatment interventions, which will require dedicated new research. Where research is focused on improving the understanding of patterns and motivations for use and social harms, it is important to consider whether this should be looked at in the context of wider substance use, as NPS are rarely taken in isolation.

The Home Office's Chief Scientific Adviser will write to Research Councils to draw their attention to the Panel's recommendations.

The Panel's recommendations will also be discussed at the cross-government Drug Strategy Research Group, which includes Research Council representation.