

Legal highs: the challenge for government

Fiona Measham considers the policy challenges for regulating 'novel' drugs.

In March 2011 the President of the International Narcotics Control Board said the problem of designer drugs was 'escalating out of control'. The biggest challenge now facing drug policy makers relates to the recent and rapid emergence of these designer drugs or so-called 'legal highs', with more than 40 novel psychoactive substances appearing on the market in 2010 alone. The key question for governments is: Should they continue attempting to risk assess and legislate for each new drug, or are there any alternatives to this accelerating merry-go-round of prohibition?

The UK 'mephedrone menace' of 2009-2010 pushed legal highs to centre stage in UK drug policy, against a backdrop of shifting sands in terms of supply, demand and retail practices. Whilst the rise in legal highs has produced a reformulation of the classic concerns attached to any 'new' drug – from the corruption of youthful innocence; and the Russian roulette of ingesting chemicals of unknown toxicity; to the symbolic fear of pollution from an invasion of 'foreign' drugs – there was a key distinction. Mephedrone is the first fully fledged drug of the internet age: advertised, sold and discussed online, facilitating a global system from Far East laboratories to UK-based websites; from user forums to e-Journal papers available (sometimes) for free download to academics and lay users alike. Yet whilst the drugs may be 'novel', the responses of the media, politicians and academics have been anything but new. With each new death allegedly linked to legal highs came a new call by politicians for these

drugs to be banned, and each incident was matched by academics' cries of 'moral panic'.

Popularity

The prevalence of mephedrone, the most widely used of the substituted cathinones banned in April 2010, is difficult to assess precisely because of the rapidity of its ascent. Indeed the rise and fall of mephedrone happened within one cycle of the UK annual household drugs survey, the British Crime Survey. Its popularity can be gauged by surveys of target groups such as the annual online Mixmag clubbers' survey (2011), which found that at the height of

its popularity, over one third of clubbers reported having taken mephedrone the previous month. The reason for its popularity is clear: it was cheap, easily available, novel, and for experienced users, an eager replacement for the declining availability/purity of street drugs in recent years due to international enforcement successes (Measham et al., 2010). The government response was predictable.

What happened next?

At the heart of the policy response to legal highs has been a process of risk assessment and prohibition, based on the deterrent value of criminalisation and an underlying assumption that the appeal of legal highs is primarily due to their legal status. By September 2010, 13 European countries had introduced legislative controls for mephedrone. For the first wave of 'early adopters', experienced but disillusioned polydrug users, the appeal of these first generation legal highs related less to users' fear of arrest (because many had used other drugs anyway) than curiosity, combined with certainty of content and purity. For



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the second wave of younger and less experienced drug users, attracted by media coverage and early adopter enthusiasm, again legal status in itself was not the primary appeal, but rather the relative ease with which legal highs could be obtained compared to purchasing illegal drugs from street dealers.

For under-18s, research suggests that some teenagers were purchasing mephedrone from street dealers even before it was banned. In this respect legal highs could be considered both a diversion from, and a gateway into, the illegal drug market. A further irony is that second generation legal highs promoted after April 2010 were as likely to contain illegal drugs as legal ones, with increasingly unreliable content and purity (Brandt et al., 2010). To date, there is no obvious replacement for mephedrone and no wholesale substitute displacement, illustrating preferences in user demand and discrepancies in market availability.

The differential impact of prohibition is reflected in these different user groups. Some users (such as seasoned polydrug clubbers) carried on taking mephedrone after the ban and simply switched to street traders once their stockpiles were depleted. For others, their brief honeymoon of experimentation was over, the access to door-to-door delivery of pure, legal stimulants ended. Mixmag (2011) shows that whilst lifetime and past year mephedrone use increased from February 2010-2011, past month use fell from 34 per cent to 25 per cent after it was banned. Availability fell from 75 per cent finding mephedrone easy or very easy to access before the ban, to 38 per cent after the ban. In terms of supply routes, whereas 33 per cent of users obtained their mephedrone from websites before the ban, it dropped to under 1 per cent after the ban. By contrast, those purchasing mephedrone from dealers increased from 24 per cent to 58 per cent of users. Whilst this is a cross-sectional rather than longitudinal survey, nevertheless, the Mixmag survey suggests that legislative control partially reduced mephedrone's availability and use, alongside a

switch from online to street supply routes.

So what are the next steps in policy responses to the next generation of legal highs?

Flagship response

The Coalition government's flagship response to reviewing and controlling individual novel psychoactive substances has been to introduce Temporary Class Drug Orders (TCDOs) as part of the *Police Reform and Social Responsibility Bill 2011*. Such orders can quickly ban the importation and supply of specified drugs which cause concern whilst the Advisory Council on the Misuse of Drugs (ACMD) goes through its process of evidence-gathering and risk assessment. Introduced in an attempt to protect the public whilst a comprehensive review is undertaken, it does not solve the problem of the resourcing and pace of this review process, with the ACMD stretched to capacity in the face of rapid psychoactive innovation.

The mantra of 'evidence-based policy' also needs careful consideration. Surely it is reasonable to ban the sale of novel psychoactive substances before they cause significant harm – the precautionary principle – to avoid the general population acting as guinea pigs whilst evidence is gathered? The irony is that the introduction of a ban, whilst evidence is gathered, curtails and potentially contaminates

the 'evidence' through a likely increase in misbranding and adulteration of supplies.

Forward thinking

In looking for a solution, the US Federal *Controlled Substance Analogue Enforcement Act 1986* (AEA) has been posed as a possible solution. The AEA automatically prohibits a chemical if it is 'substantially similar' in structure or effect to a drug that is already controlled. The danger with a blunt instrument such as this is that an undifferentiated public health message may be less effective in reducing harm than a message tailored to the relative risk of individual drugs. If some drugs are undoubtedly of greater or unknown risk, then this message could be lost in a sea of alarmism, leading to 'cry wolfism' and subsequent apathy amongst users when an indisputably dangerous drug does take off (Forsyth, quoted in Fleming, 2011). Furthermore, the AEA is neither a precise nor cost-effective legislative tool, leaning heavily on the need for legal and pharmacological expertise in implementation. Finally, we might want to question the resultant blanket criminalisation of emergent psychoactive substances regardless of their individual harm or even on balance, their overall benefits to users in terms of possible medical, psychotherapeutic or recreational use. The risk to society is that in prioritising the harms



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from psychoactive substances, we overlook their benefits (Moore and Measham, 2011).

The policy challenges of regulating legal highs relate to the broader question of how to regulate the internet: the increase in counterfeit medicines sold online and without prescription from Far East laboratories, via western websites, illustrates the broader context to this international trade in unregulated chemicals. With evidence that criminal sanctions push demand further underground and out of reach of the authorities, away from commercial websites and into closed user networks, alternative methods are required to control unregulated online trading. As we move towards multi-agency, multi-national collaborations including government, financial and enforcement agencies, it is clear that the regulation of international cyber trading itself requires innovation and rapid response.

Alongside greater controls on international cyber trading is the need for a timely reconsideration of

the role and power of consumer protection legislation. Most legal highs have been marketed as plant food and bath salts with the warning 'not fit for human consumption' in order to avoid regulatory controls. The introduction of stricter regulation of medicines and food stuffs and greater enforcement powers for health and trading standards agencies can protect unknowing consumers from the health and criminal justice risks of misbranded, adulterated and counterfeit products.

Whilst some users consider legal highs safe, because they are legal, rather than pre-regulation, in reality very little is known about many of these psychoactive substances. The lack of a scientific research base means that information and harm reduction advice come from a basis of relative ignorance compared with more established street drugs.

Admitting our ignorance, not just in terms of the effects of these drugs, but also what is the best next step in drug policy, is crucial to this debate. ■

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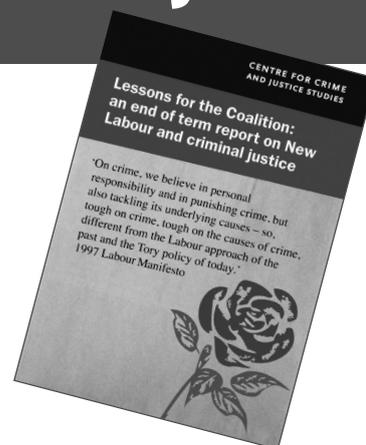
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