

# AN UNCHARTERED COURSE

Plans to introduce a temporary ban on new legal highs seem a logical step, but will navigate our drugs laws into unknown waters, claims **Jeremy Sare**

A proposal to establish a ‘temporary ban’ category which would fast-track so-called legal highs into the Misuse of Drugs Act 1971 was announced by Home Office drugs minister James Brokenshire in August.

The purpose of the new law would be to “allow us to act straight away to stop new substances gaining a foothold in the market and help us tackle unscrupulous drug dealers trying to get round the law by peddling dangerous chemicals to young people”.

A spokesman for the Home Office said that, following a consultation period, the legislation is expected “to go through Parliament in the autumn”, but it will not be fully functional until the end of 2011. The government may use the antediluvian language of ‘dope peddlers’, but this proposal is a certainly an innovative way of controlling drugs.

Under these measures, there would be an amendment to the Misuse of Drugs Act 1971, creating a new class in Schedule 2 of the Act. Drugs could be added to it for a maximum period of 12 months by the laying of a Statutory Instrument. So, unlike current changes to the list of prohibited substances, there would be no vote in Parliament sanctioning it and no ‘Order in Council’ signed by Her Majesty. The Advisory Council on the Misuse of Drugs (ACMD) would have a guaranteed role in assessing the drug’s harms.

The most surprising aspect of the plans is the exclusion of any possession offence – penalties will be restricted to possession with intent to supply, offer to supply, supply, importation, exportation and production and will equate to a Class B supply offence (maximum 14-year jail sentence and an unlimited fine.) But possession for personal use would not be deemed a criminal offence, “to prevent the unnecessary

criminalisation of young people”.

In reality, a possession offence could also have been highly problematic. These future, perhaps not yet synthesised substances, will be judged pre-emptively as dangerous as Class B drugs, like amphetamines. But when the ACMD produce its definitive assessment at a later date, that class may be wholly disproportionate to the actual level of measured harm.

Let’s consider the process a bit more. Let’s assume, some time in the future, a new drug, Megaprone, is gaining in popularity in UK and the government is being urged to place it in the new temporary class of banned substances. Although the Advisory Council would have some still, as yet, undefined role in giving advice to ministers, the government would still be free to base their decision on ‘evidence’ from various partial sources, including government officials, police and inevitably the media.

Each party would see the threat from Megaprone slightly differently, although history shows officials and ACMD members would be likely to recognise objective evidence more easily than some police forces or the media – for example, the misplaced certainty over mephedrone ‘deaths’.

The Misuse of Drugs Act exists to categorise substances based on their “harmful effects”. It is far from clear how the Advisory Council could make meaningful harm assessments effectively on the spot: their recent reports on new substances have been arguably mute on this point as there has been practically no data on which to base that judgement.

The ACMD could cite ‘potential harm’ but couldn’t we all? In those circumstances Jacqui Smith’s ‘precautionary principle’ – that it’s always better to err on the side of

caution when considering the legal status of drugs – could become the central tenet of controlling drugs.

It is entirely possible our new drug could, after several months of scrutiny, appear relatively benign. If the Advisory Council’s advice opposed the government’s initial view to ban Megaprone temporarily, would the minister have the political guts to accept that advice and withdraw it from control? There must be considerable doubt here – controls on drugs are generally only strengthened, not weakened. The only significant reclassification of a drug, cannabis, was reversed five years later.

Some of the questions were raised when James Brokenshire had a ‘getting-to-know-you’ session with ACMD recently. But they are intractable issues and the coalition government’s solutions may struggle to satisfy members’ anxieties. They will be working together on a protocol in the ensuing weeks and much of their future relationship hinges on a satisfactory outcome.

If the government uses the legislation as a mechanism to ban any substances appearing on the media’s radar, then they will be stacking up masses of work for the ACMD. If their advice is conflicting consistently with the politics then familiar tensions will re-emerge.

For future users of drugs like Megaprone, they can expect drug law to be reacting faster than ever before. Despite some thorny practical difficulties, the government is clearly determined that any legal high is not legal for very long.

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