

EXPLANATORY MEMORANDUM TO
THE PSYCHOACTIVE SUBSTANCES ACT 2016 (CONSEQUENTIAL
AMENDMENTS) REGULATIONS 2016

2016 No. 554

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations make amendments to secondary legislation in consequence of the commencement of the Psychoactive Substances Act 2016 (the “2016 Act”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The 2016 Act creates several offences, powers and sanctions related to the production and distribution of psychoactive substances. These regulations make necessary amendments to secondary legislation in consequence of the 2016 Act, in particular to certain instruments that refer to the Misuse of Drugs Act 1971 so as to include reference to the 2016 Act.

5. Extent and Territorial Application

- 5.1 As this instrument makes consequential amendments, the extent of each provision has the same extent as the provision being amended. Regulation 2 extends to the United Kingdom and regulation 3 extends to England and Wales.
- 5.2 The territorial application of this instrument varies as between provisions. Regulation 2 applies to the United Kingdom and regulation 3 applies to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The purpose of the amendments made by this instrument is to ensure that, where reference is made to the offences and provisions of the Misuse of Drugs Act 1971 or controlled drugs in secondary legislation, reference is also made, where appropriate, to the offences and provisions of the 2016 Act.
- 7.2 The purposes of the specific amendments are as follows.
- 7.3 Regulation 2 adds the 2016 Act to Schedule 5 to the Visiting Forces and International Headquarters (Application of Law) Order 1999 (“the 1999 Order”). The 1999 Order provides for visiting forces and headquarters to be exempt from the enactments listed in Schedule 5 as if they were a part of the home forces under the rule of law whereby, in the absence of an express provision or necessary implication, statutes do not bind the Crown. The Misuse of Drugs Act 1971 is included within Schedule 5. This instrument places the 2016 Act into Schedule 5 making the provisions of the 2016 Act subject to the exemptions provided by the 1999 Order.
- 7.4 Regulation 3 amends the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009. These Regulations prescribe the criteria which determine whether a person should be included automatically in the children’s barred list or the adults’ barred list maintained by the Disclosure and Barring Service under section 2 of the Safeguarding Vulnerable Groups Act 2006. This instrument adds to the list of offences in the children’s barred list and the adults’ barred list the offence of supplying or offering to supply a psychoactive substance in circumstances where the supply or offer to supply is to a child.

Consolidation

- 7.5 As this instrument makes minor consequential amendments, no question of consolidation arises.

8. Consultation outcome

- 8.1 No consultation has been carried out, as this instrument simply makes minor amendments to secondary legislation consequential on the commencement of the provisions of the 2016 Act.

9. Guidance

- 9.1 No guidance has been prepared in relation to this instrument.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument, but is available for the 2016 Act at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433151/NPSGBImpactAssessment.pdf.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 Pursuant to section 58 of the 2016 Act, the Secretary of State will review the operation of the 2016 Act, and by extension the provisions of this instrument, and will lay a report of the review before Parliament within 30 months of the 2016 Act's commencement.

13. Contact

13.1 James McLellan at the Home Office Telephone: 0207 035 1885 or email: james.mclellan@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.