

## **Joint submission to the Public Bill Committee** **into the Psychoactive Substances Bill**

[Release](#) is the UK's centre of expertise on drugs and drug laws, providing free and confidential legal and drug services to people who use drugs and/or those caught up in the criminal justice system. The organisation campaigns for evidence-based drugs policies and for reform of the UK's current drug policy, with a specific call for the end of criminal sanctions for possession offences. Release has Consultative Status with the UN Economic and Social Council

[Transform](#) is a UK-based charity and think tank producing policy analysis on, and advocating for, an end to the failed, enforcement-based 'war on drugs' and its replacement with a responsible system of market regulation, for almost 20 years. Transform operates in the UK and internationally and has been awarded Consultative Status with the UN Economic and Social Council.

We welcome the opportunity to submit evidence to this Committee. We acknowledge the potential health harms associated with Novel Psychoactive Substances ('NPS') and the inadequacy of the current legislative response to these emerging substances. However, we are of the view that the Government's proposed blanket ban of such substances is unworkable, likely to be counterproductive, and that the legislation itself is imprecise and unwieldy. It is Transform's and Release's opinion that far more could be done to reduce the harms of these substances through a review of drug policy as a whole, looking at both controlled substances and NPS, examining how the markets interact and finding solutions that are firmly based on principles of public health and human rights.

In addition to an analysis of specific clauses, Release and Transform are keen to highlight the following key observations:

- 1. The Bill will not achieve its stated aims of disrupting the trade in NPS and protecting UK citizens from their associated harms**

**Evidence from two other countries that have implemented a blanket NPS ban demonstrates that such legislation does not reduce prevalence and can lead to increased social and health harms.**

Ireland's 2010 Psychoactive Substances Act has been held up as a precedent as it ended most retail shop sales, and led to the closure of many so-called 'head shops'. In its explanatory note, the UK government specifically cites Ireland as the Bill's model: '*the Government announced its intention to develop proposals for a blanket ban similar to that introduced in Ireland in 2010*'.<sup>1</sup> Despite these head shop closures, use of NPS amongst young people aged 15-24 years in Ireland is today the highest in the EU, and has increased since the 2010 ban, from reported lifetime use of 16% in 2011 to 22% in

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<sup>1</sup> UK Home Office, 'Psychoactive Substances Bill [HL]: Explanatory Notes,' May 28, 2015, <http://www.publications.parliament.uk/pa/bills/lbill/2015-2016/0002/en/16002en.pdf>

2014<sup>2</sup>. Rather than disappear, reports indicate that the market has simply shifted to illicit street and online markets.

After banning the manufacture, sale and advertising of NPS in 2010, Poland saw the number of NPS-induced poisonings rise dramatically from 562 cases in 2010 to 1,600 cases in the first ten months of 2014.<sup>3</sup> The emergence of an unregulated online market, as well as the incorporation of the NPS trade into the traditional criminal market is thought to be behind this increase. The case of Poland highlights that banning these substances has done nothing to alleviate their potentially serious health harms, or to protect vulnerable younger users who comprise most of the market. Questions should be asked as to whether the informally regulated ‘head shops’ at least served as some sort of filter, reducing access for underage customers, limiting access to more unknown substances and potentially providing harm reduction advice to users on how to consume more safely (even though this would potentially place them at greater risk of prosecution).

The outcomes in Poland and Ireland are unsurprising. The evidence on the impact of prohibition has increasingly established that this policy has little or no impact on levels of use— instead tending to merely displace markets and increase harms. In fact, the Home Office’s own report, ‘Drugs: International Comparators’ (October 2014), stated, ‘Looking across different countries, there is no apparent correlation between the “toughness” of a country’s approach and the prevalence of adult drug use’<sup>4</sup>. Similar conclusions have been drawn by the World Health Organisation, The Organisation of American States, and the European Monitoring Centre on Drugs and Drug Addiction and Home Affairs Select Committee.

We fully endorse the observation of the Chair of the Home Affairs Select Committee that ‘there should have been an impact assessment of the ban of NPS in Ireland before the Bill was published’<sup>5</sup> and urge the committee to call for the progress of the bill to be halted until such an impact assessment is undertaken, alongside a detailed expert consideration of the likely impacts of a blanket ban explored – with the support of the ACMD. To proceed in the absence of such analysis would be reckless and negligent.

**2. The Bill is poorly drafted and will be unworkable on a number of legal grounds including the difficulty in proving the psychoactivity of a substance in court proceedings**

Ultimately, this Bill bans everything that has the potential to have a psychoactive effect, meaning substances will have to be exempted from the Bill so as not to be subject to the proposed offences.

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<sup>2</sup> European Commission, ‘International Day against Drug Abuse: new study shows increasing use of ‘legal highs’ among young Europeans,’ June 26, 2014, [http://europa.eu/rapid/press-release MEMO-14-445\\_en.htm](http://europa.eu/rapid/press-release_MEMO-14-445_en.htm)

<sup>3</sup> Polish REITOX Focal Point. ‘2014 National Drug Report: Poland – New developments, trends, and in-depth information on selected issues,’ EMCDDA, 2015, p. 131. <http://www.emcdda.europa.eu/publications/national-reports/poland-2014>

<sup>4</sup> Home Office, ‘Drugs: International Comparators,’ October, 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/368489/DrugsInternationalComparators.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368489/DrugsInternationalComparators.pdf) pg. 51

<sup>5</sup> Rt Hon Keith Vaz MP, commenting on publication of the Home Affairs Select Committee Inquiry Report into the Bill, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news-parliament-2015/151023-psych-subs-report-pubn/>

However, we are seriously concerned about the lack of legal certainty associated with this legislation – a principle which is recognised by national and international law (discussed at point 3). The use of the precautionary principle means the Bill is procedurally different to legislation set before, and therefore undermines the whole harm-led rationale that currently exists within our drugs laws – how effective this is debateable - but it is at least based on the principle of assessment of harm. As the Advisory Council on the Misuse of Drugs (‘ACMD’) has highlighted, meaningful harm assessments are now entirely absent from the new default blanket ban that makes no distinction between substances despite huge variation in potential risks.<sup>6</sup> In fact, as the Home Affairs Select Committee has highlighted it is this complete lack of consultation with the ACMD, civil society and industry in the pre-drafting process that has contributed to many of the problems implicit in the Bill<sup>7</sup>.

As has been widely flagged by multiple expert commentators, including the ACMD, the definition of psychoactivity in the draft Bill is extremely vague and broad, and, if taken literally, potentially encompasses thousands of plants, spices, herbal remedies, over-the-counter medicines, and household and industrial products. A range of substances – most obviously alcohol and tobacco - that clearly come within the given definition of ‘psychoactive substances’, and are certainly of equal or greater risk than most NPS, are exempt. This reflects a fundamental legal and logical inconsistency, raising issues around fairness, proportionality and equality before the law. The rare occasions when the Government has attempted to account for the distinction between alcohol/tobacco and illicit drugs have only underlined this fundamental legal inconsistency by citing historical and cultural reasons for the anomaly - not scientific risk or health impact assessments.

Apart from the arbitrary separation of substances there is a much more pertinent legal problem of establishing that a substance is psychoactive for the purposes of the Bill. We would agree with the ACMD and its very simple conclusion that ‘psychoactivity cannot be definitively proven’<sup>8</sup>.

As the Expert Panel (originally convened by the Home Office to make recommendations on NPS legislation rather than consulting the ACMD) acknowledges, for new and untested substances, legally establishing that something is psychoactive is a real challenge that likely requires randomised controlled trials on humans, which would be impractical (particularly for the 100s of new substances emerging each year) and unethical. Clearly, in vitro or animal testing would not be sufficient to establish the legal test of psychoactivity, and whilst common sense may indicate that a substance is psychoactive this is not a sufficient threshold for legal proceedings. The ACMD has made some suggestions<sup>9</sup> but these, by its own admission remain inadequate and problematic.

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<sup>6</sup> Advisory Council on the Misuse of Drugs, ‘ACMD letter to the Home Secretary: Psychoactive Substances Bill,’ 13 July 2015 <https://www.gov.uk/government/publications/acmd-letter-to-the-home-secretary-psychoactive-substances-bill-13-july-2015>

<sup>7</sup> Home Affairs Select Committee, Psychoactive substances - First Report of Session 2015–16, 23 October 2015, <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmhaff/361/361.pdf>

<sup>8</sup> Advisory Council on the Misuse of Drugs, ‘Re: Definitions for Psychoactive Substances Bill’ 17 August 2015 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/454039/Definitions\\_report\\_final\\_14\\_august.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454039/Definitions_report_final_14_august.pdf)

<sup>9</sup> Advisory Council on the Misuse of Drugs ‘Re: ACMD’s final advice on definitions for Psychoactive Substances Bill’ 23 October 2015 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/470421/ACMD\\_definitions\\_advice\\_final-23-October-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470421/ACMD_definitions_advice_final-23-October-2015.pdf)

The reality is that attempts to clarify the definition are a legal and scientific minefield that will cause confusion and wasted resources across the criminal justice system as they are tested by experts in court. There are also a range of important outstanding questions relating to the degree of psychoactivity needed to qualify it under the ‘psychoactive’ definition, and how this will in turn relate to different effects on different individuals, as well as to issues of dosage and potency. This critical issue is not captured in the legislation. The use of the terms ‘it [NPS] affects the person’s mental functioning or emotional state’ will likely be subject to the *De Minimis*<sup>10</sup> rule, and it appears that no discussion has been had on this matter.

**3. In its current state the legislation lacks legal certainty surrounding what substances may lead to commission of an offence.**

Legal certainty is an established principle of international law contained within Article 7 of the European Convention of Human Rights, which states that:

*“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.”*

In order for this to be realised an offence must be clearly and precisely defined. The House of Lords, in *R v. Rimmington and R v. Goldstein [2005] UKHL 63* confirmed this, with Lord Bingham stating:

*“There are two guiding principles: no one should be punished under a law unless it is sufficiently clear and certain to enable him to know what conduct is forbidden before he does it; and no one should be punished for any act which was not clearly and ascertainably punishable when the act was done.”*<sup>11</sup>

This Bill fails to meet either of these requirements. This is despite the fact that the principles of legal certainty have been firmly recognised by domestic jurisprudence, which establishes that ‘an offence must be clearly defined in law’<sup>12</sup> and also that ‘a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail’<sup>13</sup>. In its current form the Bill makes it impossible for:

- An individual to understand whether many substances will be considered psychoactive;
- The police to determine whether a substance is psychoactive and an offence has been committed;
- The CPS to establish whether it is appropriate to charge with an offence;

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<sup>10</sup>*De minimis* is a legal term which dictates that the law should not be concerned with trifling matters. In the context of the PSB there is a real risk that when establishing whether a substance is psychoactive for the purposes of the Act, some attention must be given by the Courts to the degree it ‘affects the person’s mental functioning or emotional state’. If the substance has a fleeting effect like, for example, poppers and nitrous oxide, the Court may decide that the *de minimis* rule will apply.

<sup>11</sup>*R v. Rimmington and R v. Goldstein [2005] UKHL 63* at Paragraph 33

<sup>12</sup>*S.W. v. United Kingdom: C.R. v. United Kingdom (1995) 21 EHRR 363* at Paragraph 35

<sup>13</sup>*Sunday Times v. United Kingdom 91979) 2 EHRR 245* at Paragraph 49

- A lawyer to properly advise their client on plea and potential sentence; and
- A Judge or jury to determine guilt or otherwise

The need for the rule of law to be properly considered in the drafting of new legislation is clearly demonstrated by the formation of the All-Party Parliamentary Group on the Rule of Law whose “purpose is to promote parliamentary and public discussion of the rule of law as a practical concept.”<sup>14</sup>

In addition, there are problems with the Schedule of exemptions. For example, if something is considered exempted, is it indefinitely exempted regardless of whether it is consumed for its psychoactive properties? To put this into context the exemption for food is:

*‘Any substance which— (a) is ordinarily consumed as food, and (b) does not contain a prohibited ingredient. In this paragraph— “food” includes drink; “prohibited ingredient”, in relation to a substance, means any psychoactive substance— (a) which is not naturally occurring in the substance, and (b) the use of which in or on food is not authorised by an EU instrument.’*

If we take nutmeg, a substance that is thought to have very potent psychoactive properties<sup>15</sup>, as an example, it should be exempted from the Act as it is ‘ordinarily consumed as food’ and the psychoactive element is ‘naturally occurring’. However, what if it is being consumed for its psychoactive effect? Does it still fall within the ‘ordinarily consumed’ definition, or does it become a psychoactive substance which is caught by the legislation? Such hypotheticals highlight the fundamental weakness of the legislation as currently drafted.

#### **4. The PSB is in contravention of the ‘Good law initiative’, introduced by the Government under the previous Coalition.**

The Office of Parliamentary Counsel states that ‘good law’ is law that is<sup>16</sup>:

- Necessary
- Clear
- Coherent
- Effective
- Accessible

It is our position that the Bill meets none of these objectives and is unworkable in practice.

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<sup>14</sup>All-Party Parliamentary Group on the Rule of Law Media Release, 19<sup>th</sup> June 2015, [http://binghamcentre.biicl.org/documents/662\\_appg\\_rule\\_of\\_law\\_press\\_notice\\_2015-06-19.pdf](http://binghamcentre.biicl.org/documents/662_appg_rule_of_law_press_notice_2015-06-19.pdf)

<sup>15</sup>Dorsey, S, ‘Effects of Nutmeg & Myristicine’ Erowid [https://www.erowid.org/plants/nutmeg/nutmeg\\_info3.shtml](https://www.erowid.org/plants/nutmeg/nutmeg_info3.shtml)

<sup>16</sup>Cabinet Office and Office of the Parliamentary Counsel, ‘Government Guidance - Good Law,’ 16 April 2013 <https://www.gov.uk/guidance/good-law>

### Necessary

Whilst the emergence of NPS is worrying, especially in light of the unknown harms associated with a specific new substance or group of substances, the media and political attention given to the issue potentially outweighs the realities of the situation in terms of prevalence. An estimated 6.1% of 16–24 year olds have admitted trying NPS, and of that number 2.8% tried an NPS over the previous 12 months.<sup>17</sup> To put this into context, 16.3% of 16 – 24 year olds reported using cannabis in the last year<sup>18</sup>. This is not to downplay the issue of NPS, but it is important to expose the scale of the problem and to consider a proportionate response. It is our view that the problem could be much more effectively tackled by focusing resources on education and health initiatives rather than criminal justice responses that have proven ineffective in both Ireland and Poland. The proposed legislation is likely to create more harm by driving the market underground into criminal networks, or create a new group of young social suppliers who are willing to buy on the internet and distribute to their friends. Either way, the market will become more harmful under the proposed legislation, not less harmful as intended.

### Clear

The definition of the psychoactivity has been explored above (point 2), but it will undoubtedly be difficult, if not impossible, for people to know the degree of psychoactivity, if any, of a substance in their possession. In addition there are some concerns over the various tests of *mens rea*<sup>19</sup> in the Bill. Firstly, the person accused of an offence will have to have knowledge that the substance is psychoactive, which, as discussed, will be difficult to establish. Secondly, there is a lack of clarity as to the subjective and objective nature of the mental element of the offence in relation to the various offences. For example, in production a person commits the offence if they ‘intentionally produce a psychoactive substance’ and they ‘know or suspects that the substance is a psychoactive substance’.

It would appear here that a subjective test is being applied and the defendant’s actual behaviour is being assessed. However, the test to establish a supply offence is that the ‘person knows or suspects, or ought to know or suspect’ that the substance is psychoactive, meaning the second limb of that definition allows for an objective test i.e. a reasonable person test.

Looking at nutmeg as an example, suppose a group of young people go into a supermarket and purchase a quantity of nutmeg – which is of course exempt from the Bill under the ‘food’ exemption - and when paying for the nutmeg they talk about consuming it to get high, as explored above this disclosure may end the exemption. If so, is there then an onus on a supermarket cashier in those circumstances to know or suspect, or ought to know or suspect, that the substance is psychoactive simply from the overheard conversation? Or, can they reasonably put it down to a joke between friends and continue with the sale? Whilst for some people the psychoactive properties of nutmeg may be well known, it cannot necessarily be inferred that this is knowledge that all or most people ought to possess. If that level of knowledge were to be implied across the board, supermarket cashiers

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<sup>17</sup> Home Office, 2015, Crime Survey for England and Wales: Drug Misuse Declared, <https://www.gov.uk/government/statistics/tables-for-drug-misuse-findings-from-the-2014-to-2015-csew>

<sup>18</sup> Ibid

<sup>19</sup> *Mens rea* is the mental element of the offence. In most criminal offences the prosecution must establish that the person had knowledge, or at least was reckless, that their actions would result in the offence being committed.

would have to be educated about what foodstuffs would ordinarily be exempted but may also be used for their psychoactive effect. Considering the difficulty in establishing psychoactivity it is difficult to see how this would work in practice.

Finally, in order to fully protect themselves against any prosecution for supply, the cashier may feel the need to question all customers about their intended use of nutmeg (and other products), as the final test for supply returns to a subjective one that ‘the person knows, or is reckless as to whether, the psychoactive substance is likely to be consumed by the person to whom it is supplied, or by some other person, for its psychoactive effects’.

There are a number of other aspects of the Bill that lack clarity, much of which we covered in detail in our amendments to the Bill at the Lords stage<sup>20</sup>.

### **Coherent**

The points raised for the discussion on clarity above could also apply to this discussion; but, to focus on one clear example of the lack of coherent reasoning behind the Bill we need only look at the issue of offences related to personal use. Whilst it is welcomed that the Government has decided not to criminalise possession of NPS, heeding the position of the Expert Panel that acknowledged the criminalisation of possession/use of NPS would have a negative impact on young people, the decision to criminalise importation for personal use is at odds with this position. Since online purchases are one of the main sources for these substances, this could put a lot of young people who obtain NPS via such sources at risk of prosecution, something the Expert Panel and Government were at pains to avoid.

Additionally contributing to the Bill’s incoherence is the fact that it makes production of NPS for personal use an offence. Despite this similarly being contrary to the Government’s position of not wanting to criminalise young people, these drugs in reality are produced en masse; to produce an amount within the realms of personal consumption is highly improbable.

### **Effective**

Please see the sections above on the feasibility of proving psychoactivity (point 2) and the impact of similar bans in Ireland and Poland (point 1), both of which demonstrate the inefficacy of a blanket ban approach.

### **Accessible**

The importance of accessibility is directly linked to Article 7 of the ECHR and the principle of legal certainty discussed above (point 3). This is effectively demonstrated in *Rimmington*<sup>21</sup> where Lord Bingham states:

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<sup>20</sup> Release, ‘Psychoactive Substances Bill – proposed amendments’  
[http://www.release.org.uk/sites/default/files/pdf/publications/Psychoactive%20Substances%20Bill%20amendments%20FINAL\\_0.pdf](http://www.release.org.uk/sites/default/files/pdf/publications/Psychoactive%20Substances%20Bill%20amendments%20FINAL_0.pdf)

<sup>21</sup> *R v. Rimmington and R v. Goldstein* [2005] UKHL 63

*‘Article 7 therefore sustains his [the defence counsel’s] contention that a criminal offence must be clearly defined in law, and represents the operation of the ‘principle of legal certainty’.*<sup>22</sup>

Lord Bingham goes on to cite *S.W. v United Kingdom: C.R v United Kingdom*<sup>23</sup>:

*‘The principle enables each community to regulate itself “with reference to the norms prevailing in the society in which they live. That generally entails that the law must be adequately accessible. An individual must have an indication of the legal rules applicable in a given case and he must be able to foresee the consequences of his actions, in particular to be able to avoid incurring the sanction of the criminal law’.*

### **Amendments proposed by Members of Parliament**

The Government published a Notice of Amendments<sup>24</sup> to the Psychoactive Substances Bill on 23<sup>rd</sup> October 2015, including a number of new clauses. We provide an analysis of what we submit are the most relevant clauses at Appendix A of this submission, but draw the Committee’s attention in particular to NC2 which creates a new offence of “Possession of a psychoactive substance in a custodial institution”.

This is a significant and worrying departure from the government position, and that of the expert group, which has always been that this Bill was not intended to criminalise possession of psychoactive substances covered by the Bill. Possession of a psychoactive substance outside of a custodial institution is not criminalised, and no explanation is provided as to why it is deemed necessary to make this distinction. There is no justification to criminalise prisoners more harshly simply because of their already vulnerable position. Whilst there has been some concern expressed around the use of psychoactive substances, particularly synthetic cannabinoids, in prisons the creation of this offence will not deter use in these settings. As evidenced by numerous reports, including the government’s own<sup>25</sup>, a policy based on punitive user level sanctions has little impact on levels of use.

We urge the committee to reject this amendment, and encourage the use of evidence based prevention, treatment and harm reduction interventions in prisons – in line with established best practice, and technical guidance provided by the WHO, UNAIDS, UNODC technical guidance<sup>26</sup>

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<sup>22</sup> Ibid at page 23, line 34

<sup>23</sup> (1995) 21 EHRR 363

<sup>24</sup> <http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0063/amend/pbc0632210a.1-7.html>

<sup>25</sup> Home Office, ‘Drugs: International Comparators,’ October, 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/368489/DrugsInternationalComparators.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368489/DrugsInternationalComparators.pdf) at Page 51

<sup>26</sup> UNAIDS, WHO, UNODC ‘Services for people in prisons and other closed settings’ 2014 [https://www.unodc.org/documents/hiv-aids/publications/Prisons\\_and\\_other\\_closed\\_settings/2014\\_guidance\\_servicesforpeopleinprisons\\_en\\_1.pdf](https://www.unodc.org/documents/hiv-aids/publications/Prisons_and_other_closed_settings/2014_guidance_servicesforpeopleinprisons_en_1.pdf)

### **Amendments proposed by Release and Transform**

There are a number of positive changes to the Bill proposed through the government's own amendments, some of which Release had previously proposed<sup>27</sup>. However, we do not feel that these go far enough and submit that further amendments are necessary. We provide our analysis of those identified clauses at Appendix B of this submission.

### **Conclusions and Recommendations**

Transform and Release have argued strongly that the Bill is unworkable, unwieldy, and that it will increase health and social harms rather than delivering its intended goals. As highlighted by the Home Affairs Select committee, these failings reflect a highly problematic policy development process that entirely bypassed both pre-drafting public consultation (despite Cabinet Office guidelines) and even consultation with the Government's own expert advisory body, the ACMD, despite advice on such matters clearly being the latter's specific remit and area of expertise.

Given this, we hope that the Public Bill Committee will support our recommendation for the Bill to be abandoned in its current form, and that a full review, consultation and evidence-based policy development process be implemented that informs a comprehensive new policy and legislative response to NPS in the UK. It is essential that any policy review include a meaningful impact assessment of Ireland's policy response, something that the Home Office's Expert Panel were not specifically able to deliver in the absence of relevant data.

Furthermore, it is clear that development of such potentially significant new drug legislation around NPS needs to be part of a more comprehensive independent review of the malfunctioning and outdated Misuse of Drugs Act. Such a review has indeed been supported in previous reports by the HASC, as well as by the ACMD, and has had broad support from organisations across the country working on drugs and related issues.

We do, however, recognise that the Government appears determined to push through the blanket ban, despite its near universal lack of support and objections from key centres of expertise. Should this be the case, we hope that a number of key amendments can be made to the Bill to at least curtail or minimise the inevitable negative costs of some of the more egregious elements of the legislation. These have been detailed in the proposed amendments at Appendix B. In addition we propose that:

- Nitrous Oxide ('laughing gas') has been found by the ACMD to have 'few, if any, short term adverse effects'. The ACMD confirmed that 'deaths linked to nitrous oxide are rare (1 in UK in 2011, 5 in 2010)', that 'there is no firm evidence of physical dependence,' and have specifically not recommended a ban<sup>28</sup>. As such, Nitrous Oxide should also be exempt from the Bill alongside alkyl nitrate; it is a low risk drug, and efforts should be focused on education as to safer consumption practices and the potential dangers of more intensive long-term use.

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<sup>27</sup> Release, Proposed amendments to the Psychoactive Substances Bill for House of Lords Committee Stage, June 2015, <http://www.release.org.uk/publications/proposed-amendments-psychoactive-bill-committee-stage>

<sup>28</sup> Advisory Council on the Misuse of Drugs, 'ACMD letter to the Home Secretary on nitrous oxide abuse,' March 2015 <https://www.gov.uk/government/publications/acmd-advice-on-nitrous-oxide-abuse>

- The Bill should be submitted to the All-Party Parliamentary Group on the Rule of Law, for scrutiny and consideration before it moves further through the legislative process.

- Broadening out from the focused nature of the two previous recommendations, there must be a greater shift in the Government's drugs strategy away from an enforcement-led approach to one that is centred on public health and education. The woeful lack of investment in NPS education strategies by Government must be remedied immediately, to spend less than £200,000 over the last 3 years is shocking. We would recommend that before implementing any criminal justice approach the Government explore the impact of a comprehensive fully funded education strategy that encompasses both prevention and harm reduction.

The evidence for effective prevention interventions is growing stronger with most commentators recognising that media campaigns and school programmes which focus on deterrence having little impact. However, interventions that look to build protective factors, for example, peer-based interventions or those that address the underlying reasons for use have shown to have some success.<sup>29</sup> Harm reduction programmes that aim to reduce the harm associated with consumption of various substances have proven to have a significant impact in minimising the risks. The UK has historically been a leader in harm reduction interventions, during the 1990s local Drug Action Teams funded by the Department of Health, launched a number of initiatives aimed at recreational users of drugs, such as MDMA and cocaine, which whilst discouraging use was realistic that some people will use drugs and so provided information on how to use safely. Unfortunately, such programmes no longer seem to be a priority for Government with the FRANK website providing oblique 'just say no' type information. For example, no information is given about dosage in the section on MDMA despite such information potentially saving lives. If the Government is serious about protecting young people's health and keeping them safe then it is unfortunate that their dedicated drugs site does not give the type of information that will achieve this. As such we would like to see serious and significant investment in evidence based education programmes to address NPS use.

- Any new legislation on NPS should be subject to rigorous independent evaluation with key impact indicators agreed in advance. Should the legislation – as predicted – fail to deliver on its intended goals, and/or be associated with serious negative outcomes, it should then be terminated, and alternative policy models developed based on appropriate evidence, review and expert consultation, as should have happened in the first instance. We propose that a robust evaluation framework is mandated by the legislation, and that this evaluation is linked – on a fixed time frame – to a review of the legislation, and full consultation on possible amendments or reforms.

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<sup>29</sup> International Drug Policy Consortium, 2012, 'Drug Policy Guide', IDPC London, <http://idpc.net/publications/2012/03/idpc-drug-policy-guide-2nd-edition>