

Get in on the Act

Psychoactive Substances Act 2016

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Background

The Psychoactive Substances Act (the Act) was introduced in the House of Lords on 28 May 2015, following an announcement made in the Queen's Speech to bring forward legislation to 'ban the new generation of psychoactive drugs'¹. The legislation completed its passage through Parliament in January 2016 and received Royal Assent on 28 January 2016 to bring it into law.

The Act creates a blanket ban on the production, distribution, sale and supply of psychoactive substances in the United Kingdom. It is a short piece of legislation that contains 63 sections and five schedules. Provisions in the Act are split into the following titles, some of which this document will cover in further detail:

1. Overview (an introduction to the Act)
2. Psychoactive substances (their definition and the exemptions as set out in schedule 1)
3. Offences (producing; supplying; possession; importing or exporting; penalties; exemptions as set out in schedule 2)
4. Powers for dealing with prohibited activities (prohibition and premises notices; prohibition and premises orders)
5. Powers of entry, search and seizure (further provision on search warrants is set out in schedule 3)
6. Retention and disposal of items
7. Supplementary and final provisions

The general provisions in sections 59 and 61 to 63, along with the regulation-making powers in sections 3 (2) and 11 (1) came into force on Royal Assent. At the time of writing the commencement date for the remaining provisions of the Act (to come into force by means of commencement regulations made by the Secretary of State) will be 26 May 2016.

This publication provides the reader with an introduction to the Act and further information on the Local Government Association (LGA) campaign work. Further information is available by contacting publicaffairs.team@local.gov.uk

The role of local government and the LGA in calling for the legislation

Before the introduction of the Act, the LGA consistently argued that existing legislation to tackle legal highs was not fit for purpose. We called for an outright ban on legal highs to enable the closure of 'head shops' and to protect the public from the consequences of psychoactive substances.

In September 2014, councils and the LGA called on Government to outlaw the sales of legal highs, with the publication of accompanying research showing that the 18 councils across the country most affected by legal highs were all aware of such substances being sold². At the time the statement was published, councils were spending 30 per cent, or £830 million, of their public health budget each year on tackling drug and alcohol misuse.

Following this the Conservative Party included a commitment in its 2015 General Election manifesto stating that it would ‘create a blanket ban on all new psychoactive substances, protecting young people from exposure to so-called ‘legal highs’³. The Labour Party⁴ and the Liberal Democrats⁵ also pledged action on legal highs in their 2015 General Election manifestos.

The call for an outright ban on legal highs was again made by councils and the LGA in early May 2015, with Councillor Ann Lucas OBE, then Chair of the LGA Safer and Stronger Communities Board, saying: “Legal highs are untested, unpredictable and a potential death sentence. Nobody can be sure of their contents or the effects that they could have. At the moment, as soon as one is outlawed, another one with a slightly different chemical composition appears. We can’t allow this to continue.”⁶

A number of media outlets, including the Huffington Post⁷, Daily Mail⁸ and BBC online⁹, reported on the LGA’s renewed public call, which was made a week before the Government confirmed its legislative programme for the 2015-16 parliamentary session.

Following this, new powers were announced in the Queen’s Speech on 28 May 2015 stating that the Government would bring forward legislation to ban psychoactive substances. In response to this LGA spokesperson Councillor Peter Fleming OBE said: “Whilst council trading standards teams have performed an excellent job of tackling the issue of legal highs, the LGA has long argued that the current legislation is not fit for purpose.”¹⁰

Our call for action was referenced on the floor of the House of Lords at Committee Stage in June 2016, with Home Office Minister Lord Bates saying “Are we supposed to stand idly by when the Local Government Association is telling us that and when the police are telling us that they lack the powers to act?”.

Supporting Government on the Bill, our work in Parliament

Ahead of the first general debate on the Act in the House of Lords we briefed peers to welcome the move by Government to ban the production, distribution, sale and supply of psychoactive substances. Background information, which included local authority case studies, provided by the LGA to peers, and MPs at later stages in the process, was used widely throughout debates in both Houses of Parliament.

Our parliamentary briefings put on record to parliamentarians that the legislation provides a clear, simple approach and outlines a range of powers that will enable the police, supported by councils, to take proportionate but decisive action to prevent the production and sale of psychoactive substances. We also highlighted that existing legislation was not sufficient to protect the public from the consequences of legal highs, which has long been reported by trading standards teams; also stating that such a ban would help to support councils to use public health budgets to tackle other priorities.

At all stages of the progress of the Bill we made clear that once the Act is in place we would encourage continued monitoring of the impact of the ban to ensure a solid evidence base is readily available for future reviews of the legislation. We raised the important need for the provision of education programmes designed to reduce misuse of all drugs, not just psychoactive substances; and that there is concern in local government about the use of psychoactive substances by younger people in particular. The LGA also made these points in a written submission to the Home Affairs Committee, which was submitted to assist the Committee in its inquiry into psychoactive substances¹¹.

Outside of Parliament, the LGA held meetings with Government, including with the Home Office Minister Lord Bates, to discuss the Bill and provide vital information in support of the legislation. Further to one such meeting Lord

Bates wrote an article especially for the LGA's 'first' magazine (September 2015) in which he argued¹²:

'For too long, so called 'legal highs' – potentially lethal substances that evade existing drug controls – have been sold openly in our communities. Our Psychoactive Substances Bill will put an end to this reckless trade, by introducing a blanket ban on these harmful drugs and giving the police and local authorities greater powers. The LGA has long supported such an approach and I am grateful for their continued support. I also admire the innovative and determined action from local authorities up and down the UK to tackle these traders, often using powers that were designed for different purposes.'

In the rest of his article in 'first' magazine and on the floor of the House of Lords, Lord Bates committed to the Home Office working with the LGA and its members to ensure the successful implementation of the legislation.

The key provisions and their implications for local government

The Act contains 63 sections and five schedules. Set out below is the explanation of those provisions which are important to councils.

Section 1 introduces the Act

Section 2 (meaning of “psychoactive substances”) defines “psychoactive substances” for the purposes of the Act. We support the wide definition, which will ensure that as new substances are developed with different chemical compounds they will continue to be caught by the legislation.

Section 3 (exempted substances) defines an “exempted substance” for the purposes of the Act as a substance listed in schedule 1; which includes medicinal products, alcohol, nicotine and tobacco products, caffeine and food. These substances are capable of producing a psychoactive effect in an individual when consumed, but do not constitute psychoactive substances for the purpose of provisions in the Act. In our lobbying we warned that if the definition of psychoactive substances in the legislation could capture unintended materials, like incense, then consideration should be given to adding those substances to schedule 1.

Section 4 covers producing a psychoactive substance; section 5 covers supplying, or offering to supply, a psychoactive substance; section 6 covers aggravation of an offence under section 5; section 7 covers possession of a psychoactive substances with intent to supply; section 10 sets out maximum penalties for the offences in sections 4 to 8.

Section 12 (meaning of “prohibited activity”) defines the term “prohibited activity” for the purposes of the Act.

Section 13 (prohibition notices) enables a senior officer or local authority (the definition of a local authority in section 59 covers county, district and unitary councils) to issue a prohibition notice to a person if certain conditions are met.

Section 14 (premises notice) provides a further means to tackle prohibited activity from taking place from premises, such as a head shop, through a premises notice. A senior officer or local authority would be required to form a reasonable belief that prohibited activity is being carried out on a particular premises, which would enable the issuing officer to deal with such activity.

Section 15 (prohibition notices and premises notices: supplementary) sets out information that must be included in a prohibition notice or premises notice.

Section 16 (further provision about giving notices under sections 13 to 15) makes further provision about the service of a prohibition notice or premises notice, or the withdrawal of such a notice.

Section 17 (meaning of “prohibition order”) defines a prohibition order for the purposes of the Act. Section 18 (prohibition orders on application) enables the appropriate court to make a prohibition order against a person if conditions are met.

Section 19 (prohibition orders following conviction) enables a criminal court, when sentencing an offender for an offence under sections 4 to 8, to make a prohibition order in addition to any custodial or non-custodial sentence.

Section 20 (premises order) enables the court to make a premises order if certain conditions are met.

Section 21 (applications for prohibition orders and premises orders) makes provision about the persons who may apply for a prohibition order or a premises order (including a local authority), and the form of such an application.

Section 22 (provision that may be made by prohibition orders and premises orders) provides that a prohibition order and premises order may contain other prohibitions, restrictions or requirements as the court considers appropriate.

Section 23 (enforcement of access prohibitions) makes further provision on enforcement of a prohibition order or a premises order, which includes an access prohibition under section 22 (6).

Section 24 (access prohibitions: reimbursement of costs) enables the agency (including a local authority) managing any premises subject to an access restriction to apply to the court for reimbursement of costs incurred from clearing, securing or maintaining the premises.

Section 26 (offence of failing to comply with a prohibition order or premises order) makes it an offence to fail to comply with a prohibition order or premises order.

Section 27 (offence of failing to comply with an access prohibition, etc) makes it an offence to contravene an access prohibition order.

Section 28 (variation and discharge on application) provides the courts with a power to vary or discharge a prohibition order or a premises order.

Section 30 (appeals against making of prohibition orders and premises orders) sets out appeals available to a respondent against a prohibition or premises order made.

Section 36 (power to stop and search persons) confers powers to stop and search persons on a police or customs officer. Section 37 (power to enter and search vehicles) confers powers to stop and search vehicles on a police or customs officer. Section 38 (power to board and search vessels or aircraft) confers powers to board and search a vessel or aircraft. Section 39 (power to enter and search premises) provides for prior judicial authorisation of a warrant to search premises for evidence of an offence.

Section 41 (powers of examination, etc) enables a relevant enforcement officer, when conducting a search under sections 37-39 to examine anything in it. Section 42 (power to require production of documents, etc) provides a relevant enforcement officer when searching under sections 37-39 to require any person in or on the premises to produce any document or record in the person's possession or control.

Section 43 (powers of seizure, etc) enables a relevant enforcement officer to seize and detain any substance found in the course of a search which the officer believes to be a psychoactive substance. Section 49 (retention of seized items) authorises the retention of items seized under section 43 for as long as is necessary.

Section 50 (power of police, etc to dispose of seized psychoactive substances) provides for the disposal of psychoactive substances seized during a search.

Section 58 (review) places a duty on the Secretary of State to review the operation of the Act and lay a report of the review before Parliament within 30 months of the coming into force of section 4 to 8. The LGA called for continued monitoring of the impact of the ban, both in the UK and Ireland, to ensure a solid evidence base is readily available for future reviews of the legislation.

A note of thanks

Throughout the passage of the Act through Parliament we worked closely with our President and Vice-Presidents, as well as other MPs and Peers, briefing them ahead of debates and suggesting amendments. On behalf of local government, we are grateful to the Government for briefing forward this important legislation and all those parliamentarians who supported us.

Useful links

For the full text of the Act and the explanatory notes please refer to www.legislation.gov.uk/ukpga/2016/2/contents/enacted/data.htm

For the LGA's briefings on the legislation please visit www.local.gov.uk/briefings-and-responses/-/journal_content/56/10180/7321401/ARTICLE

For a previous LGA guide to councillors on tackling new psychoactive substances please go to www.local.gov.uk/documents/10180/6869714/A+councillors%20guide+to+tackling+new+psychoactive+substances.pdf/c2055374-dff2-4717-8aed-94b1d1e08d7a

Endnotes

- 1 <https://www.gov.uk/government/speeches/queens-speech-2015>
- 2 www.local.gov.uk/media-releases/-/journal_content/56/10180/6516886/NEWS
- 3 <https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf> - p64
- 4 www.labour.org.uk/page/-/BritainCanBeBetter-TheLabourPartyManifesto2015.pdf - p52
- 5 https://d3n8a8pro7vnmx.cloudfront.net/libdems/pages/8907/attachments/original/1429028133/Liberal_Democrat_General_Election_Manifesto_2015.pdf?1429028133 – p124
- 6 www.local.gov.uk/media-releases/-/journal_content/56/10180/7284270/NEWS
- 7 www.huffingtonpost.co.uk/2015/05/23/legal-highs-banned-local-government-association_n_7426964.html
- 8 www.dailymail.co.uk/news/article-3096762/All-legal-highs-banned-Ministers-close-loophole-let-lethal-drugs-flourish.html
- 9 www.bbc.co.uk/news/uk-england-32844191
- 10 www.local.gov.uk/media-releases/-/journal_content/56/10180/7296347/NEWS
- 11 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/psychoactive-substances/written/20218.pdf>
- 12 https://issuu.com/lgapublications/docs/first_online_september_2015_issue_5/1?e=16807299/15012537



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