



Introduction

The Psychoactive Substances Act 2016 received Royal Assent on 28 January 2016 coming into force on 6 April 2016. The act contains provision for psychoactive substances, defining what a psychoactive substance is and outlining offences related to them. The act also identifies a number of exceptions, which includes items already covered by other legislation, such as nicotine, caffeine, alcohol and certain medical products.

Content Summary

The main body of the act refers to the offences and powers associated with psychoactive substances; clarifying the powers to issue prohibition notices and orders, and the powers of entry, search and seizure. One area that is not considered an offense is possession, however there are a number of exceptions, which include the possession of a psychoactive substance in a custodial institution and the carriage of psychoactive substances with the intent to supply.

The act defines 'prohibited activities' as the supply or offer to supply, production of and importation and exportation of any psychoactive substance, if it is likely to be used for its psychoactive effects, regardless of any potential harm. To clarify what a psychoactive substance is, the act defines it as:

"any substance which is capable of producing a psychoactive effect in a person who consumes it and is not an exempted substance".

The final part of the act provides law enforcement and associated agencies with legislation on the retention and disposal of item found during searches and seizures.

Psychoactive Substances Act 2016 Detail

The Act consists of 54 Sections which are broken down into:

Section 1	Overview of the Act and its parts
Section 2	Definition of what a Psychoactive Substance is
Sections 4-10	Provisions on the offences relating to psychoactive substances
Section 11	Detailed exemptions to the offences
Section 12-35	Powers for dealing with prohibited activities in respect to psychoactive substances, on particular powers to issue prohibition notices and orders
Section 36-54	Enforcement Powers

Section 2 – 3 Psychoactive Substances explained

Section 2 clearly identifies a psychoactive substance as; a substances that produce a psychoactive effect on individuals and is not exempt under the exempt substances list. This definition does not examine the nature of the ‘high’ making it clear that any ‘high’ obtained from a substance will be covered by the legislation. This also applies to the delivery of the ‘high’ whether it’s through consumption, inhalation or injection.

Due to additional legislation being in place for other psychoactive substances such as the Misuse of Drugs Act (1971), Temporary Class Drug Orders (TCDOs) and the Human Medicines Regulations (2012), the act has been formulated to complement these extant acts and orders. One exception to this is the intoxicating Substances Supply Act (1985) which will be scrapped and replaced by the Psychoactive Substances Act 2016.

Sections 4 – 11 Offences

The act outlines a number of ‘prohibited activities’ in relation to psychoactive substances which include:

- Producing psychoactive substances that is likely to be consumed by individuals for its psychoactive effects
- Supplying of such a substance
- Offering to supply such a substance
- Importing substances
- Exporting substances
- Assisting or encouraging the carrying on of a prohibited activity as detailed above

Each offence has an associated penalty details of which are detailed below (figure 1).

Figure 1 Psychoactive Substances Act 2016 – Penalties

Offence	Summary (Magistrates/Sheriff)	Indictment (Crown/High Court)
Possession	Not an offence	Not an offence
Possession – Custodial institution	Up to 12 months and/or fine*	Up to 2 years and/or a fine
Possession with an intent to supply	Up to 12 months and/or fine*	Up to 7 years and/or a fine
Supply/offer to supply	Up to 12 months and/or fine*	Up to 7 years and/or a fine
Production	Up to 12 months and/or fine*	Up to 7 years and/or a fine
Importation/exportation	Up to 12 months and/or fine*	Up to 7 years and/or a fine
Failure to comply with a prohibition or premises notice	Up to 12 months and/or fine*	Up to 2 years and/or a fine

**In Northern Ireland the Summary Penalty is 6 months and/or a fine.*

Section 12 – 35 Powers for dealing with Prohibited Activities

The act makes provision for a range of powers to tackle prohibited activity which include:

Prohibition Notices

A prohibition notice is a notice that requires the individual to whom it is presented to refrain from specific activities as per the notice or all activity related to psychoactive substances. In Scotland a prohibition notice may not be given to an individual who is under the age of 12, whereas in rest of the UK where the age is 10. If awarded to an individual under 18 the notice must specify the period of effect, which must not exceed 3 years.

Before a notice can be issued the senior officer (Inspector, NCA Grade 3 or Higher Customs Officer) or local authority responsible for the notice must meet the following conditions:

- Condition A - The senior office or local authority must reasonably believe that the individual is carrying out, or is likely to carry out, a prohibited activity.
- Condition B - The senior officer or local authority must reasonably believe that it is necessary and proportionate to give the prohibition notice for the purpose of preventing the individual from carrying out any prohibited activity.

Premises Notices

A premises notice is a notice that requires the individual to whom it is presented to take steps to prevent prohibited activities taking place within any premises owned, leased, occupied, controlled or operated by the individual. The premises notice must set out the grounds for giving the notice and must explain the possible consequences of not complying with the notice. Premises notices can be withdrawn by the senior officer or local authority; however the withdrawal does not prevent the giving of further notices to the same person. As per Prohibition Notices there are two conditions which must be met prior to the issue of a Premises Notice, these are:

- Condition A - The senior officer or local authority reasonably believes that a prohibited activity is being, or is likely to be, carried out in particular premises.
- Condition B - The individual owns leases, occupies, controls or operates the premises.

When issuing the notice it can be handed to the owner directly, left at the individual's proper address and can be sent in the post or emailed. For organisations that are a corporate body the notice would be issued to the secretary or clerk. Where there is a partnership established the notice is to be presented to the controlling partner or manager. The act also makes provision for allowing an authorised person to enter premises that a prohibition notice or order is in effect and can take steps to secure the premises against entry. Section 23(4) also stipulates that when entering a premises or securing it reasonable force may be used.

Prohibition Orders

A “prohibition order” is an order prohibiting an individual to whom it has been made from carrying out any prohibited activity or a prohibited activity of a description specified in the order. Prohibition orders may be made in relation to an activity or following a conviction of an offence under sections 4 to 8 or a related offence. With a prohibition order there are three conditions that need to be met before an order can be issued, these are:

- Condition A - The court is satisfied, on the balance of probabilities that the individual has failed to comply with a prohibition notice.
- Condition B - Where no prohibition notice has been given or has been withdrawn the court is satisfied that on the balance of probabilities the individual is carrying out, or is likely to carry out, a prohibited activity or the court considers that the individual would fail to comply with a notice if given.
- Condition C - This condition is where the court considers it necessary and proportionate to make the prohibition order for the purpose of preventing the person from carrying out any prohibited activity.

In cases where a prohibition order is issued any prohibition notice in place should be considered withdrawn. As per the prohibition notices the orders cannot be issued to anyone under the age of 12 in Scotland and 10 in the rest of the UK, with the period of effect being recorded for all individuals under 18.

Premises Orders

A premises order is an order that requires an individual against whom it is made to take reasonable steps to prevent any prohibited activity, or a specific activity detailed in the order from being carried out at any premises specified in the order that are owned, leased, occupied, controlled or operated by the individual. The conditions for this are:

- Condition A - The court is satisfied on the balance of probabilities that the individual has failed to comply with a premises notice.
- Condition B - The court is satisfied that on the balance of probabilities that the prohibited activity is being, or is likely to be, carried out at particular premises and that conditions A and C would be applicable.
- Condition C - The court considers it necessary and proportionate to make the premises order for the purpose of preventing any prohibited activity from being carried out on any premises owned, leased, occupied, operated and controlled by the individual.

A premises Order cannot be issued against an individual who is under the age of 18. Applications for Premises Orders may be made in Scotland by the Chief Constable of Police Scotland, the Director General of the NCA, the Secretary of State and a Local Authorities. The direction regarding the enforcement of the Premises Order is the same as the Premises Notice.

Section 36 - 48 Powers of Entry, Search and Seizure

Under Section 36 the act allows for police and customs officers who have reasonable grounds to suspect a person has committed or is likely to commit an offence under the act to be stopped and searched. Further to stopping and searching individuals the Section 39 to 42 allows for officers to enter and search premises, vehicles, vessels and aircraft so long as a warrant has been issued by the procurator fiscal in Scotland. During searches officers may find items which they can under section 43 seize.

The Police powers to Stop and Search will not be affected by this act; however as possessing a Psychoactive Substance is not deemed an offence under the Act there is possible conflict between Police Scotland Stop and Search procedures and guidelines on the seizure of suspect items and the Psychoactive Substances Act 2016.

Section 49 - 54 Retention of Seized Items and Disposal

The act allows for items to be retained as long as is necessary in all circumstances, in particular:

- For use as evidence at a trial for an offence under the Act
- For forensic examination or for investigation in connection with an offence under the Act.
- No item may be retained for either of the purposes mentioned above if a photograph or a copy would be sufficient for that purpose.

Following the conviction of an individual the courts have the power to apply for a forfeiture order to confiscate any psychoactive substances with which the offence was committed and also any items that were used in the commissioning of the offence.

The remaining aspects of the act Sections 55 to 63 cover the remaining details and ancillary data and provisions for the act.

Links

For further information on the Act visit the following links:

Legislation.gov.uk; Psychoactive Substances Act 2016; <http://www.legislation.gov.uk>
Drug Watch; A simple (ish) guide to the Psychoactive Substances Act 2016;
<http://www.drugwise.org.uk>