

## UKDPC Briefing on Drug Control Issues

This short briefing paper was prepared by the UK Drug Policy Commission (UKDPC) for a Question for Short Debate: *Lord Norton of Louth to ask Her Majesty's Government what consideration they have given to establishing a Royal Commission on the law governing drug use and possession.*

Debate to be held Wednesday 9<sup>th</sup> March 2011, from 19.30.

### KEY FACTS

- The Misuse of Drugs Act 1971 (MDA) now controls over 600 substances. Many of these can only be distinguished by expensive chemical analysis.<sup>i</sup>
- Mephedrone unleashed disquiet in the UK about new 'legal highs' when it emerged in the media in March 2009, but it was not the first such drug. BZP, GBL and Spice had all received attention from users and policymakers alike in previous years.
- Equally, mephedrone will not be the last. *The Telegraph* recently reported that a record 40 new synthetic psychoactive substances were identified in 2010.<sup>ii</sup>
- In the past, a wider range of alternative control options have been used to deal with psychoactive substances. Alcohol and tobacco are regulated largely through Trading Standards legislation, while solvents are regulated through the Intoxicating Substances Supply Act 1985. Substances may also be subject to control under medicines control regulations, as recently suggested in the *British Medical Journal*.<sup>iii</sup>
- There is no evidence that the level of classification within the MDA has any effect on consumption. When cannabis was reclassified downward to Class C and then back up to Class B, there was no discernible change in the already downward trend in use.<sup>iv</sup>
- Under the Police Reform and Social Responsibility Bill, the government will have powers to introduce one-year temporary banning orders for new substances while awaiting review by the Advisory Council for the Misuse of Drugs (ACMD). Under these temporary bans, possession for personal use will not be an offence although the police will have the power to seize substances they suspect are banned.
- Penalties for drug possession have a considerable impact on the criminal justice system, despite the fact that forces may prioritise drug supply and production offences. In 2009, over 41,000 people were sentenced for drug possession offences, almost three-quarters of the total sentenced for drug offences. This included over 1,200 people sentenced to immediate custody.<sup>v</sup>

## KEY ISSUES

The MDA is not the only way in which psychoactive substances are controlled, but in recent years it has come to be seen as the main tool for preventing drug use. It is now 40 years old and, in view of the changing landscape of substance use, is ripe for review.

Any review of the law governing drug use and possession should consider a number of issues, including those around enforceability. Given the quantity and wide range of substances controlled under the MDA, enforcement is becoming more and more difficult, and this risks bringing the law into disrepute. Enforcement agencies inevitably make choices about which substances to prioritise, but 'turning a blind eye' to some drugs may appear discriminatory.

However, beyond enforcement, there are a number of broader issues that need to be considered:

- **The inconsistency in our approach to controlling different psychoactive substances is becoming increasingly apparent.**

There has recently been a greater focus on the harms associated with licit psychoactive substances, such as alcohol and nicotine, which has highlighted the inconsistency in our approaches to different substances.

- **Banning substances can itself result in a range of unintended negative consequences.**

As was recognised by Antonio Maria Costa, when he was Executive Director of UNODC, banning substances can have a wide range of negative consequences<sup>vi</sup>:

- A huge criminal black market, with associated violence and other crime;
- Policy displacement (the opportunity costs of high expenditure on enforcement);
- Geographical displacement, such as the development of new producer countries or distribution routes;
- Substance displacement, with new drugs being developed all the time;
- The stigmatisation of people suffering from addiction, which may impede access to treatment and rehabilitation;
- Substances sold on a black market are more likely to be cut with other substances to increase profit, leading to uncertainty around safe dosage levels and exposure to potentially harmful contaminants resulting in health harms or even death;
- People may be criminalised if caught in possession of illicit substances that are nevertheless in widespread use.

These apply to new 'legal highs' as well as other drugs. There is emerging evidence that mephedrone users are still obtaining the drug but now obtain it from drug dealers at higher cost, and that supplies are of poorer quality with the potential that they are cut with harmful substances.<sup>vii</sup>

- **A balanced debate is needed, which considers the impact of bans and the potential benefits as well as the harms from use of psychoactive substances.**

It should also be considered that there may be benefits associated with use of some substances in moderation, as is recognised in the case of alcohol. These may include simply pleasure or the excitement of doing something new, but may also be a way of dealing with problems, including severe physical and mental health problems<sup>viii</sup>, or improving confidence or performance. These will generally be the reasons people take the initial decision to use some drugs.

An oft-mentioned concern for policy-makers is to "send a message" to young people that use of psychoactive substances is harmful. However, for such messages to be credible they also need to acknowledge the factors that attract young people to the use of these substances.

- **The proposed temporary banning power in the Police Reform and Social Responsibility Bill is likely to lead to permanent bans for all new psychoactive substances, regardless of need, enforceability, or negative consequences.**

In the political and legislative systems, there is a fundamental bias towards prohibition. The potential damage should the government fail to ban a substance that is later found to be in any way harmful is likely to be considerable, whereas the damage from banning a substance that is relatively safe is perceived as minimal. This reflects the public debate around drugs in which certain tragic incidents become the focus of media campaigns regardless of evidence, as in the case of some of the supposed mephedrone deaths. Issues of enforceability, enforcement harms, or the potential benefits from use, are not considered, even though they may be significant.

- **Therefore, this suggests that there is a need for a complete review of our approach to drug control in order to produce a single, coherent, overarching framework for regulating all psychoactive substances, such as a Control of Harmful Substances Act. Within this, consideration should be given to the appropriateness of using criminal versus civil sanctions for simple possession.**

**UKDPC, in collaboration with Demos, is reviewing the issues around the control of new psychoactive substances. The report from this work will be published in May 2011.**

## THE UK DRUG POLICY COMMISSION (UKDPC)

We are a registered charity which provides authoritative and objective analysis of UK drug policies and practices. Our mission is to encourage the formulation and adoption of evidence-based drug policies.

## WHO WE ARE

The UKDPC brings together senior and leading figures from policing, public policy and the media along with leading experts from the drug treatment and medical research fields.

## OUR COMMISSIONERS

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<sup>i</sup> See *List of Drugs Currently Controlled Under the Misuse of Drugs Legislation* available at: <http://www.homeoffice.gov.uk/publications/drugs/drug-licences/controlled-drugs-list?view=Binary> (accessed 07/03/2011).

<sup>ii</sup> Gray, R. (2011) *Forty new legal highs made in China are being sold in Britain*, The Telegraph, 15 January 2011, <http://www.telegraph.co.uk/journalists/richard-gray/8247808/Forty-new-legal-highs-made-in-China-are-being-sold-in-Britain.html> (accessed 28 February 2011).

<sup>iii</sup> Evans-Brown, Michael et al (2011); *BMJ* 2011;342:d1101

<sup>iv</sup> See for example Fuller & Sanchez (eds) (2010) *Smoking, drinking and drug use among young people in England in 2009*, Figure 2.3, p23. Available at: <http://www.ic.nhs.uk/statistics-and-data-collections/health-and-lifestyles-related-surveys/smoking-drinking-and-drug-use-among-young-people-in-england/smoking-drinking-and-drug-use-among-young-people-in-england-in-2009>

<sup>v</sup> Based on analysis of sentencing statistics available at: <http://www.justice.gov.uk/publications/sentencingannual.htm> (accessed 07/03/11)

<sup>vi</sup> UNODC (2008) *Making drug control 'fit for purpose': Building on the UNGASS decade*. Statement of the Executive Director of the United Nations Office on Drugs and Crime. Vienna: UNODC <http://www.unodc.org/documents/commissions/CND-Session51/CND-UNGASS-CRPs/ECN72008CRP17.pdf>

<sup>vii</sup> Winstock, A., Mitcheson, L. and Marsden, J. (2010) *Mephedrone: still available and twice the price*. The Lancet, 376, p.1537

<sup>viii</sup> *Drugs and Diversity: Disabled People*, UK Drug Policy Commission 2010