

Release is the national centre of expertise on drugs and drugs law. The organisation, founded in 1967, is an independent and registered charity. We are delighted to submit a consultation response to the ACMD's call for evidence in respect of Nitrous Oxide (submitted by email to ACMD@homeoffice.gov.uk on 21/02/2023).

Section 2: Social Harms of Nitrous Oxide

Q3. Have you experienced any of the below social harms of nitrous oxide use within your local area?

(Please see the below details from the ACMD [Standard Operating Procedure](#))

Q3a. Crime against others (Yes or No)?

Social harms to victim of crime; loss of economic support for family members; increase in acquisitive crime, growth in serious and organised crime, fear of crime leading to a loss in confidence in formal criminal justice structures; fraud and money laundering; corruptions of public official and public office

No. Release runs a national helpline receiving hundreds of calls a month about drugs, drug related harms, and drug law enforcement. We have received no calls relating to nitrous oxide, except in relation to the legal status of the substance under the PSA 2016. We have received absolutely no reports of nitrous oxide being related to crime against others.

Release also operates legal clinics, supporting the needs of people who have a history of drug dependency, seeing approximately 1000 clients a year across 11 London boroughs. Whilst many of our clients are victims of crime and/or police harassment, none have reported that this is linked to nitrous oxide.

Q3b. Community costs (Yes or No)?

Harms resulting from the impact of drug use, drug markets, and legislative responses on social cohesion, community reputation, perceptions of community safety, and stigmatisation.

If yes, please provide details and supporting evidence on the scale of impact.

No, please see our answer to 3Qa, which applies equally to Q3b. The only community cost we have witnessed is the over-sensationalized reporting of nitrous oxide by the media, which uses terms such as "hippy crack" and has the inevitable consequence of stigmatising young people.

Q3c. Environmental damage (Yes or No)?

Harms resulting from littering of drugs or drug paraphernalia. Harms resulting from the production of drugs including environmental contamination, deforestation, land (re)appropriation, and unsustainable agricultural and production practices.

If yes, please provide details and supporting evidence on the scale of impact.

No. Although concerns about littering have been raised, predominantly linked to the use of small canisters, environmental damage is perhaps too strong a term. Any potential nuisance and littering caused by small cannisters is surely encompassed by existing littering laws and can thus be dealt with accordingly. Criminalisation of possession, creating a criminal record for young people that can impact on their life chances, is a disproportionate response to the problem of littering.

Littering could be addressed by having a recycling scheme for the cannisters, this would also address some of the broader environmental impacts, which although negligible, could be resolved through such a scheme.

Please see the submission from our colleagues at DrugScience, which we endorse, addressing the broader environmental impacts.

Q3d. Developmental (Yes or No)?

Including family adversity, economic and emotional wellbeing, and harms resulting from adverse childhood experiences (ACEs) directly and indirectly related to parental/family drug use.

If yes, please provide details and supporting evidence on the scale of impact.

No, nitrous oxide does not contribute to developmental harms. A conviction for possession of a controlled drug does, however, cause significant development harms and can negatively impact on economic and emotional wellbeing. Please see our response to Q5 for more detail.

Q3e. Dependence potential (Yes or No)?

What is known about antisocial or criminal behaviours associated with the drug or with drug-seeking behaviour?

If yes, please provide details and supporting evidence on the scale of impact.

There is no evidence to support the idea that the dependence potential of nitrous oxide will lead to anti-social (except for littering – please see Q3c) or criminal behaviours. There is also little to no evidence to suggest that nitrous oxide use leads to dependency.

Q3f. Accidents- traffic, industrial or personal (Yes or No)?

Including harms related to fatal and non-fatal accidents, property damage, loss of earnings, social costs of injury direct costs (e.g. emergency and health services, courts, traffic delay expenses).

If yes, please provide details and supporting evidence on the scale of impact.

No. Please see the comments made by DrugScience which we endorse.

Section 3: Health Harms of Nitrous Oxide

Q4. Have you experienced any of the below health harms of nitrous oxide use within your local area?

Q4a. Physical health harms (Yes or No)?

Mortality, neurological, cardiovascular, respiratory, blood/ nutrition, musculoskeletal, multiple.

If yes, please provide details and supporting evidence on the scale of impact.

There are reports of increasing hospital admissions related to use of nitrous oxide, and there have been a very small number of deaths recorded resulting from nitrous oxide use.

According to the Office for National Statistics, between 2001 and 2020, there were 56 registered deaths involving nitrous oxide in England and Wales, with 45 of those having been registered since 2010 (Office for National Statistics, 2022; EMCDDA report, 2022). For context, in 2019-2020, 8.7% of 16- to 24-year-olds (around 549,000 individuals) reported using nitrous oxide in the last 12 months from the time of the survey (UK Home Office, 2020), with additional thousands of individuals outside of the 16- to 24-year-old bracket also reporting use of nitrous oxide in the past 12 months.

As our partners at DrugScience have noted, in most cases, the cause is accidental asphyxiation from breathing the gas using a mask or plastic bag over the head without sufficient oxygen ([Barthalamew, 2021](#)). On this point, there have been no public campaigns to better educate young people on the dangers of these methods, or the promotion of techniques to reduce the health harms which result from dangerous modes of consuming nitrous oxide or from overuse of nitrous oxide.

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On the latter point, since 2016 there has been a rise in physical health harms resulting from nitrous oxide use, which coincides with the increasing availability of large cylinders of nitrous oxide, which contain 15 kg of the gas, relative to the older small 8-gram cartridges of nitrous oxide (EMCDDA report, 2022). Once again, no public campaigns to support managed use of this substance have been undertaken, leaving third sector organisations to attempt to fill the gap while thousands of young people go without necessary information on managing quantity and frequency of intake.

Criminalising possession will not result in lower health harms for individuals, and may in fact increase harms as has been evidenced with other drugs that have been controlled under the MDA 1971 ([Home Office, 2017](#)). It also increases the risk of people not seeking support, including emergency help, due to fear of police and punishment (please see Q5 reference to the Higher Education Policy Institute report of 2022 which highlighted young people's reluctance to seek help for this reason).

Q4b. Psychological health harms (Yes or No)?

Intoxication, mood disorders, memory disorders, anxiety, psychological dependence and addiction.

If yes, please provide details and supporting evidence on the scale of impact.

Like many drugs, nitrous oxide may have negative effects of the mental health of individuals with pre-existing or predisposed mental health disorders ([Jay, 2008](#)). While some nitrous oxide users will develop patterns of compulsive use, there is little evidence for "true metabolic addiction (tolerance of dosage or physical withdrawal)" (ibid).

In a recent systematic literature review of nitrous oxide research, only in a minority of hospital presentations did nitrous oxide users experience psychological health harms. Those harms were hallucinations, delusions, and mood disturbances ([Marsden, Sharma, and Rotella, 2022](#)).

Please refer to our response to Q4a on the concerning lack of public information campaigns to support safer use of nitrous oxide, helping to avert potential physical and psychological health harms produced by the use of nitrous oxide, particularly via the overconsumption or particularly high-risk modes of consumption.

Section 4: Legitimate Use

Q5. Are you aware of legitimate sale of nitrous oxide within your local area (Yes or No)?

If yes, what uses are you aware of?

There are a range of catering suppliers across London that supply nitrous oxide for legitimate use in commercial kitchens.

Q6. Are you aware of any shops/suppliers of nitrous oxide that are not 'legitimate' within your local area (Yes or No)?

If yes, have any steps been taken to target this?

No.

Section 5: Current Controls

Q7a. Have you introduced Public Spaces Protection Orders (PSPOs) or any other powers related to the use of nitrous oxide (directly or as part of larger issues) (Yes or No)?

If yes, please detail these.

The Anti-social Behaviour, Crime and Policing Act 2014 empowers Local Authorities to make PSPOs under two conditions. The first condition requires that a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect. The second condition is that the effect, or likely effect of the activities a) is, or is likely to be, of a persistent or continuing nature, b) is, or is likely to be, such as to make the activities unreasonable, and c) justifies the restrictions imposed by the notice. A PSPO can stipulate positive or negative obligations on those in the area, breach of which, without reasonable excuse, is a criminal offence punishable by way of a fixed penalty notice of up to £100, or prosecution in the magistrates' court.

These are wide-ranging powers, with no central governmental or judicial oversight prior to the creation of a PSPO. In addition, as set out by the human rights campaign group Liberty, PSPOs are very difficult to challenge and challenges are not amenable to legal aid, effectively precluding the majority of the population from seeking to raise legitimate issues in the courts. This restricts access to justice for those who will be most vulnerable to the enforcement of PSPOs – those living in socioeconomically deprived, overpoliced areas. This restricts access to justice for those who will be most vulnerable to the enforcement of PSPOs – those living in socioeconomically deprived, overpoliced areas.

Liberty identify the extent to the abuse of this power, including PSPOs targeting “foul and abusive language”, golf equipment and gatherings of two or more people. They also highlight the troubling incentivisation of private companies to issue PSPOs under local authority contracts. We share Liberty's concerns around the effective criminalisation of the homeless and foresee additional harms associated with PSPOs issued against Nitrous Oxide use.

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Issuing PSPOs in relation to the use of Nitrous Oxide is a grossly disproportionate and likely ineffective measure. Young people are the most frequent users of Nitrous Oxide, but those under 18 cannot lawfully be given a penalty notice. It is therefore more likely, particularly if Nitrous Oxide becomes regulated by the Misuse of Drugs Act 1971, that young people would be additionally over-subjected to already overused police stop and search powers, arrest, charge and prosecution. As set out below, the criminalisation of the possession of controlled substances has been shown time and again to be an ineffective and unethical exercise of public power and the criminal regulation of Nitrous Oxide would serve only to exacerbate the harms inherent to that system.

Q7b. If you answered yes to Q7a), do you evaluate the effectiveness of these powers (Yes or No)?

If yes, please share your findings.

N/A

Q8a. Do you have any other local measures in place or other targeted campaigns and activities surrounding the use of nitrous oxide (Yes or No)?

For example, promoting awareness of potential harms or harm reduction initiatives.

If yes, please detail these.

Yes. As is usually the case NGOs have taken on the vital role of educating the public on safer use of nitrous oxide, and the potential harms, with limited resources. Organisations like Release, DrugScience, the Global Drug Survey and many others nationally and locally have been providing much needed information to young people.

If the ACMD wants to reduce the limited harms related to nitrous use, which are largely about dose (related to cannister size), frequency and route of administration, then it should recommend that the Government fund a national campaign on how to reduce those harms. This is a proportionate and effective response, that could arguably see a significant fall in the already small numbers seeking emergency medical support.

Q8b. If you answered yes to Q8a, do you evaluate the effectiveness of these measures or activities?

If yes, please share your findings.

N/A

Q9a. Do you have any partnerships with other local stakeholders (e.g., housing or police) to reduce the harms of nitrous oxide (Yes or No)?

If yes, please detail these.

N/A

Q9b. If you answered yes to 9a), do you evaluate the effectiveness of these partnerships?

If yes, please share your findings.

N/A

Q10. How much police time is spent on issues related to nitrous oxide?

Police spend a disproportionate amount of time and resources enforcing drug laws. This exercise of public power is most heavily carried out in areas of social deprivation, and disproportionately against those from Black or minority ethnic communities.

Release [reported](#) on the racial injustice associated with the enforcement of drugs laws, in particular in relation to the exercise of police stop and search powers. We made a number of key findings, including:

- Since 2010/11 more than 80 per cent of drug offences recorded by police have been possession offences and more than 60 per cent have been for cannabis possession. Extrapolating from these figures indicated that more than a third of all stop-searches are for suspected cannabis possession offences (the exact proportion varies from 34 to 39 per cent depending on the year). It follows that police forces are making operational decisions to target low-level drug possession offences over other crimes.
- Even as the use of stop search powers declined over time, disproportionality on racial lines increased, indicating that the remaining use of the powers is more heavily concentrated on Black and minority ethnic groups. Black people were stopped and searched at more than eight times the rate of whites in 2016/17. Asian people and those in the 'mixed' group were stopped and searched at more than twice the rate of whites.
- Stop-searches for drugs are more disproportionate than stop-searches for other offences. Black people were stopped and searched for drugs at almost nine times the rate of whites, while Asian people and those in the 'mixed' group were stop-searched for drugs at almost three times the rate of whites.
- However, the 'find' rate for drugs is lower for black than white people suggesting drug searches on black people may be based weaker grounds for suspicion than those on white people.

If Nitrous Oxide becomes regulated by the Misuse of Drugs Act 1971, there is a real risk of the exacerbation of these harms and further damage to communities that already suffer from racist policing.

Q11. Do you have any suggestions for wider controls that could be taken surrounding the use of nitrous oxide? What are your reasons for these suggestions?

We endorse DrugScience's recommendations, specifically:

- An effective evidence based educational and harm reduction campaign aimed at young people.
- Health warnings on cannisters.
- Limiting the number of cannisters/ cartridges that can be purchased at one time.
- A recycling campaign for cartridges, and we would add with the possibility of deposit/refund scheme.

Ultimately, the main issues here are littering, and for a very small number (compared to the level of use), health risks. Potentially criminalising hundreds of thousands of young people for what is a relatively safe substance, one that is much safer than alcohol or any other controlled substance, would fly in the face of what is proportionate and necessary, and would cause so much more harm.

Section 5: Any Other Comments

Existing legislative attempts to reduce or eliminate drugs use have been ineffective. Seeking to regulate the use of Nitrous Oxide through the criminal justice system will serve only as the latest in a decades-long international history of failed attempts to eliminate drug use by punitive means. The Home Office's own [2014 review](#) of overseas policy approaches found no correlation between the harshness of penalties and the rate of adult drug use. Its [2017 evaluation](#) of the UK's 2010 Drug Strategy found that despite a £1.6billion expenditure on law enforcement in 2014/15, there was little impact on the supply of drugs. Conversely, Release has found no statistically significant impact on the upward prevalence of drug use in countries that have decriminalised the possession and use of drugs.

The existing system of criminalisation also causes or exacerbates harms. Again, the Home Office in its 2017 evaluation took note of the "unintended consequences" associated with drug interdiction, including: increased violence in the market place resulting from enforcement activities; criminalisation negatively impacting on employment prospects; and parental imprisonment, which can have dire consequences for children, increasing the risks of child offending, experience of mental health problems, and problematic drug use.

Criminalisation and fear of punishment also hinders people seeking the support they need in emergency situations. A recent [report](#) from the UK's Higher Education Policy Institution (HEPI) into illicit drug use amongst students found that 29 per cent feared punishment if they were to disclose their drug use to their institution. This report also cited one study where 16 per cent of students who experienced or witnessed a "scary experience" did not go to hospital or seek help. While the risks associated with the use of Nitrous Oxide are minimal, regardless, young people,

who are most associated with the use of Nitrous Oxide, should not be prevented from accessing help where needed out of fear of criminal sanctions.

As above, the enforcement of existing drugs laws is disproportionately along socioeconomic, racialised and racist lines, despite drug use itself being ubiquitous across these comparators. Our research, linked above, shows that the likelihood of prosecution increases more than tenfold for Black people. There is nothing to indicate that this trend of selective and prejudicial enforcement will somehow disappear if Nitrous Oxide is criminalised and policed in the same way as other substances.

Beyond the initial harms associated with enforcement in the criminal justice system, there are lasting consequences for those affected. A criminal record irreparably damages a person's employment and life prospects. This can extend to the loss of housing and the restriction on an individual's ability to travel overseas. In addition, there are broader economic consequences as a result of the criminalisation of drug use and possession. One 2013 [study](#) estimated a total loss of earnings of just over £100m of the 28,000 cannabis arrestees in 2010.

The individual and societal harms associated with drug use or possession occur within a legislative framework that fails in its stated aim to reduce or eliminate the use of drugs. There is no evidence to support the efficacy of applying this broken system to the regulation of Nitrous Oxide. Instead, it is imperative that we pursue policies that remove the risk of criminal sanction and that legal markets for the production and supply of currently controlled substances.