ROADMAPS TO REGULATION:
NEW PSYCHOACTIVE SUBSTANCES (NPS)

EXECUTIVE SUMMARY

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This week sees the delayed implementation of the *Psychoactive Substances Act 2016* in the UK. The *Act* is intended to finally put an end to the seemingly unstoppable proliferation of new psychoactive substances (NPS), some of which have caused serious harm and death. As this report explains, whether it can do so remains in serious doubt. Regardless of its efficacy, the introduction of the *Act* is a watershed moment in this country's legislative response to drug use.

This report describes the NPS landscape; their uses and users, their production and supply, their under-recognised diversity in pharmacology and risks. The report traces the evolution of responses to NPS that has culminated in the *Psychoactive Substances Act 2016*, a blanket ban on the production and the supply of all psychoactive drugs, known and yet to be discovered, excepting a handful, such as alcohol, tobacco and caffeine. The report then considers alternative directions we could take at this crucial crossroads - this crisis for the current drug control paradigm.

For decades, the traditional response to each emerging drug has been 'reactive prohibition'; banning the drug and criminalising its users. Whilst the evidence does not demonstrate any efficacy of this approach in deterring use and preventing harm, it has been the backbone of drug policy in the UK and internationally.

Contrary to its aims, 'reactive prohibition' seems to have promoted the proliferation of new psychoactive substances, by incentivising the creation of new substances closely resembling banned ones.

This inevitable cat-and-mouse game called forth an evolution in 'reactive prohibition', whereby a ban would apply not just to one specific substance, but could be applied 'generically' to its close analogues. Since the substitution or addition of an atom or two can completely transform a drug's effects, including its potency and toxicity, these 'generic' laws began to erode the principle that substances are banned in response to evidence of their specific risks.

With these legislative efforts spurring the exponential diversification of psychoactive substances, in recent years governments have created shortcuts to try to sustain a paradigm that is ill-equipped to cope with novel drugs appearing on a weekly basis. These legislative

shortcuts, such as Temporary Class Drug Orders[1], expedite new bans at the expense of evidence-based assessment and political deliberation.

Perhaps the central futility in 'reactive prohibition' is that it does not see the wood for the trees; the market for any particular new substance such as mephedrone is not contextualised within the consistent consumer demand for mind-alteration. Drug policy should reduce drug associated harms, but even when a ban is 'successful' at curbing a particular drug's popularity, (as the mephedrone ban seems to have been), no reduction in harms will have resulted if users simply turn to similarly risky, newer psychoactive substances, or back to established drugs. Conversely, harms may be amplified.

It is clear that the demand for untested NPS, despite their obvious risks, is largely an unintended consequence of an unmet demand for legal access to popular psychoactive substances, such as cannabis, MDMA and psychedelics. Most NPS that have emerged in recent years are synthetic cannabinoids, reflecting the demand for cannabis, which is considerably safer than the synthetic cannabinoids by every measure.

NPS account for a mere fraction of the drug market, which is dominated by long-established legal drugs such as alcohol, and 'traditional' illicit drugs from cannabis to cocaine. The growing burden of NPS-related harms in terms of damage dependence and death, and pressure on public services, remains relatively insignificant alongside the burden associated with established drugs and their mismanagement. Nonetheless, the transparent failure of the prohibition approach to address the challenges of NPS could represent an existential crisis for that paradigm. The international regime of drug-control based on reactive prohibition has been a disaster by every measure; illicit drugs are more available than ever, drug markets operate outside of any government control, criminal sanctions do not demonstrably curtail drug-use, but impose other forms of harms to users.

A commendable progressive feature of *The Psychoactive Substances Act 2016* is that it will not criminalise *simple possession*. However, the Act will operate parallel to the existing *Misuse of Drugs Act 1971*, which does impose sanctions on possession supposedly commensurate with a drug's relative harmfulness. Both sets of legislation will operate alongside laws regulating alcohol, tobacco and prescription drugs, creating a confusing situation where citizens will have no confidence in any relationship between a substance's harmfulness, accessibility and legality.

As this report describes, in the immediate-term, the regulatory model for NPS that offers the most promising substitute for the *Psychoactive Substances Act* is the one that has been passed in New Zealand. Unfortunately, the framework they constructed has been hamstrung by a variety of domestic political setbacks. Nonetheless, this report explores how the model could be instituted. Crucially, it demands that the manufacturers fully fund the assessment of the safety of the new psychoactive substances, to establish if they are low-risk, before they can be offered to consumers as a licensed and regulated product. This is in contrast to the reactive prohibition regime, which at best assesses drugs once they are already in the unregulated circulation.

There are no perfect solutions in the world of drug policy. Drug use is inherently risky and the appetite for them seems to be a natural human trait. The task then is to minimise the harms,

[1] The Home Secretary gained powers to create Temporary Class Drug Orders in 2011. These enabled a drug to be banned 'temporarily' (although in practise none of the bans have been temporary) without the typical full assessment of available evidence by the Advisory Council on the Misuse of Drugs (ACMD). The threshold criteria for a drug to qualify for a TCDO were minimal, for example if the ACMD agreed that the drug was (a) likely to be 'misused' (i.e. used), and (b) 'capable' of having harmful effects.

and indeed to maximise their potential benefits. Since the drug market is an interconnected system regardless of the arbitrary territories claimed by the different UK laws in operation, this report argues that the challenge of NPS is best understood and addressed in the context of the challenge of drugs and the risks associated with their use more generally.

It would be safer for the consumer if they could satisfy their desire for a psychoactive substance with a compound which has been certified by a reputable body as being of acceptably low risk. It is time that governments accept that some of their citizens seek to alter their consciousness in ways other than consuming alcohol or coffee, and make it possible to meet this demand in the safest possible way, with all the necessary controls to minimise harmful use. A paradigm-crisis such as that caused by NPS can set the stage for a paradigm shift. The regulated availability of a small selection of classical psychoactive products, alongside the regulation of a select few NPS that pass stringent safety testing, could satisfy virtually all that the consumer demands in their quest to alter their consciousness.