

Psychoactive Substances Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as HL Bill 2 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Bates has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Psychoactive Substances Bill [HL] are compatible with the Convention rights.

Psychoactive Substances Bill [HL]

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Make provision about psychoactive substances; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Introductory

1 Overview

- (1) This Act contains provision about psychoactive substances.
- (2) Section 2 defines what is meant by a “psychoactive substance”.
- (3) Sections 4 to 9 contain provision about offences relating to psychoactive substances. 5
- (4) Section 10 provides for exceptions to those offences.
- (5) Sections 11 to 31 contain powers for dealing with prohibited activities in respect of psychoactive substances, in particular powers to give prohibition notices and make prohibition orders. 10
- (6) Sections 32 to 50 contain enforcement powers.

Psychoactive substances

2 Meaning of “psychoactive substance” etc

- (1) In this Act “psychoactive substance” means any substance which—
 - (a) is capable of producing a psychoactive effect in a person who consumes it, and
 - (b) is not an exempted substance.15
- (2) For the purposes of this Act a substance produces a psychoactive effect in a person if, by stimulating or depressing the person’s central nervous system, it

affects the person’s mental functioning or emotional state; and references to a substance’s psychoactive effects are to be read accordingly.

- (3) For the purposes of this Act a person consumes a substance if the person causes or allows the substance, or fumes given off by the substance, to enter the person’s body in any way. 5

3 Exempted substances

- (1) In this Act “exempted substance” means a substance listed in Schedule 1.
- (2) The Secretary of State may by regulations amend Schedule 1 in order to –
- (a) add or vary any description of substance;
 - (b) remove any description of substance added under paragraph (a). 10
- (3) Before making any regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (4) The power to make regulations under this section is exercisable by statutory instrument.
- (5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 15

Offences

4 Producing a psychoactive substance

- (1) A person commits an offence if – 20
- (a) the person intentionally produces a psychoactive substance,
 - (b) the person knows or suspects that the substance is a psychoactive substance, and
 - (c) the person –
 - (i) intends to consume the psychoactive substance for its psychoactive effects, or 25
 - (ii) knows, or is reckless as to whether, the psychoactive substance is likely to be consumed by some other person for its psychoactive effects.
- (2) This section is subject to regulations made under section 10 (power to provide that certain activities are not an offence under this section). 30

5 Supplying, or offering to supply, a psychoactive substance

- (1) A person commits an offence if –
- (a) the person intentionally supplies a substance to another person,
 - (b) the substance is a psychoactive substance, 35
 - (c) the person knows or suspects, or ought to know or suspect, that the substance is a psychoactive substance, and
 - (d) the person knows, or is reckless as to whether, the psychoactive substance is likely to be consumed by the person to whom it is supplied, or by some other person, for its psychoactive effects. 40
- (2) A person (“P”) commits an offence if –

- (a) P offers to supply a psychoactive substance to another person (“R”), and
 - (b) P knows or is reckless as to whether R, or some other person, would, if P supplied a substance to R in accordance with the offer, be likely to consume the substance for its psychoactive effects. 5
- (3) For the purposes of subsection (2)(b), the reference to a substance’s psychoactive effects includes a reference to the psychoactive effects which the substance would have if it were the substance which P had offered to supply to R.
- (4) This section is subject to regulations made under section 10 (power to provide that certain activities are not an offence under this section). 10

6 Aggravation of offence under section 5

- (1) This section applies if—
- (a) a court is considering the seriousness of an offence under section 5, and
 - (b) at the time the offence was committed the offender was aged 18 or over. 15
- (2) If condition A or B is met the court—
- (a) must treat the fact that the condition is met as an aggravating factor (that is to say, a factor that increases the seriousness of the offence), and
 - (b) must state in open court that the offence is so aggravated.
- (3) Condition A is that the offence was committed on or in the vicinity of school premises at a relevant time. 20
- (4) For the purposes of subsection (3) a “relevant time” is—
- (a) any time when the school premises are in use by persons under the age of 18;
 - (b) one hour before the start and one hour after the end of any such time. 25
- (5) Condition B is that in connection with the commission of the offence the offender used a courier who, at the time the offence was committed, was under the age of 18.
- (6) For the purposes of subsection (5) a person (“P”) uses a courier in connection with an offence under section 5 if P causes or permits another person (the courier)—
- (a) to deliver a psychoactive substance to a third person, or
 - (b) to deliver a drug-related consideration to P or a third person. 30
- (7) A drug-related consideration is a consideration of any description which—
- (a) is obtained in connection with the supply of a psychoactive substance, or
 - (b) is intended to be used in connection with obtaining a psychoactive substance. 35
- (8) In this section—
- “school premises” means land used for the purposes of a school, other than any land occupied solely as a dwelling by a person employed at the school; 40
 - “school” has the same meaning—
 - (a) in England and Wales, as in section 4 of the Education Act 1996;

- (b) in Scotland, as in section 135(1) of the Education (Scotland) Act 1980;
- (c) in Northern Ireland, as in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)).

7 Possession of psychoactive substance with intent to supply 5

- (1) A person commits an offence if –
 - (a) the person is in possession of a psychoactive substance,
 - (b) the person knows or suspects that the substance is a psychoactive substance, and
 - (c) the person intends to supply the psychoactive substance to another person for its consumption, whether by any person to whom it is supplied or by some other person, for its psychoactive effects. 10
- (2) This section is subject to regulations made under section 10 (power to provide that certain activities are not an offence under this section).

8 Importing or exporting a psychoactive substance 15

- (1) A person commits an offence if –
 - (a) the person intentionally imports a substance,
 - (b) the substance is a psychoactive substance,
 - (c) the person knows or suspects, or ought to know or suspect, that the substance is a psychoactive substance, and 20
 - (d) the person –
 - (i) intends to consume the psychoactive substance for its psychoactive effects, or
 - (ii) knows, or is reckless as to whether, the psychoactive substance is likely to be consumed by some other person for its psychoactive effects. 25
- (2) A person commits an offence if –
 - (a) the person intentionally exports a substance,
 - (b) the substance is a psychoactive substance,
 - (c) the person knows or suspects, or ought to know or suspect, that the substance is a psychoactive substance, and 30
 - (d) the person –
 - (i) intends to consume the psychoactive substance for its psychoactive effects, or
 - (ii) knows, or is reckless as to whether, the psychoactive substance is likely to be consumed by some other person for its psychoactive effects. 35
- (3) In a case where a person imports or exports a controlled drug suspecting it to be a psychoactive substance, the person is to be treated for the purposes of this section as if the person had imported or exported a psychoactive substance suspecting it to be such a substance. 40
 In this subsection “controlled drug” has the same meaning as in the Misuse of Drugs Act 1971.

- (4) Section 5 of the Customs and Excise Management Act 1979 (time of importation, exportation, etc) applies for the purposes of this section as it applies for the purposes of that Act.
- (5) This section is subject to regulations made under section 10 (power to provide that certain activities are not an offence under this section). 5

9 Penalties

A person guilty of an offence under any of sections 4 to 8 is liable –

- (a) on summary conviction in England and Wales –
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or 10
 - (ii) to a fine,
- or both;
- (b) on summary conviction in Scotland – 15
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,
- or both;
- (c) on summary conviction in Northern Ireland –
 - (i) to imprisonment for a term not exceeding 6 months, or 20
 - (ii) to a fine not exceeding the statutory maximum,
- or both;
- (d) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.

10 Power to provide for exceptions to offences 25

- (1) Regulations made by the Secretary of State may provide that it is not an offence under this Act for any person, or any person of a specified description, to do an act, or an act of a specified description, in specified circumstances or if specified conditions are met.
- (2) Before making any regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate. 30
- (3) Regulations under this section may –
 - (a) make different provision for different purposes, and
 - (b) contain incidental, supplemental, consequential or transitional provision or savings. 35
- (4) The power to make regulations under this section is exercisable by statutory instrument.
- (5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 40
- (6) In this section “specified” means specified in regulations.

Powers for dealing with prohibited activities

11 Meaning of “prohibited activity”

- (1) In this Act “prohibited activity” means any of the following activities—
- (a) producing a psychoactive substance that is likely to be consumed by individuals for its psychoactive effects; 5
 - (b) supplying such a substance;
 - (c) offering to supply such a substance;
 - (d) importing such a substance;
 - (e) exporting such a substance;
 - (f) assisting or encouraging the carrying on of an activity listed in any of paragraphs (a) to (e). 10
- (2) The carrying on by a person of an activity listed in subsection (1) is not the carrying on of a prohibited activity if the carrying on of the activity by that person would not be an offence under this Act by virtue of regulations under section 10. 15

12 Prohibition notices

- (1) A senior officer or a local authority may give a prohibition notice to a person if conditions A and B are met.
- (2) A prohibition notice is a notice that requires the person to whom it is given not to carry on any prohibited activity or a prohibited activity of a description specified in the notice. 20
- (3) Condition A is that the senior officer or local authority reasonably believes that the person is carrying on, or is likely to carry on, a prohibited activity.
- (4) Condition B is that the senior officer or local authority reasonably believes that it is necessary and proportionate to give the prohibition notice for the purpose of preventing the person from carrying on any prohibited activity. 25
- (5) A prohibition notice may not be given—
- (a) in England and Wales or Northern Ireland, to an individual who is under the age of 10, or
 - (b) in Scotland, to an individual who is under the age of 12. 30
- (6) A prohibition notice given to an individual who is under the age of 18—
- (a) must specify the period for which it has effect, and
 - (b) may not have effect for more than 3 years.
- (7) In this Act “senior officer” means—
- (a) a police officer (or, in Scotland, a constable) of at least the rank of inspector; 35
 - (b) a designated NCA officer of grade 3 or above;
 - (c) a general customs official of at least the grade of higher officer.

13 Premises notices

- (1) A senior officer or a local authority may give a premises notice to a person if conditions A and B are met. 40

- (2) A premises notice is a notice that requires the person to whom it is given to take all reasonable steps to prevent any prohibited activity, or a prohibited activity of a description specified in the notice, from being carried on at any premises specified in the notice that are owned, leased, occupied, controlled or operated by the person. 5
- (3) Condition A is that—
 - (a) the senior officer or local authority reasonably believes that a prohibited activity is being, or is likely to be, carried on at particular premises, and
 - (b) the person owns, leases, occupies, controls or operates the premises. 10
- (4) Condition B is that the senior officer or local authority reasonably believes that it is necessary and proportionate to give the prohibition notice for the purpose of preventing any prohibited activity from being carried on at any premises owned, leased, occupied, controlled or operated by the person.
- (5) A premises notice may not be given to an individual who is under the age of 18. 15
- (6) For the purposes of this section a person (other than a mortgagee not in possession) “owns” premises in England and Wales or Northern Ireland if—
 - (a) the person is entitled to dispose of the fee simple in the premises, whether in possession or reversion, or
 - (b) the person holds or is entitled to the rents and profits of the premises under a lease that (when granted) was for a term of not less than 3 years. 20
- (7) For the meaning of “senior officer”, see section 12(7).

14 Prohibition notices and premises notices: supplementary

- (1) This section applies to the giving of prohibition notices and premises notices. 25
- (2) A notice must—
 - (a) set out the grounds for giving the notice;
 - (b) explain the possible consequences of not complying with the notice.
- (3) A notice may be withdrawn by a notice to that effect given by—
 - (a) where the notice was given by a senior officer, that officer or another senior officer; 30
 - (b) where the notice was given by a local authority, that local authority.
- (4) The withdrawal of a notice does not prevent the giving of a further notice to the same person.
- (5) For the meaning of “senior officer”, see section 12(7). 35

15 Means of giving notices under sections 12 to 14

- (1) This section applies to the giving of notices under sections 12 to 14.
- (2) A notice may be given to a person by—
 - (a) handing it to the person,
 - (b) leaving it at the person’s proper address, or 40
 - (c) sending it by post to the person at that address.
- (3) A notice to a body corporate may be given to the secretary or clerk of that body.

- (4) A notice to a partnership may be given to a partner or a person who has the control or management of the partnership business.
- (5) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of a person is— 5
- (a) in the case of a body corporate or its secretary or clerk, the address of the body's registered or principal office;
 - (b) in the case of a partnership, a partner or a person having the control or management of the partnership business, the principal office of the partnership; 10
 - (c) in any other case, the person's last known address.
- (6) For the purposes of subsection (5) the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom.
- (7) If a person has specified an address in the United Kingdom, other than the person's proper address within the meaning of subsection (5), as the one at which the person or someone on the person's behalf will accept notices of the same description as a notice under section 12, 13 or 14 (as the case may be), that address is also treated for the purposes of this section and section 7 of the Interpretation Act 1978 as the person's proper address. 15 20

16 Meaning of “prohibition order”

- (1) In this Act a “prohibition order” means an order prohibiting the person against whom it is made from carrying on any prohibited activity or a prohibited activity of a description specified in the order.
- (2) A prohibition order may be made— 25
- (a) on application (see section 17), or
 - (b) following conviction of an offence under any of sections 4 to 8 or a related offence (see section 18).
- (3) For the meaning of “prohibited activity”, see section 11.

17 Prohibition orders on application 30

- (1) The appropriate court may make a prohibition order under this section against a person if—
- (a) condition A or B is met, and
 - (b) condition C is met.
- (2) Condition A is that the court is satisfied on the balance of probabilities that the person has failed to comply with a prohibition notice. 35
- (3) Condition B is that, where no prohibition notice has been given (or one was given but has been withdrawn)—
- (a) the court is satisfied on the balance of probabilities that the person is carrying on, or is likely to carry on, a prohibited activity, and 40
 - (b) the court considers that the person would fail to comply with a prohibition notice if given.

- (4) Condition C is that the court considers it necessary and proportionate to make the prohibition order for the purpose of preventing the person from carrying on any prohibited activity.
- (5) If a court makes a prohibition order under this section based on condition A having been met, the prohibition notice is to be treated as having been withdrawn. 5
- (6) A prohibition order under this section may not be made—
 - (a) in England and Wales or Northern Ireland, against an individual who is under the age of 10, or
 - (b) in Scotland, against an individual who is under the age of 12. 10
- (7) A prohibition order under this section made against an individual who is under the age of 18 at the time the order is made—
 - (a) must specify the period for which it has effect, and
 - (b) may not have effect for more than 3 years.
- (8) A prohibition order under this section may be made only on an application made in accordance with section 20. 15
- (9) In this section “the appropriate court” means—
 - (a) in relation to England and Wales—
 - (i) where the person in respect of whom the application is made is under the age of 18, a youth court, and 20
 - (ii) in any other case, a magistrates’ court;
 - (b) in relation to Scotland, the sheriff;
 - (c) in relation to Northern Ireland—
 - (i) where the person in respect of whom the application is made is under the age of 18, a youth court, and 25
 - (ii) in any other case, a court of summary jurisdiction.

18 Prohibition orders following conviction

- (1) Where a court is dealing with a person who has been convicted of a relevant offence, the court may make a prohibition order under this section if the court considers it necessary and proportionate for the purpose of preventing the person from carrying on any prohibited activity. 30
- (2) A prohibition order may not be made under this section except—
 - (a) in addition to a sentence imposed in respect of the offence concerned, or
 - (b) in addition to an order discharging the person conditionally or, in Scotland, discharging the person absolutely. 35
- (3) If a court makes a prohibition order under this section, any prohibition notice that has previously been given to the person against whom the order is made is to be treated as having been withdrawn.
- (4) A prohibition order under this section made against an individual who is under the age of 18 at the time the order is made—
 - (a) must specify the period for which it has effect, and
 - (b) may not have effect for more than 3 years. 40
- (5) In this section “relevant offence” means—
 - (a) an offence under any of sections 4 to 8;

- (b) an offence of attempting or conspiring to commit an offence under any of sections 4 to 8;
- (c) an offence under Part 2 of the Serious Crime Act 2007 in relation to an offence under any of sections 4 to 8;
- (d) an offence of inciting a person to commit an offence under any of sections 4 to 8; 5
- (e) an offence of aiding, abetting, counselling or procuring the commission of an offence under any of sections 4 to 8.

19 Premises orders

- (1) The appropriate court may make a premises order against a person if – 10
 - (a) condition A or B is met, and
 - (b) condition C is met.
- (2) A premises order is an order that requires the person against whom it is made to take all reasonable steps to prevent any prohibited activity, or a prohibited activity of a description specified in the order, from being carried on at any premises specified in the order that are owned, leased, occupied, controlled or operated by the person. 15
- (3) Condition A is that the court is satisfied on the balance of probabilities that the person has failed to comply with a premises notice.
- (4) Condition B is that, where no premises notice has been given (or one was given but has been withdrawn) – 20
 - (a) the court is satisfied on the balance of probabilities that a prohibited activity is being, or is likely to be, carried on at particular premises,
 - (b) the person owns, leases, occupies, controls or operates the premises, and 25
 - (c) the court considers that the person would fail to comply with a premises notice if given.
- (5) Condition C is that the court considers it necessary and proportionate to make the premises order for the purpose of preventing any prohibited activity from being carried on at any premises owned, leased, occupied, controlled or operated by the person. 30
- (6) If a court makes a premises order based on condition A having been met, the premises notice is to be treated as having been withdrawn.
- (7) A premises order may not be made against an individual who is under the age of 18. 35
- (8) A premises order may be made only on an application made in accordance with section 20.
- (9) In this section the “appropriate court” means –
 - (a) in relation to England and Wales, a magistrates’ court;
 - (b) in relation to Scotland, the sheriff; 40
 - (c) in relation to Northern Ireland, a court of summary jurisdiction.
- (10) Subsection (6) of section 13 (when a person “owns” premises) applies for the purposes of this section as it applies for the purposes of that section.

20 Applications for prohibition orders and premises orders

- (1) An application for a prohibition order under section 17 or a premises order may be made—
 - (a) in England and Wales, by the chief officer of police for a police area,
 - (b) in Scotland, by the chief constable of the Police Service of Scotland, 5
 - (c) in Northern Ireland, by the chief constable of the Police Service of Northern Ireland,
 - (d) in England and Wales or Scotland, by the chief constable of the British Transport Police Force,
 - (e) by the Director General of the National Crime Agency, 10
 - (f) by the Secretary of State by whom general customs functions are exercisable, or
 - (g) by a local authority.

This is subject to subsection (2).

- (2) Where an application is made based on a failure to comply with a prohibition notice or a premises notice (as the case may be), the application must be made—
 - (a) where the notice was given by a police officer, by the chief officer of police or chief constable (as the case may be) of the police force of which the police officer was a member when the notice was given; 20
 - (b) where the notice was given by a designated NCA officer, by the Director General of the National Crime Agency;
 - (c) where the notice was given by a general customs official, by the Secretary of State by whom general customs functions are exercisable;
 - (d) where the notice was given by a local authority, by that local authority. 25
- (3) An application for a prohibition order under section 17 or a premises order is—
 - (a) in England and Wales, to be made by complaint;
 - (b) in Northern Ireland, to be made by complaint under Part 8 of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)). 30

21 Provision that may be made by prohibition orders and premises orders

- (1) A prohibition order or a premises order may contain such other prohibitions, restrictions or requirements as the court considers appropriate (in addition to the prohibition referred to in section 16(1) or the requirement referred to in section 19(2) (as the case may be)). 35
- (2) Subsections (3) to (5) contain examples of the type of provision that may be made under subsection (1), but they do not limit the type of provision that may be so made.
- (3) The prohibitions, restrictions or requirements that may be imposed on a person by a prohibition order or a premises order include prohibitions or restrictions on, or requirements in relation to, the person’s business dealings (including the conduct of the person’s business over the internet). 40
- (4) The requirements that may be imposed on a person by a prohibition order include a requirement to hand over for disposal an item belonging to the person that the court is satisfied—
 - (a) is a psychoactive substance, or 45

- (b) has been, or is likely to be, used in the carrying on of a prohibited activity.
- (5) The prohibitions that may be imposed on a person by a prohibition order or a premises order include a prohibition prohibiting access to premises owned, occupied, leased, controlled or operated by the person for a specified period (“an access prohibition”). 5
- (6) The period specified under subsection (5) may not exceed 3 months (but see subsections (3) to (5) of section 24).
- (7) An access prohibition may prohibit access – 10
- (a) by all persons, or by all persons except those specified, or by all persons except those of a specified description;
- (b) at all times, or at all times except those specified;
- (c) in all circumstances, or in all circumstances except those specified.
- (8) An access prohibition may – 15
- (a) be made in respect of the whole or any part of the premises;
- (b) include provision about access to a part of the building or structure of which the premises form part.
- (9) In this section “specified” means specified in the prohibition order or the premises order (as the case may be).
- 22 Enforcement of access prohibitions** 20
- (1) An authorised person may –
- (a) enter premises in respect of which an access prohibition is in effect (see section 21(5));
- (b) do anything necessary to secure the premises against entry.
- (2) In this section “authorised person” – 25
- (a) in relation to an access prohibition imposed by a prohibition order under section 17, or a premises order, made on the application of the chief officer of police for a police area, the chief constable of the Police Service of Scotland, the chief constable of the Police Service of Northern Ireland or the chief constable of the British Transport Police Force, means a constable or a person authorised by the chief officer of police or the chief constable (as the case may be) who applied for the order; 30
- (b) in relation to an access prohibition imposed by a prohibition order under section 17, or a premises order, made on the application of the Director General of the National Crime Agency, means a designated NCA officer or a person authorised by the Director General; 35
- (c) in relation to an access prohibition imposed by a prohibition order under section 17, or a premises order, made on the application of the Secretary of State by whom general customs functions are exercisable, means a general customs official or a person authorised by that Secretary of State; 40
- (d) in relation to an access prohibition imposed by a prohibition order under section 17, or a premises order, made on the application of a local authority, means a person authorised by that local authority;
- (e) in relation to an access prohibition imposed by a prohibition order under section 18, means a constable. 45

- (3) A person acting under subsection (1) may use reasonable force.
- (4) A person seeking to enter premises under subsection (1) must, if required to do so by the occupier of the premises or, where the occupier is not present, by another person appearing to be in charge of the premises –
 - (a) give his or her name; 5
 - (b) if not a constable in uniform, produce documentary evidence that he or she is an authorised person.
- (5) An authorised person may also enter premises in respect of which an access prohibition is in effect to carry out essential maintenance or repairs to the premises. 10

23 Offence of failing to comply with a prohibition order or premises order

- (1) A person against whom a prohibition order or a premises order is made commits an offence by failing to comply with the order.
- (2) A person guilty of an offence under this section is liable –
 - (a) on summary conviction in England and Wales – 15
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine, 20
 or both;
 - (b) on summary conviction in Scotland –
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum, 25
 or both;
 - (c) on summary conviction in Northern Ireland –
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum, 30
 or both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.
- (3) A person does not commit an offence under this section if –
 - (a) the person took all reasonable steps to comply with the order, or
 - (b) there is some other reasonable excuse for the failure to comply.

24 Variation and discharge on application 35

- (1) The court may vary or discharge a prohibition order or a premises order on the application of –
 - (a) the person who applied for the order (if any),
 - (b) the person against whom the order was made, or
 - (c) any other person who is significantly adversely affected by the order. 40
- (2) Where a prohibition order is made under section 18, the court may also vary or discharge the order on the application of –
 - (a) in the case of an order made in England and Wales, the chief officer of police for a police area;

- (b) in the case of an order made in Scotland, the chief constable of the Police Service of Scotland;
 - (c) in the case of an order made in Northern Ireland, the chief constable of the Police Service of Northern Ireland;
 - (d) in the case of an order made in England and Wales or Scotland, the chief constable of the British Transport Police Force; 5
 - (e) the Director General of the National Crime Agency;
 - (f) the Secretary of State by whom general customs functions are exercisable.
- (3) Subsection (4) applies where – 10
- (a) a prohibition order or a premises order imposes an access prohibition (see section 21(5)), and
 - (b) an application for the variation of the order is made by the person who applied for the order, or by a person mentioned in subsection (2), before the expiry of the period for which the access prohibition has effect. 15
- (4) Where this subsection applies, the court may vary the order by extending (or further extending) the period for which the access prohibition has effect.
- (5) The period for which an access prohibition has effect may not be extended so that it has effect for more than 6 months.
- (6) In this section “the court” means – 20
- (a) the court that made the order, except where paragraph (b) or (c) applies;
 - (b) where the court that made the order was the Court of Appeal, the Crown Court;
 - (c) where the court that made the order was a youth court but the person against whom the order was made is aged 18 or over at the time of the application, a magistrates’ court or, in Northern Ireland, a court of summary jurisdiction. 25

25 Variation following conviction

- (1) This section applies where – 30
- (a) a court is dealing with a person who has been convicted of a relevant offence and against whom a prohibition order or a premises order has previously been made, or
 - (b) a court is dealing with a person who has been convicted of an offence under section 23 of failing to comply with a prohibition order or a premises order. 35
- (2) The court may vary the prohibition order or (as the case may be) the premises order.
- (3) An order that has been varied under subsection (2) remains an order of the court that first made it for the purposes of section 24. 40
- (4) An order may not be varied under this section except –
- (a) in addition to a sentence imposed in respect of the offence concerned, or
 - (b) in addition to an order discharging the person conditionally or, in Scotland, discharging the person absolutely.
- (5) In this section “relevant offence” has the same meaning as in section 18. 45

26 Appeals against making of prohibition orders and premises orders

Orders made under section 17 or 19

- (1) A person against whom a prohibition order under section 17 or a premises order is made by a court specified in the first column of the table may appeal against the making of the order to the court specified in the corresponding entry in the second column of the table— 5

<i>Court that made order</i>	<i>Court to which appeal lies</i>	
Youth court in England and Wales	Crown Court	
Magistrates' court		10
Sheriff	Sheriff Appeal Court	
Youth court in Northern Ireland	County Court	
Court of summary jurisdiction		15

- (2) On an appeal under subsection (1) the court hearing the appeal may by order affirm, vary or revoke the order.
- (3) An order that has been affirmed or varied under subsection (2) remains an order of the court that first made it for the purposes of section 24.

Orders made under section 18 20

- (4) A person against whom a prohibition order is made under section 18 (other than by a youth court in England and Wales or a magistrates' court) may appeal against the making of the order as if it were a sentence passed on the person for the offence referred to in section 18(1). 25
 (As regards orders made by a youth court in England and Wales or a magistrates' court, see section 108(3) of the Magistrates' Courts Act 1980.)

27 Appeals about variation and discharge

Decisions under section 24

- (1) An appeal may be made against a decision under section 24 of a court specified in the first column of the table to the court specified in the corresponding entry in the second column of the table— 30

<i>Court that made section 24 decision</i>	<i>Court to which appeal lies</i>	
Youth court in England and Wales	Crown Court	
Magistrates' court		35

<i>Court that made section 24 decision</i>	<i>Court to which appeal lies</i>	
Sheriff	Sheriff Appeal Court	
Youth court in Northern Ireland	County Court	5
Court of summary jurisdiction		
Crown Court	Court of Appeal	
High Court of Justiciary	High Court of Justiciary sitting as the Court of Criminal Appeal	10

- (2) The right of appeal under subsection (1) is exercisable by –
- (a) the person against whom the relevant order was made, and
 - (b) any other person who is significantly adversely affected by that order.

- (3) In subsection (2) the “relevant order” means the order that was the subject of the application under section 24. 15

- (4) On an appeal under subsection (1) the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

Decisions under section 25 20

- (5) A person against whom a prohibition order or a premises order has been made may appeal against a variation of the order under section 25 (other than by a youth court in England and Wales or a magistrates’ court) as if the varied order were a sentence passed on the person for the offence referred to in section 25(1). (As regards orders varied by a youth court in England and Wales or a magistrates’ court, see section 108(3) of the Magistrates’ Courts Act 1980.) 25

28 Nature of proceedings under sections 18 and 25, etc

- (1) Proceedings before a court arising by virtue of section 18 or 25 are civil proceedings (like court proceedings arising by virtue of section 17, 19 or 24).
- (2) The standard of proof to be applied by the court in the proceedings is the balance of probabilities. 30
- (3) The court is not restricted in the proceedings to considering evidence that would have been admissible in the criminal proceedings in which the person concerned was convicted.
- (4) The court may adjourn any proceedings arising by virtue of section 18 or 25 even after sentencing the person concerned. 35
- (5) Despite subsection (1), an Act of Adjournment under section 305 of the Criminal Procedure (Scotland) Act 1995 (Acts of Adjournment) may be made in relation to proceedings before the sheriff arising by virtue of section 18 or 25.

- (6) A prohibition order may be made or varied as mentioned in section 18(2)(b) or 25(4)(b) (as the case may be) in spite of anything in the following provisions (which relate to orders discharging a person conditionally or absolutely and their effect) –
- (a) sections 12 and 14 of the Powers of Criminal Courts (Sentencing) Act 2000; 5
 - (b) sections 246 and 247 of the Criminal Procedure (Scotland) Act 1995;
 - (c) Articles 4 and 6 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)).
- (7) The Crown Court, when exercising its jurisdiction in England and Wales under any of sections 18 and 24 to 27, is a criminal court for the purposes of Part 7 of the Courts Act 2003 (procedure rules and practice directions). 10

29 Special measures for witnesses: England and Wales

- (1) Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (special measures directions in the case of vulnerable and intimidated witnesses) applies to relevant proceedings under this Act as it applies to criminal proceedings, but with – 15
- (a) the omission of the provisions of that Act mentioned in subsection (2) (which make provision only in the context of criminal proceedings), 20
and
 - (b) any other necessary modifications.
- (2) The provisions are –
- (a) section 17(4) to (7);
 - (b) section 21(4C)(e);
 - (c) section 22A; 25
 - (d) section 32.
- (3) Rules of court made under or for the purposes of Chapter 1 of Part 2 of that Act apply to relevant proceedings under this Act –
- (a) to the extent provided by rules of court, and
 - (b) subject to any modifications provided by rules of court. 30
- (4) Section 47 of that Act (restrictions on reporting special measures directions etc.) applies with any necessary modifications –
- (a) to a direction under section 19 of that Act as applied by this section;
 - (b) to a direction discharging or varying such a direction.
- Sections 49 and 51 of that Act (offences) apply accordingly. 35
- (5) In this section “relevant proceedings under this Act” means –
- (a) proceedings in England and Wales under section 17, 19, 24, 26 or 27, and
 - (b) proceedings in England and Wales arising by virtue of section 18 or 25.

30 Special measures for witnesses: Northern Ireland 40

- (1) Part 2 of the Criminal Evidence (Northern Ireland) Order 1999 (S.I. 1999/2789 (N.I. 8)) (special measures directions in the case of vulnerable and intimidated witnesses) applies to relevant proceedings under this Act as it applies to criminal proceedings, but with –

- (a) the omission of the provisions of the Order of 1999 mentioned in subsection (2) (which make provision only in the context of criminal proceedings), and
- (b) any other necessary modifications.
- (2) The provisions are – 5
- (a) Article 5(4);
- (b) Article 9(4C)(e);
- (c) Article 10A;
- (d) Article 20.
- (3) Rules of court made under or for the purposes of Part 2 of the Order of 1999 apply to relevant proceedings under this Act – 10
- (a) to the extent provided by rules of court, and
- (b) subject to any modifications provided by rules of court.
- (4) Section 47 of the Youth Justice and Criminal Evidence Act 1999 (restrictions on reporting special measures directions etc.) applies with any necessary modifications – 15
- (a) to a direction under Article 7 of the Order of 1999 as applied by this section;
- (b) to a direction discharging or varying such a direction.
- Sections 49 and 51 of that Act (offences) apply accordingly. 20
- (5) In this section “relevant proceedings under this Act” means –
- (a) proceedings in Northern Ireland under section 17, 19, 24, 26 or 27, and
- (b) proceedings in Northern Ireland arising by virtue of section 18 or 25.
- 31 Transfer of proceedings from youth court**
- (1) This section applies where – 25
- (a) an individual against whom a prohibition order is sought reaches the age of 18 whilst proceedings before a youth court for the making of the order are ongoing;
- (b) an individual against whom a prohibition order has been made reaches the age of 18 whilst proceedings before a youth court for the variation or discharge of the order are ongoing. 30
- (2) Rules of court may provide for the transfer of the proceedings from the youth court to –
- (a) in England and Wales, a magistrates’ court;
- (b) in Northern Ireland, a court of summary jurisdiction. 35
- (3) Rules of court may prescribe circumstances in which the proceedings may or must remain in the youth court.

Powers of entry, search and seizure

32 Power to stop and search persons

- (1) This section applies where a police or customs officer has reasonable grounds to suspect that a person has committed, or is likely to commit, an offence under any of sections 4 to 8 or section 23. 40

- (2) The officer may –
 - (a) search the person for relevant evidence, and
 - (b) stop and detain the person for the purposes of the search.
- (3) The powers conferred by this section may be exercised in any place to which the officer lawfully has access (whether or not it is a place to which the public has access). 5
- (4) In this Act –
 - “police or customs officer” means –
 - (a) a constable,
 - (b) a designated NCA officer, or 10
 - (c) a general customs official;
 - “relevant evidence” means evidence that an offence has been committed under any of sections 4 to 8 or section 23.

33 Power to enter and search vehicles

- (1) This section applies where – 15
 - (a) a police or customs officer has reasonable grounds to suspect that there is relevant evidence in a vehicle, and
 - (b) the vehicle is not a dwelling.
- (2) The officer may at any time –
 - (a) enter the vehicle and search it for relevant evidence; 20
 - (b) stop and detain the vehicle for the purposes of entering and searching it.
- (3) Where –
 - (a) a police or customs officer has stopped a vehicle under this section, and
 - (b) the officer considers that it would be impracticable to search the vehicle 25

in the place where it has stopped, the officer may require the vehicle to be taken to such place as the officer directs to enable the vehicle to be searched.
- (4) A police or customs officer may require –
 - (a) any person travelling in a vehicle, or 30
 - (b) the registered keeper of a vehicle,

to afford such facilities and assistance with respect to matters under that person’s control as the officer considers would facilitate the exercise of any power conferred by this section.
- (5) The powers conferred by this section may be exercised in any place to which the officer lawfully has access (whether or not it is a place to which the public has access). 35
- (6) In this section “vehicle” does not include any vessel or aircraft.
- (7) For provision conferring additional powers to enter and search vehicles, see section 35. 40

34 Power to board and search vessels or aircraft

- (1) This section applies where –

- (a) a police or customs officer has reasonable grounds to believe that there is relevant evidence in or on any vessel or aircraft, and
 - (b) the vessel or aircraft is not a dwelling.
- (2) The officer may at any time –
 - (a) board the vessel or aircraft, and 5
 - (b) search it for relevant evidence.
- (3) For the purposes of exercising the power conferred by subsection (2), the officer may require a vessel or aircraft –
 - (a) to stop, or
 - (b) to do anything else that will facilitate the boarding of that or any other vessel or aircraft. 10
- (4) A police or customs officer who has boarded a vessel or aircraft may, for the purposes of disembarking from the vessel or aircraft, require that or any other vessel or aircraft –
 - (a) to stop, or 15
 - (b) to do anything else that will enable the officer to disembark from the vessel or aircraft.
- (5) A police or customs officer may require any person on board a vessel or aircraft to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section. 20
- (6) For provision conferring additional powers to enter and search vessels and aircraft, see section 35.

35 Power to enter and search premises

- (1) Where a justice is satisfied that the requirements in subsection (4) are met in relation to any premises, the justice may issue a warrant (a “search warrant”) authorising a relevant enforcement officer –
 - (a) to enter the premises, and
 - (b) to search them for relevant evidence. 25
- (2) A search warrant may be issued only on the application of –
 - (a) a relevant enforcement officer, in England and Wales or Northern Ireland;
 - (b) a procurator fiscal, in Scotland. 30
- (3) A search warrant may be either –
 - (a) a warrant that relates to any premises occupied or controlled by a person specified in the warrant (an “all-premises warrant”), or
 - (b) a warrant that relates only to premises specified in the warrant (a “specific-premises warrant”). 35
- (4) The requirements of this subsection are met in relation to premises if there are reasonable grounds to suspect that –
 - (a) there are items on the premises that are relevant evidence, and
 - (b) in a case where the premises are specified in the application, any of the conditions in subsection (5) is met. 40
- (5) The conditions referred to in subsection (4)(b) are –

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (b) that it is not practicable to communicate with any person entitled to grant access to the items;
 - (c) that entry to the premises is unlikely to be granted unless a warrant is produced; 5
 - (d) that the purpose of entry may be frustrated or seriously prejudiced unless a relevant enforcement officer arriving at the premises can secure immediate entry to them.
- (6) In this Act “relevant enforcement officer” means – 10
- (a) a police or customs officer (see section 32(4)), or
 - (b) an officer of a local authority.

36 Further provision about search warrants

- (1) A search warrant may be executed by any relevant enforcement officer.
- (2) A search warrant may authorise persons to accompany any relevant enforcement officer who is executing it. 15
- (3) A person authorised under subsection (2) to accompany a relevant enforcement officer may exercise any power conferred by sections 35 to 41 which the officer may exercise as a result of the warrant.
But the person may exercise such a power only in the company of, and under the supervision of, a relevant enforcement officer. 20
- (4) Schedule 2 contains further provision about search warrants.
- (5) An entry on or search of premises under a search warrant is unlawful unless it complies with the provisions of Part 2 of that Schedule (execution of search warrants). 25

37 Powers of examination, etc

- (1) This section applies where a relevant enforcement officer is exercising a power of search conferred by section 33, 34 or 35 in relation to any premises.
- (2) The officer may examine anything that is in or on the premises.
- (3) The officer may carry out any measurement or test of anything which the officer has power under this section to examine. 30
- (4) The power conferred by subsection (3) includes power to take a sample from any live plant.
- (5) For the purpose of exercising – 35
 - (a) a power of search conferred by section 33, 34 or 35, or
 - (b) any power conferred by this section,
 the officer may, so far as is reasonably necessary for that purpose, break open any container or other locked thing.
- (6) The officer may require any person in or on the premises to afford such facilities and assistance with respect to matters under that person’s control as the officer considers would facilitate the exercise of – 40
 - (a) a power of search conferred by section 33, 34 or 35, or

- (b) any power conferred by this section.
- (7) Nothing in this section confers any power to search a person.

38 Power to require production of documents, etc

- (1) This section applies where a relevant enforcement officer is exercising a power of search conferred by section 33, 34 or 35 in relation to any premises. 5
- (2) The officer may require any person in or on the premises to produce any document or record that is in the person's possession or control.
- (3) A reference in this section to the production of a document includes a reference to the production of –
 - (a) a hard copy of information recorded otherwise than in hard copy form, or 10
 - (b) information in a form from which a hard copy can be readily obtained.
- (4) For the purposes of this section –
 - (a) information is recorded in hard copy form if it is recorded in a paper copy or similar form capable of being read (and references to hard copy have a corresponding meaning); 15
 - (b) information can be read only if –
 - (i) it can be read with the naked eye, or
 - (ii) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye. 20

39 Powers of seizure, etc

- (1) A police or customs officer who is exercising the power of search conferred by section 32 may seize and detain anything found in the course of the search.
- (2) This subsection applies where a relevant enforcement officer – 25
 - (a) is exercising a power of search conferred by section 33, 34 or 35 in relation to any premises, or
 - (b) is otherwise lawfully on premises.
- (3) Where subsection (2) applies, the officer may –
 - (a) seize and detain or remove any item found on the premises; 30
 - (b) take copies of or extracts from any document or record found on the premises.
- (4) A relevant enforcement officer to whom any document or record has been produced in accordance with a requirement imposed under section 38 may –
 - (a) seize and detain or remove that document or record; 35
 - (b) take copies of or extracts from that document or record.

In this subsection “document” includes anything falling within paragraph (a) or (b) of section 38(3).
- (5) The powers under this section may only be exercised –
 - (a) for the purposes of determining whether an offence under any of sections 4 to 8 or section 23 has been committed, or 40
 - (b) in relation to an item which a relevant enforcement officer reasonably believes to be –

- (i) relevant evidence, or
 - (ii) a psychoactive substance (whether or not it is relevant evidence).
- (6) Nothing in this section confers power on a relevant enforcement officer to seize an item which is an excluded item (see section 40). 5

40 Excluded items

- (1) This section defines what is meant by “excluded items” for the purposes of section 39.
- (2) In England and Wales “excluded items” means –
- (a) items subject to legal privilege, within the meaning of the Police and Criminal Evidence Act 1984 (see section 10 of that Act); 10
 - (b) excluded material, within the meaning of that Act (see section 11 of that Act);
 - (c) special procedure material, within the meaning of that Act (see section 14 of that Act). 15
- (3) In Scotland “excluded items” means items in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.
- (4) In Northern Ireland “excluded items” means –
- (a) items subject to legal privilege, within the meaning of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (see Article 12 of that Order); 20
 - (b) excluded material, within the meaning of that Order (see Article 13 of that Order);
 - (c) special procedure material, within the meaning of that Order (see Article 16 of that Order). 25

41 Further provision about seizure under section 39

- (1) Where –
- (a) any items which a relevant enforcement officer wishes to seize and remove are in a container, and
 - (b) the officer reasonably considers that it would facilitate the seizure and removal of the items if they remained in the container for that purpose, any power to seize and remove the items conferred by section 39 includes power to seize and remove the container. 30
- (2) If a container is seized under this section, reasonable efforts must be made to return it to – 35
- (a) the person from whom it was seized, or
 - (b) (if different) a person to whom it belongs.
- (3) Subsection (2) does not apply –
- (a) if the container appears to be of negligible value,
 - (b) if it is not practicable for the container to be returned, or 40
 - (c) while the container is or may be needed for use as evidence at a trial for an offence.

- (4) If, in the opinion of a relevant enforcement officer, it is not for the time being practicable for the officer to seize and remove any item, the officer may require –
- (a) the person from whom the item is being seized, or
 - (b) where the officer is exercising a power of search conferred by section 33, 34 or 35 in relation to any premises, any person in or on the premises,
- to secure that the item is not removed or otherwise interfered with until such time as the officer may seize and remove it.

42 Notices and records in relation to seized items 10

- (1) This section applies where a relevant enforcement officer, or a person accompanying a relevant enforcement officer, seizes any item under section 39.
- (2) When the item is seized, the officer must make reasonable efforts to give written notice to each of the following persons –
- (a) in the case of an item seized from a person, the person from whom the item was seized; 15
 - (b) in the case of an item seized from premises, any person who appears to the officer to be the occupier of the premises or otherwise to be in charge of the premises;
 - (c) if the officer thinks that the item may belong to any person not falling within paragraph (a) or (b), that other person. 20

A person falling within any of paragraphs (a) to (c) is referred to in this section as an “affected person”.

- (3) If –
- (a) the item is seized from premises, and 25
 - (b) at the time of the seizure it is not reasonably practicable to give a notice to any affected person,
- the officer must leave a copy of the notice in a prominent place on the premises.
- (4) The notice must –
- (a) state what has been seized and the reason for its seizure; 30
 - (b) specify any offence which the officer believes has been committed;
 - (c) explain the effect of sections 45 to 47 and 49.
- (5) The officer must make a record of what has been seized.
- (6) If a person who appears to a relevant enforcement officer to be an affected person asks for a copy of that record, the officer must, within a reasonable time, provide a copy of that record to that person. 35

43 Powers of entry, search and seizure: supplementary provision

- (1) A relevant enforcement officer may use reasonable force, if necessary, for the purpose of exercising any power conferred by sections 32 to 41.
- (2) A person authorised under section 36(2) to accompany a relevant enforcement officer may use reasonable force, if necessary, for the purpose of exercising any power conferred by sections 35 to 41. 40
- (3) The powers conferred on a relevant enforcement officer by any of sections 32 to 41 do not affect any powers exercisable by the officer apart from that section.

44 Offences in relation to enforcement officers

- (1) A person commits an offence if, without reasonable excuse, the person intentionally obstructs a relevant enforcement officer in the performance of any of the officer’s functions under sections 32 to 41.
- (2) A person commits an offence if— 5
 - (a) the person fails without reasonable excuse to comply with a requirement reasonably made, or a direction reasonably given, by a relevant enforcement officer in the exercise of any power conferred by sections 33 to 41, or
 - (b) the person prevents any other person from complying with any such requirement or direction. 10
- (3) In this section any reference to a relevant enforcement officer includes a reference to a person authorised under section 36(2) to accompany a relevant enforcement officer.
- (4) A person who is guilty of an offence under this section is liable— 15
 - (a) on summary conviction in England and Wales, to either or both of the following—
 - (i) imprisonment for a term not exceeding 51 weeks (or 6 months, if the offence was committed before the commencement of section 281(5) of the Criminal Justice Act 2003); 20
 - (ii) a fine;
 - (b) on summary conviction in Scotland, to either or both of the following—
 - (i) imprisonment for a term not exceeding 12 months;
 - (ii) a fine not exceeding level 5 on the standard scale;
 - (c) on summary conviction in Northern Ireland, to either or both of the following— 25
 - (i) imprisonment for a term not exceeding 6 months;
 - (ii) a fine not exceeding level 5 on the standard scale.
- (5) Proceedings for an offence under this section may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom. 30

Retention and disposal of items

45 Retention of seized items

- (1) This section applies to any item seized under section 39.
- (2) The item may be retained so long as is necessary in all the circumstances and in particular— 35
 - (a) for use as evidence at a trial for an offence under this Act, or
 - (b) for forensic examination or for investigation in connection with an offence under this Act.
- (3) No item may be retained for either of the purposes mentioned in subsection (2) if a photograph or a copy would be sufficient for that purpose. 40

46 Power of police, etc to dispose of seized psychoactive substances

- (1) This section applies if –
- (a) a police or customs officer has seized an item found during the course of a search under section 32, 33 or 34,
 - (b) the search was carried out in a place to which the officer lawfully had access without a warrant (whether issued under this Act or under any other enactment), 5
 - (c) the officer reasonably believes that the item is a psychoactive substance but is not evidence of any offence under this Act, and
 - (d) the officer has no reason to believe that, at the time of the seizure, the item was being used for the purposes of, or in connection with, an exempted activity carried on by a person entitled to the item. 10
- (2) The officer may dispose of the item in whatever way the officer thinks is suitable.
- (3) For the purposes of this section – 15
- (a) an activity is an “exempted activity” in relation to a person if the carrying on of the activity by that person would not be an offence under this Act by virtue of regulations under section 10;
 - (b) the persons “entitled” to an item are –
 - (i) the person from whom it was seized; 20
 - (ii) (if different) any person to whom it belongs.
- (4) In this section “enactment” includes –
- (a) an enactment contained in subordinate legislation;
 - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament; 25
 - (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;
 - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.

47 Forfeiture of seized items by court on application 30

- (1) A relevant enforcement officer may apply to the appropriate court for the forfeiture of an item retained under section 45.
- (2) Where an application for the forfeiture of an item is made under this section, the item is to be retained while proceedings on the application are in progress.
- (3) In a case where the item is a psychoactive substance, the court must order the forfeiture of the item if satisfied that – 35
- (a) it is a psychoactive substance, and
 - (b) at the time of its seizure, it was not being used for the purposes of, or in connection with, an exempted activity carried on by a person entitled to the item. 40

For the purposes of this section, an activity is an “exempted activity” in relation to a person if the carrying on of the activity by that person would not be an offence under this Act by virtue of regulations under section 10.

- (4) In any other case, the court may order the forfeiture of the item if satisfied that it has been used in the commission of an offence under this Act. 45

- (5) Where an order for forfeiture of an item is made under subsection (3) or (4), the item may be disposed of in whatever way the officer who applied for the order, or another relevant enforcement officer acting on behalf of the same body as that officer, thinks is suitable.
- (6) But the item may not be disposed of under subsection (5) — 5
- (a) before the end of the period within which an appeal under section 48 may be made against the order, or
- (b) if such an appeal is made, before it is determined or otherwise dealt with.
- (7) If either subsection (8) or (9) applies in relation to an item, the court must order the item to be returned to a person entitled to it. 10
(For provision enabling an application for an order under this subsection to be made, see section 49.)
- (8) This subsection applies in relation to an item if the court is not satisfied that the item — 15
- (a) is a psychoactive substance, or
- (b) has been used in the commission of an offence under this Act.
- (9) This subsection applies in relation to an item if — 20
- (a) the item is a psychoactive substance, and
- (b) the court is satisfied that, at the time of its seizure, the substance was being used for the purposes of, or in connection with, an exempted activity carried on by a person entitled to the item.
- (10) Where an order for the return of an item is made under subsection (7), the item may nevertheless be retained — 25
- (a) until the end of the period within which an appeal under section 48 may be made against the order, or
- (b) if such an appeal is made, until the time when it is determined or otherwise dealt with.
- But if it is decided before the end of the period mentioned in paragraph (a) that there is to be no appeal, the item must be returned as soon as possible after that decision is made. 30
- (11) In this section “the appropriate court” means — 35
- (a) in relation to England and Wales —
- (i) where the person in respect of whom the application is made is under the age of 18, a youth court, and
- (ii) in any other case, a magistrates’ court;
- (b) in relation to Scotland, the sheriff;
- (c) in relation to Northern Ireland — 40
- (i) where the person in respect of whom the application is made is under the age of 18, a youth court, and
- (ii) in any other case, a court of summary jurisdiction.
- (12) The persons “entitled” to an item for the purposes of this section are —
- (a) the person from whom it was seized;
- (b) (if different) any person to whom it belongs.

48 Appeal against decision under section 47

- (1) Where an order has been made under section 47, each of the following persons may appeal against the order –
- (a) any party to the proceedings in which the order was made;
 - (b) any other person entitled to the item to which the order relates. 5
- (2) Where –
- (a) a relevant enforcement officer brings an appeal under this section, and
 - (b) no person entitled to the item in question was a party to the original proceedings,
- the officer must make reasonable efforts to give notice of the appeal to every person who the officer thinks is or may be entitled to the item. 10
- (3) An appeal under this section is to –
- (a) the Crown Court, in England and Wales;
 - (b) the Sheriff Appeal Court, in Scotland;
 - (c) a county court, in Northern Ireland. 15
- (4) An appeal under this section against an order must be made before the end of the period of 30 days starting with the date of the order.
- (5) Subject to subsections (6) and (7), the court hearing the appeal may make any order the court thinks appropriate.
- (6) If an appeal against an order for the return of an item is allowed – 20
- (a) the court must order the item to be forfeited, and
 - (b) subsections (5) and (6) of section 47 apply with the necessary adaptations.
- (7) If an appeal against an order forfeiting an item is allowed –
- (a) the court must order the item to be returned to a person entitled to it, and 25
 - (b) subsection (10) of section 47 applies with the necessary adaptations.
- (8) The persons “entitled” to an item for the purposes of this section are –
- (a) the person from whom it was seized;
 - (b) (if different) any person to whom it belongs. 30

49 Return of item to person entitled to it, or disposal if return impracticable

- (1) Where the retention of an item has been, but is no longer, authorised under this Act –
- (a) the item must be returned to a person entitled to it (but see subsection (4)); 35
 - (b) the appropriate court must, if asked to do so by a person entitled to the item, order it to be returned to that person.
- (2) A person who claims to be entitled to an item retained under this Act may apply to the appropriate court for an order under subsection (1)(b) or section 47(7) (as appropriate). 40
- (3) Where –
- (a) a court makes an order under this Act requiring an item to be returned to a particular person, and

- (b) reasonable efforts have been made, without success, to find that person, or it is for some other reason impracticable to return the item to that person,
the order has effect as if it required the item to be returned to any person entitled to it. 5
- (4) Where—
 - (a) an item is required by a provision of this Act, or an order made under this Act, to be returned to a person entitled to it, and
 - (b) reasonable efforts have been made, without success, to find a person entitled to the item, or it is for some other reason impracticable to return the item to a person entitled to it, 10
a relevant enforcement officer may dispose of the item in whatever way the officer thinks is suitable.
- (5) In this section “the appropriate court” means—
 - (a) in relation to England and Wales— 15
 - (i) where the person making the application is under the age of 18, a youth court, and
 - (ii) in any other case, a magistrates’ court;
 - (b) in relation to Scotland, the sheriff;
 - (c) in relation to Northern Ireland— 20
 - (i) where the person making the application is under the age of 18, a youth court, and
 - (ii) in any other case, a court of summary jurisdiction.
- (6) The persons “entitled” to an item for the purposes of this section are—
 - (a) the person from whom it was seized; 25
 - (b) (if different) any person to whom it belongs.

50 Forfeiture by court following conviction

- (1) This section applies where a person is convicted of—
 - (a) an offence under any of sections 4 to 8 and 23, or
 - (b) an ancillary offence (see subsection (10)). 30
- (2) The court by which the person is convicted must make an order for the forfeiture of any psychoactive substance in respect of which the offence was committed.
- (3) The court may also make an order for the forfeiture of any other item that was used in the commission of the offence. 35
- (4) An order under subsection (2) or (3) is referred to in this section as a “forfeiture order”.
- (5) Before making a forfeiture order under subsection (3) in relation to any item, the court must give an opportunity to make representations to any person (in addition to the convicted person) who claims to be the owner of the item or otherwise to have an interest in it. 40
- (6) A forfeiture order may not be made so as to come into force at any time before there is no further possibility (ignoring any power to appeal out of time) of the order being varied or set aside on appeal.

- (7) Where the court makes a forfeiture order, it may also make such other provision as it considers to be necessary for giving effect to the forfeiture.
- (8) That provision may, in particular, include provision relating to the retention, handling, destruction or other disposal of the item.
- (9) Provision made by virtue of this section may be varied at any time by the court that made it. 5
- (10) In this section “ancillary offence” means –
- (a) an offence of attempting or conspiring to commit an offence under any of sections 4 to 8 and 23;
 - (b) an offence under Part 2 of the Serious Crime Act 2007 in relation to an offence under any of sections 4 to 8 and 23; 10
 - (c) an offence of inciting a person to commit an offence under any of sections 4 to 8 and 23;
 - (d) an offence of aiding, abetting, counselling or procuring the commission of an offence under any of sections 4 to 8 and 23. 15

Supplementary and final provisions

51 Offences by directors, partners, etc

- (1) Where an offence under this Act has been committed by a body corporate and it is proved that the offence –
- (a) has been committed with the consent or connivance of a person falling within subsection (2), or 20
 - (b) is attributable to any neglect on the part of such a person, that person (as well as the body corporate) is guilty of that offence and liable to be proceeded against and punished accordingly.
- (2) The persons are – 25
- (a) a director, manager, secretary or similar officer of the body corporate;
 - (b) any person who was purporting to act in such a capacity.
- (3) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate. 30
- (4) Where an offence under this Act has been committed by a Scottish firm and it is proved that the offence –
- (a) has been committed with the consent or connivance of a partner in the firm or a person purporting to act as such a partner, or
 - (b) is attributable to any neglect on the part of such a person, 35
- that person (as well as the firm) is guilty of that offence and liable to be proceeded against and punished accordingly.

52 Providers of information society services

Schedule 3 contains provision about the application of certain provisions of this Act in relation to persons providing information society services within the meaning of that Schedule. 40

53 Interpretation

(1) In this Act –

- “designated NCA officer” means a National Crime Agency officer designated under section 9 or 10 of the Crime and Courts Act 2013 as a person having either or both of the following – 5
 - (a) the powers and privileges of a constable;
 - (b) the powers of an officer of Revenue and Customs;
- “exempted substance” has the meaning given by section 3;
- “general customs function” has the meaning given by section 1(8) of the Borders, Citizenship and Immigration Act 2009; 10
- “general customs official” means a person designated as a general customs official under section 3(1) of the Borders, Citizenship and Immigration Act 2009;
- “item” includes any substance;
- “justice” means – 15
 - (a) in England and Wales, a justice of the peace,
 - (b) in Scotland, a sheriff, and
 - (c) in Northern Ireland, a lay magistrate;
- “local authority” means –
 - (a) in England, a county council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly, 20
 - (b) in Wales, a county council or county borough council,
 - (c) in Scotland, a council constituted under section 2 of the Local Government etc (Scotland) Act 1994, and 25
 - (d) in Northern Ireland, a district council constituted under section 1 of the Local Government Act (Northern Ireland) 1972;
- “police or customs officer” has the meaning given by section 32(4);
- “premises” includes any place and, in particular, includes –
 - (a) any vehicle, vessel or aircraft; 30
 - (b) any offshore installation within the meaning given by section 1 of the Mineral Workings (Offshore Installations) Act 1971;
 - (c) any renewable energy installation within the meaning given by section 104 of the Energy Act 2004;
 - (d) any tent or movable structure; 35
- “premises notice” is to be read in accordance with section 13;
- “premises order” is to be read in accordance with section 19;
- “prohibited activity” has the meaning given by section 11;
- “prohibition notice” is to be read in accordance with section 12;
- “prohibition order” is to be read in accordance with section 16; 40
- “psychoactive effects”, in relation to a substance, is to be read in accordance with section 2(2);
- “psychoactive substance” has the meaning given by section 2(1);
- “relevant enforcement officer” has the meaning given by section 35(6);
- “relevant evidence” has the meaning given by section 32(4); 45
- “search warrant” means a warrant under section 35;
- “senior officer” has the meaning given by section 12(7);
- “vessel” is to be read in accordance with subsection (4).

- (2) In this Act—
- (a) any reference to producing a substance is a reference to producing it by manufacture, cultivation or any other method;
 - (b) any reference to supplying a substance includes a reference to distributing it; 5
 - (c) any reference to consuming a substance is to be read in accordance with section 2(3).
- (3) For the purposes of this Act the items which are in a person’s possession include any items which are—
- (a) subject to that person’s control, but 10
 - (b) in the custody of another person.
- (4) In this Act any reference to a vessel includes a reference to—
- (a) any ship or boat or any other description of vessel used in navigation, and
 - (b) any hovercraft, submersible craft or other floating craft, 15
- but does not include a reference to anything that permanently rests on, or is permanently attached to, the sea bed.
- (5) Before the commencement of section 109 of the Courts Reform (Scotland) Act 2014 (abolition of appeal from a sheriff to the sheriff principal), any reference in this Act to the Sheriff Appeal Court is to be read as a reference to the sheriff principal. 20

54 Consequential amendments

Schedule 4 (which contains consequential amendments) has effect.

55 Power to make further consequential amendments

- (1) The Secretary of State may by regulations make provision that is consequential on any provision of this Act. 25
- (2) The power to make regulations under this section—
- (a) is exercisable by statutory instrument;
 - (b) includes power to make transitional, transitory or saving provision;
 - (c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under primary legislation passed before this Act or in the same Session. 30
- (3) A statutory instrument that contains (with or without other provision) regulations under this section that amend, repeal or revoke any provision of primary legislation may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 35
- (4) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section “primary legislation” means— 40
- (a) an Act of Parliament;
 - (b) an Act of the Scottish Parliament;
 - (c) a Measure or Act of the National Assembly for Wales;
 - (d) Northern Ireland legislation.

56 Extent

- (1) Except as provided by subsection (2), this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Any amendment or repeal made by this Act has the same extent as the provision amended or repealed. 5

57 Commencement and short title

- (1) The following provisions of this Act come into force on the day on which this Act is passed –
 - (a) sections 53, 55 and 56 and this section;
 - (b) any power to make regulations under this Act. 10
- (2) The remaining provisions of this Act come into force in accordance with provision contained in regulations made by the Secretary of State.
- (3) Regulations under subsection (2) may –
 - (a) make different provision for different purposes;
 - (b) make such transitory or transitional provision, or savings, as the Secretary of State considers necessary or expedient. 15
- (4) This Act may be cited as the Psychoactive Substances Act 2015.

SCHEDULES

SCHEDULE 1

Section 3

EXEMPTED SUBSTANCES

Controlled drugs

- | | | |
|---|--|---|
| 1 | Controlled drugs (within the meaning of the Misuse of Drugs Act 1971). | 5 |
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Medicinal products

- | | | |
|---|---|--|
| 2 | Medicinal products for which either of the following is in force – <ul style="list-style-type: none"> (a) a marketing authorisation; (b) an Article 126a authorisation. | |
|---|---|--|

Terms used in this paragraph and in the Human Medicines Regulations 2012 (S.I. 2012/1916) have the same meaning in this paragraph as they have in those Regulations.	10
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|---|---|----|
| 3 | Investigational medicinal products. | |
| | “Investigational medicinal product” has the same meaning as in the Medicines for Human Use (Clinical Trials) Regulations 2004 (S.I. 2004/1031) (see regulation 2 of those Regulations). | 15 |

- | | | |
|---|---|--|
| 4 | Homoeopathic medicinal products. | |
| | “Homoeopathic medicinal product” has the same meaning as in the Human Medicines Regulations 2012 (see regulation 8 of those Regulations). | |

- | | | |
|---|---|----|
| 5 | Traditional herbal medicinal products. | 20 |
| | “Traditional herbal medicinal product” has the same meaning as in the Human Medicines Regulations 2012 (see regulation 8 of those Regulations). | |

Alcohol

- | | | |
|---|--|----|
| 6 | Alcohol or alcoholic products. | |
| | In this paragraph – <ul style="list-style-type: none"> “alcohol” means ethyl alcohol, and “alcoholic product” means any product which – <ul style="list-style-type: none"> (a) contains alcohol, and (b) does not contain any psychoactive substance. | 25 |

<i>Nicotine and tobacco products</i>	30
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- | | | |
|---|-----------|--|
| 7 | Nicotine. | |
|---|-----------|--|

- 8 Tobacco products.
- In this paragraph “tobacco product” means –
- (a) anything which is a tobacco product within the meaning of the Tobacco Products Duty Act 1979 (see section 1 of that Act), and
 - (b) any other product which –
 - (i) contains nicotine, and
 - (ii) does not contain any psychoactive substance.

Caffeine

- 9 Caffeine or caffeine products.
- In this paragraph “caffeine product” means any product which –
- (a) contains caffeine, and
 - (b) does not contain any psychoactive substance.

Food

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

SCHEDULE 2

Section 36

SEARCH WARRANTS 25

PART 1

SEARCH WARRANTS: APPLICATIONS AND SAFEGUARDS

Applications for warrants

- 1 (1) An application for a search warrant may be made without notice being given to persons who might be affected by the warrant. 30
- (2) The application must be supported –
- (a) in England and Wales, by an information in writing;
 - (b) in Scotland, by evidence on oath;
 - (c) in Northern Ireland, by a complaint on oath.
- (3) A person applying for a search warrant must answer on oath any question that the justice hearing the application asks the person. 35
- 2 (1) A person applying for a search warrant must –

-
- (a) state that the application is made under section 35 of this Act;
- (b) specify the matters set out in sub-paragraph (2) or (3) (as the case may be);
- (c) state what are the grounds for suspecting that relevant evidence is on the premises; 5
- (d) identify, so far as is possible, the offence to which the relevant evidence relates.
- (2) If the person is applying for a specific-premises warrant, the person must specify each set of premises that it is desired to enter and search.
- (3) If the person is applying for an all-premises warrant, the person must specify – 10
- (a) as many of the sets of premises that it is desired to enter and search as it is reasonably practicable to specify;
- (b) the person who is in occupation or control of those premises and any others that it is desired to enter and search; 15
- (c) why it is necessary to search more premises than those specified under paragraph (a);
- (d) why it is not reasonably practicable to specify all the premises that it is desired to enter and search.
- In this sub-paragraph “all-premises warrant” has the meaning given by section 35(3). 20
- (4) If the person is applying for a search warrant authorising entry and search on more than one occasion, the person must also state –
- (a) the ground on which the person applies for such a warrant, and
- (b) whether the person seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired. 25

Safeguards in connection with power of entry conferred by warrant

- 3 A search warrant authorises entry on one occasion only, unless it specifies that it authorises multiple entries. 30
- If it specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.
- 4 (1) A search warrant must – 35
- (a) specify the name of the person who applies for it;
- (b) specify the date on which it is issued;
- (c) state that the warrant is issued under section 35 of this Act;
- (d) specify each set of premises to be searched, or (in the case of an all-premises warrant) the person who is in occupation or control of premises to be searched, together with any premises to be searched that are under the person’s occupation or control and can be specified; 40
- (e) identify, so far as is possible, the offence to which the relevant evidence suspected to be on the premises relates.
- (2) In sub-paragraph (1)(d) “all-premises warrant” has the meaning given by section 35(3). 45

- 5 (1) Two copies must be made of a search warrant that specifies only one set of premises and does not authorise multiple entries.
- (2) As many copies as are reasonably required may be made of any other kind of search warrant.
- (3) The copies must be clearly certified as copies. 5

PART 2

EXECUTION OF SEARCH WARRANTS

Warrant to be executed within one month

- 6 Entry and search under a search warrant must be within one month from the date of its issue. 10

All-premises warrants

- 7 (1) In the case of an all-premises warrant, premises that are not specified in the warrant may be entered and searched only if a relevant enforcement officer of the appropriate grade has authorised them to be entered.
- (2) An authorisation under sub-paragraph (1) must be in writing. 15
- (3) In this paragraph –
“all-premises warrant” has the meaning given by section 35(3);
“relevant enforcement officer of the appropriate grade” means –
(a) a senior officer (see section 12(7)), or
(b) in the case of a search warrant issued on the application of an officer of a local authority, a person designated by the local authority for the purposes of this paragraph. 20

Search of premises more than once

- 8 (1) Premises may be entered or searched for the second or any subsequent time under a search warrant authorising multiple entries only if a relevant enforcement officer of the appropriate grade has authorised that entry to the premises. 25
- (2) An authorisation under sub-paragraph (1) must be in writing.
- (3) In this paragraph “relevant enforcement officer of the appropriate grade” has the same meaning as in paragraph 7. 30

Time of search

- 9 Entry and search under a search warrant must be at a reasonable hour unless it appears to the relevant enforcement officer executing it that the purpose of a search may be frustrated on an entry at a reasonable hour.

Evidence of authority etc

- 10 (1) Where the occupier of premises to be entered and searched under a search warrant is present at the time when a relevant enforcement officer seeks to execute the warrant, the following requirements must be satisfied – 35

-
- (a) the occupier must be told the officer's name;
 - (b) if not a constable in uniform, the officer must produce to the occupier documentary evidence that the officer is a relevant enforcement officer;
 - (c) the officer must produce the warrant to the occupier; 5
 - (d) the officer must supply the occupier with a copy of it.
- (2) Where the occupier of premises to be entered and searched under a search warrant is not present at the time when a relevant enforcement officer seeks to execute the warrant –
- (a) if some other person who appears to the officer to be in charge of the premises is present, sub-paragraph (1) has effect as if a reference to the occupier were a reference to that other person; 10
 - (b) if not, the officer must leave a copy of the warrant in a prominent place on the premises.
- Extent of search* 15
- 11 A search under a search warrant may only be a search to the extent required for the purpose for which the warrant was issued.
- Securing premises after entry*
- 12 A relevant enforcement officer who enters premises under a search warrant must take reasonable steps to ensure that when the officer leaves the premises they are as secure as they were before the officer entered. 20
- Return and retention of warrant*
- 13 (1) A search warrant must be returned to the appropriate person (see sub-paragraph (2)) –
- (a) when the warrant has been executed, or 25
 - (b) on or before the expiry of the period of one month from the date of its issue, if the warrant is –
 - (i) a specific-premises warrant that has not been executed,
 - (ii) an all-premises warrant, or
 - (iii) a warrant authorising multiple entries. 30
- (2) The appropriate person is –
- (a) in the case of a warrant issued in England and Wales, the designated officer for the local justice area in which the justice of the peace was acting when issuing the warrant;
 - (b) in the case of a warrant issued in Scotland, the sheriff clerk for the sheriff court in which the sheriff was sitting when issuing the warrant; 35
 - (c) in the case of a warrant issued in Northern Ireland, the clerk of petty sessions for the petty sessions district in which the lay magistrate was acting when issuing the warrant. 40
- (3) The appropriate person must retain a search warrant returned under sub-paragraph (1) for 12 months from the date of its return.
- (4) If during that period the occupier of premises to which the search warrant relates asks to inspect it, the occupier must be allowed to do so.

- (5) In this paragraph “specific-premises warrant” and “all-premises warrant” have the meaning given by section 35(3).

SCHEDULE 3

Section 52

PROVIDERS OF INFORMATION SOCIETY SERVICES

PART 1

5

OFFERING TO SUPPLY A PSYCHOACTIVE SUBSTANCE

Domestic service providers: extension of liability

- 1 (1) If—
- (a) a service provider established in a particular part of the United Kingdom does anything in an EEA state other than the United Kingdom in the course of providing information society services, and
 - (b) the action, if done in that part of the United Kingdom, would constitute an offence under section 5(2),
- the service provider is guilty in that part of the United Kingdom of such an offence. 15
- (2) Nothing in this paragraph affects the operation of paragraphs 3 to 5.

Non-UK service providers: restriction on institution of proceedings

- 2 (1) Proceedings for an offence under section 5(2) may not be instituted against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met. 20
- (2) The derogation condition is that taking proceedings—
- (a) is necessary for the purposes of the public interest objective,
 - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
 - (c) is proportionate to that objective. 25
- (3) In this paragraph—
- “non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;
 - “the public interest objective” means the pursuit of public policy. 30

Exceptions for mere conduits

- 3 (1) A service provider does not commit an offence under section 5(2) by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not— 35
- (a) initiate the transmission,
 - (b) select the recipient of the transmission, or
 - (c) select or modify the information contained in the transmission.

- (2) For the purposes of sub-paragraph (1) –
- (a) providing access to a communication network, and
 - (b) transmitting information in a communication network,
- include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network. 5
- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

Exception for caching

- 4 (1) A service provider does not commit an offence under section 5(2) by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met. 10
- (2) The first condition is that the storage of the information –
- (a) is automatic, intermediate and temporary, and
 - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request. 15
- (3) The second condition is that the service provider –
- (a) does not modify the information,
 - (b) complies with any conditions attached to having access to the information, and 20
 - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that –
- (a) the information at the initial source of the transmission has been removed from the network,
 - (b) access to it has been disabled, or
 - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information. 25 30

Exception for hosting

- 5 (1) A service provider does not commit an offence under section 5(2) by storing information provided by a recipient of the service if –
- (a) the service provider had no actual knowledge when the information was provided that its provision constituted an offence under section 5(2), or 35
 - (b) on obtaining actual knowledge that the provision of the information constituted such an offence, the service provider promptly removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider. 40

PART 2

PROHIBITION NOTICES AND PROHIBITION ORDERS

Domestic service providers: extension of liability

- 6 (1) If—
- (a) a service provider established in a particular part of the United Kingdom does anything in an EEA state other than the United Kingdom in the course of providing information society services, and 5
 - (b) the action, if done in that part of the United Kingdom, would constitute an offence under section 23, 10
- the service provider is guilty in that part of the United Kingdom of such an offence.
- (2) Nothing in this paragraph affects the operation of paragraph 8.

Non-UK service providers: restriction on including terms in prohibition notice or order

- 7 (1) This paragraph applies to a service provider established in an EEA state other than the United Kingdom. 15
- (2) A prohibition notice or a prohibition order may include terms which restrict the freedom of the service provider to provide information society services in relation to an EEA state only if conditions A and B are met.
- (3) Condition A is that the relevant person considers that the terms— 20
- (a) are necessary for the purposes of the public interest objective,
 - (b) relate to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
 - (c) are proportionate to that objective.
- (4) In sub-paragraph (3)— 25
- “the relevant person” means—
- (a) in relation to a prohibition notice, the person giving the notice;
 - (b) in relation to a prohibition order, the court making the order;
- “the public interest objective” means the pursuit of public policy. 30
- (5) Condition B is that—
- (a) a law enforcement officer has requested the EEA state in which the service provider is established to take measures which the officer considers to be of equivalent effect under the law of the EEA state to the terms and the EEA state has failed to take the measures, and 35
 - (b) a law enforcement officer has notified the Commission of the European Union and the EEA state of—
- (i) the intention to give a prohibition notice or (as the case may be) apply for a prohibition order containing the terms, and
 - (ii) the terms. 40
- (6) For the purposes of sub-paragraph (5) it does not matter whether the request or notification is made before or after the giving of the notice or (as the case may be) the making of the application for the order.

Protections for service providers of intermediary services

- 8 (1) A prohibition notice or prohibition order may not include terms which impose liabilities on service providers of intermediary services so far as the imposition of those liabilities would result in a contravention of Article 12, 13 or 14 of the E-Commerce Directive (various protections for service providers of intermediary services). 5
- (2) A prohibition notice or prohibition order may not include terms which impose a general obligation on service providers of intermediary services covered by Article 12, 13 or 14 of the E-Commerce Directive – 10
- (a) to monitor the information which they transmit or store when providing those services, or
- (b) actively to seek facts or circumstances indicating illegal activity when providing those services.
- 9 (1) In paragraph 8 “intermediary services” means an information society service which consists in any of the following – 15
- (a) the provision of access to a communication network or the transmission, in a communication network, of information provided by a recipient of the service;
- (b) the transmission in a communication network of information which – 20
- (i) is provided by a recipient of the service, and
- (ii) is the subject of automatic, intermediate and temporary storage which is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request; 25
- (c) the storage of information provided by a recipient of the service.
- (2) For the purposes of sub-paragraph (1)(a) – 30
- (a) providing access to a communication network, and
- (b) transmitting information in a communication network,
- include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

PART 3 35

INTERPRETATION

- 10 In this Schedule –
- “established”, in relation to a service provider, is to be read in accordance with paragraph 11;
- “information society services” – 40
- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and 45

- (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”; 5
- “recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;
- “service provider” means a person providing an information society service; 10
- “the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). 15
- 11 (1) A service provider is “established” in a particular part of the United Kingdom, or in a particular EEA state, if the service provider –
- (a) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and 20
- (b) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union.
- (2) The presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider. 25
- (3) Where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider’s activities relating to that service. 30

SCHEDULE 4

Section 54

CONSEQUENTIAL AMENDMENTS

Proceeds of Crime Act 2002

- 1 (1) The Proceeds of Crime Act 2002 is amended as follows.
- (2) In Schedule 2 (lifestyle offences: England and Wales), after paragraph 1 insert – 35
- “1A An offence under any of the following provisions of the Psychoactive Substances Act 2015 –
- (a) section 4 (producing a psychoactive substance);
- (b) section 5 (supplying, or offering to supply, a psychoactive substance); 40
- (c) section 7 (possession of psychoactive substance with intent to supply);

- (d) section 8 (importing or exporting a psychoactive substance).”
- (3) In Schedule 4 (lifestyle offences: Scotland), after paragraph 2 insert –
- “2A An offence under any of the following provisions of the Psychoactive Substances Act 2015 – 5
- (a) section 4 (producing a psychoactive substance);
- (b) section 5 (supplying, or offering to supply, a psychoactive substance);
- (c) section 7 (possession of psychoactive substance with intent to supply); 10
- (d) section 8 (importing or exporting a psychoactive substance).”
- (4) In Schedule 5 (lifestyle offences: Northern Ireland), after paragraph 1 insert –
- “1A An offence under any of the following provisions of the Psychoactive Substances Act 2015 – 15
- (a) section 4 (producing a psychoactive substance);
- (b) section 5 (supplying, or offering to supply, a psychoactive substance);
- (c) section 7 (possession of psychoactive substance with intent to supply); 20
- (d) section 8 (importing or exporting a psychoactive substance).”

Police Reform Act 2002

- 2 In Part 1 of Schedule 4 to the Police Reform Act 2002 (powers exercisable by community support officers), after paragraph 7D insert – 25
- “Powers to seize and detain: psychoactive substances*
- 7E (1) Where a designation applies this paragraph to any person (“the CSO”), the CSO shall, within the relevant police area, have the powers set out in sub-paragraphs (2) and (3). 30
- (2) If the CSO –
- (a) finds a psychoactive substance in a person’s possession (whether or not the CSO finds it in the course of searching the person by virtue of any paragraph of this Part of this Schedule being applied to the CSO by a designation), and 35
- (b) reasonably believes that it is unlawful for the person to be in possession of it,
- the CSO may seize it and retain it.
- (3) If the CSO –
- (a) finds a psychoactive substance in a person’s possession (as mentioned in sub-paragraph (2)), or 40
- (b) reasonably believes that a person is in possession of a psychoactive substance,

- and reasonably believes that it is unlawful for the person to be in possession of it, the CSO may require the person to give the CSO his name and address.
- (4) If in exercise of the power conferred by sub-paragraph (2) the CSO seizes and retains a psychoactive substance, the CSO must – 5
- (a) if the person from whom it was seized maintains that he was lawfully in possession of it –
- (i) tell the person where inquiries about its recovery may be made, and
- (ii) explain the effect of sections 45 to 47 and 49 of the Psychoactive Substances Act 2015 (retention and disposal of items), and 10
- (b) comply with a constable’s instructions about what to do with it.
- (5) Any substance seized in exercise of the power conferred by sub-paragraph (2) is to be treated for the purposes of sections 45 to 49 of the Psychoactive Substances Act 2015 as if it had been seized by a police or customs officer under section 32 of that Act. 15
- Section 46 of that Act applies in relation to any such substance as if the reference in subsection (1)(b) to the police or customs officer who seized it were a reference to the CSO who seized it. 20
- (6) A person who fails to comply with a requirement under sub-paragraph (3) is guilty of an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (7) In this paragraph “police or customs officer” and “psychoactive substance” have the same meaning as in the Psychoactive Substances Act 2015. 25
- 7F (1) Sub-paragraph (2) applies where a designation applies this paragraph to any person (“the CSO”).
- (2) If the CSO imposes a requirement on a person under paragraph 7E(3) – 30
- (a) sub-paragraph (3) of paragraph 2 applies in the case of such a requirement as it applies in the case of a requirement under paragraph 1A(3), and
- (b) sub-paragraphs (4) to (5) of paragraph 2 also apply accordingly.” 35

Licensing Act 2003

- 3 (1) The Licensing Act 2003 is amended as follows.
- (2) In section 97 (power to enter and search club premises), in subsection (1), omit the “or” after paragraph (a) and after that paragraph insert – 40
- “(aa) that an offence under section 5(1) or (2) of the Psychoactive Substances Act 2015 (supplying, or offering to supply, a psychoactive substance) has been, is being, or is about to be, committed there, or”.
- (3) In Schedule 4 (personal licences: relevant offences), after paragraph 23 45

insert –

- “23A An offence under any of the following provisions of the Psychoactive Substances Act 2015 –
- (a) section 4 (producing a psychoactive substance);
 - (b) section 5 (supplying, or offering to supply, a psychoactive substance); 5
 - (c) section 7 (possession of psychoactive substance with intent to supply);
 - (d) section 8 (importing or exporting a psychoactive substance).” 10

Gambling Act 2005

- 4 In Part 1 of Schedule 7 to the Gambling Act 2005 (relevant offences), after paragraph 11 insert –
- “11A An offence under any of the following provisions of the Psychoactive Substances Act 2015 – 15
- (a) section 4 (producing a psychoactive substance);
 - (b) section 5 (supplying, or offering to supply, a psychoactive substance);
 - (c) section 7 (possession of psychoactive substance with intent to supply); 20
 - (d) section 8 (importing or exporting a psychoactive substance).”

Armed Forces Act 2006

- 5 (1) The Armed Forces Act 2006 is amended as follows.
- (2) In section 75 (power of service policeman to stop and search persons, vehicles etc) – 25
- (a) in subsection (1), after “controlled drugs” insert “, psychoactive substances”;
 - (b) in subsection (2), for paragraphs (c) and (d) substitute – 30
 - “(c) in the case of the search of a person, that – 30
 - (i) the person is in possession of a controlled drug in circumstances in which he commits an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under the Misuse of Drugs Act 1971, or 35
 - (ii) the person is in possession of a psychoactive substance in circumstances in which he commits an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under the Psychoactive Substances Act 2015; or 40
 - (d) in the case of the search of a vehicle, that – 45
 - (i) the search will reveal a controlled drug that is in a person’s possession in the circumstances mentioned in paragraph (c)(i), or

- (ii) the search will reveal a psychoactive substance that is in a person’s possession in the circumstances mentioned in paragraph (c)(ii).”;
 - (c) in subsection (4), omit the “or” after paragraph (b) and after that paragraph insert –
 - “(ba) evidence of an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under the Psychoactive Substances Act 2015;
 - (bb) a psychoactive substance (whether or not it is evidence of such an offence); or”.
- (3) In section 76 (stop and search by persons other than service policemen), in subsection (1)(a), after “controlled drugs” insert “, psychoactive substances”.
- (4) In section 77 (definitions for purposes of sections 75 and 76), after subsection (4) insert –
 - “(4A) “Psychoactive substance” has the meaning given by section 2 of the Psychoactive Substances Act 2015.”

Serious Crime Act 2007

- 6 (1) Schedule 1 to the Serious Crime Act 2007 (serious offences) is amended as follows. 20
- (2) In Part 1 (serious offences in England and Wales), after paragraph 1 insert –
 - “1A An offence under any of the following provisions of the Psychoactive Substances Act 2015 –
 - (a) section 4 (producing a psychoactive substance); 25
 - (b) section 5 (supplying, or offering to supply, a psychoactive substance);
 - (c) section 7 (possession of psychoactive substance with intent to supply);
 - (d) section 8 (importing or exporting a psychoactive substance).” 30
- (3) In Part 1A (serious offences in Scotland) (inserted by Schedule 1 to the Serious Crime Act 2015), after paragraph 16A insert –
 - “16AA An offence under any of the following provisions of the Psychoactive Substances Act 2015 – 35
 - (a) section 4 (producing a psychoactive substance);
 - (b) section 5 (supplying, or offering to supply, a psychoactive substance);
 - (c) section 7 (possession of psychoactive substance with intent to supply); 40
 - (d) section 8 (importing or exporting a psychoactive substance).”
- (4) In Part 2 (serious offences in Northern Ireland), after paragraph 17 insert –
 - “17A An offence under any of the following provisions of the Psychoactive Substances Act 2015 – 45

- (a) section 4 (producing a psychoactive substance);
- (b) section 5 (supplying, or offering to supply, a psychoactive substance);
- (c) section 7 (possession of psychoactive substance with intent to supply); 5
- (d) section 8 (importing or exporting a psychoactive substance).”

Policing and Crime Act 2009

- 7 In section 34 of the Policing and Crime Act 2009 (injunctions to prevent gang-related violence and drug-dealing activity), for subsection (7) substitute— 10
- “(7) In this Part “drug-dealing activity” means—
- (a) the unlawful production, supply, importation or exportation of a controlled drug, or
 - (b) the unlawful production, supply, importation or exportation of a psychoactive substance. 15
- (8) In subsection (7)—
- (a) in paragraph (a), “production”, “supply” and “controlled drug” have the meaning given by section 37(1) of the Misuse of Drugs Act 1971; 20
 - (b) in paragraph (b), “production”, “supply” and “psychoactive substance” have the meaning given by section 53 of the Psychoactive Substances Act 2015.”

Psychoactive Substances Bill [HL]

A

B I L L

To make provision about psychoactive substances; and for connected purposes.

Lord Bates

Ordered to be Printed, 28th May 2015

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