

PSYCHOACTIVE SUBSTANCES (UNCONTROLLED DRUGS) POLICY

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PSYCHOACTIVE SUBSTANCES (UNCONTROLLED DRUGS)

Owning Department: Specialist Crime and Capabilities Command

Department SPOC: D/Supt Cyber and Serious Crime and Controlled Drug Liaison Officer

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Legal Basis

Legislation specific to the subject of this policy document:

- Psychoactive Substances Act 2016
- Misuse of Drugs Act 1971
- Misuse of Drugs Regulations 2001
- Proceeds of Crime Act 2002
- Human Medicines Regulations 2012

Other relevant legislation which you must check this document against (required by law)

- Human Rights Act 1998 (in particular A.14 – Prohibition of discrimination)
- Equality Act 2010
- Crime and Disorder Act 1998
- Health and Safety at Work etc. Act 1974 and associated Regulations
- General Data Protection Regulation (GDPR) and Data Protection Act 2018
- Freedom Of Information Act 2000
- The Civil Contingencies Act 2004

Other documentation which you must check this document against:

- College of Policing – Code of Ethics
- Norfolk and Suffolk Constabularies' Standards of Professional Behaviour
- College of Policing – Authorised Professional Practice

Other Related Documents

- Drug Seizure and Identification Policy (Controlled Drugs)
- Authorised Professional Practice

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1. Introduction

1.1 This policy outlines the processes and powers relating to the Psychoactive Substances Act 2016. It does not replace the Misuse of Drugs Act 1971 which provides the legislative framework for the regulation of dangerous or otherwise harmful drugs in the UK, laws around existing illegal (controlled) drugs will remain the same. In this Act 'psychoactive substance' means any substance which:

- Is capable of producing a psychoactive effect in a person who consumes it; and
- Is not an exempted substance.

1.2 The Act creates a number of criminal offences covering the manufacture and distribution of psychoactive substances (as defined in the Act). The main offences in the Act are:

- Producing a psychoactive substance;
- Supplying or offering to supply a psychoactive substance;
- Possession with intent to supply a psychoactive substance;
- Importing or exporting a psychoactive substance.

1.3 The Psychoactive Substances Act captures all psychoactive substances that are not controlled by the Misuse of Drugs Act 1971. Please see Drug Seizure and Identification Policy for procedures relating to controlled drugs.

1.4 For the purposes of the Act, the term 'psychoactive substance' does not include:

- Controlled drugs under the Misuse of Drugs Act 1971;
- Medicinal products as defined by the Human Medicines Regulations 2012;
- Alcohol (ethyl alcohol);
- Nicotine/tobacco;
- Caffeine;
- Food (item that is normally consumed as food and does not contain a prohibited ingredient);
- Alky Nitrates (Poppers).

2. Statement of Policy

2.1 This policy has been formally agreed via the approved policy development/review process. It will be maintained by the Specialist Crime and Capabilities Command in conjunction with the Central Policy Unit.

2.2 The policy is intended to promote equality, eliminate unlawful discrimination and actively promote good relations regardless of age, disability, gender reassignment,

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marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, economic or family status.

- 2.3 Managers have a responsibility to ensure this policy is applied fairly, and unless otherwise stated, all policies and procedures are non-contractual.

3. Applicability

- 3.1 Unless otherwise stated, this policy applies to all police officers (including officers of the Special Constabulary) and all members of police staff (including police support volunteers).

4. Main Offences

- 4.1 The Psychoactive Substances 2016 Act makes it an offence to produce; supply; offer to supply; possess with intent to supply; import or export a psychoactive substance.
- 4.2 Simple possession of a Psychoactive Substance is not an offence; it is an offence if committed in a custodial institution, it applies to anybody on such premises, including prisoners, visitors and staff.
- 4.3 Section 6 provides for a statutory aggravating factor when sentencing an offender for an offence of supplying, or offering to supply, a psychoactive substance where the supply, or offer to supply, took place at or in the vicinity of a school, involved the use of a courier under the age of 18 or took place in a custodial institution.
- 4.4 This section only applies where the offender was aged 18 or over. Where one of the three conditions is satisfied, the court is required to treat the condition as an aggravating factor when determining the sentence.
- 4.5 Offences and Criminal Justice Services codes are as follows:

CJS CODES					
Offence	Summary	Indictment	CJS Code	HO code	MOJ(HO)
Possession in a custodial institution s.26(1)	Up to 12 months and/or a fine	Up to 2 years and/or a fine	PS16007	H12526	093/47
Possession with intent to supply S.7	Up to 12 months and/or a fine	Up to 7 years and/or a fine	PS16004	H12523	093/44
Supply s.5(1)/offer to supply S.5(2) etc	Up to 12 months and/or a fine	Up to 7 years and/or a fine	PS16002/ PS16003	H12521/ H12522	093/42 093/43
Production s.4(1)	Up to 12 months	Up to 7 years	PS16001	H12520	093/41

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	and/or a fine	and/or a fine			
Importation s.8(1)/exportation s.8 (2)	Up to 12 months and/or a fine	Up to 7 years and/or a fine	PS16005/ PS16006	H12524/ H12525	093/45 093/46
Failure to comply with a prohibition or premises notice S.26 (1)	Up to 12 months and/or a fine	Up to 2 years and/or a fine	PS16008	H12527	093/48

5. Powers of Search and Seizure

- 5.1 The Psychoactive Substances Act 2016 grants police powers to stop and search for, and dispose of, psychoactive substances. Officers will also be able to obtain search warrants for premises linked to the supply, importation and production of psychoactive substances.
- 5.2 Section 36 enables police and NCA officers and customs officials to stop and search a person where they have reasonable grounds to suspect the person has committed, or likely to commit, one of the main offences under the Act (that is, the offences of production, supply etc of a psychoactive substance or an offence of breaching a prohibition order or premises notice).
- 5.3 The powers conveyed are the same as in other stop search legislation and can be used wherever the officer lawfully has access (whether or not it is a place to which the public access).
- 5.4 Section 37 provides the power to enter a vehicle and search as per Section 36.
- 5.5 Section 37 (3) allows an officer to require a vehicle be moved to enable an effective search on an occasion where it is impractical to search in a place where it is originally stopped. Vehicle does not include aircraft or vessel – that power is conveyed in Section 38.
- 5.6 Section 39 of the Act is the section of the Act that provides for an application to a magistrate for a search warrant.
- 5.7 Section 42 of the Act conveys powers to an officer where they are exercising a search under Sections 37, 38 or 39 to require a person in or on the premises to produce any document or record that is in the person's possession or control.
- 5.8 Section 43 of the Act provides a power of seizure. This section states that a police officer (or customs officer) conducting a search under Sections 36, 37, 38 or 39 can seize and detain anything found in the course of the search.
- 5.9 Section 43 complements normal Powers of Seizure for evidence of an offence.
- 5.10 Section 40 conveys powers to an enforcement officer (Trading Standards Officer) when accompanied by a 'relevant enforcement officer' are lawfully on premises or part of a planned search of premises – NOT in the street.

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5.11 Section 50 of the Act provides a power of disposal. This section states that a police or customs officer who seizes items only whilst searching using Sections 36, 37 or 38 can dispose of that item if the following points are met.

- The substance / item is Psychoactive;
- They believe that the substance was going to be used for its psychoactive effects;
- It does not constitute evidence of an offence.

5.12 The officer has no reason to believe that at the time of the seizure the item was not covered by one of the exemptions, the officer may dispose of it in accordance with the same process as controlled drugs using the Electronic Property System under 'Drug Register'.

6. Prohibition Notices and Premises Notices

6.1 Section 13 of the Act states that a Senior Officer (Inspector or above) or a local authority may give a Prohibition notice, 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 to a person if the following conditions are met:

- They believe that a person is conducting a prohibited activity (One of the specified offences with the exception of possession in a custodial institution); and
- They believe it is necessary and proportionate.

6.2 A Prohibition Notice can only be issued to someone who is ten or over. If the person is under 18 they can be enforced for only three years.

6.3 They can be utilised as a non-criminal form of disposal if certain criteria are met, i.e. no previous and full admission to the offence.

6.4 If a Prohibition Notice is not adhered to, or it is believed that it would be ineffective', a Prohibition Order can be applied for at a Magistrates Court under Section 18 of the Act.

6.5 Section 14 of the Act states, as previous, that a Senior Officer (Inspector or above) or a local authority may give a premises notice that requires the person to whom it is given to take all reasonable steps to prevent any 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 if the following conditions are met: -

- The Senior Officer or Local Authority believes that a prohibited activity (As per Section 13) is being or likely to be carried out at that particular premises and the person owns/leases/occupies/controls or operates that premises; and
- The officer believes it is necessary and proportionate for the notice to be given.

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- 6.6 This Notice cannot be issued to a person under 18.
- 6.7 If a Premises Notice is not adhered to, or it is believed that it would be ineffective', a Premises Order can be applied for at a Magistrates Court under Section 20 of the Act.

7. Drug Testing and Identification

- 7.1 If it is suspected that the substance falls under other legislation, i.e. Misuse of Drugs Act 1971, then refer to existing procedures including the forensic strategy for Drug Testing and Identification for psychoactive substances.
- 7.2 If the substance is seized under S43 of the PS Act 2016 and the officer has a reasonable belief that the substance is a psychoactive substance it can be disposed of according to local guidance at 8.1. Where there is no reasonable belief, consider options under other legislation.
- 7.3 Where a substance is suspected to be evidence of an offence then it must be submitted via Crime Scene Investigator (CSI) to the Forensic Science Provider (FSP) for testing to ascertain if it is psychoactive.
- 7.4 FSPs will endeavour to identify the submitted substance and report back to the submitting force in the form of a written report. Where the substance has been recognised as having psychoactive properties, the FSP will report this information to Forensic Services and the Officer in the Case (OIC).
- 7.5 There are no processes in place for routine testing at any of the Police Investigation Centres (PIC) at this stage.

8. Examination of a Premises

Risk Assessment

- 8.1 Prior to entering any premises, all staff should consider the following possibilities or hazards and as a minimum should wear full protective clothing including masks, gloves and an oversuit:
- The processes used in manufacture could be unknown and airborne particles could be hazardous if inhaled. Consider the use of (Chemical, Biological, Radiological and Nuclear) CBRN units to identify hazards before entry.
 - The manufacture of psychoactive substances could involve the abstraction of electricity. Consider the use of energy companies if in any doubt.
 - Consider the use of a Forensic Scientist who specialises in drug identification and manufacture.
 - Consider the use of Trading Standards Officers who might have a greater knowledge of psychoactive substances.

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Methodology

- 8.2 A systematic and methodical approach will be utilised in order to recover forensic and other intelligence as well as evidential material. To maintain integrity and continuity of evidence whilst negating any risk of contamination. Staffing will be dependent upon the size and scale of the operation, but as a minimum will probably require at least one Crime Scene Manager (CSM) one CSI and search trained officers.

Specific Actions

- 8.3 Prior to the deployment of any personnel to examine the scene there will be a full briefing of the staff attending. All information received at this briefing and any subsequent decisions made relating to the examination are to be documented in a major investigations notebook by the CSM.

CSI:

- If there are several rooms or outbuildings, each should be numbered to ease identification.
- Conduct general record photography of each area/room.
- If the premises are residential and occupied, then general photography should show lifestyle/standard of living.
- Conduct detailed photography of each area/room to show manufacture processes. This should include the names and details of any chemicals found.
- Conduct detailed photography of any tampered electrical supply.
- If a Forensic Scientist is not present, advice should be sought on how to collect or sample chemicals within the premises.
- Recover any appropriate samples from each area/room for chemical finger-mark enhancement in accordance with Fingerprint Development Laboratory (FDL) policy – (Liaise with Senior CSI if in doubt.)
- Recover any available footwear marks from each area/room. Photographing and casting as appropriate.
- Record photographically, and then recover any appropriate DNA items from each area.
- Conduct a powder finger-mark examination of any suitable and relevant surfaces within each area/room.

Search Criteria - Items for Seizure / Examination

- 8.4 This is not an exhaustive list, and items thought to be relevant to the enquiry should be raised to investigating staff.
- Recovery of mobile phones and sim cards for data retrieval;

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- All mobile phone and sim cards will be swabbed for DNA and fingerprinted prior to their removal from the address to allow submission to a specialist examination department.
- All DNA in respect of these and other moveable items must be done at the address to avoid delays.
- Mobile phones found switched on should be turned off – noting the time, the IMEI number and service provider.
- Recovery of customer lists contact telephone numbers, invoices and receipts;
- Recover maps showing locations;
- Recovery of handwritten documents that could be used as control samples for handwriting analysis;
- Recovery of paperwork and packaging relating to mobile phones and sim cards;
- Recovery of computer hard drives, and other storage equipment;
 - These are to be photographed to show a viable system and then unplugged, do not attempt to “shut down” the system. Leads should be labelled to show where they were originally plugged in.
- Recovery of all paper money;
 - This is to be photographed in location
 - There is no requirement to count prior to seizure.
 - Packaging of any found money should also be seized for future forensic examination.

9. Local Policies/Procedures

- 9.1 When an officer is to dispose of an item this will ONLY be done via booking the substance into the Electronic Property System (EPS) and marking the substance for disposal. Whilst the Act clearly states that this can be done as appropriate for transparency, Suffolk and Norfolk will dispose of substances using the Property system.
- 9.2 When seizing an item where possession only is suspected (not an offence) the officer must complete the Stop and Search paperwork, book the item in for disposal and submit intelligence on Athena relating to that individual.

10. Electronic Property System

- 10.1 All seized substances identified, or suspected as being a Psychoactive Substance, will be booked into the Electronic Property System under the Drug Register.
- 10.2 When completing the record ‘Psychoactive Substance’ should be selected as the ‘Reason for Seizure’. If the substance has been identified, the ‘Confirmed Description’ should also be shown as ‘Psychoactive Substance’.

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- 10.3 Where a substance is sent to a laboratory, the responsibility (where known) lies with the OIC to ensure the 'Confirmed Description' is updated upon receipt of any laboratory analysis. If the confirmed description is not available, the result of the analysis will be shown in the NOTES field.
- 10.4 The 'Visual Description' field should be completed in the usual way including the product trade name/logo and, if known or obvious, the consistency, e.g. white powder, green leaf etc. The remaining details of the record can be completed.
- 10.5 Possession of Nitrous Oxide is illegal if it is, or likely to be, wrongfully inhaled, by classifying it as a Class 'C' drug under the Misuse of Drugs Act 1971. It will be a criminal offence to be found in possession of nitrous oxide and intends to wrongfully inhale the substance and/or in the cases of importation, exportation, production, and supply, knows or is reckless as to whether it is likely that another person will wrongfully inhale it, they will be committing an offence. They should be booked in under the Drugs Register as above. "Wrongful inhalation" means inhalation other than for medical or dental purposes, and which is not accidental inhalation of nitrous oxide which has been released into the atmosphere (such as industrial processes). Medical, dental, and veterinary administration will be lawful, as will other activities such as use in industry or model rocketry. Penalty notices for disorder, a financial punishment (fine) to manage low-level, anti-social and nuisance offending can be administered on the spot or in a police station to adult offenders aged 18 and over. A formal warning, caution, conditional cautions, or other diversionary outcomes can also be considered.
- 10.6 If Nitrous Oxide canisters are being seized as stolen goods, e.g. for scrap value and there is no suspicion that their intended use is for wrongful inhalation, importation, exportation, production or reckless supply they should be booked in under the Volume Crime Register. Seized canisters must be stored appropriately.

11. Police Community Support Officers (PCSO) (Suffolk Only)

- 11.1 Where designated, a PCSO may seize and retain a psychoactive substance where they are conducting a search under existing designated powers (the Act does not confer a power of search). The PCSO must reasonably believe that it is unlawful for the person to be in possession of the substance, e.g. the person has enough substance in their possession for the PCSO to reasonably believe there is intent to supply.
- 11.2 A PCSO may require the person to give their name and address where they:
- Find a psychoactive substance in a person's possession; or
 - 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.
- 11.3 If in the exercise of the power the PCSO seizes and retains a Psychoactive Substance, the PCSO must, if the person from whom it was seized maintains that they were lawfully in possession of it:

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- Tell the person where inquiries about its recovery may be made; and
- Explain the effect of sections 49 to 51 and 53 of the Psychoactive Substances Act 2016 (for use at a trial for an offence, or for forensic examination, forfeiture and destruction, or return of the item to the person entitled to it or subsequent disposal if the return is impracticable).

11.4 A person who fails to give their name and address commit an offence.

11.5 A PCSO will comply with a Constables instruction about what to do with any seized substance suspected to be a Psychoactive Substance and will follow the procedure using the Electronic Property System.

11.6 A Stop and Account form will be completed in all cases.

12. Forms and Further Guidance

12.1 The following forms and documentation are available on the Cyber and Serious Crime section of the Intranet:

- Premises Notice;
- Prohibition Notice;
- Application for Prohibition Notice;
- Home Office Forensic Strategy;
- Home Office Flow Chart for Forensic Process (Official/Sensitive).