taking drugs seriously

a demos and uk drug policy commission report on legal highs

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Any errors and omissions remain our own.

Jonathan Birdwell
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Nicola Singleton
April 2011

Foreword

The debate about drug control is a long-standing one and shows little sign of receding. The Misuse of Drugs Act is now 40 years old and the calls for its review are becoming more frequent, particularly in the light of the number of new synthetic drugs which are being produced and sold, especially via the internet.

The UK Drug Policy Commission (UKDPC) has, over the past four years, sought to foster a more informed and evidence-based approach to drug policy. But the challenge for society and policy makers faced with these new 'legal highs' is the paucity of robust evidence upon which to make objective decisions. There is then a risk that making a hasty decision about controlling a new drug may, on occasions, make matters worse and increase harms, both to individuals and wider society.

Unfortunately, the debate about drug policy often degenerates into a polarised one, where any pragmatic suggestions for change and improvement will be decried by those on opposing sides of the debate. It was against this background that the UKDPC was genuinely keen to explore with Demos whether and how we might approach this challenge in a fresh way. We are grateful to the AB Charitable Trust for their support to enable us to do this.

Keeping pace with rapid technological developments is challenging to legislators and those responsible for enforcing the law, as the experience from other countries also shows. The conclusions we reach will, we hope, help people to begin to think differently about how society might set about controlling harmful substances, enhance understanding about the legislative options available and stimulate more productive discussion about the steps that could be taken to tackle these issues in this country.

Dame Ruth Runciman
Chair, UK Drug Policy Commission

Executive summary

The emergence of mephedrone triggered a growing disquiet in the UK about 'legal highs': new psychoactive substances that have been manufactured and are made widely available in an uncontrolled and unregulated way to purchase in outlets and on the internet.[1] Unlike cocaine and ecstasy, which have been studied for decades, the effects of these new substances are unknown and untested. This uncertainty combined with easy accessibility presents a major challenge and a potential risk to public health and public order.

And yet they are emerging almost weekly. The *Daily Telegraph* reported that data presented to the Independent Scientific Committee on Drugs showed 40 new substances had emerged by the end of 2010, a new record.[2] In 2009, a previous record 24 new synthetic psychoactive substances were identified.[3] There are now over 600 substances controlled under the Misuse of Drugs Act (MDA) in the UK.[4] With the emergence of manufactured 'legal highs', this number is set to increase drastically.

The ability of traditional approaches to drug control to keep pace with these changes is now in question. As quickly as policy makers make new substances illegal through the MDA, others are being manufactured and put on the market. The danger is that the next substance to emerge could be more dangerous than the previous one. And the speed with which they emerge leaves little time for experts to assess their potential harm. Since the majority of these drugs are produced in China and sold on the internet, their distribution and manufacture are extremely hard to regulate. In the UK, enforcing drug control laws is made increasingly difficult and costly, as only advanced scientific analysis can distinguish between the multitude of white powders and tablets. Moreover, traditional approaches to drug

control based on criminal enforcement can actually exacerbate the harms caused by these drugs. For example, making new substances illegal leaves the trade in the hands of unregulated criminals who constantly adapt their methods of distribution and sustain profitability by cutting their drugs with potentially harmful substances.

As the MDA turns 40 years old this year, this report investigates whether twentieth-century drug control legislation is fit for the twenty-first-century drugs market.

Drug policy is a 'wicked issue'

The challenges posed by new psychoactive substances provide an opportunity to look afresh at drug control policy without recourse to a rerun of older and redundant debates about whether to be 'tough or soft' on drugs. Debate about drug policy tends to reinforce the perception that there are only two extreme options for policy makers: controlling drugs strictly through the MDA with strong enforcement and punishments, or legalising them. Those on each side of the debate present their view as offering the single, most successful solution to the 'drug problem' and drug policy. Yet evidence for the effectiveness of either approach is thin on the ground.

The issue is one of framing. If drug policy is framed as 'a war on drugs' then it is either won or lost and requires a level of national sacrifice (wars are won or lost). If it is framed as the 'drug problem' then there is an implicit assumption that there is a 'solution' (problems have solutions). An alternative way of looking at the issue is to use systems thinking and consider drug policy as a 'wicked issue' to which there is no solution, and no winners or losers. Instead, one seeks an improvement to policy that will be supported by people who otherwise disagree about what is wrong and what the goals of policy are.

A new way forward

This is the aim of our project: to demonstrate the potential benefits of taking a different approach to considering control of

new substances, framing it as a 'wicked issue', and using soft systems techniques to show that it is possible to identify areas for action that people from both sides of the drug control debate can agree would improve drug control policy.

To achieve this we convened two innovative soft system workshops with 12 different key stakeholders attending each. Participants included senior civil servants in relevant government departments and agencies covering enforcement, health, medicines, young people, education and consumer protection, as well as pharmacologists and chemists, frontline workers from a variety of charities, a young person peer mentor and advocates from lobbying organisations from opposite sides of the drug control debate. Together, these stakeholders examined the key issues for control of new psychoactive substances (also known as 'legal highs') in a way that reflected their differing perspectives. They identified areas of agreement about the elements of the 'problem' as well as options for action.

The project also involved an international review undertaken by Professor Peter Reuter to look at the regulatory approaches to drugs and new psychoactive substances taken elsewhere, plus interviews with a wide range of experts in the UK.

Our soft system workshops approach demonstrated that it is possible to get people to reconsider their perspectives, give greater recognition to other viewpoints and find consensus on ways forward. In keeping with the view that drug control is a problem with no single solution we do not claim to have provided the definitive answer for drug control policy. However, the findings provide valuable insights on how and where policy direction might be aligned with expert opinion and emerging evidence.

Key policy issues

The project highlighted that:

- When analysed from an international perspective, the latest wave of new psychoactive substances has thus far been localised: there have only been instances in a few countries where a new drug has

rapidly risen in prevalence on par with other illicit substances. However, there are signs that their sale and use is spreading and will continue to grow.[5]

- The cost of enforcement is likely to rise substantially and/or the law become increasingly unenforceable with the number of substances classified through the MDA rising dramatically.
- There is a fundamental and growing bias in the political and regulatory system towards prohibition as a default option. This is despite there being no conclusive evidence that classifying a substance through the MDA reduces overall harms. This bias may unintentionally increase harms, in addition to leading to substantial financial costs in the criminal justice system.
- Information about the nature and effects of new substances is a key issue for everyone involved in the drugs field: policy makers, enforcement agencies and those engaged in providing prevention and treatment. Yet knowledge about the new substances becoming available is very poor and controlling a substance under the MDA makes collection of the necessary information to make genuinely informed decisions more difficult. Without information on new substances as they become available, the Government becomes susceptible to influence from media campaigns and political pressures demanding action at critical junctures.
- There is a wide range of different pieces of legislation besides the MDA which can be utilised for controlling new potentially harmful substances.
- The number of substances now controlled (over 600) and the multiplicity of ways in which this is done is confusing and appears often inconsistent, inefficient and ineffective.
- There are a number of potential benefits to taking a step back and producing a simplified overarching control framework, such as a Harmful Substances Control Act along the lines proposed by the New Zealand Law Commission.[6]

Implications for policy

The policy recommendations that emerged from the project suggest three broad principles for improving drug policy and a

number of specific actions. The latter are in no way comprehensive but illustrate how a new approach might be used to identify ways to improve drug policy.

Focus on achieving outcomes on which there is consensus

We need to shift the focus of debate away from stale arguments about whether or not or how drugs should be classified to focus on the broader outcomes that policy is seeking to achieve, such as the desire to protect young people from the harms associated with drug use. Our project demonstrates that in this way it is possible to bring together people from different sides of the debate to agree on a range of actions that could improve the current situation; actions identified in the workshops have been incorporated here.

The following areas for action were identified:

- there should be continued investment and support for broader intervention initiatives, delivered in schools and communities, as well as family-based initiatives and mentoring schemes in order to increase resilience to problematic drug use
- the Government together with local authorities and schools must ensure that drug education is based on accurate information delivered by individuals who will be perceived as credible and authoritative
- a systematic framework for information collection should be created to tap into the experience of drug users and frontline workers, as an early warning system and source of knowledge about potential harms and perceived benefits of new drugs
- the development and evaluation of outreach approaches, such as amnesty bins in clubs and other venues where use of such drugs is prevalent, should be supported to encourage people to adopt less risky behaviours even if they do still continue to use, while also providing valuable information about availability and purity
- there should be investment in laboratory-based investigation of current and potential drugs of abuse.

Ensure a more balanced decision-making process and debate

There is a growing 'fault line' in the balance of decision making about the control of new drugs that leads to a system that is weighted in favour of the precautionary principle. This closes off proper consideration of the relative harms of particular substances and the harms that arise from banning these substances. It also hinders the consideration of alternative control measures. As a result, this bias may unintentionally increase overall harms.

We recommend that the Government:

- conducts more rigorous research into the full range of impacts (including unintended harms) of the control and enforcement elements of drug control and drug policy; while we acknowledge the complexity of such an exercise, it is not methodologically insurmountable, as similar assessments in areas as diverse as climate change and health policy have shown
- gives greater consideration to identifying and assessing the benefits (in addition to the harms) that individuals and society derive from the use of psychoactive substances, including the potential for substitution for more harmful substances. This should be built into the formal assessment and advice process to ministers and parliament; government legislation and pronouncements recognise the benefits (beyond medicinal) of the moderate use of alcohol, but fail to do so with other psychoactive drugs

Consider other regulatory options for control

There has been insufficient attention and discussion given to other control and regulatory mechanisms that have been used in the past for other comparable substances. These alternative control mechanisms could be utilised to respond to the challenge of new drugs.

In the short term, the Government should:

- commit to a comprehensive assessment of the use and impact of planned temporary banning powers; our project revealed significant concerns among experts that the temporary ban could

be unenforceable, lead to other harms, and lead to a failure to consider other control options

- give greater consideration to controlling the supply of new psychoactive drugs through the wide range of consumer protection legislation in some instances

In the longer term, Government and Parliament should:

- consider a radical reform of the measures for the control of psychoactive substances to provide an overall and integrated framework for controlling the supply of all potentially harmful substances – including alcohol, tobacco and solvents – perhaps through a Harmful Substances Control Act

In summary, it is 40 years since the Misuse of Drugs Act 1971 became law and the 'drug problem' is no nearer being solved. The new psychoactive substances now being developed pose new challenges while at the same time our understanding of the problems associated with licit substances has grown. Therefore it seems high time for a new approach. The drugs debate is a hotly contested and polarised area and anyone entering it runs the risk of being characterised as being on one side or the other. However, it is clear that the 'drug problem' is complex and multi-faceted and there is no simple solution to it. We would suggest that it is time for a new approach to policy making, legislation and debate on drugs issues focusing on developing consensus and taking a more holistic view of substance use while building better evidence about what works.

Introduction

In late 2009 and early 2010, the UK media reported widely on the 'unstoppable rise' of a new and 'legal' drug: methylmethcathinone (mephedrone).[7] Similar to drugs like amphetamine and cocaine in its effects and chemical composition, mephedrone 'emerged from nowhere' to become, according to one online survey, the fourth most popular drug among British clubbers.[8] However, mephedrone was different from other drugs in that it was legal and could be purchased over the internet at affordable prices, with no limitations on the size of orders. Users could even get next day delivery.

At first, the amusing street names (meow meow, bubbles) and this easy accessibility were enough to guarantee media coverage and generate worry among policy makers. There soon followed a series of drug-related deaths among young people, reportedly tied to this new and unknown drug. While a media frenzy commenced in the immediate run-up to the general election of 2010, the Home Secretary Alan Johnson responded by banning the substance by classifying it under the Misuse of Drugs Act (MDA) following a swift review by the Advisory Council on the Misuse of Drugs (ACMD).[9]

Since the mephedrone episode, there has been growing concern about new psychoactive substances.[10] Previously, BZP, GBL and Spice had received attention from users and policy makers alike but the apparent extent of mephedrone use, and the speed with which it occurred, were unprecedented. Once mephedrone was banned, other new and seemingly more dangerous substances emerged, including NRG-1, Ivory Wave and Benzo Fury.[11]

The Coalition Government's response to the emergence of new psychoactive substances is the creation of a temporary banning order under the MDA. This is currently (early 2011)

passing through Parliament as part of the Police Reform and Social Responsibility Bill. The temporary ban would control new substances by placing them in a holding classification for a year, allowing the ACMD to conduct research into its harms. At the end of a year's time, the substance would then either be banned (permanently classified as A, B or C in the MDA), or regulated through alternative means. Our research suggests there are a number of concerns about the likely efficacy of this approach which are discussed later.

New challenges

New psychoactive substances present policy makers with a number of challenges. Unlike opium, cocaine and cannabis – the effects of which have been intensively researched – new substances can emerge and be available for purchase over the internet very quickly without any information on their composition, effects or safety. This speed to market makes it difficult for toxicologists and other experts to give advice on the short- and long-term effects of such drugs. The prospect of significant numbers of people using untested and potentially dangerous substances in an unsupervised or uncontrolled manner raises serious public health concerns. And yet, the old approach to controlling harmful substances – through the MDA – is increasingly being seen as ineffective since the constant growth and product 'innovation' in the synthetic drugs market allows producers to stay ahead of the law.[12] While heroin, cocaine and cannabis originate mostly from organic sources, the composition of synthetic drugs can be constantly altered to circumvent legislation. As the list of substances continues to grow, the financial and operational burden on enforcement agencies will become increasingly unmanageable particularly in light of public sector cuts.

There is a tendency, not only in the UK but internationally, to propel any new substances into a control through criminal penalties framework, even where the actual evidence of harms may be limited (see Appendix I for short glossary of key drug policy terms). This precautionary approach can have unintended

consequences. Some commentators suggest that the growth in popularity of new substances such as mephedrone and the potential risk they pose could have arisen as a result of the enforcement efforts on illicit drugs like ecstasy and the stricter controls of chemicals like BZP[13] (although others argue for cyclical patterns in drug use with some drugs going in and out of fashion). Such substitution has the potential to increase harms. Some of the drugs that have been substituted for mephedrone are more powerful and may be more harmful if taken in similar doses. There is also emerging evidence that some people may have substituted mephedrone for cocaine, and this may have reduced cocaine-related deaths, although this requires confirmation.[14]

The rapid development of new substances and their availability on the internet requires a re-examination of drugs control policies and the process by which potentially harmful substances are controlled. The boundaries between recreational drugs used for pleasure, cognitive enhancers, some medicines, and other commercially used substances, are becoming increasingly blurred. This poses considerable ethical and practical questions about why one drug may be controlled by the MDA and others through the medicines legislation or other regulatory systems, such as the Intoxicating Substances Supply Act 1985, which is essentially a piece of consumer protection legislation. Moreover, the internet continues to confound enforcement and regulation, not only for these new psychoactive substances. Counterfeiting of legitimate medicines is increasingly a global problem and is proving very difficult to police.

Adding to these new challenges is the fact that the UK already has among the highest rates of illicit drug use in the European Union, although more recently there has been a downward trend.[15] Illicit drug use continues to affect every part of the UK and every social group, though some more so than others. Approximately one in three people between the ages of 16 and 59 in the UK have used a controlled substance at some time in their life, demonstrating that, although illegal, these substances remain widely available.[16] Drug use is also increasingly intertwined with alcohol problems, which affect

communities, families and individuals. Clearly, something is not working very well.

A new approach

In 2011 the MDA will be 40 years old. The world is very different now than it was in 1971. Over ten years ago the Police Foundation Independent Inquiry into the Misuse of Drugs (chaired by Dame Ruth Runciman), one of the first independent assessments of the Act concluded, 'The main aim of the law must be to control and limit the demand for and the supply of illicit drugs in order to minimise the serious individual and social harms caused by their use.'[17] Such an assertion seems equally valid today even if circumstances have changed.

However, it is uncertain whether government can continue to control emerging substances in the same way as it has done in the past. There are now over 600 substances that are controlled through the MDA, with new substances emerging virtually weekly.[18] According to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), there was a record 24 new synthetic psychoactive substances identified in 2009, and another 15 had emerged by July 2010.[19] The *Daily Telegraph* reported that data presented to the Independent Scientific Committee on Drugs showed 40 new substances had emerged by the end of 2010, a new record.[20]

New drugs bring new demands on the resources of enforcement and public health services. At a time of mounting financial pressure, there is a question of government's capacity to respond to an increasingly long list of controlled drugs through the MDA. Enforcement agencies including the police, borders and customs face enormous practical challenges in light of expenditure reductions and the costs of forensic testing in order to secure possible prosecutions. There is also a risk that the current recession and increasing unemployment, particularly among young people, could lead to an even further rise in drug use, though this is by no means a certainty.

The costs in other parts of the criminal justice system are also already substantial. The current cost per prison place is

estimated at £45,000 per year and the cost of Crown Court process imposing a prison sentence is £30,500 per conviction. With people convicted of drug offences making up 15 per cent of male and 24 per cent of female sentenced prisoners in April 2010, this suggests there are well over 10,000 people in prison for drug offences at any one time. Given that many will serve less than one year, the number being sentenced annually is still larger and it can be seen that annual costs solely for drug control offences in excess of a billion pounds are likely to be incurred.[21] In addition to this there are the wider costs to the society of other drug-related offending by people with drug problems, which will be even greater; it is estimated that between a third and a half of the people in prison have drug problems.[22]

Meanwhile, there is a growing willingness in some countries to handle control and enforcement in different ways. This includes decriminalising drugs possession for personal use in countries such as Portugal, the Czech Republic, Argentina, Ecuador, Brazil and Bolivia.[23] As the Police Foundation Inquiry found in its research, a number of other countries in the developed world including the Netherlands, Spain, Australian states and Italy have tried various approaches including administrative expediency in enforcement and prosecutions, and the use of civil rather than criminal penalties for drug users.[24] The experiences in these countries may hold transferable lessons for policy makers, enforcement agencies and public health professionals here in Britain. Among contested views about the interpretation of evidence one thing is clear, the drug problem has not spiralled out of control in those countries.

To some extent, UK governments have shown some flexibility and adaptability in how they seek to control and regulate psychoactive substances. For example, regulating the misuse of solvents though the Intoxicating Substances (Supply) Act of 1985; classifying anabolic steroids with no prosecution for simple possession, as is also proposed under the temporary ban category; increasing the use of fines and warnings for cannabis possession; as well as the recent use of a ban under the Open General Import Licence powers for the importation of cathinones (the group of substances that includes mephedrone)

before the classification of mephedrone in April 2010 and recently recommended by ACMD for desoxypipradol (sometimes sold as Ivory Wave). Tobacco controls also illustrate the ability of policy makers to take radical steps and, more recently, new restrictions are proposed for alcohol sales. Such flexibility is perhaps a classic British pragmatic response to changing circumstances and priorities. It shows that the law is not immutable and there is a range of innovative and creative methods of control.

This project

The aim of this project is to use the lens of new psychoactive substances to re-examine and explore how UK drug control policy might utilise a broader range of policy options apart from the established bans under the MDA. We have not sought to replicate other valuable work that has examined how the MDA might be incrementally improved (eg the Police Foundation Independent Inquiry report or by the Science and Technology and Home Affairs committees).[25]

We have also avoided reopening the debate about whether existing drugs such as cannabis or ecstasy should be reclassified or even whether the classification and scheduling system itself should be revised or abolished. A stalemate of sorts has been reached in those discussions: new drugs present new challenges, which the current control system is increasingly ill-equipped to deal with. The rapid arrival of new substances, technology and distribution systems, allows us to examine carefully and consider how a different approach to their control might work in practice.

The project consisted of two main elements. First, we commissioned an international review to look at the experiences of emerging 'legal highs' in the UK and abroad and analyse the different regulatory approaches that countries have thus far taken to new psychoactive substances. This review was conducted by Peter Reuter, Professor in the Department of Criminology at the University of Maryland and a founder of the RAND Drug Policy Research Center.[26]

Second, we convened 24 key stakeholders for two day-long workshops addressing the 'legal highs' issue from two different

starting points. We also conducted qualitative interviews with ten drug experts in the UK. The workshops made use of an innovative systems approach pioneered in a project concerned with youth nuisance on deprived estates and outlined in previous Demos reports *System Failure* (2001) and *Connecting the Dots* (2009).[27] Our aim was to bring together a range of experts and stakeholders who do not meet regularly to engage in a comprehensive discussion about how drug policy can tackle the new challenge of 'legal highs'.

The workshops were conducted under Chatham House Rules, and because of the sensitivity of the topic participants will remain anonymous. Participants included senior civil servants in relevant government departments and agencies, covering enforcement, health, medicines, young people and education, and consumer protection, as well as pharmacologists and chemists, frontline workers from a variety of charities, a parent activist, a young person peer drug mentor, and advocates from lobbying organisations from opposite sides of the drug control debate.

Too often, policy is made and implemented in isolation from other stakeholders. This can have unintended consequences and result in policies that work at cross purposes. The aim of the workshops was to bring to the surface the different perspectives represented by those attending and foster a more constructive debate.

The first workshop explored *how best to protect young people from new psychoactive substances*. The second workshop explored *what steps could be taken to control the availability of new psychoactive substances*.

Our aim in this report is to demonstrate that it is possible to gain agreement from people with contrasting perspectives on actions and improvements to policy. Drug policy is already fraught with complexity, value conflicts and high stakes. The emergence of new psychoactive substances complicates drug policy further through a new set of challenges.

We argue that a different approach to the development of drug policy is needed: a fresh approach that gives greater consideration to our pluralist society in which people hold many

different and opposing views, so evidence to underpin policy making is vital, even if it is not perfect. Instead of arguing for one side of the debate over another in a zero-sum game, we advocate the need to find better consensus on areas that more people can agree on and then seek to make improvements to policy.

The report structure

In the first chapter, we look briefly at the history of psychoactive substances in order to put the emergence of new 'legal highs' into context. This chapter also includes previous research into 'legal highs' as well as the findings from Peter Reuter's report into the experiences of 'legal highs' in other countries.

In the second chapter, the focus shifts to the policy context. It includes a brief history of drug control policy, discussion of the recent debates on drug policy and lessons from abroad on dealing with the emergence of new psychoactive substances.

Chapters 3 through 5 focus on the soft systems approach to drug policy and the findings from the workshops. Chapter 3 describes the soft systems methodology and the conceptualisation of the 'drugs problem' as a 'wicked issue'.

Chapter 4 presents the findings from the first workshop. This includes the areas of broad agreement on non-legislative approaches that can help protect young people from the harms of emerging new substances.

Chapter 5 presents the findings from the second workshop, looking specifically at legislative options for controlling the emergence of new psychoactive substances.

In Chapter 6 we offer recommendations for policy.

1 The 'drug problem' and new psychoactive substances

The fundamental urge to alter our consciousness in significant but controllable ways is, it seems, part of our hard-wiring.[28]

When considering the issue of drug use in society or the 'drug problem', most people tend to think of a relatively small collection of core *illicit* substances: heroin, cocaine, cannabis, LSD, ecstasy and amphetamine. People rarely include similarly harmful (and potentially addictive) substances such as alcohol and tobacco. They are probably even less likely to call to mind solvents, poppers, nitrous oxide, 'study drugs' or even caffeine. However, all of these substances have psychoactive, intoxicating or sense-heightening effects for humans. They are thus, to varying degrees, subject to use, misuse and addiction by individuals seeking to 'get high' or get ahead.

Psychoactive substances in society

While our review is focused on new psychoactive substances, one cannot ignore the evolution of drugs and drug use in society. Psychoactive substances have played a role in much of human history. They have provided tonic to pain and disease, played an integral role in social and religious ceremonies in some societies, and fulfilled a desire to alter our consciousness. Researchers have discovered implements for inhaling drug fumes or powders in South America that can be dated back to between 400 BC and 100 BC.[29] Beer has been dated as far back to Neolithic times (10,000 BC), and ancient Chinese tools for making wine have been discovered. The benefits and harms associated with alcohol have been debated at least from the ancient Greeks through the 1800s and early 1900s to the present. The use of opiates in various forms also has a long history, from evidence of the

consumption of poppy seeds in c 2500 BC, through widespread use in China from the eleventh to the twelfth centuries AD as a medicine and later recreationally, and the introduction of laudanum and other opium products to the practice of medicine in Europe from the sixteenth century onwards in Europe.[30] And, of course, the rapidity with which the use of caffeine (in the form of tea and coffee) and nicotine (from tobacco) spread once they were introduced from the New World provides testament to our acceptance of the use of psychoactive substances and of the long-term nature of some of the harms associated with them.

In light of this history, and the persistence (and even increase) in the number of people using a range of psychoactive substances for a variety of reasons, the idea of a 'drug free' world, as envisaged by previous drug policy campaigns of the 1980s, seems quixotic, if not unnatural and most certainly unachievable. Nevertheless, to highlight the seemingly basic human desire to 'alter our consciousness in significant but controllable ways' should by no means imply that this is something that all humans do, or should do. The number of people who regularly use illicit substances is quite small proportionally. While estimates of drug use are an inexact science, the authoritative numbers suggest that anywhere between 3 per cent and 6 per cent of the world's population used illicit substances at least once in 2008. The United Nations Office of Drugs and Crime (UNODC) estimates that there are anywhere between 16 million and 38 million problem drug users (who are dependent on drugs, or using the most dangerous drugs such as injected heroin) in the world. The majority of people who use illicit drugs – approximately 80 per cent – use cannabis, which remains the most widely used illicit substance in Europe and here in the UK.

In many parts of the UK, illicit drug consumption may be perceived as a 'common' but not a 'normal' activity, at least for most of the population. Of course this differs according to age and locality. By comparison, consumption of licit substances such as tobacco and alcohol is significantly higher and can be said to be a 'normal' activity in the UK and abroad.

Alcohol and tobacco: the other 'legal highs'

Compared with many other European countries, the UK appears to have a particular problem with excessive drinking, especially among young people. Consumption of alcohol in the UK has increased by 19 per cent over the last three decades.[31] There are now an estimated 10.5 million adults in England who drink above sensible limits and 1.1 million adults in England have a level of alcohol addiction.[32] These numbers dwarf the number of people in the UK who use (not necessarily in a problematic way) illicit substances. Moreover, while the number of smokers has fallen substantially over the past decade, there are still around 10 million adults in the UK who smoke cigarettes: approximately one in five men and women smoke. It has been estimated that over 100,000 people a year in the UK die from smoking-related diseases.[33]

As discussed further below, there has been increasing attention in recent decades on the harms of licit substances such as alcohol and tobacco. According to recent analysis by the Independent Scientific Committee on Drugs, alcohol is the fourth most harmful drug to the user, and the most harmful to society as a whole, making it more harmful than both heroin and cocaine.[34] While there is debate about the particular methodology used to reach this assessment there is no doubt that the substantive point about the growing harms of some types of alcohol use is broadly accepted.

New substances and global factors affecting drug use

While the history of psychoactive substances in human society is long and varied, drug use has changed drastically over the past 100 years and more people are using a broader range of substances than ever before. Changes in patterns of drug use are the result of a combination of technological advancements, changing social norms, growing wealth yet widening economic inequalities, civil strife in other parts of the globe along with unscrupulous suppliers and corrupt officials.

Set against these deep undercurrents, we highlight three factors that underpin the emergence of new and varied psychoactive substances and the current dynamism and flux in

the drugs market. The result is a difficult problem made significantly more intractable. These trends include:

- the rise of 'manufactured drugs'
- the internet
- changing cultural norms towards intoxication.

The three trends identified above suggest that the problem of new psychoactive substances will continue to influence patterns of drug use in the coming decades.

The rise of manufactured substances

While the list of 'legal highs' presented in the introduction all emerged in the past ten years, the appearance of new synthetic drugs is not an entirely twenty-first-century phenomenon. Alexander Shulgin, an author and influential biochemist in the drugs field, predicted the diversification and increasing number of psychedelic and synthetic substances in the 1960s. There has been considerable growth in the different types of drugs since then: between 1961 (when the UN Single Convention on Narcotic Drugs was first passed) and 1995 the number of prohibited substances rose from 85 to 282.[35]

Synthetic drugs – manufactured by chemists in laboratories – have risen rapidly in prevalence over the past two decades. Although MDMA and other ecstasy-group drugs were first developed in the early 1900s, recreational use of ecstasy exploded in the 1990s, particularly in Europe and the USA.[36] Manufactured amphetamine-group substances, including ecstasy and related drugs, are now the second most used illicit substance behind cannabis. The UNODC predicts that the number of amphetamine-type substance users globally is likely to surpass the number of opiate and cocaine users combined in the near future.[37]

There are a number of reasons for the growth in the market for these drugs, including changing social norms, youth culture, the manufacturing process, the ease of substituting precursor chemicals and psychoactive substances, and the convenient

methods for taking these drugs (pills versus injecting, snorting or smoking).

Additionally, the enforcement strategy against manufactured substances is more complicated. Unlike the cultivation of coca and poppy plants, manufactured drugs can be produced closer to consumer markets with shorter distribution chains.[38] They are also impervious to remote sensing, unlike poppy plants, cocoa bushes and indoor cannabis farms.[39] Moreover, enforcement efforts must contend with not only the final product, but also the distribution of precursor chemicals. Ecstasy can be manufactured using a variety of precursor chemicals and a variety of manufacturing methods, which makes replacements easy to find, and ensures greater flexibility in the manufacturing process.[40]

The rise of manufactured drugs has led to an explosion of synthetic drugs designed to mimic the effects of illicit substances. New substances have included synthetic cathinones, synthetic cannabinoids, and new cocaine and amphetamine-like synthetic derivatives, among a variety of other substances. These are the new generation of 'legal highs'. Coinciding with this is a trend towards increasing levels of deception and confusion in the actual composition of marketed drugs. In the European drugs market, tablets sold as ecstasy increasingly contain other substances, including piperazines like BZP, mCPP and TFMPP.[41] Some of these substances are not under domestic or international control, so constitute 'legal highs'.[42] Mephedrone has increasingly been sold as ecstasy or as a suitable replacement to ecstasy, before and after its control via the EMCDDA and national legislation.

The speed with which this shift has taken place is alarming. UNODC reports that in 2006, 10 per cent of tablets sold as ecstasy in the EU contained mCPP. By the end of 2008 this figure had risen to 50 per cent in countries with large markets for ecstasy.[43] This increasing confusion and uncertainty poses a number of challenges to enforcement and public health agencies. It also puts a high premium on quick and easy drug-testing facilities to determine the composition of drugs.

The influence of the internet

The ease with which new drugs can be synthesised and manufactured is matched by the efficient and difficult to regulate distribution methods now provided by the internet. As with every other aspect of life in the twenty-first century, the internet has significantly impacted on the distribution of drugs and drug use. Information about new drugs was previously disseminated through word of mouth or traditional media. Now, information about new drugs can be transmitted to a larger number of people more quickly than ever before.

This is likely to result in a wider range of people being aware of and likely to use an increasingly wide range of substances. Indeed, with 'legal highs', groups of people who might be put off using drugs by a lack of contact with drug dealers, can gain access to a drug and purchase it in much the same way they now purchase many other goods over the internet.

The internet has also facilitated the emergence of new manufacturing and distribution centres (most significantly from China and India) by providing them with global reach into the lucrative and seemingly insatiable market for drugs in Europe and North America. Motivated by profit and effectively out of reach of these countries' drug laws, research chemists and entrepreneurs have emerged to supply the Western world's demand for drugs. As a result of this change in the supply side of the drug market the frequency and speed with which new drugs can emerge is significantly greater. The same dynamic is at the root of the rise of counterfeit medicines.

Changing cultural attitudes towards intoxication

Reuter suggests there is an increasing tolerance in Western society for 'altered states of consciousness'.[44] However, this does not necessarily mean that use rates of illicit substances like cannabis, cocaine, heroin and ecstasy are rising. Indeed, recent reports suggest that trends in cannabis consumption indicate stable or declining levels of use.[45] The UNODC suggests that heroin use is decreasing in most West European countries and although the trend in cocaine use varies between different countries, for the most part use appears stable.

In this context the difference between a 'good' high (eg alcohol in moderation) and a 'bad' one (eg ecstasy in moderation) is becoming harder to explicate.[46] In the USA, as elsewhere, there has been a growing acceptance of marijuana use, particularly for medical purposes. Simultaneously, there has been increased attention to the social and health harms of alcohol consumption. This blurring of the lines has led many experts and members of the public to question why one harmful substance can be purchased in a shop, while possession of the other is punishable by prison and a criminal record.

Such changing attitudes and perceptions may also contribute to the increasing patterns of 'poly drug' use (the use of many different kinds of drugs simultaneously), particularly in Europe. According to the EMCDDA, almost all patterns of 'poly drug' use include alcohol, and it is likely that a significant proportion also include cannabis.[47] In part, such explanations have given rise to new political calls for increased personal responsibility in substance-using behaviours.

Finally, the significant growth in the 'study drug' phenomenon – particularly in the USA – means that large numbers of young people are using drugs not only to get high, but also to get ahead. The 'study drug' phenomenon is one aspect of a growing problem with the misuse of prescription drugs, including painkillers and antidepressants.

'Legal highs': the new generation of manufactured drugs

The rise of new psychoactive substances (aka 'legal highs') in the twenty-first century is an extension of these underlying trends. Some of the best-known examples of this new generation of manufactured substances are GBL, BZP (see box 1), Spice, mephedrone (see box 2), NRG-1 (see box 3), Benzo Fury and Ivory Wave. Not all of these substances are new drugs which have just been created by DIY, entrepreneurial chemists. Some of them are manufactured for other industrial uses (eg GBL and other solvents), but have been discovered to have intoxicating effects. A recent article in the *International Journal of Drug Policy*

notes three types of 'legal highs': organic plants, synthetic substances and semi-synthetic substances derived from natural oils.[48]

Box 1 **Case study: BZP (1-benzylpiperazine)**

BZP became the fourth most widely used drug in New Zealand in the period 2004–2008.[49] *Originally developed for veterinary purposes, BZP first appeared in 'party pills' in 2000.*[50] *Surveys in New Zealand have shown that most users consume BZP with alcohol and other psychoactive substances.*

Only a few direct studies have been made on the physiological properties of BZP in humans. Available information derives mainly from indirect sources, for example, from self-reports of users on internet sites, clinical observation of intoxicated patients, or post-mortem material.

In 2006 and 2007, New Zealand's Expert Advisory Commission on Drugs concluded that the risks to users were moderate. Acute problems largely came from combining BZP with alcohol and other drugs, as well as the variability of potency (the latter may have been mitigated had there been processes for formal regulation).[51] *As mentioned above, many BZP tablets and capsules also contain TFMPP (1-(3-trifluoromethylphenyl) piperazine).*

How prevalent are new 'legal highs'?

Reuter's research into the international experience concluded that the problem of new psychoactive substances ('legal highs') has been modest and localised thus far. There have been few instances in which a new psychoactive substance, not covered by existing regulations or laws, has become a significant problem in terms of widespread use on a par with illicit substances like ecstasy and cocaine. The two most prominent examples are BZP in New Zealand and mephedrone in the UK.

Nonetheless, the market for 'legal highs' is moving quickly. At the beginning stage of writing this report in December 2010, the issue of 'legal highs' and a number of the substances most

prominent in Europe were essentially unknown in the USA. A search of the Drug Abuse Warning Network (DAWN), which lists known psychoactive substances in the USA, by Reuter at the end of 2010 found no mention of BZP, Spice, mephedrone or naphyrone, using both street and technical names.[52] However, in January and February 2011 there were media reports that the problem is of growing concern in the USA.[53] The *Washington Post* reported recently that cathinone derivatives are being advertised in the USA primarily as 'bath salts', rather than 'plant food' as in the UK and Europe. In March 2011, the US Government announced that it was using emergency scheduling powers to ban five synthetic cannabinoid chemicals, which can be used to comprise Spice.[54]

Motivations for using 'legal highs'

There have only been modest levels of research into the profile of 'legal high' users, and their motivations. Who is using these new substances, and why? Do new 'legal highs' simply present more choice for those who already use a range of illicit drugs and alcohol, or do they appeal to a new cohort of users who would normally be discouraged from illicit activity?

There is a small but growing body of primary research into use of mephedrone particularly in the UK. There have been three quantitative surveys into mephedrone use. Two were annual Mixmag surveys (online self-selecting surveys of clubbers and festival goers that hence represent a particularly high drug-using group within the population), including the 2010 survey which first revealed that mephedrone had become the fourth most popular drug among the 2,000 people who responded to the survey. The other survey was conducted in Scotland, with over 1,000 school and college or university students responding, showing that one in five had tried mephedrone.[55] There has also been a handful of smaller-scale qualitative research studies with mephedrone users.[56] This includes research before and following the classification of mephedrone in April 2010, which gives some insight into the effect of classification on changing patterns of use.

Box 2 **Case study: mephedrone (4-methylmethcathinone)**

Mephedrone is a synthetic cathinone. It is the most recent 'legal high' to attract significant media attention, particularly in the UK, which accounted for 88 per cent of European seizures of the drug in 2010.[57] *Some research suggests that mephedrone emerged in part as the consequence of the declining quality of ecstasy.*[58]

The drug first emerged in the UK in 2008, and grew in prevalence rapidly. Two seizures were reported in 2008, 20 seizures in early 2009 and up to 600 seizures in the latter part of 2009.[59] *A survey of EU member states found that only the UK and the Netherlands had made substantial seizures; the nine others (Estonia, Finland, Germany, Ireland, Italy, Latvia, Romania, Slovenia and Slovakia) with any seizures reported totals of 2–325 grams. Ireland and the UK reported 'legal importations' of mephedrone available for purchase in 'head shops' or over the internet advertised as a plant food. Europol and EMCDDA report that there is little evidence of European processing or trafficking in mephedrone. Evidence suggests mainly legal production and distribution from Asia, namely China.*

An internet search in December 2009 revealed at least 31 websites selling mephedrone, a majority of which were based in the UK.[60]

There is some very limited research into the prevalence of mephedrone within the UK, and the profile of users. The most significant research in scale comes from an annual survey of drug using by the European clubbing magazine, Mixmag.[61] *This online survey consisted mainly of self-selecting individuals who are active in the club scene and therefore probably yields figures that show greater levels of drug use, than among even the wider clubbing population. The survey had 2,220 respondents, of which 65 per cent were male and 81 per cent were employed, mostly aged 18–27. The Mixmag survey revealed that in less than a year, mephedrone had become the fourth most popular drug among those British clubbers sampled, with 42 per cent reporting ever having taken the substance (lifetime prevalence), 34 per cent use in the past*

month, and 6 per cent use weekly. There has also been a small-scale qualitative study of ten mephedrone users in Middlesbrough, UK. This consisted of nine men and one woman, all of whom were regular or occasional users of other drugs (mainly alcohol, cannabis, ecstasy). Among this sample, mephedrone was mainly a weekend indulgence at parties or nightclubs, with most people mixing the drug with alcohol and/or cannabis. Users describe stimulant and hallucinogenic effects, with negative effects including cravings, skin rashes, vomiting, insomnia and/or amnesia; several respondents experienced some of these effects.

Knowledge of the adverse effects of the substance is slight, as the EMCDDA reported in 2010: 'there are no published formal studies assessing the psychological or behavioural effects of mephedrone in humans'.[62] *As with BZP, much information is based on informal sources such as user reports.*

Professor Fiona Measham and colleagues conducted research into the reasons for the growth in popularity of mephedrone in particular.[63] People choose to take 'legal highs', or any drugs for that matter, for a number of factors including:

- legality
- price
- purity
- convenience and availability
- effect

Their research suggests that displacement resulting from fluctuations in the supply of illegal drugs is a key issue in understanding changing patterns of drug use. They argue that there was a 'growing disillusionment with the quality of street drugs throughout the 2000s' because of the lack of purity of drugs like cocaine, ecstasy and MDMA. Cocaine purity reportedly dropped from 60 per cent in 1999 to 22 per cent in 2009, while analysis of seized ecstasy pills in 2009 showed that half contained no ecstasy, but rather BZP or caffeine. There have

also been decreasing purity levels of MDMA, probably as a result of enforcement successes and stricter security.

Additionally, availability appeared to be a more significant motivation than legality for using mephedrone. Users were less concerned about whether they were doing something illegal than they were about the ease with which the lack of any regulation made these drugs available. Curiosity to experiment with something new was also a cited factor for use.[64] Box 3 presents a case study of the drug naphyrone, which emerged around the time of mephedrone and was often marketed by sellers as a replacement following the banning of mephedrone.

Box 3 **Case study: NRG-1 (naphyrone)**

Naphyrone is a high-potency cathinone. Before it was banned in July 2010 as a class B drug within the Misuse of Drugs Act (MDA), it was largely sold in the UK through the internet. Its harms are thought to closely equate with those of mephedrone, but it is much more potent; a standard dose of naphyrone is one-tenth that of mephedrone.

The majority of samples of supposed naphyrone actually contain mephedrone and other related compounds.[65] *The ACMD speculates that this may be the consequence of mephedrone distributors dumping their product after it was classified in April 2010.*[66]

Naphyrone has significant potential for abuse: according to Reuter, naphyrone is a triple-uptake inhibitor like cocaine (with ten times the potency) rather than a single-uptake like d-amphetamine and MDMA, which means that it affects all three neurotransmitters linked to depression: serotonin, norepinephrine and dopamine.[67] *Moreover, the lack of transparency over its content, and the much smaller difference between safe and lethal dosage compared with mephedrone, could potentially lead to overdoses.*

These findings concerning motivations do not necessarily hold for all 'legal highs', but depend on the quality of the effect,

as well as the quality of illicit substances. For example, Measham et al cite research around the motivations for using Spice, finding that legality was the most significant motivator. Spice is a set of herbs with some synthetic cannabinoids added. It was first identified in Sweden in 2007, though it had been available at least since 2004. Like other 'legal highs', Spice has been an internet phenomenon, where it is advertised for purposes other than consumption (eg incense, bath salts). It can contain a large range of cannabinoid substitutes, of which many of the harms are unknown, and often does not contain the materials identified on the package. Once Spice was given comparable status within the MDA, most users reportedly switched back to cannabis. Participants said this was because the effects of Spice were not as pleasurable as cannabis.

The impact of banning 'legal highs'

Meanwhile, there is evidence to suggest that the use of mephedrone has continued despite its classification. Research by McElrath and O'Neill, based on semi-structured interviews with 23 people in Northern Ireland who used mephedrone, suggests that while distribution over the internet has diminished and prices have risen, mephedrone remains available and sought after.[68] While the majority of the sample purchased mephedrone from friends or dealers before the ban, there was still greater reliance on dealers following the ban. Interestingly, those in this sample were reluctant to purchase mephedrone in 'head shops' or over the internet before the ban, for fear of stigmatisation. This suggests that legal status was irrelevant to the stigma of purchasing or using the substance, and the perceived harm. As McElrath and O'Neill note, the lack of impact of legality on the perception of harm contrasts with the experience of BZP in New Zealand. As discussed in the next chapter, the ambiguous legal status of BZP in New Zealand led some to conclude that it was safe. However, this difference may be because the New Zealand research included higher numbers of young people and drug novices, whereas the Northern Ireland research included a range of older people (it included those aged 19–51), most in

professional occupations and long-standing recreational drug users.

The latest *Mixmag* annual survey for 2011 shows a relatively mixed picture of the effect of the ban on use.[69] On the one hand, there was a higher proportion (61 per cent) of respondents who had ever tried mephedrone compared with the previous year before the ban (42 per cent). Users this year were also more likely to have used it in the past 12 months, though slightly less likely to have used it in the previous month. Most notably, 75 per cent of those who had ever tried mephedrone had done so since it was banned in April 2010. The survey also suggests a displacement effect as a result of the ban, with 30 per cent of respondents saying they used more ecstasy as a result of the ban, and 19 per cent saying they used more cocaine as a result of the ban.

On the other hand, 56 per cent said their use had decreased or stopped following the ban, while 33 per cent said that the ban had no effect. The ban also appeared to decrease the availability of mephedrone and increase its price. It is perhaps most worrying that prevalence of use increased while the purity of the drug decreased. Before the ban, 90 per cent of respondents had thought the purity of mephedrone was either good or excellent, while 30 per cent suspected it was cut with something else. Following the ban, the percentage who suspected mephedrone was cut with other substances rose to 80 per cent.

The 'legal high' challenge for policy makers

Unlike cocaine, cannabis, heroin, alcohol and tobacco, we know much less about the impact of this new generation of psychoactive substances. So far, it seems, new psychoactive substances have remained on the fringes of the drug-using community. The two exceptions appear to be mephedrone in the UK and BZP in New Zealand. Nonetheless, the problem appears to be growing and the rise of these new substances presents policy makers with a number of challenges. The next chapter looks at the policy context, and the response to 'legal highs' thus far. As seen above, research suggests that the growth of these new

substances may stem in part from successes in tackling illicit substances like ecstasy. Moreover, it seems that banning mephedrone has had only a marginal impact on use, and may even increase the harm it causes by decreasing transparency about its content.

2 Drug control and the policy response

All governments seek to control the availability of harmful substances in society, and there are a number of ways in which a government can do this. In the UK, since 1971 the Misuse of Drugs Act (MDA) has been the primary legislation for controlling psychoactive substances, primarily through police enforcement. However, there is other legislation in the UK that controls harmful substances, including the Intoxicating Substances Supply Act and the Medicines and Health Act and the various Licensing Acts governing sale of alcohol in different parts of the UK.

The choice of regulatory option depends on a number of factors:

- the toxicity of the substance
- the prevalence in use and the desirability of its effect
- historical and cultural precedents
- 'beneficial' medicinal or industrial uses

Regulatory options are constrained by international and supranational agreements. There are three UN conventions on drugs. The first is the 1961 Single Convention on Narcotic Drugs, which applies to opiates, cocaine and cannabis. The second, the Convention on Psychotropic Substances in 1971 extended controls to LSD, amphetamine, barbiturates and benzodiazepines. Third, the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988 focused on aligning international efforts to tackle international drug trafficking.

The UN's Single Convention on Narcotic Drugs 1961 and its efforts establishing the Convention on Psychotropic Substances (ratified in 1971) informed UK policy and the

development of the classification system under the MDA. James Callaghan, then Home Secretary, told Parliament in 1970 that in developing the ABC classification system the Government had used the UN Single Convention on Narcotic Drugs and guidance provided by the World Health Organization to place drugs 'in the order in which we think they should be classified of harmfulness and danger'. Box 4 presents a brief history of UK drug control policy.

Box 4 **Brief history of UK drug control policy**

Reuter and Stevens present the history of UK drug policy in four phases, covering pre-1916, 1916–1928, 1928–1960s and the 1960s onward.[70]

The first major piece of UK legislation was the Dangerous Drugs Act 1920, which limited production, import, export, possession, sale or distribution of opium, cocaine, morphine or heroin to licensed persons. Before this, legislation of potentially harmful substances was limited to the 1868 Pharmacy Act, which was the first regulation of poisons and dangerous substances, limiting sales to chemists, and the 1908 Poisons and Pharmacy Act, which specifically included coca in regulations on sale and labelling.

The Dangerous Drugs Act restricted sale and distribution generally, but allowed for the prescribing of cocaine and heroin to addicts by licensed doctors and pharmacists. Known as the British System for its uniqueness compared with other countries' legislation, this system functioned until the 1960s when abuses of the system combined with other external factors to hasten its revision.

In the 1960s, the UK passed two additional Dangerous Drugs Acts (in 1964 and 1967) driven by the cultural liberalisation of drug taking, particularly among young people. Under these acts, drug offences were penalised equally, with no recognition of differing relative harms. These acts generated criticism because of the harsh punishments prescribed for cannabis possession. In response to a publicity campaign by celebrities and experts in the UK, the Wootton Committee was

established and argued for the abolition of imprisonment for cannabis possession. This eventually led to the MDA in 1971, which made the distinction between sales and use in scope of punishment.[71]

The Misuse of Drugs Act 1971

In addition to creating a classification system that used the harm caused by a drug as a means of guiding sentencing, the MDA also created the Advisory Council on the Misuse of Drugs (ACMD) as an independent body to provide guidance on the classification of substances according to their harms. The MDA sought to combine a sense of proportionality with a commitment to evidence-based policy making. The Act makes it a statutory requirement that the ACMD is consulted to assess harms before making amendments to a drug's classification (although its findings do not have to be followed by the Secretary of State). In addition to a drug's class under the MDA (consisting of A, B and C categories), the Act also provides a scale of varying controls (known as Schedules) to allow a substance's use for medical and/or research purposes. Table 1 lists the drugs included in the British Crime Survey and their classification under the MDA; table 2 lists the drugs included in the schedules determining medical use controls under the MDA.

The unintended harms associated with drug control

Much of the criticism of current drug policy approaches rests on the failure of enforcement-led policy to prevent the availability and use of illicit substances like cannabis, cocaine, heroin and ecstasy despite huge amounts of expenditure in time, money and resources. A number of high profile evaluations and reports have pointed to the diminishing returns to supply side approaches that involve enforcement and incarceration. According to a UK Prime Minister's Strategy Unit report from 2003, 'even if supply-side interventions were more effective, it is not clear that the impact on the harms caused by serious drug users would be reduced'.[72]

Table 1 **Drugs included in the British Crime Survey and their classification under the Misuse of Drugs Act (July 2010)**

Classification	Drug
Class A	Powder cocaine Crack cocaine Ecstasy LSD Magic mushrooms Heroin Methadone Methamphetamine
Class A/B	Amphetamines
Class B	Cannabis (since January 2009)
Class B/C	Tranquilisers
Class C	Anabolic steroids Ketamine (since April 2006)
Not classified	Amyl nitrite Glues (including glues, solvents, gas or aerosols)

Source: Hoare and Moon, Drug Misuse Declared[73]

Another major criticism of current drug control measures arises from an increasing recognition that prohibition itself can result in harm. As Antonio Maria Costa recognised when he was executive director of UNODC, banning substances can have a wide range of negative consequences, including:

- the creation of an expansive and powerful criminal black market, with associated violence and other crime
- black market drugs being 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

Table 2 **Drugs included in the schedules determining medical use controls under the Misuse of Drugs Act**

Schedule	Level of control	Description	Drugs
1	High	No recognised medicinal use	Ecstasy, LSD, cannabis
2	High	The most potent and harmful drugs that can be used clinically	Heroin, morphine, cocaine
3	Medium	Lighter controls on storage and administration	Buprenorphine, Temazepam
4	Medium	Lighter controls on storage and administration; lesser controls on prescription than Schedule 3	Most tranquilisers, ketamine, steroids
5	Low	Contains very low levels of controlled drugs that can be bought over the counter	Kaolin and morphine

Source: Home Office, Review of the UK's Drugs Classification System[74]

- the criminalisation of people (particularly ethnic minorities and low income communities), including young people, if caught in possession of illicit substances that are nevertheless in widespread use
- the stigmatisation of people suffering from addiction, which may impede access to treatment and rehabilitation[75]

Current drug control measures also give rise to a number of displacement effects. For example:

- policy displacement (high expenditure on enforcement at the expense of other policy areas, such as public health)

- geographical displacement (enforcement efforts concentrated in one country leading to the development of new producer countries or distribution routes
- substance displacement (restricting the availability of some drugs leading to the development of new drugs)

At the street level, successful enforcement initiatives can have the effect of raising the price of drugs, which may cause dependent users to commit crime in order to obtain their 'fix'. It can also affect the purity of drugs and lead to overdosing among drug users and the introduction of potentially harmful cutting agents. Finally, criminal drug laws often disproportionately affect certain communities, particularly those in lower income neighbourhoods. As the ACMD highlighted, the development of serious health and social problems as a result of heroin injecting in the 1980s was largely associated with social disadvantage.[76] This inequity also extends to different ethnic groups as has been well documented in the USA,[77] and research shows a similar picture in the UK, with black people six times more likely than white people to be arrested for drug offences and 11 times more likely to be imprisoned despite there being no evidence that black people are more likely to use or deal drugs than white people.[78]

Nevertheless, it remains extremely difficult to quantify the harms of drug control policy (relative to the harms of drugs themselves). In a recent debate during the scrutiny stages of the Police Reform and Social Responsibility Bill in Parliament, the Home Office drugs minister, James Brokenshire MP, argued:

The impact of domestic and international prohibition policy on levels of consumption and production globally is key in any meaningful assessment and analysis of the 1971 Act. We do not accept that meaningful figures can be ascribed to the likely public and individual health cost or that it is possible to properly assess the impact of drugs on productivity and industry or on industrial or traffic accidents. Those fundamental difficulties point up the question of whether the task is an appropriate use of research funding. In our judgment, it would not be a proper use of public money.[79]

Yet just because measuring harms is difficult does not mean that they do not exist, nor that some attempt to measure them should not be made.

Recent trends in drug policy

As the culture of drug use changes, and as society's attitudes to drugs change, so drug policy needs to evolve. This section identifies three trends in the formation of drug control policy in the UK and globally. They include:

- increasing liberalisation in the USA, Latin America, Europe and Australasia.
- increasing controversy around drug harms and scheduling and classifications
- the blurring distinction between alcohol and cigarettes, and illicit substances

These trends, some of which were discussed in the previous chapter in relation to the rise of 'legal highs', provide the context for considering drug control policy in the twenty-first century and the challenge of new psychoactive substances.

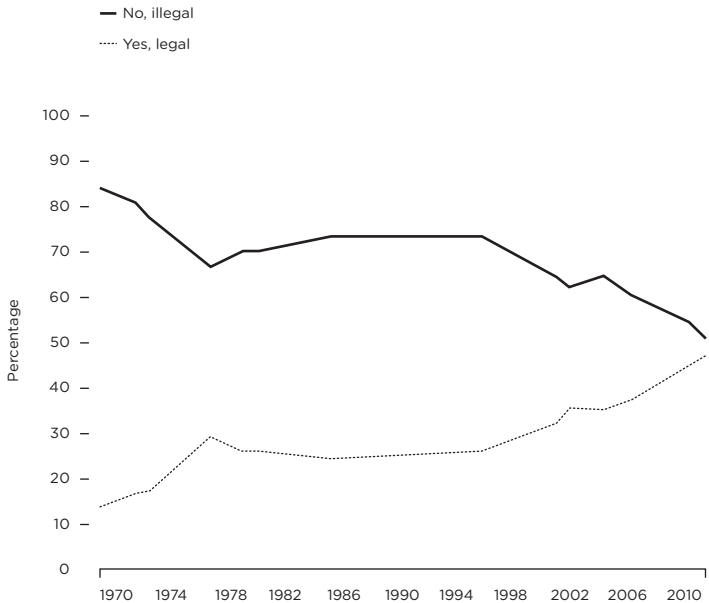
Increasing policy liberalisation

Initiated with a strong emphasis on prohibition, drug policy in some countries has steadily shifted towards 'harm reduction' and treatment in addition to, or as an alternative to, criminal enforcement. This shift has been underpinned by changes in public opinion, particularly with respect to cannabis. Figure 1 shows Gallup polls carried out in the USA on the legalisation of marijuana.[80]

In the UK, the British Social Attitudes Survey shows that between 1983, when three-quarters of respondents were against legalising cannabis and only about a tenth were in favour, and 2001 there was increasing support for cannabis being legalised. Indeed in 2001 the proportion in favour was roughly the same as the proportion against; just over two-fifths of respondents in

Figure 1 **Support for making use of marijuana legal**

Do you think the use of marijuana should be made legal, or not?



Source: Gallup, 'New Highs of 46 per cent of Americans support legalizing marijuana'

both cases. However, the 2007 survey showed some reversal of this liberal trend with just over a half against legalisation and only a quarter supporting it.[81]

Policy liberalisation in Europe

Although there is some evidence that public opinion has moved in the direction of relaxing legislation, at least for some drugs, changing policy still requires a committed reforming government to expend political capital in the face of a likely media backlash. This may be particularly true in the UK. Elsewhere in Europe, governments have taken steps towards liberalisation.

Despite all European countries being signatories to the UN conventions on illicit drugs, there is a significant amount of variation in the way this is translated into drug policy.[82] These differences mainly consist of punishments for charges for possession of different drugs, but also include policy more generally relating to cannabis. In Europe, possession of drugs for personal use is not a criminal offence in Spain, Portugal and Italy. Perhaps surprisingly, despite the well-known coffee shops in Amsterdam where cannabis has been readily available since 1976, the Netherlands has not decriminalised cannabis or other drugs; it has simply chosen not to enforce their laws in the coffee shops. The same is true in Germany, where personal possession remains an offence but policy and judicial guidelines recommend against punishment for these offences. The first European country to decriminalise personal possession for all drugs was Portugal (box 5).

Box 5 **The Portuguese approach**

Much has been made about the Portuguese experience by experts and those in the media who advocate reform of UK drug laws. In 2001, Portugal abolished legal penalties for the personal possession of drugs, including marijuana, cocaine and heroin, and replaced arrest and incarceration with the offer of treatment. These changes were based on the premise that incarceration is more expensive than treatment and that there are social and economic reasons why treatment should be the first option and imprisonment a last resort.[83]

Drug policy debates in general have been predicated on the assumption that liberalisation (in the form of de-penalisation and/or decriminalisation) will lead to higher rates of drug use and greater harms to society. According to Professor Alex Stevens of Kent University, 'the example of Portugal seriously challenges this argument'.[84] *While it is difficult to extrapolate from the experience of one country, evidence from an independent study found that five years after personal possession was decriminalised, illegal drug use among teens in Portugal declined and rates of new HIV infections caused by sharing of*

> *dirty needles dropped. Moreover, the number of people seeking treatment for drug addiction more than doubled.*[85]
>
> *One of the difficulties in seeking conclusions from the changes introduced in Portugal is being able to distinguish changes that would have occurred anyway from those caused by the legislative change. In their recent study Hughes and Stevens compare the experience in Portugal with neighbouring countries and conclude,*
>
> *the reduction in problematic drug users and reduction in burden of drug offenders on the criminal justice system were in direct contrast to those trends observed in neighbouring Spain and Italy. Moreover, there are no signs of mass expansion of the drug market in Portugal. This is in contrast with apparent market expansions in neighbouring Spain.*[86]
>
> *As a result of these policy changes, Portugal is one of the few European countries to have an integrated legislative and regulatory approach to drugs and alcohol.*

In the UK, the introduction of cannabis warnings and fixed penalty notices following the reclassification of cannabis back to class B reflected an attempt to reduce the potential unintended harm associated with criminalisation of young cannabis users. This followed a long tradition of police expediency in using police cautions rather than automatic arrest and prosecution. However, the major increase in recent years in the number of drug offences recorded, which is largely accounted for by cannabis possession offences, suggests that an unintended consequence of this policy is that it has created a perverse incentive to give and formally record warnings that might otherwise have been dealt with informally.[87]

Liberalisation in Australia, the USA and South America

Outside Europe there has been a range of initiatives that soften or ameliorate the impact of drug laws, particularly for personal possession. In Australia the penalties in different states vary, but

in most cases the possession for personal use of cannabis, including some plants, is not a criminal offence, but one for which fines can be imposed.

In the USA, the medical use of cannabis has grown significantly and is now legally approved in 15 states as well as the District of Columbia.[88] While there have been attempts in some states, for example Montana, to repeal these laws there has also been the growth and increasing professionalisation of a budding industry in states like California and Colorado.[89] A recent attempt to effectively legalise the recreational use of cannabis in California was only narrowly defeated in a referendum, and had attracted a wide range of professional investors. There have even been statements of support among the most conservative commentators and politicians in the USA, including Pat Robertson and Sarah Palin, for relaxing enforcement of laws against personal use of cannabis.[90]

A number of South American countries have also recently sought to decriminalise some drug use (primarily cannabis) in order to reduce the impact of illegal drug production and distribution in their countries.[91] In August 2009, the Argentine Supreme Court declared that it was 'unconstitutional' to prosecute citizens for having drugs for their personal use, asserting that 'adults should be free to make lifestyle decisions without the intervention of the state', though it stopped short of advocating complete decriminalisation.[92] In the same month, Mexico enacted a law decriminalising possession of small amounts of drugs, including cocaine and heroin in an attempt to enable police to focus on major criminals in the drug trade, rather than dealing with petty cases. Those found in possession of the equivalent of four joints of marijuana, or four lines of cocaine, will no longer be viewed as criminals. Instead, they will be encouraged to seek government-funded drug treatment, which will be compulsory if users are caught a third time.[93]

Mexico and Brazil are among other Latin American countries that are beginning to consider a recasting of drug policies. In the past few years, high ranking former officials, including Brazil's former president, Fernando Henrique Cardoso, and a Brazilian judge, Maria Lucia Karam, have come

out against the war on drug policy as being counterproductive.[94] More recently, President Calderon of Mexico publicly acknowledged the need to have a debate about the pros and cons or enforcement versus legalisation and regulation.[95] A recent briefing from the International Centre for Human Rights and Drug Policy and the International Harm Reduction Association argues that changes in a number of South American countries in favour of decriminalisation for personal possession of drugs are indeed consistent with international drug treaties.[96]

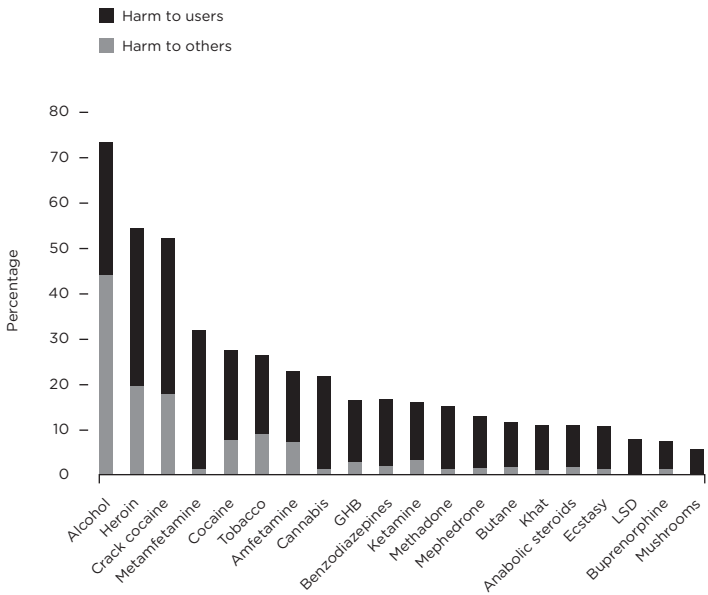
Harms and the classification system

While an international debate about drug policy continues, the UK classification system in particular has come under criticism in the past ten years as the result of a number of decisions. Charles Clarke when Home Secretary promised a review of the drug classification system in 2005 but his successor, Dr John Reid, did not follow through with this. The farrago over the reclassification of cannabis, a somewhat modest change in reality, brought untold opprobrium on the heads of many politicians. Both of these decisions generated criticism, revealing the fractiousness of debates around drugs. Other criticism has stemmed from decisions to classify new drugs, including ketamine, GHB, and steroids (all class C) as well as magic mushrooms (now all class A).

Many argue that the scientific basis of classification is undermined by combining harmful drugs like crack cocaine and heroin with less harmful substances like ecstasy or magic mushrooms in class A. It has also been argued that the complete exclusion of alcohol and tobacco from classification is not only analytically problematic, but may also send the wrong message and amounts to a form of 'separate but equal' in harm policy.[97] Critics argue that at its worse the classification of drugs has become a political tool, rather than the expression of evidence of harm.

Professor David Nutt, formerly chair of the ACMD, and other experts recently published a review of harms caused by different drugs as assessed by experts. The process assessed

Figure 2 **Harms caused by drug use**



Source: D Nutt et al[98]

physical, psychological and social harm to users; and harm to others, mostly social but including physical and psychological. The results, shown in figure 2, reinforce the critique of the current classification scheme since several class A drugs are among those with the lowest levels of harm. It also suggests that alcohol is the most harmful of all the psychoactive substances considered, while tobacco ranks sixth, making it more harmful than cannabis, mephedrone and ecstasy. It should be noted, though, that a number of concerns have been raised about the methodology used for this process.

The blurring distinction between alcohol, tobacco and illicit substances

One of the key critiques of a number of experts is that extremely harmful drugs like alcohol and tobacco are not regulated through the Misuse of Drugs Act (MDA). Instead, because of cultural and historical precedent they are controlled through a series of consumer protection, licensing and taxation measures, with varying degrees of impacts. Each year, alcohol misuse for all ages costs the NHS around £2.7 billion, but the wider cost to society including crime and disorder, social and family break-down and sickness absence is estimated at closer to £25.1 billion.[99] There are also high social costs in the UK for smoking, with the NHS spending approximately £2.7 billion a year treating diseases related to smoking.[100] However, unlike illicit substances, tobacco and alcohol generate substantial levels of revenue for the Treasury because they are regulated outside the MDA. For example, in 2009/10, the Treasury earned £8.8 billion from taxes on tobacco.[101]

Some suggest that this has led to confusing public health messages, for example, suggesting that alcohol and tobacco are not as harmful as illicit substances, or that messages about the harm of illicit substances are dismissed as fear-mongering by the government. There has been increasing attention to strengthening regulation around the sale of alcohol and tobacco: for example, the Coalition Government is exploring the idea of raising the price of alcohol per unit to discourage binge drinking. More recently, it was announced that the Government would seek to ban the display of tobacco products in retail shops and is considering requirements for plain packaging for all tobacco products.[102]

As the 2010 EMCDDA annual report argues, there are a number of arguments that suggest that public health requires a comprehensive approach to illicit and licit substances that are potentially harmful and open to misuse.[103] Perhaps the most important reason is that the use of licit and illicit substances tends to take place among the same population, and possibly in the same settings. From the perspective of those working in public health responding to problems with misuse and addiction, a comprehensive approach is better suited to reality. This has

been recognised by the most recent 2010 UK drug strategy, which states that 'severe alcohol dependence raises similar issues [to illicit drug misuse] and that treatment providers are often one and the same'.[104] The new body Public Health England will have a remit to bring together traditional public health efforts (eg diet, immunisation) with drugs and alcohol treatment services. However, the drug strategy also recognises that alcohol plays an 'important part in the cultural life of this country', and has an economic contribution 'with large numbers employed in production, retail and the hospitality industry'. It notes that 'pubs, bars and clubs contribute to community and family life and also generate valuable revenue to the economy', but points out that 'alcohol is a regulated product'.

Legislating against 'legal highs': experiences abroad

At present there exists a variety of international responses to 'legal highs'. Where drug laws are used to control use and supply there are significant differences between countries. Outside drug laws are control options that restrict sale, with or without medical supervision, largely through consumer protection or trading standards type legislation.

Internationally, there have been different approaches to controlling 'legal highs' thus far, including:

- an analogue or generic approach
- medicines legislation
- trading standards or consumer protection ('restricted sales')
- temporary bans or emergency legislation

Analogue legislation

An analogue approach entails banning or controlling all substances within a particular chemical group. The US Federal Analog Act enacted in 1988 is the most cited example of this type of approach. It was passed as a means of correcting the slow process needed to schedule potentially harmful substances. Before this Act the Drug Enforcement Agency had to legislate for

each chemical or substance separately, which could take months if not years. The scheduling of ecstasy in the USA entailed a four-year process.[105] The Analog Act allows for the scheduling of a substance if it is 'substantially similar in structure' and has a 'substantially similar chemical effect' to a substance that is already prohibited.[106] Because of the vagueness of the language in the Analog Act, and the tendency for courts to defer to government interpretation, every substance that has been proposed for scheduling under the Analog Act has been approved for prohibition. According to Reuter, it is unclear whether the Analog Act is part of the reason 'legal highs' have been less of an issue in the USA, or whether it is the comparative severity of prison sentences for drug prosecutions that have thus far discouraged entrepreneurial chemists from aggressively targeting the US market.

There has been little public debate in the UK about adopting an analogue approach similar to the US model, for example, although the ACMD is apparently undertaking a review of different approaches including the analogue approach. Thus far, the Government has opted for introducing temporary bans (discussed further below); while in dealing with mephedrone, it has banned a wide range of cathinone derivatives at the same time. The minister's comments in a recent parliamentary debate about 'legal highs' suggest that, although the UK is developing a broader classification approach that does not have to deal with specific chemicals individually, it is felt that the analogue approach would cast the regulatory net too widely. Banning substances without clear evidence of harm could forestall the research and development of useful medicines, or have unintended consequences by driving people towards more harmful substances.[107]

Medicines legislation

Medicines legislation provides for control of substances through medical supervision, or prescription. At the heart of such regulatory and control processes are strict standards to be applied to product quality control and knowledge about the likely benefits and problems of their use through established

clinical trials. Under medicines legislation, the burden of proof about safety rests largely with the manufacturer and/or distributor within a structured regulatory framework. In some countries, including the Netherlands and Finland, 'legal highs' such as mephedrone have been controlled through medicines legislation.[108] Austria has also used medicines legislation to restrict the sale of Spice without criminalising users.[109] There has thus far been little analysis – at least in the public domain – about the effectiveness of this approach. In the UK and other countries, producers and distributors of 'legal highs' circumvented medicines legislation by putting a disclaimer on their products saying 'not for human consumption' and advertising them as 'plant food' or 'bath salts'.

Trading standards and consumer protection ('restricted sales')

The experience with BZP in New Zealand presents the richest and best-documented case of a government struggling with an array of choices for regulating a new psychoactive substance.[110]

In 2005 the New Zealand Government's first regulatory effort placed BZP in a new schedule within the NZ Misuse of Drugs Act as a 'restricted substance'. This prohibited sale to anyone under 18 and prohibited various promotional activities, which had been widespread, but aside from these measures the substance was unregulated.[111] In lieu of formal regulation, voluntary guidelines from an industry association were used but not thought to be effective. Because of this confusion most people in New Zealand believed use of BZP was legal, whereas in fact it was merely not prohibited.[112]

In 2006 and 2007, New Zealand's Expert Advisory Commission on Drugs conducted an intensive review of the regulatory options for BZP and concluded that the risks to users were moderate.[113] As a result, in April 2008 the New Zealand Government moved to schedule BZP as class 1 under the Drugs Misuse Act of 1975, which amounted effectively to full prohibition. To allow for this shift to prohibition, the New Zealand Government enacted a six-month transition period in which purchase, possession and use were not yet prohibited.

Following this, the New Zealand Law Commission conducted a review of the control and regulation of new psychoactive substances and published an issues paper that favoured regulation rather than prohibition as the default option and proposed some possible options based on current regulatory frameworks for other substances.[114]

Ireland has taken an approach which goes beyond this, but also still represents a form of trading standards control. The Criminal Justice (Psychoactive Substances) Act 2010 targets 'head shops' in which 'legal highs' are often sold. Among a wide range of provisions on drug use paraphernalia and cultivation equipment, it makes it a criminal offence to sell or supply for human consumption substances that may not be specifically controlled under the Misuse of Drugs Acts but which have psychoactive effects. It also gives powers to the police and the courts to intervene quickly to prevent the sale of psychoactive substances by way of prohibition notices and prohibition orders. It is too early to assess the impact of this approach.[115]

Temporary ban and emergency legislation

Another approach adopted for 'legal highs' has been the use of emergency powers to ban a substance – often for a year – to allow for research into its harms. The USA recently used such emergency legislation to ban five cannabinoids used in Spice. The planned temporary ban in the UK is one form of such emergency legislation. As described by the minister with responsibility for drugs, James Brokenshire MP, the temporary ban will only apply to the sale, supply and distribution of substances, and not to personal possession in order to avoid 'criminalising users, particularly young people'. The waiver of possession charges makes it unnecessary for police officers to have to test drugs in order to determine their chemical make-up. It is however proposed that they can stop and search people and seize any substance they suspect is subject to a temporary ban.

From a public health perspective, in light of the rapid emergence of substances about which little is known, a temporary ban may prevent the spread of a new drug if it is

enacted quickly enough. It also ostensibly keeps intact an approach to drug control based on evidence of harms, rather than simply basing drug control on an over-application of the precautionary principle (see below). However, there are a number of concerns about a temporary ban approach. For example, some suggest that once a substance is subject to a temporary ban, there is a strong internal logic and likelihood that the substance will become permanently controlled. This is in part due to the complications around prosecuting someone during the temporary ban period and then having to revisit those convictions if it was later decided that little harm was posed and the drug should be unclassified. Another concern is that unbanning a substance could be seen as suggesting it is completely safe (rather than of low risk compared to other psychoactive substances) and this might lead to a rapid increase in use. There is also the risk that a temporary ban could have the same effect as an analogue approach in hindering the development of drugs with medical benefit. For example, one substance recently banned through emergency powers in the USA as a synthetic cannabinoid (JWH-133) has been shown in tests on animals to have ameliorating effects on Alzheimer's disease.[116]

The precautionary principle and 'legal highs'

As Reuter argues in his report, legislating on 'legal highs' represents simply another instance of the government being forced to make policy in the face of uncertainty.[117] In this instance, the harms of these new substances are generally unknown, as is the likely growth and evolution in this new market. The precautionary principle is one approach to policy making in the face of uncertainty when the action in question may pose 'a possible danger to human, animal or plant health'.[118] The application of the precautionary principle has been explored mainly in the context of environmental protection, in which instance it is often used by advocates of environmental protection in the face of potentially polluting industries. The precautionary principle assumes that policy makers are extremely

risk averse in the face of uncertainty. In applying the precautionary principle, policy makers assume that the risks of a certain policy choice are so great (often judged on the basis of a worst-case scenario) that any benefits of that policy choice are completely outweighed. In contrast, the New Zealand Law Commission states its view that 'in a free and democratic society full prohibition should be a last resort option when lesser regulatory restrictions have proved ineffective'.[119]

The adoption of the precautionary principle may seem appropriate for legislation around controlling new emerging psychoactive substances. In this instance, it is used to defend the current approach to drug control through enforcement and criminal sanction. While some application of the precautionary principle may be necessary, there is a risk that prohibiting a substance can actually increase harms, in which case legislation becomes potentially counterproductive. For example, prohibiting a substance that is still highly desired by substantial sections of society can encourage the involvement of organised criminals who are willing to take the risk of legal sanctions in order to reap the monetary reward of serving that demand. It can also influence quality control and assurances, the absence of which increases the harmful impact on individual users on average. In addition, it makes gathering data on the drug and its use much more difficult, which impedes the provision of prevention and harm reduction programmes as well as effective policy development and enforcement.

The decision to prohibit a new psychoactive substance, argues Reuter, is similar to the decision faced by drug regulatory agencies and pharmaceutical companies in bringing a new medicine to market. On the one hand, a regulatory agency could face criticism for delaying a potentially beneficial medicine while its safety was being assessed. On the other hand, bringing a medicine to market too soon could see a proliferation of potentially dangerous and ineffective medicines. Similarly, banning a new psychoactive substance too early can potentially make it difficult to gather information on its harms and potential beneficial uses. Banning it too late – as could arguably be the case with mephedrone – can allow the drug to proliferate and

become better established. However, there are two important characteristics that distinguish the two examples.

First, there are well-established lobbying interests on both sides of the debate about regulating medicines: pharmaceutical companies and sometimes patient interest groups on the one hand, and consumer protection NGOs along with bodies like NICE on the other. However, there is hardly a substantial user base of recreational users of psychoactive substances that commands similar influence. There are of course a number of people who criticise prohibitionist drug policy, but their influence on policy has thus far been marginal. Second, and most importantly, there is a clear medical benefit at issue in the context of a decision about new medicines. The primary benefit of new psychoactive substances is the pleasure derived by users, and there is a further benefit if users are encouraged to use less harmful substances. According to Reuter,

emphasizing substitution, that these substances may be less harmful than those that are already being used, whether legally or illegally, may be a more promising strategy for persuading the public that there can be gains from allowing regulation of risky new drugs.[120]

The discourse around drug control ought to take account of any possible benefits from use of some psychoactive 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[121] or improving confidence or performance. These are generally the reasons why 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, but for such messages to be credible they also need to acknowledge the factors that attract young people to the use of these substances. This lop-sided view of drug control may also hamper the formulation of effective drug policy.

The recent proposal to create new temporary banning powers to tackle 'legal highs' and the use of Open General

Importation Licensing provisions to stop mephedrone and other cathinones may be seen as an effort to think laterally. But it is still predicated on the assumption that banning a substance will control or deter production, supply and use whereas the last 40 years' experience suggests this is wholly unrealistic. It also does not take into account the harms that may arise from enforcement discussed earlier.

3 A new approach to a 'wicked issue'

As argued in the introduction and chapter 2, drug policy is a notoriously difficult area in which to have rational and dispassionate policy debates. There are fundamental conflicts of value and the stakes involved are perceived to be very high. Politicians engage with the issue at their peril, and often rely on a risk averse stance that entails an extension of the precautionary principle. A not inconsiderable proportion of crime in the UK is linked to drugs of different kinds and there are regular reports of young people dying or becoming mentally ill following drug use (although there may be debate about the extent of causal links between these events). Despite some shifts in public opinion noted in the previous chapter, most public opinion polls suggest more people are in favour than against a tough enforcement approach to drug use. This is particularly true when polls are carried out after a high profile 'overdose', such as the case with Leah Betts in 1995. Politicians are thus (perhaps rightly) fearful of media and political reactions to any appearance of being 'soft on drugs'. With so much potential for loss, and little obvious gain, it is little wonder that there is very little political appetite for changing drug legislation.

Meanwhile, reformers argue that moralising and scaremongering among the media have wrongly shaped public opinion. The result, they argue, is support for a policy that actually causes harm to many people on top of the harms caused by drugs themselves. While the prevailing cultural value is that 'drugs are bad' and 'drug users are irresponsible' it should come as no surprise that few professionals are willing to make public statements challenging the current legislation. There are calls for change, but only from retired leading professionals, whether they are judges, chief constables[122] or medical experts.[123] Even an ex-Home Office minister has called for change, but only when out

of office.[124] There appears to be little support from current professionals for change.

While both drug reformers and drug enforcers argue for their respective proposals and arguments, there is little actual data on what is or is not effective, as demonstrated in a recent comprehensive review of evidence.[125]

This chapter presents a different approach to drug policy based on a soft systems methodology and the conceptualisation of the drugs problem as a 'wicked issue'. Much of the perceived current impasse on drug control policy is in large part due to the polarised nature of the debate. This debate tends to reinforce the view that there are only two options available to policy makers: controlling drugs through the Misuse of Drugs Act (MDA) and criminal enforcement, or decriminalisation. Those on each side of the debate present their view as offering the only solution to drugs and drug policy. We argue that this is unhelpful, and that there is no silver-bullet solution to the drugs problem. However, there are things that can be done to progress a more informed analysis of different control options for new substances and make improvements to the current policy framework that are based on broad areas of consensus.

Our soft system workshops, described in more detail below, sought to encourage people to reconsider their perspectives, give greater recognition to other viewpoints, focus on the goals of drug control rather than competing means, and find consensus on ways forward. We did this by structuring the discussions around outcomes on which there was universal consensus, and avoiding discussion about whether the use of psychoactive substances is an inherently bad thing. For example, the first workshop addressed the question: *what is the best approach to protect young people from the harms of new emerging psychoactive substances?*

Framing the question in this way and focusing on outcomes, rather than asking whether classifying a substance through the MDA minimised harms, allowed for a more fruitful discussion.

Drugs: a 'wicked issue'

Drug use in society and drug policy are 'wicked issues': social problems characterised by resistance to resolution over long periods of time, being fractured by different deeply held values and by being connected to other similarly complex and unresolved issues.[126]

The 'war on drugs' was launched in the USA in 1970 and has been viewed as one important stimulus for the MDA introduced in the UK in 1971. Yet, despite this rhetoric and significant increases in expenditure on enforcement, drug use in the USA and UK has increased until recently while the street price of most drugs has steadily declined. Numerous commentators have claimed that if it really were a 'war' then governments have been roundly defeated. This formulation of the issue is widely contested and few today would argue that a drug-free world is achievable.

There is significant disagreement about whether drug policy over the last 50 years has been a complete failure, or just the least worst option. While the supply of drugs and drugs harms remain persistent, many argue that the levels of prevalence of use and problematic use could be even worse if illicit drugs were available in the same way as alcohol and tobacco.

The disagreements around drug policy have two contrasting roots, both of which are significant. The first lies in the fundamental values around drug use. For some, drugs are 'evil' and their use has to be prohibited and discouraged as much as possible. For others, government has no right to interfere with what citizens ingest for their pleasure. And for pragmatists, the core value is reducing the various associated harms, both to individuals and society in general.

The second root of disagreement is about how the world is understood to be operating, and how drug use fits into the fabric of modern society. Here the issue is one of causation. Problematic drug use is often intertwined with a range of other social issues, including family breakdown, poverty, worklessness and family history of substance abuse. It is difficult to identify which of these issues is the cause of the others. For example, many young people who have problematic drug use come from

deprived backgrounds; is the source of their problems the drug use or the deprivation?

Traditional policy making starts from the assumption that the issue to be addressed can be identified and defined. However in the face of the type of profound disagreements outlined above, dispute starts at the definitional stage and continues into what constitutes evidence, what should be the goals and what means should be used. What appears to be a 'solution' from one perspective is likely to make matters worse from other perspectives. Wicked problems do not have simple 'solutions', no matter how much the media and politicians would wish otherwise. Rather, we argue that a more fruitful way of framing the issue is to seek 'improvements' to policy that are supported by all stakeholders. One of the fundamental problems with policy making on 'wicked issues' is that a huge amount of time and energy is spent arguing among stakeholders about which is the right solution. Focusing on improvements to policy which are backed by consensus can help contribute to more efficient and less fractious policy making.

A soft systems approach to drug policy

A key feature of this project was to use a soft systems approach to explore the different perspectives or world views operating within the drug policy debates in order to identify areas of consensus. The soft systems method, pioneered by Peter Checkland in the 1970s,[127] emerged from systems engineering in recognition of the complexity in managerial problems resulting from different views on what the system was, what its goals should be and what needed to be done to improve the situation. The process aims to identify these differences in perspective with the aim of gaining a bigger picture and thereby generating system improvements that are not in opposition to any of the existing perspectives. To achieve this, participants in the process are encouraged to voice their perspective strongly, but with the aim of being understood, not with the aim of trying to change other people's minds.

Each workshop for this project focused on a specific question, though the aim was not to arrive at a definitive answer

to the question. Rather the question served to limit the scope of the debate and provide a vehicle for exploring improvement options.

The first workshop considered the question:

What is the best policy approach to protect young people from emerging new synthetic drugs?

The second considered the question:

What steps can we take to control the availability of new emerging psychoactive substances?

The participants

Each one day workshop had about a dozen participants. Participants agreed to participate on the basis of anonymity. For each workshop, we chose participants carefully in order to try to ensure that every type of stakeholder in the drugs debate, and represent a wide range of perspectives.

We aimed to have representatives of all the government departments and agencies responsible for some aspect of UK drug policy, including areas of enforcement, health, education, medicines legislation and trading standards. In addition to these participants, we sought to have a representative of the police at both workshops, representatives of different frontline drugs charities with on-the-ground knowledge, a young person with experience of drugs, advocates representing the parent or carer perspective, and expert pharmacologists. We also sought out individuals and academics with specific knowledge of 'legal highs' and new psychoactive substances. Crucially, we also invited two well-known individuals in the drug policy debate who represented the more extreme views on drug policy: each workshop had both a committed and passionate enforcer and reformer.

The process

The systems workshops began by participants being invited to draw a 'rich picture' of how they perceived the issue. Using images in this way enables each person to focus on what exactly they wish to communicate, and to give expression to emotions by their choice of images and colour. Then each person introduced themselves to the group, including their job title and role, and briefly described the elements of their picture. The picture and short debate that followed gave rise to a number of issues that were captured on flipcharts by the workshop facilitator. Once all the pictures had been presented, the group debated the topics that seemed most significant, either because they generated most debate or because they recurred a few times. As these discussions proceeded further, issues were captured on flipcharts after which they were grouped by issues into themes.

The groups then chose to work on one of the general themes that had emerged from their discussions by defining an ideal system that, if it existed, would address the theme. For example, in the first workshop one of the themes that emerged was providing information to young people and the ideal system was defined as:

A system to enable young people to make informed and responsible choices regarding substance use before they risk becoming regular users, in order to enable young people to realise their full potential as adults, by providing accurate, accessible and relevant information, combined with education and skills, to both young people, parents and communities while recognising that different groups will require the information presented differently.

Arriving at the definition of an ideal system requires debate about what exactly the system is seeking to achieve (its purpose), why this is important and how it is to achieve its purpose. This is an iterative process in the sense that the formulation of a definition usually illuminates something that has, to date, been overlooked or perhaps simplified. Once an adequate definition is achieved the group then considers the sequence of activities that would be required for this ideal system to fulfil its purpose. In the example given above, key activities would include gathering and assembling relevant information, assessing its accuracy and

relevance, identifying the key audiences, and for each audience devising appropriate messages, media and methods of transmission.

Once the set of activities for the ideal system have been assembled they are then compared with what is happening in the real world. This then leads to a debate about what steps could be taken to improve the existing system in the direction of the ideal. In the example illustrated above, it was agreed that the most important step was the collection and collation of accurate information on new psychoactive substances since without the completion of this activity no other part of the system could operate effectively. By focusing on concrete purposes and using the rigour of systemic thinking, the group could come to an agreement about an improvement without becoming bogged down in their different perspectives.

Workshop questionnaire

One of the aims of the workshops was to enable the participants to enlarge their own view of the issues. It is normal for participants in this type of workshop to be influenced by increasing their understanding of each other's perspective. In order to explore whether such changes took place, participants were invited to complete a short questionnaire (see Appendix II) before and after the workshop. The results confirmed the expectation that people did not move their positions much, presumably because they had previously understood each others' positions. However there were some changes and these are summarised below:

- In both workshops, there were slight shifts from positions of certainty to uncertainty: participants became less certain of their views. General comments also reflect that they had broadened their perspectives and considered wider options for control.
- Of all the questions asked in the survey, both workshop groups were most unsure about whether the temporary ban will be the most effective approach, suggesting they were unclear about the implications of such a policy.

- Both groups agreed that the emergence of new substances requires a new approach to drug control, and that providing education is an essential prerequisite for deterring use.

Different perspectives

As mentioned, a key reason for using the systems workshops was to identify the different perspectives that were operating within the drug policy debate. The workshops succeeded in this respect and a number of the different perspectives are summarised below. The aim of this summary is not to pigeonhole people, but to provide composites designed to convey a flavour of the differences that emerged. It is important to recognise the variation within categories of participants so individual participant's views often differ from those in a particular category. For example, not all members of the police will concur with the description attributed to the police below. It should also be recognised that individual participants are quite likely to hold conflicting views and beliefs about the issues. Nevertheless, for developing a bigger picture of the drug policy domain the following summaries capture something of the extent and nature of the different perspectives to be found.

The police's perspective

Box 6 **The police's perspective**

The young people the police come into contact with who are in trouble with drugs are in a high-risk group from broken or chaotic homes. It does not help to criminalise them, or other young people, for their involvement with using drugs:

> How people choose to get off their heads is really none of our business – provided that they do not engage in risky or illegal activities (other than possessing illegal drugs).
>
> *The risky activities are things such as driving, getting into fights and so on. Our job is to catch the villains who are*

making a lot of money by importing, distributing and selling drugs.

The police saw the paradox posed by the current prohibition system quite clearly. They wanted drugs to be illegal so that they could catch the villains who make money from drugs, while at the same time not wanting to wreck young people's careers by giving them a criminal record.

Reformers' perspective

Box 7 **Reformers' perspective**

Reformers think the current system simply does not work. Drugs are cheaper and more widely available than ever before; this after almost 40 years of control under the MDA. Thousands of young people have their lives wrecked by being given a criminal record as a result of recreational drug use. Banning a substance does not have much impact on its availability, but it does make drug use more hazardous due to lower purity, unknown dosage and unknown contaminants. A regulated system is both possible and preferable and, as the example of cigarette smoking demonstrates, need not lead to uncontrolled use.

Reformers tend to be advocates working for charities and/or campaigning organisations with well-known views on drug policy. Reformers often do not fully address the fact that making something legal and regulated might lead to an increase in its use, which could lead to an increase in harms associated with addiction.

Drug workers' perspective

Box 8 **Drug workers' perspective**

Officialdom has no idea what's happening on the street. The problem with new substances is the lack of accurate and

reliable information. No one, not the young people using them, nor the drug workers trying to give advice about them, nor the doctors in A&E units treating users, knows enough about these substances, and there seems to be a continual supply of new ones. The lack of information is about dosage, toxicity, side effects and issues associated with mixing different drugs. There is a growing body of data available among young people and drug workers, but no one is collecting and collating this, and it could be the basis for giving advice. Messages about extreme dangers of drugs are negated by peer experience, so the whole drug advice and education system is brought into disrepute. The young people who get into trouble with drugs are usually 'at risk' for other reasons and fall foul of mixing different drugs (including alcohol).

Frontline charity workers tended to have a very pragmatic perspective based on aiming to reduce harm at the street level. Legality is seen as less of an issue than accurate information. The best advice given to youngsters is, 'If you are having fun that's OK, but if you are using any drugs to get out of it then stop, you are overdoing it.'

Civil servants' perspective

Box 9 **Civil servants' perspective**

Civil servants are involved in delivering a harm reduction agenda while perceiving that radical changes to drug legislation are unlikely any time soon, so they accept the constraints of the existing system. This leaves them with a dilemma because they recognise the drawbacks of the current policy, but are not convinced that decriminalisation is the answer. They recognise different groups of users (teenagers, clubbers, old hippies) but these differences are not represented in policies or campaigns. They are puzzled by many aspects of drug use including the changes in fashion that determine drugs of choice and the steady decline of teenage use of both drugs

and alcohol since 2001. They recognise that the young people at greatest risk are those from disadvantaged backgrounds, and these can be targeted independently of drug use. For this group the most effective assistance is helping them make less risky decisions in all aspects of life.

Civil servants tended to adopt a very intellectual approach, largely because they do not see it as part of their role to challenge the moral or value judgements involved. They are also aware of potential paradoxes, eg demands for classification of substances on the basis of harms quickly before any evidence of harms can be obtained, which then makes obtaining such evidence extremely difficult.

Professionals' perspective

Box 10 **Professionals' perspective**

Professionals (pharmacologists, academics, clinicians) believe the MDA is no longer fit for purpose. The classification system is crude and not related to harm: and does not appear to have any effect on users' decisions. Banning substances changes the sellers, not the users, and means that what is used might be less pure and the users less certain of what they are ingesting. The mephedrone issue brought the Advisory Council on the Misuse of Drugs (ACMD) into disrepute and illustrated that policy was driven more by the media than by scientific evidence. They recognise that there is a moral judgement driving prohibition, and that this is a valid role of government. However they also see that pursuing a harm reduction agenda might well lead to some substances being regulated rather than banned. They are also concerned by the anomalies in the current system (eg around poppers, GBL, nitrous oxide).

This is quite similar to the civil servants' perspective, but less bound by politics, as well as the reformers' perspective. It is

an open perspective that requires clear evidence to determine the way forward that would actually reduce harms.

Enforcers' perspective

Box 11

Enforcers' perspective

Enforcers believe that any relaxation in the legal position will lead to a dramatic increase in use of drugs, with a concomitant increase in the harms due to addiction, mental illness, overdoses and other accidents. Drugs are bad and we have to do all that we can to stop young (and older) people using them. We have to be much tougher using border controls to prevent the importation of drugs of all kinds. We have to be tougher on the criminals who import and distribute drugs and we have to combat the pervasive pro-drug culture in the UK. The sake of our children's future depends on maintaining an approach to drugs backed by the threat of criminal sanction to send the right message of deterrence.

At the workshop this perspective was presented as being entirely based on a desire for harm reduction. Nevertheless the implicit value judgements that drugs are bad, that being intoxicated is not good and that the moral fibre of our culture is at risk was always visible beneath the surface. This appeared to be the most 'closed' perspective at the workshop; there was very little scope for any shift.

Young people's perspective

The significant perspective not represented at either workshop was that of young people. The first workshop included a young person below the age of 25 years old who had previously had problems with drugs and was working as a peer drug mentor for a local charity.

At the workshop it was recognised that there were several sub-groups of young people of relevance, characterised during the workshops as:

A Young people who do not use drugs, or have tried drugs a couple of times but ultimately do not use. According to available surveys, this applies to the majority of young people. Participants at the first workshop raised the question of why the majority did not use drugs. Was it as a result of personal inclination, lack of opportunity or because drugs were illegal?

B Pupils still at school who use drugs occasionally. The interesting question that arose regarding this group was why the consumption of all types of drugs and alcohol in this group has steadily declined since 2001.

C Clubbers and other young adults in the age range 18–30 who used drugs recreationally as part of a dance culture in which drugs enhance the experience and facilitate the 'all night' participation that is a feature of this scene. This is the group that adopted mephedrone enthusiastically in 2008/09 and towards whom the 'legal highs' marketing is targeted.

D Young people of any age for whom drug use becomes problematic. This is a small proportion of the total number of young people using drugs. It was also recognised that in most cases drug use was a symptom of more general problems for this group who were at risk for other reasons.

In order to ensure representation of young people in the research, we conducted a separate focus group with eight young people between the ages of 17 and 25. The focus group was arranged with help from the Foyer Federation, and included young people who were living in one of their supported accommodation centres. While young people in Foyer Federation housing often come from chaotic households, and would fall into category D above, those who participated in this focus group appeared to fall into group A or B of those outlined above.

Box 12 **A young person's perspective on drugs**

Alcohol and tobacco are just as harmful as drugs like cannabis and ecstasy, though ultimately it's very difficult to say which is more harmful (there was little consensus on the relative harms

among the group of young people we spoke to). They suggested people use drugs for a range of reasons, but mainly through curiosity, boredom, because everyone else is doing it, the media, and popular music and culture. Legality of a substance doesn't matter as much as the effect. Young people will take things that make them feel good, and try things that their friends recommend. For some, even, the illegality of something makes it more cool and more desirable:

They don't really care whether it's legal or not… if people give them something they're like 'what's this', not 'is this legal', they don't care if it's legal. If it gives them a buzz, the higher they feel, the better they think it is. They don't care if it's legal or not. Most of the time, if it's with the people they trust, they don't care if it's legal anyway.

The media plays a huge role, with lots of young people using drugs because they see other people (singers, rappers) doing it.

Most of the young people in the focus group had heard of mephedrone but were not necessarily familiar with the term 'legal highs'. Their knowledge of mephedrone mainly came through the media, though a few had friends who used it; no one at the focus group admitted to trying mephedrone, or other drugs. Although they described friends getting it from other friends, motivations for using mephedrone were thought to be curiosity, legality ('they don't get done for it if they get caught') and availability. One participant noted their friends had tried Spice, mainly because it was legal, but didn't like the effect so went back to smoking cannabis. In general, the young people were very aware of the harms of drugs, tobacco and alcohol. There was lively debate about whether alcohol, cannabis or tobacco was more harmful, but almost all the participants thought that ecstasy and mephedrone were very harmful. Opinions were again divided over whether drugs should be controlled: many felt that the harms caused by alcohol were the

result of its easy accessibility. Nevertheless, most felt that legalising cannabis 'wouldn't make much of a difference' because it was already widely available. No one thought that all drugs should be legalised. Interestingly, one participant spoke about being surrounded by drugs, including from his parents, but 'got a thrill' from saying no:

But I've chilled with these people my entire life, and I've never taken these things. My dad is the biggest smoker you'll ever know. All my friends. I'm always in the circle. If I'm going to die it'll be of passive smoking, because I take it every day, I'm always around him. He's like do you want some, and I'm like no, I'm alright. My thrill is saying no. I get a thrill out of it – like yeah, I can say no. That's why I'm so independent today.

One of the surprising features of both workshops was that the debates between the participants were extremely constructive with a great deal of acknowledgement involved in the exchanges. This was in sharp contrast to the way drug issues are presented in the media. All the participants had considerable experience of working with and around drug policy and the discussions were rich in ideas and challenges, some of which are included in the description of perspectives above. The next two chapters summarise the issues on which the participants in each workshop were able to form a consensus. This should be instructive to policy makers in seeking to make improvements to drug policy that would enjoy wider support.

4 What is the best approach to protect young people from emerging new synthetic drugs?

It is important to emphasise that our focus was explicitly on new compounds and not on the use of established drugs. Indeed one of the implicit conclusions that emerged from both workshops was that it was important to differentiate policies appropriate to different drugs and different groups of users. A significant source of unintended harm and confusion arises as a result of the attempt to lump all drugs and all users into the same category.

This is an anonymised list of the participants who attended the first workshop:

- a civil servant (enforcement)
- a civil servant (health)
- a civil servant (young people)
- a police officer
- a police officer
- a director of medical research, leading charity
- a parent (affected by their child's use of a 'legal high')
- a director of a leading reformer charity
- a pharmacologist
- a frontline worker, charity focusing on the club scene
- a frontline worker, London borough charity
- a peer support worker, London borough charity

Why do young people use drugs?

Participants in the first workshop agreed that most young people do not use drugs. Those that do, do so for a variety of reasons. For some it is fun, curiosity, exploration, and there are some who

just like the effects. Others may explore drugs but then decide they do not like the effects. Teenage years are characterised by boundary testing, experimentation, rebelling and trying something just because it is new. Some use drugs as a way to escape stresses of family, work or the boredom of day-to-day life. Only a small minority of young people who try drugs end up running into difficulties. This minority are often but not always from disadvantaged backgrounds or otherwise in a high-risk group.

The participants with experience of working with young people who run into trouble with drugs agreed that for many of them the use of drugs was a symptom of other problems, not a cause. The same young people were likely to be in trouble with anti-social behaviour, crime and promiscuous sex. Members of this group were not hard to identify and the workshop participants, particularly civil servants and frontline workers, felt that the best approach was to devise ways of enabling them to make less risky decisions. This could be done, in part, through education and providing parental and community support services. Laws about drugs were going to be as ineffective as laws about sex with this group, and 'legal highs' posed simply another risky opportunity.

Participants agreed that there were many influences and environmental factors acting on young people that may have an effect on drug use and experimentation, including family pressures and attitudes to drug taking, community cultural norms, risk-taking behaviour, youth culture, music and the media ('social norms'). Personality traits including potential genetic influences are also significant, including being prone to thrill seeking, anxiety and depression. All participants argued that identifying these young people and working with them to address those underlying factors that can be changed early on (which could happen at school) could reduce drug use later.

However, although a range of factors was identified as likely to be significant, there was still no proven evidence known to participants explaining why drug and alcohol use among school pupils has been steadily declining for the last decade.[128] There is clearly scope for improving our understanding and

using this to provide guidance and advice to those groups at greatest risk. One proposed way forward is to analyse why some young people do not use drugs (particularly those in a high-risk group), rather than to ask why those who do use them do so.

Box 13 **Positive drug experiences**

It is estimated that over one-third of 16–59-year-olds in England and Wales have used an illicit drug at some point in their life. This does not of course make it right or beneficial. But many will have got some pleasure, at least initially, and sometimes over a longer period.

There are a number of benefits that people derive from psychoactive substances. The first area is that of mood enhancement, which is said to improve openness, reduce inhibitions and increase social bonding. This is the basis of the 'having fun' aspect of drug use and is very similar to the benefits obtained from the social use of alcohol. The second area of benefit is the reported increase in creativity experienced by many people using drugs such as cannabis, hallucinogens and cocaine. This use of drugs has a long history in human culture and accounts for the popularity of many drugs with artists, musicians, poets and people working in the creative industries.[129]

The third area of reported positive experience arises as a result of enhanced sensory perception and experience, particularly associated with listening to music, watching films and sexual experiences. The fourth domain was promoted as the basis of the cultural revolution in the 1960s and is the reported expansion of consciousness or awareness associated with many, but not all, illicit drugs. Many young people report highly significant spiritual and psychological experiences with drugs, events that can often be interpreted as shaping their lives for the better. The famous 'Good Friday experiment' carried out at Harvard in 1962 has recently been repeated as a double-blind clinical trial to test the effect of psilocybin with 36 volunteers who had never used hallucinogenic drugs. The authors concluded, 'The most striking finding… is that a large

proportion of volunteers [67 per cent] rated their "psilocybin experience" as among the most personally meaningful and spiritually significant of their lives'.[130]

Many of the reported positive effects of drug use appear to depend on the relaxation of perceptual, cognitive and sensory filters that normally condition experience. However, those relaxations can also be the source of difficulties for vulnerable groups, since a similar process can result in the psyche being overwhelmed by paranoia and psychoses. Finally, the fifth domain of positive experience for drugs is the role the play in facilitating the all-night dancing which characterises the club and rave culture that emerged in the 1990s and continues to this day in the UK and across Europe.

For any drug control policy to be more effective at controlling new substances it will, at some point, have to acknowledge this reality.

What is the aim of drug policy for young people?

There was some debate in the workshop about what the goal should be for drug policy for young people. Participants felt that there was an expectation among parents and the media that laws that prohibit the distribution and use of drugs can invariably protect young people. Nearly all of the participants agreed that it was unrealistic to aim to prevent *all* drug use among young people, and yet this aim is the source of much of the demand for tougher legislation and enforcement. While some argued this was not even desirable, the majority agreed that while it may be desirable it was not a feasible aim. A recent estimate indicates that customs and the police intercept about 1 per cent of heroin and crack cocaine entering the UK, an indication of the impossibility of effectively enforcing drug laws.[131] With over a third of the adult population reportedly having used an illicit drug at least once, including over 20 per cent of school pupils in the UK population, drug control legislation apparently does not prevent use of illicit substances.

Nevertheless the need for protection, especially for young people, was clearly recognised throughout the workshop

debates. Participants agreed that in an ideal system, the aim of drug policy would be *to enable young people to make informed and responsible choices about substance use before they risk becoming regular drug users in order to enable them to realise their full potential as adults*.

This required:

- providing accurate, accessible and relevant information, combined with education and development of skills, to young people, parents and communities
- targeting the information, education and skill development particularly to at risk groups (recognising that different groups require the material to be presented differently)
- providing mentoring services to offer extra one-to-one support

The importance of information on new psychoactive substances

Participants agreed that the best foundation for reducing harms to young people was to provide accurate, relevant and helpful information and advice. Information about the nature and effects of new substances was considered to be crucial for everyone involved in the drugs field for the following purposes:

- effective drug education to enable young people to make informed decisions about whether or not to use drugs
- development of strategies to encourage young people who choose to use drugs despite knowledge of dangers to make less risky choices
- treatment of those who have problems as a result of drug use
- understanding the extent and nature of use and making decisions on appropriate control measures
- enforcement of relevant controls

In this context it was also recognised that at the very least there were three separate groups to be targeted:

- youngsters who have not yet tried any drugs; the aim would be to provide information to enable these young people to make an

informed decision about the health and legal risks weighed against the potential benefits of taking drugs

- those who had already used drugs and would continue to do so; the focus would be to provide this group with information on how to use drugs safely and the warning signs of imminent trouble
- those who were already experiencing difficulties in the form of dependency, paranoia or excessive use; the focus would be on providing information on self-help and treatment options

It was recognised that providing information to these different target groups could pose problems, especially when giving messages about avoiding use to one group and how to use drugs safely to another group.

There was a serious problem with assembling reliable information on new psychoactive compounds – effects, dosage and hazards – especially when combined with other intoxicants. Some participants felt that our knowledge about new substances becoming available is very poor and that controlling a substance under the Misuse of Drugs Act (MDA) makes collection of the necessary information more difficult. This was seen by the participants as one of the many unintended effects of classification and scheduling.

Legality and classification: unintended consequences

Workshop participants recognised that there were a number of potentially important unintended harms that resulted from current drug legislation. Participants, particularly the police, saw one of the biggest harms of classification as the criminalisation of large numbers of young people. In a system as complex and varied as the supply and use of hundreds of different psychoactive compounds, there will inevitably be unintended consequences of any control regime. Although it is impossible to devise a perfect system, most unintended consequences could be anticipated, and they should be considered in framing new regulations for new compounds.

The frequently repeated view that the MDA had passed its sell-by date was based partly on the poor relationship to levels of harm,[132] and also related to the number of unintended harms it created. Some participants – particularly reformers – noted that there has been a steady move toward de-penalising and decriminalising substances for personal use (see review in chapter 2) in other countries. Although not explicitly stated at the workshops, this suggests that the consideration of unintended harms should be part of the remit of the Advisory Council on the Misuse of Drugs (ACMD) in considering its recommendations to government.

It was also felt that drug policy and the classification of drugs were of little significance to those using drugs (though it may inhibit some from starting to use them). Legality was felt to have a greater impact on sellers than buyers: high street shops and domestic internet outlets were unlikely to persist once a compound was classified, leaving the only sellers on the streets and the profits financing organised crime. The issue of legality was also tied up with the purity of drugs. It was reported that while new compounds were legally available they were very pure; once they became illegal then the purity was variable. The loss of purity and labelling meant that users of the compound were less able to gauge dosage. Also as one compound was made illegal, users were likely to switch to another – one that might be more toxic and on which there may be even less information available within the user community.

There was general agreement that it was difficult to establish whether making a drug illegal increased or decreased the harm to young people. On the one hand it might deter some, but the illegality may also make it more attractive to others (some concluding that it must be good if government bans it). The loss of purity and user information – both arguably consequences of MDA classification – increased the risks among those using the drugs. The classification of drugs is currently unsatisfactory, with some widely used drugs still legal (poppers, nitrous oxide and GBL).

Improvements to drug policy to better protect young people

The Coalition Government is committed to looking at new ways to influence people's behaviour in order to encourage them to make less risky choices and act more responsibly. This emphasis on influencing choices around risky behaviour was in evidence throughout the workshops we conducted. While legislation can impact on drug use prevalence, there are a number of issues relating to drug education and availability of information that suggest current approaches are not effective at influencing behaviour. As noted above, influencing less risky behaviour is especially important for young people who display background factors that predispose them to greater risk taking.

It was generally agreed that broader intervention initiatives delivered in schools and communities, such as Strengthening Families, could have more of an impact on drug use than interventions that were drug-specific. These broader initiatives helped to build emotional resilience among young people to withstand the pressures and influences around drug use that they are inevitably exposed to. In a recent meta-review of evidence by a team of international scientists from a variety of fields, it was argued that family, community and school-based interventions in the USA that focus on a 'broad set of mental, emotional, and behavioural disorders as well as drug use' have been shown to have more impact than 'purely didactic prevention programmes'.[133]

Workshop participants agreed that addressing the problem of a lack of information was the most useful way forward to improve the protection of young people from new psychoactive substances.[134] Key activities identified by workshop participants included:

- creating a framework that allows better information sharing between frontline workers, users and the government
- providing support for testing facilities in clubs and other venues where synthetic drug taking is prevalent

Creating a framework for better information sharing between frontline workers, users and the government

One route identified was to establish ways in which front-line organisations and charities working with drug users could collate information and provide it to a coordinating body, possibly the ACMD. The Coalition Government is planning an early warning system but it was felt that government and agencies needed to make better use of the potential data that are and could be made available (eg the Mixmag surveys), but also initiate more comprehensive information-gathering initiatives and processes. Frontline workers felt there was a wealth of information about new drugs available, through their work and myriad drug user forums on the internet, pharmacists, A&E and research literature. However, at present, no systematic framework existed to collect this information and disseminate it to the Government, the ACMD, public health and police bodies, other charities or to young people.

Creating this type of framework (partly envisaged in government plans) was seen as key to anticipating the arrival of new compounds, rather than continually playing catch-up. Three specific ways this could be achieved were identified:

- searching internet chat rooms where users exchange information on new substances and their effects
- approaching (largely Chinese) manufacturers of 'legal highs' to enquire what compounds they were researching or preparing
- using the commercially available pharmacological testing procedures used for assessing new medicinal compounds, which would give reasonably accurate data on how the compound functioned pharmacologically, its likely effects and toxicity, all essential information in preparing any regulation strategy

It was also felt that Government and the ACMD needed to develop a minimum data set of information, and that approaches cannot be substance-specific. According to our eminent pharmacologist participant, a full trial of mephedrone could take five years, so there is a need to be pragmatic and develop an approach that can deal with a variety of new and emerging

substances. It was argued that in vitro testing can provide a rough profile of effects of new substances.

While policy makers and ministers are playing catch-up they will always be prey to media campaigns and political pressures at critical junctures demanding action on new substances. If they can garner better intelligence they may be in a better position to respond to or be in advance of media and political concerns. Such approaches combined with complementary control approaches (along the lines we set out in chapter 5) could offer novel approaches to control new substances.

Provide support for testing facilities in clubs and other venues where synthetic drug taking is prevalent

One of the most significant problems facing enforcement and drug users alike is growing deception in drug markets. Mephedrone is being sold as cocaine, BZP is being sold as mephedrone, and some pills contain a mixture of illicit and licit substances. This deception about dosage and strength levels makes it difficult for individuals to make informed decisions about the risks they would take by consuming an illicit substance. Providing them with reliable and accurate information can allow them to make less risky choices (including to use less or no drugs) and act more safely and responsibly. Providing financial support for these activities is not necessarily something that the Government need do. However, as a principle, funding should not be withdrawn from charities and organisations that are providing these services.

5 Steps to control the availability of new psychoactive substances

Although there was clearly some overlap with the question addressed in the first workshop (about the best approach to protect young people from emerging new synthetic drugs), the second workshop focused particularly on the most effective legislative approach for controlling new potentially harmful substances and so took a different direction. This included views about the effectiveness of the current approach of classifying and scheduling substances according to the Misuse of Drugs Act (MDA), the creation of a temporary ban classification, and an exploration of complementary control regimes for responding to new substances.

The second workshop was attended by the following stakeholders:

- a civil servant (health)
- an enforcement officer (consumer protection/trading standards)
- a civil servant (health/medicines)
- a police officer
- a police officer
- a former civil servant (enforcement)
- a former civil servant (enforcement advocate)
- a lawyer, reformer charity
- a drug education specialist
- a pharmacologist
- a frontline youth worker, London borough
- an academic, specialising in new psychoactive substances

The global nature of the problem

Participants agreed that the emergence of new psychoactive substances is a global problem because of the way they are

produced and distributed (in 2011, coming predominantly from China) and the way information about them is ordered and shared via the internet. The market for new substances was driven by the desire for drug taking in the West, and the money that could be made by producers in supplying this market. Participants felt that these factors posed a series of new challenges that existed outside current control mechanisms. Moreover, these new challenges were added on top of existing concerns about the current system of control, which was not perceived to be working well enough, as discussed in chapter 2.

Issues relating to control and regulation of 'legal highs'

Much of the discussion focused on different options for regulation. This included regulation through the Medicines and Healthcare Products Regulatory Agency and medicines legislation, or through Trading Standards provisions, which regulate solvents, tobacco and alcohol among other substances. Currently, sellers of 'legal highs' have circumvented medicines legislation by advertising psychoactive substances as 'not for human consumption' or for alternative uses. It was also suggested that, because of the lack of other beneficial medicinal uses for 'legal highs', medicines legislation would not be an appropriate mechanism of control. The possibility of dual or multiple use for substances determines the type and extent of control measures. For example, amyl nitrites (poppers), although quite frequently used as a stimulant, are not controlled under the MDA as there are many industrial uses for these chemicals so banning them would be problematic.

It was felt that a regulatory system that included better labelling, advice and purity could reduce some harms associated with new psychoactive substances, though this sentiment was not shared by all of the workshop participants. Such a system would also hold the seller or distributor accountable for the demonstration of public safety (as with foodstuffs and medicines) providing evidence and warning about potential harms, rather than placing the burden on the Government to

determine whether substances are harmful. However, it was felt that, to be adopted, a control or regulatory system for new substances needed to demonstrate a clear benefit (not just a reduction in harm).

Moving forward: options for control

Based on the discussion in this workshop, we concluded that there are broadly five options available to the Government in seeking to control the availability and use of new 'legal highs'. Participants at the workshop agreed the following:

- There is a wide range of different pieces of legislation besides the MDA that could be used for controlling new harmful substances.
- The number of substances now controlled and the multiplicity of ways in which this is done is confusing and potentially inefficient and ineffective.
- There are a number of potential benefits to taking a step back and producing a simplified, overarching control framework, such as a Harmful Substances Control Act. This framework would include alcohol, tobacco and solvents, among a range of potentially harmful substances.

In considering the different options for control it is important to be clear about the objective of the exercise and the criteria that a good or more effective control framework must meet. Our research and the workshops we have undertaken would suggest that a suitable control framework would aim to:

- provide protection for the public (and especially children and young people) from potentially dangerous substances

And to be effective it must:

- ensure there are practical and enforceable control mechanisms in place for the production, supply and distribution of potentially harmful substances

- ensure those who produce or supply substances outside any control regime are dealt with in a proportional manner
- meet international obligations under UN drug control conventions and EU treaties
- be designed to minimise unintended harms resulting from the application of the regulations

These factors bear much similarity to those endorsed by the Police Foundation Independent Inquiry into the MDA.[135]

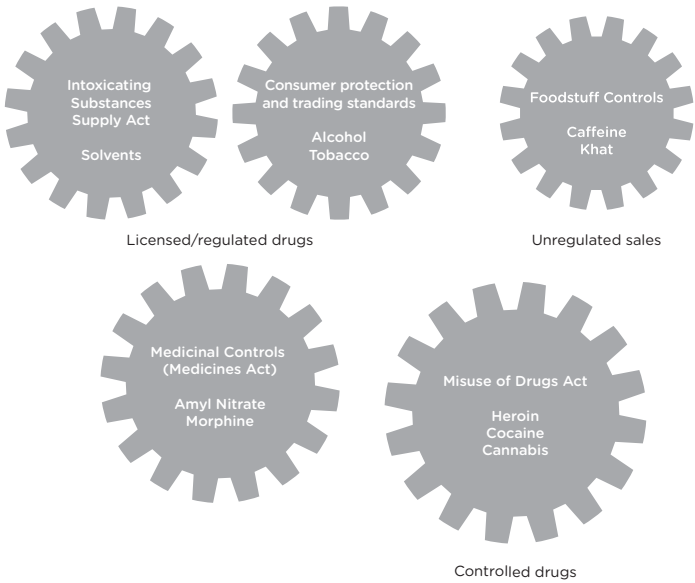
But what are the realistic options available to a government and parliament that wishes to reduce the risk of widespread use of potentially harmful substances without incurring other unintended harms from the associated enforcement efforts and accompanying black markets? Figure 3 below provides a visualisation of the different forms of control that exist for psychoactive substances in the UK. We have used these options, in conjunction with the discussion in the workshop, to identify a range of possibilities to controlling new psychoactive substances, from little change to more radical approaches.

Option 1 An 'as you are' option

Until there is clear evidence of harms, it could be argued that there is no reason to place any controls on these new substances. Any system of controls will take resources to enforce and have the potential for having a negative impact on users, for example through criminalisation. The use of the new substance may also have benefits, for example substituting for something more harmful, which might be negated by any system of control. Given that there is an element of fashion involved in recreational drug use it may be that the drug will have a period of popularity followed by a natural dwindling in use anyway.

However, there are a number of potential problems with this approach. First, it may take some time before the harms from taking a new drug are evident and it may become harder to control a substance once a market for it has developed than when it first emerges. A challenge also comes from the expectations placed on the UK as signatories to various UN

Figure 3 **How governments control potentially harmful substances**



drug control conventions and similarly with EU treaties. Once there is an international call or agreement to prohibit a substance or to introduce stricter controls then the UK would be in an embarrassing position if it were to stand out against such moves. In addition there may be pressure from the media, concerned family members and political opponents that 'something must be done' to stop new drugs, whether or not there is compelling evidence of their harms. In such cases, the momentum to classify a new or emerging substance under the MDA may become overwhelming.

Option 2 Control under the Misuse of Drugs Act and increase enforcement

A second option is to control new substances under the MDA and provide increases in expenditure for enforcement agencies including the police, customs and the planned National Crime Agency, to be able to increase their efforts to reduce production, supply and use. In the foreseeable economic climate, and set against a planned substantial reduction in expenditure (with estimates ranging from 6 per cent to 20 per cent) for police services in 2011/12 and future years, this does not seem a plausible option. Various estimates have been made of the utility of extra spending on enforcement activities and there is no hard evidence that increasing spending would result in a proportionate decrease in supply and availability. There might be more arrests of criminals and drug seizures, as has happened over the past 40 years. But the simple economic laws of supply, demand and prices suggest that, at best, the lid is being kept on the drugs market.[136] It is highly probable that the law of diminishing returns is already operating and we would see increasing inefficiencies.

Option 3 Use the current drug control legislation more flexibly

A third option is to take the opportunity to be more flexible within the current drug control framework. For example, anabolic steroids are class C drugs to be sold only by pharmacists with a doctor's prescription. It is legal to possess or import steroids as long as they are in the form of a medicinal product for personal use. But possession or importing with intent to supply (which includes giving them to friends) is illegal and could lead to 14 years in prison and an unlimited fine. Cannabis is a class B drug with a maximum penalty for simple possession of five years' imprisonment and an unlimited fine, like other class B drugs. But for cannabis the police also have the power to issue warnings and penalty notices with a fine, and are using them with increasing frequency, if unevenly, across the country.[137] Recent advice from the Association of Chief Police Officers following the control of the cathinones, including mephedrone, was that unless there were special circumstances,

the police should avoid arresting users for simple possession cases.[138]

The new temporary control measures will not include penalties for possession, although police officers will be able to search people suspected of possessing the drug and seize any suspect substances (without having to verify that they are the substance in question). Therefore it is probable that police resources will be directed more towards intervening in the production and supply chains rather than the consumption or user end. If a drug subsequently becomes formally controlled under the MDA, it is possible that the police may continue with this approach. On the other hand, there is no guarantee they will.

The Government has recently turned also to the use of other powers to complement action taken under the MDA, for example invoking importation controls using the General Importation Licensing provisions and encouraging local council trading standards staff to take action against 'head shops' selling 'legal highs'. This approach, which envisages use of existing powers, is taken further in recent Irish legislation aimed at regulating 'head shops' (the Criminal Justice (Psychoactive Substances) Act 2010) as mentioned in chapter 2.

The use of controls across a particular drug and its analogues (a whole group of very similar substances) is another tactic adopted within the existing framework. This happened with anabolic steroids and with cathinones. However, as raised in chapter 2, a generic approach needs to be weighed against the possible downside of potentially discouraging the research and development of drugs with possible beneficial medical impacts.

Reclassifying and rescheduling are also appropriate and legitimate responses, though many observers would comment that the traumatic experience of the reclassification of cannabis does not auger well for those who argue for less punitive sanctions for cannabis possession or growing for personal use. Indeed, it could be argued that all these options have already been tried without huge success in limiting use but certainly impacting on police and courts' time.

Parliament could go further and amend the sentences for possession offences under the MDA in order to remove the threat

of imprisonment (depenalisation) or it could even remove criminal sanctions altogether for simple possession offences and instead put in place a series of civil penalties (possession decriminalisation). This is the approach adopted by Portugal, discussed in chapter 2. All of these approaches have, at various times, been proposed by a number of bodies. Recently, for the first time, the Advisory Council on the Misuse of Drugs (ACMD) has raised the idea of decriminalising personal possession for all drugs.[139]

All these options are valid within the parameters and spirit of the international conventions, but such tinkering with the system has led to an accretion of control measures. While they may be pragmatic responses to changing circumstances, there is the danger that they simply lead to further inconsistencies and confusion. Moreover, these ad hoc changes are unlikely to satisfy advocates on either side of the drug debate spectrum: those who argue for more fundamental change on the one hand, and those who favour an uncompromising stand against drugs on the other. What muddies the water is that in the public mind drug use is seen as synonymous with crime, especially when it comes to an addiction driving acquisitive crime. This takes us to the fourth option for change, which begins to see drug use and the use of new substances as a significant public health challenge. Figure 3 illustrates how governments control potentially harmful substances.

Option 4 Control through consumer protection legislation or regulations

Our fourth option for addressing the growing challenge of new 'legal highs' is to turn towards controlling their production, supply and use not through the MDA framework but rather through consumer protection legislation, such as that enforced through the local trading standards system. Trading Standards officers have responsibility for overseeing an extensive range of regulatory powers, including those relating to medicines, poisons, agricultural chemicals, veterinary drugs, foodstuffs, animal health, tobacco, alcohol, industrial chemicals and

cosmetic products as well as health and safety. The law regulating such substances, many of which are harmful or dangerous, is extensive and complex. Trading Standards officers work closely and in collaboration with the police and a wide range of other bodies such as the Medicines and Healthcare Products Regulatory Agency and Royal Mail to enforce controls and regulations on the production, supply and use of those substances.

One such piece of legislation is the Intoxicating Substances (Supply) Act 1985. This act came into being following the deaths of many young people around the UK from the inhaling of solvents, including glue. Even now, there are approximately 36 deaths each year related to volatile substances.[140] The legislation introduced stricter controls on the retailing of volatile substances, most of which (gas, aerosols, glues and other solvents) had approved or licensed commercial applications. Manufacturers over the years have adapted their products to make them less hazardous and retailers and wholesalers have acted more responsibly in reducing access, especially to children and young people.

This legislation could offer a vehicle to control the selling of new unlicensed or unapproved substances such as 'legal highs', either through physical outlets such as 'head shops' or through internet sales. The UK Drug Policy Commission has previously called for a new system outside the MDA of temporarily controlling or regulating new drugs so that a full assessment of their actual or potential harms can be undertaken.[141] It would be feasible to ensure that an amended Intoxicating Substances (Supply) Act included provisions for the use of temporary powers both to restrict sales and supply of 'legal highs' and to put the onus on suppliers and manufacturers to demonstrate that their products were safe to use. In the event that an assessment of harms did not confirm a satisfactory level of proportionate safety, the legislation could provide for restrictive control measures to be put in place, with either civil or criminal penalties for breach.

Through taking such domestic legislative steps, the UK would be adhering to the international drug control treaties through means other than the MDA. The Coalition Government

plans to set up new local authority led health and wellbeing boards in England and this would provide a unique opportunity to shape control of emerging 'legal highs' within this new public health system. Such a step would not be without practical and financial implications for local councils and trading standards departments. We have not sought at this point to estimate any financial implications but rather believe the general principle is one worth exploring. By focusing on just new psychoactive substances, it would also allow policy makers to evaluate the impacts of complementary control regimes without reopening the debate about whether to be 'soft or hard' on drugs.

In the second workshop, participants considered the make-up of an 'ideal' regulatory system for new psychoactive substances, which they considered would overall reduce harms. Their control framework included licensed sellers with the responsibility for providing labelling of harms and adverse effects, product assurances and liability, and age restrictions. All these are adopted in various forms with other potentially harmful substances controlled through trading standards and consumer protection regulatory legislation.

Option 5 A new Harmful Substances Control Act

The fifth option involves the creation of new more embracing drug control legislation.[142] This would consolidate a wide range of existing legislative provisions covering controlled drugs with at least those for the control of alcohol and tobacco.

A proposal for a Misuse of Substances Act was set out by a Royal Society of Arts Commission on illegal drugs, communities and public policy in their report *Drugs – Facing Facts* in 2007. The RSA Commission concluded,

the law as it stands embodies a classification of illegal drugs that is crude, ineffective, riddled with anomalies and open to political manipulation… the Misuse of Drugs Act 1971 and the subsequent legislation associated with it be repealed and be replaced by a comprehensive Misuse of Substances Act.[143]

The commission proposed that the focus of the law should not be on individual drugs (as in the existing MDA ABC classification) but on the harms that drugs cause. At the heart of a new framework should be an index of substance-related harms: 'The index should be based on the best available evidence and should be able to be modified in the light of new evidence – and also in the light of the coming onto the market of new substances.'

Others, including participants in the second workshop conducted as part of this project, have raised the possibility of integrating controls on a much wider range of chemicals and harmful substances (eg medicines, solvents or poisons) into a single Harmful Substances Control framework. The argument in support of this approach is that 'while it is traditional to regard the other substances in isolated groups, they all overlap to a greater or lesser extent'.[144] It would also have the advantage of decluttering the current drug control legislation and provide an opportunity to remove a number of anomalies that have grown up over the years. As suggested above, the launch of the new body Public Health England could provide a unique opportunity to progress fresh approaches to influence and control potentially harmful behaviours.

6 Conclusions and recommendations

The Misuse of Drugs Act (MDA) is 40 years old. The world we face now, with emerging new psychoactive substances available via the internet, is very different from what it was in 1971. The vast number of drugs now controlled within it, the ever-expanding range of new psychoactive substances, new routes of supply and changing patterns of drug use make enforcement increasingly difficult, if not impossible in many cases. Although there is clearly still an important role for enforcement in protecting public health and public safety, the enormity of the challenge faced by enforcement agencies, and the drawbacks of an enforcement-based approach, point to a need to review the Coalition Government's current approach to drug control to determine whether the existing framework is fit for purpose in the twenty-first century.

New psychoactive substances are quickly emerging, made widely available over the internet, and their harms are unknown and untested. This presents a serious concern for public health, and requires a responsible government to confront this challenge. The Coalition Government has proposed the introduction of temporary bans on new psychoactive substances under the MDA. However, there are a number of concerns about this approach. A temporary ban is seen as potentially undermining evidence-based policy making, is likely to be very difficult if not impossible to enforce, may lead to the use of even more harmful substances, and could potentially restrict the development of substances with potential medical benefit. As a simple extension of the current approach, it reinforces the tacit belief that classifying a substance through the MDA will inevitably prevent and deter manufacture, supply and use.

There is no solution or single best drug control option. To claim there is requires either appealing to a set of values or an

ideology that others may disagree with, or the ability to conduct a rigorous cost benefit analysis (which would still entail underlying value judgements). A similar conclusion was reached in a major review of evidence-based policy making by an international team of scientists from a variety of fields.[145]

Nonetheless, the current system is unbalanced, being weighted towards regulating new substances on the basis of a precautionary principle, without addressing the problem of enforceability or recognising the potential or unintended harms that may result from this type of approach.

One reason for the failure to recognise this inherent bias and to make improvements to drug policy is the entrenched, polarised nature of the debate. As our project demonstrates, there are ways in which the issue can be approached which allows analysis of different options and the identification of improvements to the current policy framework.

It is important for researchers and policy makers to question the belief among the media and others that control and prohibition invariably minimises harm, and consider the implications of other complementary regulatory options for new substances. We can also take account of the current political and economic situation in Britain, and likely developments in the near future, and think about how we can offer improvements to policy in the current context that are in line with the Government's values and priorities.

Too often recommendations about drug policy reform are idealistic and overly ambitious, ignoring realpolitik. They lack sufficient sensitivity to the political realities that currently prevail. Our approach in this report is pragmatic. Our recommendations are based on three broad principles.

First, our project showed that it was possible to bring together people from different sides of the debate to agree on a range of actions that could improve the current situation. By first agreeing on universally valuable outcomes, it was possible to identify steps towards improving the current approach to the problem of psychoactive substances. Although it does not seek to provide a blueprint for all aspects of drug policy, our approach presents a possible model for making decisions about drug

policy that could prove fruitful for those developing policy options for the future.

Second, we must address the imbalance in decision making that leads to a bias in favour of the precautionary principle. This includes, but is not limited to, giving greater attention to other control mechanisms. It also includes recognising harms of some enforcement as well as the benefits of taking some drugs – and being able to talk about these openly and initiate research into methodologies that permit investigation of these issues.

Third, there has been insufficient attention to a wide range of other control mechanisms that have been used in the past for other psychoactive substances; it would be worth exploring these and evaluating the different outcomes. This includes potential long-term reform to provide a comprehensive framework for dealing with all psychoactive substances.

Focus on achieving outcomes where there is consensus

Discussions around the Coalition Government's legislative response are necessary, but can lead to people taking up intractable and entrenched positions that inhibit progress. By focusing on outcomes that people from all sides of the debate agree are important it is possible to move away from areas of high contention and identify possible practical improvements. For example, using the outcome of protecting young people as the starting point, all participants in the first workshop were able to agree on the importance of gathering information on new substances for all stakeholders.

The following recommended areas for action were identified:

There should be continued investment and support for broader intervention initiatives, delivered in schools and communities, as well as family-based initiatives and mentoring schemes in order to increase resilience to problematic drug use.

These programmes aim to build broader networks of support for young people at greater risk of 'drug problems'. They also help

to develop better emotional and social resilience enabling young people to withstand the lure of drug use, or to experiment with drugs without letting it diminish their ability to reach their potential. The 2010 government drug strategy commendably highlights the importance and role of broader support to reduce the demand for drugs.[146] This broader focus has a developing evidence base and is something that stakeholders across the spectrum of debate can agree on. The Government should continue to invest in early intervention initiatives, such as Sure Start and Family Nurse Partnerships and continue to build the evidence base for such programmes. The Government has pledged that the Early Intervention Grant and the Public Health Grant will provide local authorities with the funding and flexibility to tailor approaches to supporting vulnerable families. The Government and local authorities must ensure that this funding is spared from further spending cuts.

Government, local authorities and schools must ensure that drug education is based on accurate information delivered by individuals who will be perceived as credible and authoritative.

The 2010 government drug strategy also recognises the importance of providing accurate and reliable drug education and information in schools and through the drugs advisory service FRANK.[147] The strategy advocates providing resources to schools based on best practice, while giving them the freedom to determine the approach they think is best. The experts involved in our project indicated that schools must avoid only providing scare-mongering messages to young people about the effects of drugs. While the bleak realities of drug use should certainly be conveyed to young people, they must be balanced by some recognition of the perceived benefits of drug use. The most effective messengers are likely to include other young people, and people from the local area that young people can identify with. The participants in our workshops also felt that it is important to ensure there are alternative positive activities for young people, such as team sports.

A systematic framework for information collection should be created to tap into the experience of users and frontline workers, as an early warning system and a source of knowledge about potential harms and perceived benefits of new drugs.

The Coalition Government has announced the creation of 'an effective forensic early warning system' as part of its efforts to tackle new psychoactive substances, but the details of how such a system would function are unknown. Nor is it clear how the Government will make use of similar initiatives, for example, the Europe-wide Psychonaut Web Mapping Project based at King's College. This searches the internet and user forums and supplier websites to analyse new and emerging substances, and some of the perceived effects of substances. While there are clear drawbacks to user based reports – for example, experts cannot be sure that drugs actually contain the substances they advertise – this type of initiative can help to provide real-time information into European drug markets. The Government should recognise that when a substance is banned even temporarily, it becomes increasingly difficult to gather accurate information on the effects of new substances on users. A more effective, evidence-based approach could be pursued using early warning monitoring and information gathering, and regulation through consumer protection channels outside the MDA. This form of regulation could then be supplemented by a framework for sharing information among pharmacologists, frontline charities and users to gather and disseminate information on harmful effects.

The development and evaluation of outreach approaches, such as use of amnesty bins in clubs and other venues where use of such drugs is prevalent, should be increased to enable people to adopt less risky behaviours if they do decide to use, but also to provide valuable information about the availability and purity of new substances.

Research over the past 20 years into prevalence of drug use in the UK shows that despite significant investment in tackling illicit substances, millions of people continue to gain access to and use them. Moreover, illicit substances controlled through the

MDA are almost inevitably and increasingly cut with other licit and illicit substances that pose harms in themselves and increase the risk of people taking dangerous-sized doses. The Government and enforcement agencies should continue to support pragmatic approaches to personal possession and drug use in an effort to reduce harm. For new psychoactive substances – most of which include pills – such approaches would include measures such as pill testing facilities and amnesty bins in clubs, festivals and other venues where drug taking is prevalent although their impact needs to be evaluated. A number of frontline charities, including Crew 2000 in Scotland, already provide a number of outreach services in nightclubs and festivals. Government support for charities like Crew 2000 doing outreach, as well as the use of amnesty bins and drug testing, should continue in order to facilitate the gathering of information of pattern of drug use and the chemical content of new drugs.

The Government should invest in laboratory-based investigation of current and potential drugs of abuse. Laboratory-based investigations can provide some indication of the likely effects of new substances after they have been detected, or even before this. This may help policy makers in deciding what types of regulation might be most appropriate and what effects to look out for. This might be an area where co-ordination and co-operation within the EU would be an efficient way of maximising use of resources.

Ensure a more balanced decision-making process and debate

As discussed in chapter 2, the conclusion of Peter Reuter's paper is that there is a fundamental bias in the political and regulatory system towards prohibition of new psychoactive substances:

The adverse consequences of mistakenly refraining from prohibiting what may turn out to be a dangerous drug are massive both for the individual decision maker and for the political party in power at the time. On the other hand the gains from correctly allowing a new psychoactive substance enter

into the market, with appropriate regulatory controls, are modest and not very salient for the decision maker or the government. A Type II error (allowing what should have been prohibited) has much greater consequences than avoiding a Type I error (prohibiting what should have been allowed). That will be true even with a broader array of legal options. Once the decision not to prohibit is explicit, the decision maker faces a risk of significant public retribution.[148]

There are a number of parallels here with the challenges facing regulatory agencies when deciding whether to bring a therapeutic medicine to market.[149] Regulatory agencies have to balance the risk of taking a medicine to market too quickly to provide the benefit to individual users, with the cautious tendency to withhold it until there is greater assurance of low harms. When considering whether to bring therapeutic medicines to market, the benefits to individual users are a significant part of the decision. The benefits to individual users of new psychoactive substances are different and some would argue less morally relevant.

There is an argument that new substances can provide a safer substitute for other more harmful substances. As discussed above, there is some evidence to suggest this was the case with mephedrone and cocaine. However, because the long-term effects of new substances may take some time to become apparent, making a judgement about whether or not they are in fact safer overall is essentially a gamble. There are also the harms related to prohibition to be considered. These include: eliminating the possibility of providing quality control and assurance; increasing the potential harms to individual users; complicating the task of gathering data on the substance that would allow for a more informed decision, since there are no manufacturers with an incentive to collect and analyse such data; and making it less likely that respondents in studies will disclose use.[150]

As Reuter argues, it is thus important to develop ways to 'override this bias and to ensure a more balanced set of regulatory decisions', which requires, in part, a shift in public opinion to consider the benefits of drug taking, including the potential for less harmful drugs to substitute for more harmful drugs.[151]

As a result, we make the following recommendations:

The Government should conduct more rigorous research into the full range of impacts (including unintended harms) of the control and enforcement elements of drug control and drug policy.
The Government needs to improve the quality of impact assessments on drug harms and the harms of different drug policy options, despite the methodological challenges this throws up. The harms from drug use require data on the numbers of users, hospital admissions, deaths and dependent users. It would also be helpful to have data on the numbers of admissions and deaths caused or aggravated by impurities in the drugs used and the number of incidents involving multiple drug use. There are harms from drug control itself that also require documentation and data, including the number of people with drug cautions and drug convictions. These are critical data for the construction of effective drug policies.

The Government should give greater consideration to identifying and assessing the benefits (in addition to the harms) that individuals and society may derive from using psychoactive substances, including the potential for substitution for more harmful substances.
Government legislation and pronouncements recognise the benefits (beyond medicinal) of using alcohol, which factors into their analysis, but fail to do so with other recreational drugs. As mentioned in chapter 2, the 2010 drug strategy acknowledges the contribution of alcohol to 'community and family life', as well as the 'cultural life of this country' in addition to the 'valuable revenue it generates to the economy' as a result of the manner in which alcohol is regulated. While the authors are not arguing that the benefit of pleasure to users should be on par with potential medical benefits of substances, they ought to be taken into account for the sake of consistency. Therefore surveys relating to drug use should find out the reasons why some young people take drugs and some do not. There is also the potential benefit that a new psychoactive substance may be functioning as

a safer substitute to more harmful drugs but to assess this will require study and an evaluation of a functioning and active market. Gathering this type of information is easier within a regulated market – for example, along the lines of the New Zealand 'restricted substances' – than after prohibition.

Consider other regulatory options for control

We believe there is now a need to consider a shift to the policy debate to focus on the wide range of regulatory options available, not just the MDA. This can potentially allow improvements to policy without having to become entrenched in the legalise versus criminalise debate. It could encourage a broader consideration of the impact of complementary legislative options, for example regulation through the MDA, versus consumer protection perhaps through the Intoxicating Substances (Supply) Act giving a focus entirely on supply control.

We therefore make the following recommendations.

In the short term the Government should commit to a comprehensive assessment of the use and impact of planned temporary banning powers.

Our project revealed significant concerns among experts that the temporary ban could be unenforceable, lead to other harms, and lead to a neglect in considering other options. The Government needs to confront the increasing unenforceability of the MDA in light of the rapid growth in the synthetic drugs market.

In the short term the Government should give greater consideration to controlling the supply of new psychoactive drugs through the wide range of consumer protection legislation in some instances.

Trading Standards officers and the Medicines and Healthcare Products Regulatory Agency oversee a wide range of regulatory powers, some of which could be applied to new 'legal highs', such as the Intoxicating Substances (Supply) Act 1985. This control framework would or could require such things as licensed suppliers, proper labelling of harms and adverse effects,

product assurances and liability, age restrictions and appropriate sanctions, whether criminal or civil for breaches. Such measures would comply with international obligations, provide a proportionate response to the challenge and avoid some (but not all) of the consequences of any control regime. It would also allow a full evaluation to be made of the contrasting approaches to control in order to inform future drug policy.

In the long term the Government should consider a radical reform of the measures for the control of psychoactive substances to provide an overall and integrated framework for controlling the supply of all psychoactive substances, including alcohol, tobacco and solvents.

A new Harmful Substances Control Act or framework could be developed. This is an extension of the idea that has been recommended by the RSA Drug Policy Commission and by Dr Les King, a well-known pharmacologist, forensic scientist and former member of the Advisory Council on the Misuse of Drugs (ACMD). Essentially, this would consolidate a wide range of existing legislative provisions covering controlled drugs with those at least for alcohol and tobacco and even perhaps those covering the control of medicines and poisons. This has the advantage of de-cluttering the current drug control legislation and providing an opportunity to remove anomalies that have grown up over the years.

One of the biggest criticisms of current policy is that harmful substances are dealt with through a range of legislative frameworks. For example, solvents are regulated through the Intoxicating Substances Act; alcohol and tobacco are regulated through Trading Standards and licensing; while cannabis is classified according to the MDA. This is not only inefficient; it sends confusing messages about the potential harms of such substances, especially to young people who have access to a plethora of information routes. The Government will find it hard to continue to ignore many of the perceived contradictions inherent in its various approaches to harmful substances. It should commit to undertaking a review to consider the implications of consolidating all legislation that covers

potentially harmful substances, including alcohol and tobacco, into one Harmful Substances Control Act.

In summary, it is 40 years since the Misuse of Drugs Act 1971 became law and the 'drug problem' is no nearer being solved. The new psychoactive substances now being developed pose new challenges while at the same time our understanding of the problems associated with licit substances has grown. Therefore it seems high time for a new approach. The drugs debate is a hotly contested and polarised area and anyone entering it runs the risk of being characterised as being on one side or the other. However, it is clear that the 'drug problem' is complex and multi-faceted and there is no simple solution to it. We would suggest that it is time for a new approach to policy making, legislation and debate on drugs issues focusing on developing consensus and taking a more holistic view of substance use while building better evidence about what works.

Appendix 1

Glossary of key drug policy terms

There is often confusion about the terminology concerning approaches to the control psychoactive substances. The following list provides clarification of the meaning of key terms used in this report.

Control	The term 'control' encompasses the full array of legislative approaches for restricting the availability of various substances. It includes laws such as the Misuse of Drugs Act, which make some substances illegal to use / possess / sell, as well as regulations concerned with the manufacturing, dispensing, approval and marketing of substances that have medical or commercial uses, or are seen as 'acceptable', such as alcohol, solvents, inhalants etc. Thus, Government 'controls' cannabis, for example, through the Misuse of Drugs Act, and 'controls' tobacco through Trading Standards regulations. The level of control varies according to the mechanism. The Misuse of Drugs Act controls substances through enforcement with the threat of criminal penalties, while Trading Standards controls the selling of food, most often through civil penalties and fines.
Decriminalisation	'Decriminalisation' refers to the repeal of laws that define drug use or possession (but not selling or distribution) as criminal

	offences. It does this through either total repeal of penal punishments (ie prison sentences) or shifting the basis to civil penalties, such as fines or removal of a licence, or administrative processes, eg in Portugal. In Portugal, drug use and possession are still legally prohibited, but violations are deemed to be simply administrative offences and are dealt with by 'Commissions for Dissuasions of Drug Addiction' rather than criminal courts.
Depenalisation	'Depenalisation' refers to the reduction of the level of penalties associated with drug offences, usually those for personal use or possession. For example, 'depenalisation' applies to the introduction of warnings or cautions for cannabis possession, rather than potential time in prison.
Legalisation	'Legislation' refers to making drug use, possession, production and distribution legal. Unlike decriminalisation, legalisation would repeal all penalties, criminal and civil, for use, possession, production and distribution of a substance. However, 'legalisation' would most likely still require other types of controls and regulations put in place (e.g. restrictions to licensed proprietors, and age restrictions on sales).
Regulation	'Regulation' (both domestic and international) imposes conditions on the manufacturing, dispensing, approval and marketing of substances. These laws bind manufacturers and distributors and penalties range in severity and may be civil or criminal. Examples include food labelling requirements, age restrictions on sales, and the more stringent controls for dispensing medicines.

Appendix 2

Workshop questionnaires

Please indicate the extent to which you agree or disagree with the following statements on a scale from 1 (strongly agree) to 5 (strongly disagree) by circling the relevant number.

		Strongly agree	Slightly agree	Neither agree or disagree	Slightly disagree	Strongly disagree
1	It is important that the Government classifies new psychoactive substances as quickly as possible.	1	2	3	4	5
2	Classifying drugs under the Misuse of Drugs Act is the most effective approach to protect young people from harmful substances.	1	2	3	4	5
3	The Misuse of Drugs Act and the current classification system act as an effective deterrent to use among young people.	1	2	3	4	5
4	The Government's proposal for a temporary ban on new emerging substances will be the most effective approach to protect young people from the harm of new emerging psychoactive substances.	1	2	3	4	5

5 I think I understand young people's motivations for using new emerging synthetic substances.	1	2	3	4	5
6 Providing drug education/information to young people is an effective deterrent to use.	1	2	3	4	5
7 The phenomenon of new emerging synthetic substances requires a completely new approach to drug control.	1	2	3	4	5

Post-workshop questionnaire

Please indicate the extent to which you agree or disagree with the following statements on a scale from 1 (strongly agree) to 5 (strongly disagree) by circling the relevant number.

	Strongly agree	Slightly agree	Neither agree or disagree	Slightly disagree	Strongly disagree
1 It is important that the Government classifies new psychoactive substances as quickly as possible.	1	2	3	4	5
2 Classifying drugs under the Misuse of Drugs Act is the most effective approach to protect young people from harmful substances.	1	2	3	4	5
3 The Misuse of Drugs Act and the current classification system act as an effective deterrent to use among young people.	1	2	3	4	5

4	The Government's proposal for a temporary ban on new emerging substances will be the most effective approach to protect young people from the harm of new emerging psychoactive substances.	1	2	3	4	5
5	I think I understand young people's motivations for using new emerging synthetic substances.	1	2	3	4	5
6	Providing drug education/information to young people is an effective deterrent to use.	1	2	3	4	5
7	The phenomenon of new emerging synthetic substances requires a completely new approach to drug control.	1	2	3	4	5

8 Has your view on drug issues and how to best protect young people changed in any way as a result of participating in the workshop? If possible please indicate below or on the reverse of this page the main change that has occurred for you.

Notes

1 J Doward, 'Students warned of lethal risks from "legal highs"', *Observer*, 20 Sep 2009, www.guardian.co.uk/society/2009/sep/20/legal-highs-lethal-risk (accessed 24 Mar 2011); Mixmag Drugs Survey 2010, Feb 2010.

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8 Mixmag Drugs Survey 2010, Feb 2010; F Measham et al, 'Tweaking, bombing dabbing and stockpiling: the emergence of mephedrone and the perversity of prohibition', *Drugs and Alcohol*

Today 10, no 1, Mar 2010; T Bates, 'Britain battles with a dangerous "legal high"', www.aolnews.com/2010/01/30/britain-battles-with-a-dangerous-legal-high/ (accessed 24 Mar 2011).

9 It is noteworthy that while the review was under way officials had already been using a general control on imports power, as far as we are aware for the first time in such circumstances, to seek to restrict and control supplies into the country.

10 Doward, 'Students warned of lethal risks from "legal highs"'; 'Mephedrone: meet the UK's favourite new drug'.

11 V Wheeler, 'NRG-1 is 25p a hit and will kill many more than meow', *Sun*, 31 Mar 2010, www.thesun.co.uk/sol/homepage/news/2914372/NRG-1-is-25p-a-hit-and-will-kill-many-more-than-meow.html (accessed 24 Mar 2011); R Porter, '"Legal high" bath salts Ivory Wave kill bride', *Daily Mail*, 28 Aug 2010, www.dailymail.co.uk/news/article-1306877/Legal-high-bath-salts-Ivory-Wave-kill-bride.html (accessed 24 Mar 2011).

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15 P Reuter and A Stevens, *An Analysis of UK Drug Policy*, London: UK Drug Policy Commission, 2007.

16 J Hoare and D Moon (eds), *Drug Misuse Declared: Findings from the 2009/10 British Crime Survey*, Home Office, 2010.

17 R Runciman (chair), *Drugs and the Law: Report of the Independent Inquiry into the Misuse of Drugs Act 1971*, London: Police Foundation, 2000.

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20 Gray, 'Forty new legal highs made in China are being sold in Britain'.

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The proliferation of new psychoactive substances, or 'legal highs', has caused moral panic in recent years. But it has also thrown the existing regulatory measures for drugs into sharp relief. As quickly as policy makers to seek to control new substances through the Misuse of Drugs Act, others are being manufactured and put on the market. The effects of these new substances are unknown and untested and it is this uncertainty combined with easy accessibility that presents major challenges to public safety.

However, these challenges also provide an opportunity to look again at drug control policy without a rerun of redundant debates about whether to be 'tough' or 'soft' on drugs. Instead, this pamphlet adopts a systems approach and considers drug policy as a 'wicked issue' to which there is no solution, and no ultimate winners or losers. Fundamentally, it seeks an improvement to policy that will be supported by people who otherwise disagree about what the goals of policy are.

It is 40 years since the Misuse of Drugs Act became law and the 'drug problem' is no nearer being solved. *Taking Drugs Seriously* argues that it is time for a new approach to policy making, legislation and debate on drugs issues, focusing on developing consensus while building better evidence about what works.

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