

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: New Psychoactive Substances (“Legal Highs”)
Paper No: 127/12
Date: 25 April 2012
Report of: Acting Attorney General

1.0 Purpose

1.1 The purpose of this paper is to:

(a) provide Members with preliminary information gathered as part of a cross departmental group meeting, which was established to share information and to disseminate public health information about new psychoactive substances; and

(b) seek policy guidance from Members in relation to the priority to be allocated to further work to be carried out to address the issue; in particular in relation to the potential for new or amending legislative provision.

1.2 What this paper does not do is attempt to provide a detailed analysis of the scale and nature of the issues surrounding new psychoactive substances, nor propose a comprehensive policy solution. This paper might best be seen as a first “flagging” information and policy steer paper which aims to keep Members informed, and which seeks early guidance on Members’ view of this issue as a policy priority.

2.0 Recommendations

Members are recommended to:

(a) note the information contained in this paper in relation to new psychoactive substances in the Falkland Islands;

(b) advise their policy priority preferences for further work to be carried out reference paragraph 5.16.

3.0 Summary of Financial Implications

None.

4.0 Background

What are “legal highs”?

4.1 The term “legal highs” is the common term used for new legal chemicals which are intended to chiefly affect the mind, and which are often taken instead of, or as well as, other drugs.

4.2 However, the term “legal highs” is, in practice, misleading, because it is used to cover a wide range of unidentifiable substances, usually including psychoactive chemicals, but which may contain other substances, including controlled drugs which are not “legal”.

4.3 The speed of development of new psychoactive chemicals of this type means that it is necessarily difficult for the law on the control of drugs to keep pace, although other jurisdictions are using a variety of methods to attempt to do so.

Why are psychoactive substance, or “legal highs” relevant to us now?

4.4 Concerns have been raised by the Director of Emergency Services in connection with numerous recent imports of what appear to be new psychoactive substances; largely in the first quarter of 2012.

4.5 A cross departmental meeting of senior officers (Director of Emergency Services, Attorney General, Director of Health and Education, Collector of Customs and Police Inspector) was held on 23 March 2012, when a number of actions were agreed; including continued monitoring, information sharing, and further consideration of an education campaign.

4.6 A further cross departmental meeting was held on 5 April with representatives at an operational level (health, education, customs, police, and legal services) aimed at further information sharing and continuing the actions agreed at the meeting of 23 March.

4.7 At the meeting of 5 April, it was advised that the legal position in relation to misuse of drugs in the Falkland Islands is out of step with other modern jurisdictions, which have gone some way to addressing the issue of new psychoactive substances (although, as indicated at paragraph 4.3, even well resourced jurisdictions continue to face difficulties in keeping pace).

4.8 It was agreed at the meeting that, given the worrying nature of some of the information available, an early information paper to Members is appropriate, which will also seek policy guidance in relation to the potential for work on addressing deficiencies in the law to be prioritised.

Information currently available in relation to new psychoactive substances on the Falkland Islands

4.9 Brief reports are set out below from customs, health, education, and the RFIP, in relation to the relevant information that they currently have about new psychoactive substances in the Falkland Islands, and what steps have been taken so far to address the issues surrounding them:

4.10 Customs

Falkland Islands Government Customs & Immigration Service Detection and Examination Levels for 'Legal Highs'

During April 2010 the Customs & Immigration Service received information that alleged 'legal highs' had been imported into the Islands. The substance in question was Mephedrone, a Class 'B' drug, under United Kingdom legislation. However, Mephedrone is not listed as a classified substance in the Misuse of Drugs Ordinance 1987, so therefore it is lawful to import it.

In June 2010, as the result of a routine examination of the mail, a package was intercepted at Stanley Post Office. This package contained two small packets of 'legal highs'. One of which contained a substance that was listed as a Class 'C' drug under United Kingdom legislation, however, it was not listed as a prohibited substance under Falkland Islands legislation. The items were examined, tested and subsequently handed over to the importer as they were not prohibited or restricted items.

Following this interception the Customs and Immigration Service contacted the Chief Medical Officer and the Attorney Generals Chambers for advice and were subsequently requested to monitor the situation and report any significant increase in the importation of 'legal highs'.

From that point on, Customs and Immigration Officers have been tasked to keep an eye on the situation, especially with regard to postal imports.

In mid February 2012 a package containing 'legal highs' was intercepted at Stanley Post Office and since that date the following 'legal highs' have been discovered whilst conducting mail examinations:

- The total number of consignments intercepted by the Customs & Immigration Service between 10 February 2012 and 09 April 2012 (approximately a 2 month period) was 16 packages.
- During that period 9 importers were responsible for importing 256 'legal highs' at an estimated cost of £6,076.
- One of these importers imported 97 'legal highs', in a one month period, at an estimated cost of £2,285.
- March 2012 has seen the largest amount of imports, 13 packages containing 209 'legal highs' at an estimated cost to the importer of £4,870.

The above figures show items discovered by Customs during mail examinations at Stanley Post Office. The Service only carries out random examinations of mail so therefore these figures may not indicate the full extent of the problem.

Because of the significant increase in imports during March 2012, the Customs & Immigration Service raised the issue with the relevant authorities.

Customs and Immigration were tasked to:

- Monitor the importation of ‘legal highs’ and develop an overall intelligence picture.
- Retain the packages being imported and subsequently contact the importers and ask them to attend the Customs & Immigration Service offices to collect their consignments.
- When importers attend the C&I offices, speak to them, and determine what the items are being used for, also inform them that supply of such items to young people is illegal [*on the basis that if the substance is to be smoked, it is illegal under the Abusable Substances (Young Persons) Ordinance – although that interpretation of the Ordinance has yet to be tested*]. Although they would be primarily committing a police offence, it was felt that because the Customs and Immigration Service were dealing with the importation issue it would be more appropriate for the Service to take the lead in this regard.

Mick Floyd
Customs Officer
Falkland Islands

09 April 2012

4.11 Health

Legal Highs – Acting Chief Medical Officer Perspective

Background

In March 2012 it was brought to the attention of the Director of Health and Education (DHE) that large numbers of so called “Legal Highs” were being imported into the Islands. Some of the consignments being imported into the Islands were big enough to suggest that the individuals buying such large quantities intended to sell these items onwards. It was felt that this could lead to a significant risk to the health of the individuals involved or to the population of the Islands at large.

The DHE tasked the Acting Chief Medical Officer (ACMO) to set out a clear health promotion and education programme about these substances to be published island wide.

What are legal highs?

Legal highs are substances that replicate the effects of illegal drugs. They commonly mimic LSD, ecstasy, cocaine, amphetamines or marijuana. They are made from either assorted herbs, herbal extracts, “research chemicals”, or a mixture of these compounds.

Most legal highs are illegal to sell on for human consumption [in UK] however manufacturers get around this by advertising these substances as “bath crystals”, “plant food” or “incense”. They claim their product is not intended for human consumption.

Legal highs are sold under a variety of names, often with no ingredients listed on the packet. This makes it extremely hard to know what the content really is.

Why are they dangerous?

The term “Legal High” is misleading. It implies to the user that the product they are about to use is in some way safe. They are not. Legal highs are just as strong as illegal drugs, often more strong than the drug they mimic. Testing has suggested that synthetic highs are purer and more potent. This can lead to cases of accidental overdose.

Very little is known about these substances. Very few have been researched, even at the level of animal testing. The short or long term effects on humans of these substances are only just starting to be observed. Common side effects include , anxiety, palpitations, reduced inhibitions, hallucinations, nose bleeds, vomiting, drowsiness, raised blood pressure, seizures, breathing difficulties, fitting, coma, limbs turning blue and paranoia, to name but a few. There have been rare cases of coma and death following legal high use. The long term effects are just starting to be observed and these seem to be mainly linked to psychiatric problems including, addiction, depression, suicide attempts and bipolar affective disorder. The early suggestion is that there is a very strong link to legal high abuse and long term depression. The most serious psychiatric effects seem to be in those who use legal highs and already have a history of depression or other psychiatric illness.

Legal highs become most dangerous when taken with other substances (i.e. regular medication, other types of legal highs or alcohol).

Observations in the community so far.

At the KEMH we have had several admissions of young people into A+E and the ward who have taken legal highs and had adverse responses to them. Patients have been anxious, suffering with paranoia, tremor, nausea and more worryingly palpitations and dangerously high tachycardia’s and raised blood pressures. So far medical staff have managed to treat these patients symptomatically and after several hours their symptoms settled. Unfortunately we have had some patients admitted more than once with the same problem. It is hard to put an exact figure on the total admissions without talking to all doctors and nurses who admit too A+E (and time does not permit this),

however we have had at least 4 admissions openly telling us that they are in trouble as a result of legal high use, but up to a dozen or more “suspicious” visits to A+E, where the youngster hasn’t admitted to taking anything, but the attending physician has been quite sure of drug use. The ages of these people range from 15 through to mid 20’s. It would appear that it is starting to become commonplace, like our teenage admissions for alcohol use.

The Community Psychiatric Nurses also reports several new cases on their caseload directly attributed to legal high use. Anxiety, depression and breakdown in relationships are the presenting features.

The Social Welfare Department too report an increase to their caseload with patients who have problems directly linked to legal high use.

The Chief Dental Officer also reports suspicions of legal high use causing an increase in dental caries in teenagers and young adults (some of these substances are quite acidic).

During routine consultations with teenagers in her clinic, the ACMO had discussions with schoolchildren aged 14 and 15 (a total of six children only, in two groups of three). All the children spoke openly about knowing how to get legal highs and some openly admitted to trying them. It was a common phenomenon for these children. This theory has been supported by Helen Bell’s survey of FICS children.

Action taken so far.

The ACMO has written a leaflet intended to be sent to all FICS pupils and a letter to all FICS parents explaining what legal highs are and why they are dangerous. Advice is given to users as to how to take these drugs safely, if they are to take them at all. A flyer has also been written by the ACMO for customs to put into all consignments of legal highs imported into the community so as to directly target the users.

A press release to Penguin News and FIRS about this problem is due to run this week and we hope to speak to FITV also with the aim to promote awareness and education about this topic.

Reasons to ask for FIG to act quickly.

It would appear to medical staff at the KEMH that we are standing at the edge of a precipice here. The importation of these substances seems to be increasing quickly, drug use in the community is becoming more common and we are already seeing early problems with individuals being admitted to hospital or calling on ancillary services. More worryingly, because so little is known about these drugs, little is known about how to best treat patients suffering with symptoms of overdose or addiction. There is a very real possibility of serious long term health problems in young adults who take these substances regularly.

We have not had a problem with drug use in our community before, a fact we proudly announce regularly. Unfortunately we can no longer say this. Just because these substances are legal, they are still drugs and still have all the same troublesome sequelae .

I hope that by acting quickly to try and ban importation of these drugs, or by at least introducing legislation to make it more difficult to import these substances, we can halt this problem in its tracks.

Dr Rebecca Edwards ACMO April 2012

4.12 Education

On Monday 9 April, the Falkland Islands Community School arranged for a survey of students to establish some figures to confirm knowledge and use of “legal highs” among that age group. The results are set out below, and a copy of the survey is provided at Annex 1 for completeness. The percentage figures given are only indicative, because they do not take account of any absences.

Year 7 – aged 11-12 (36 students)

11 students have heard of legal highs	30%
1 student has been offered them	2%
0 students have taken them	0%
5 students have been present when they have been used	13%
3 were older 2 were school age	
1 student knew where to get them	2%

Year 8 - aged 12-13 (37 students)

13 students had heard of legal highs	36%
1 had been offered them	2%
0 students had taken them	0%
1 student had been present when they had been used	2%
3 older than school age students	
1 student knew where to get them	2%

Year 9 – aged 13-14 (29 students)

21 had heard of legal	72%
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highs	
8 students had been offered them	27%
6 students had taken them	20%
7 students had been present when they had been used	24%
5 were older 4 were school age	
11 knew where to get them	37%

Year10 – aged 14-15 (26 students)

15 had heard of legal highs	57%
3 had been offered them	11%
4 had taken them	15%
6 students had been present when they were used	23%
4 school age and 5 older	
6 knew where to get them	23%

Year 11 – aged 15-16 (25 students)

20 students had heard of them	80%
10 students been offered them	40%
9 students had taken them	36%
11 students had been present when they were used	44%
13 were older and 7 were school age	
11 knew where to get them	44%

4.13 Police

To date, RFIP have currently dealt with two legal high cases; CR39/10 and CR24/11 CR/39/10 involved the legal high ‘Mojo’ and this gave a positive indication for amphetamine; however a prosecution was not brought due to the fact that, only a presumptive test had been carried out, whereas to bring a prosecution it would have to be subjected to full and appropriate testing. Also [whilst] the law states that possession of a controlled substance is illegal, it may not be absolute when there is a genuine belief that the substance was not illegal. The case was deemed to have insufficient public interest to pursue the matter and was dealt with by way of an educational talk with the offender.

The second case, CR24/11 saw RFIP dealing with a case involving [Alkyl Nitrites](#) ‘poppers’. This case involved three male youths and a female adult. All four received verbal warnings for substance abuse and supply.

RFIP are currently reliant on HM Customs and Excise for intelligence on who is importing these substances and in what quantities.

RFIP continue to monitor the situation and gather intelligence as and when it becomes available.

RFIP can only work within the confines of the law and until there is sufficient legislation in place then we are unable to effectively deal with this potential problem.

It is worthy of note that historically the Islands have enjoyed a relatively drug free existence and RFIP have a very limited capability in testing, in fact our kits have all time expired. These kits are quite expensive and are used extremely infrequently, it is therefore deemed as not an essential piece of equipment when planning the CSI budget.

There maybe a need for additional funds to be set aside for better more reliant presumptive testing of suspected controlled substances and certainly for the further evidential testing in an approved laboratory.

Whilst I appreciate that there is little in the way of hard facts, this is a relatively new problem for us all and one that is likely to stick around.

Paul McDade

Sergeant Operations 877, Crime Scene Investigator

5. Legal Position

Falkland Islands law

5.1 The principal Falkland Islands laws touching on this subject are the Misuse of Drugs Ordinance, and the Abusable Substances (Young Persons) Ordinance.

5.2 The Misuse of Drugs Ordinance restricts the importation, exportation, production, supply and possession of controlled drugs.

5.3 Controlled drugs are defined in the Ordinance by way of each individual drug being listed by reference to three classes; the classes being relevant to sentence for an offence relating to the relevant drug.

5.4 The Ordinance is loosely based on the English Misuse of Drugs Act, but the lists of controlled drugs have not been updated since 1997, so are considerably out of date in comparison with the English equivalent.

5.5 The Abusable Substances (Young Persons) Ordinance restricts the supply to young persons and inhalation by young persons of “abusable substances”. Abusable substance is defined as a substance, other than a controlled drug or alcohol, which is capable of causing intoxication through inhalation/fumes. The law was principally aimed at solvent abuse, but does arguably have the potential to catch psychoactive chemicals which are inhaled through smoking (although that interpretation has yet to be tested by the courts).

Laws in other jurisdictions

5.6 In the United Kingdom, the principal law is the Misuse of Drugs Act 1971, although there is other relevant legislation, including the Drugs Act 2005. A number of changes have been made to the Misuse of Drugs Act which are not reflected in the misuse of drugs laws in the Falkland Islands. Whilst time has not allowed a full comparison yet, examples are as follows.

- (a) numerous drugs are listed as controlled drugs under the substantive Act, which are not controlled in the Falkland Islands; such as mephodrone;
- (b) the Act was amended in 2011 to allow for temporary class drugs orders, which are intended to be sufficiently flexible and responsive to better control new psychoactive substances where appropriate (and the first Temporary Class Drug Order was made under the Act on 29 March 2012; illustrating how recent the latest developments in English law in this area are).

5.7 It appears that other jurisdictions may be taking a different approach to the issue of new psychoactive substances although, again, time has not yet allowed for a detailed analysis of those approaches. For example, Ireland introduced a Criminal Justice (Psychoactive Substances) Act in 2010 which appears to restrict the sale, importation, exportation and advertisement of psychoactive substances in general.

Legal issues to be addressed

5.8 It is clear that there are a number of areas where the law of the Falkland Islands could be improved to improve the control of new psychoactive substances, although the “moving target” nature of the problem means that it is likely only to provide a partial solution which should almost certainly be supplemented by other activity, such as continued education campaigns.

5.9 It is accepted that the Attorney General’s Chambers, through their general criminal justice responsibilities, do have a lead role in terms of the policy development which must precede any change in the law, albeit that lack of expertise in the subject across any FIG department means that policy development will necessarily have to draw heavily on practice in other jurisdictions.

5.10 The quickest action may be to bring our law in line with that in UK, although it is emphasised that even this will require quite a considerable amount of work; both in research and drafting (it is not just a question of adding types of drug to a schedule;

substantive amendments would be involved, for example providing for the use of temporary class drug orders).

5.11 Alternatively, if Members were minded to give ultimate priority to the matter in terms of allocation of work, more time might allow a combined solution; ie taking the best approaches from various other jurisdictions.

5.12 Determining which detailed solution would be preferred will obviously involve further policy decision making by Members; potentially involving wider policies on the control of drugs because there are potential dangers in focussing only on one area of drug misuse. Further work will also need to be done on practical issues, for example, to establish to what extent proposed new laws may put customs and police under financial pressure in terms of the cost of substance testing (which is estimated to involve £1,000 per item). It is therefore reiterated that this paper is only intended to be a first step, and that a further paper will be put to Members once more information can be provided on the nature of the legislation proposed and any potential financial implications.

5.14 In the mean time, the existing legislative drafting priorities programme for 2011/12, nor 2012/13, does not include work in relation to misuse of drugs as a priority. However, the information contained in this paper suggests that Members may wish to instruct that work be given some priority now. If that is the case, Members are asked to consider which matters currently with drafting priority for the 2011/12 year could be sacrificed for this work to be undertaken.

5.15 Legislative drafting work outstanding in the current financial year include; (i) finalising the FIDC Bill and (ii) finalising the Committees (Public Access) Bill; (iii) drafting the Finance Bill (to include fisheries fees); (iv) continuing work on the Road Traffic draft legislation; (v) drafting an amending Conservation of Wildlife and Nature Bill in relation to the sale of trout; and (vi) drafting new legislation for the regulation of camp airstrips.

5.16 Practical necessities mean that there is no potential to delay the Finance Bill, but guidance from Members is sought in connection with the following options:

- (a) urgent priority be given to the development of a legislative solution during this financial year - in which case Members are asked to advise which of items (i),(ii), or (iv) to (vi), listed in paragraph 5.15 above could be deferred in priority to this work; or
- (b) there is ongoing monitoring of the situation together with a continued educational campaign with a view to a paper coming back to Executive Council early in the next financial year which includes more detailed recommendations flowing from the continued monitoring and further information gathering; or
- (c) some other course advised by Members.

5.17 Whilst there is clear evidence of relatively large amounts of importation of new psychoactive substances (in proportion to community size), and there is clear evidence of use among young people, information currently available about the effects that the substances might be having on health and community safety appear to indicate a scale of negative effects comparable to those arising from existing alcohol abuse (but with no evidence to date linking psychoactive substance use to criminal activity). This perhaps indicates that time can be taken to ensure the best informed solution.

5.18 But on the other hand, it can be argued that the lack of information available about exactly what substances are being taken is a significant indicator of risk which, combined with -

(a) the heightened risks of mixing psychoactive substances with alcohol, as identified by the Acting Chief Medical Officer; and

(b) the knowledge of potential for harm from other jurisdictions (see Annex 2),

indicates that we don't have the luxury of time, and that action needs to be taken more urgently on the basis that by the time real evidence of significant harm is available, disproportionate harm will have been done.

5.19 Whilst it is difficult to make a recommendation at such an early stage, and Members may quite properly prefer the status quo option (b) set out in paragraph 5.16 above for that reason, the majority preference of officers is to prioritise work as a matter of urgency, reference paragraph 5.16(a).

6. Financial Implications

No immediate financial implications. However, as stated in paragraph 5.12, any amendment to the law subsequently proposed for approval may have financial implications for enforcement agencies.

7. Legal Implications

None, other than those already detailed in paragraph 5.

8. Human Resources Implications

None.

FICS – ‘Legal Highs’ Survey

Please can you take a few minutes to answer these questions honestly. You can place your own answer sheet in the envelope provided by your tutor and I have no way of knowing who you are.

Thankyou Mrs Bell

Are you Male or Female please circle

What year group are you in? please tick✓

Year 7	
Year 8	
Year9	
Year 10	
Year 11	

Please circle your answers

Have you heard of the term ‘legal high’?	
	YES
	NO

Have you ever been offered any of these products ?	
	YES
	NO

Have you ever taken a legal high ?	
	YES
	NO

Have you ever been present when others have used one of these products?	
	YES
	NO

If you have been present, was this person your own age –that is still at school or older than school age	
Still at school	
Older than school age	

Are you aware of who you can buy these products from?	
	YES

	NO
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Thank you for answering these questions honestly.

**Extracts from (Home Office) HM Drug Strategy 2010:
Reducing Demand, Restricting Supply, Building Recovery
Supporting People to Live a Drug Free Life**

Where are we now?

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New psychoactive substances ('legal highs')

Over the last few years, a new trend has emerged. There is emerging evidence that young people are taking new legal chemicals instead of or as well as other drugs. Most of these substances have never been tested for use by humans. The immediate risks they pose or the long term damage they are doing, are often not immediately apparent as their harms are unknown.

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Restricting Supply

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New psychoactive substances ('legal highs')

The Government is determined to address the issue of so called 'legal highs'. We know that these substances can pose a serious threat, especially to the health of young people. We need a swift and effective response and are therefore redesigning the legal framework through the development of temporary class drug orders so we can take immediate action. We will improve the forensic analytical capability for new psychoactive substances and will establish an effective forensic early warning system.

UKBA are undertaking enforcement action at the border to target and intercept consignments of these new substances. The Serious Organised Crime Agency (SOCA) is currently developing approaches to identify importers, distributors and sellers of 'legal highs' and disrupt their ventures, including activity against websites. We are also introducing technology at the borders to identify these new types of drugs.

These enforcement activities will be combined with prevention, education and treatment. We will continue to emphasise that, just because a drug is legal to possess, it does not mean it is safe and it is likely that drugs sold as 'legal highs' may actually contain substances that are illegal to possess.