



# Psychoactive Substances Act 2016

## 2016 CHAPTER 2

### *Offences*

#### **4 Producing a psychoactive substance**

- (1) A person commits an offence if—
- (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
    - (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 section 11 (exceptions to offences).

#### **Commencement Information**

**II** S. 4 in force at 26.5.2016 by [S.I. 2016/553, reg. 2](#)

#### **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,
  - (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.

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*Changes to legislation:* There are currently no known outstanding effects for the Psychoactive Substances Act 2016, Cross Heading: Offences. (See end of Document for details)

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- (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.
- (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 section 11 (exceptions to offences).

#### Commencement Information

**I2** S. 5 in force at 26.5.2016 by S.I. 2016/553, reg. 2

## 6 Aggravation of offence under section 5

- [<sup>F1</sup>(1) [<sup>F2</sup>Subsections (2) to (10) apply] if—
- (a) a court [<sup>F3</sup>in Scotland or Northern Ireland] 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.]
- [<sup>F1</sup>(2) If condition A, B or C 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.]
- [<sup>F1</sup>(3) Condition A is that the offence was committed on or in the vicinity of school premises at a relevant time.]
- [<sup>F1</sup>(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.]
- (5) 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;
- “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)).
- [<sup>F4</sup>(6) 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.]
- [<sup>F4</sup>(7) For the purposes of subsection (6) 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 substance to a third person, or
  - (b) to deliver a drug-related consideration to P or a third person.]

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- [<sup>F4</sup>(8) 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.]

[<sup>F4</sup>(9) Condition C is that the offence was committed in a custodial institution.]

[<sup>F4</sup>(10) In this section—

“custodial institution” means any of the following—

- (a) a prison;
- (b) a young offender institution, secure training centre, secure college, young offenders institution, young offenders centre, juvenile justice centre or remand centre;
- (c) a removal centre, a short-term holding facility or pre-departure accommodation;
- (d) service custody premises;

“removal centre”, “short-term holding facility” and “pre-departure accommodation” have the meaning given by section 147 of the Immigration and Asylum Act 1999;

“service custody premises” has the meaning given by section 300(7) of the Armed Forces Act 2006.]

[<sup>F5</sup>(11) For the requirement for a court in England and Wales considering the seriousness of an offence under section 5 to treat certain matters as aggravating factors, see section 72 of the Sentencing Code.]

#### Textual Amendments

- F1** S. 6(1)-(4) repealed (E.W.) (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 29](#) (with ss. 413(4), 416(7), [Sch. 27](#)); S.I. 2020/1236, [reg. 2](#)
- F2** Words in s. 6(1) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 295\(2\)\(a\)](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); S.I. 2020/1236, [reg. 2](#)
- F3** Words in s. 6(1)(a) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 295\(2\)\(b\)](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); S.I. 2020/1236, [reg. 2](#)
- F4** S. 6(6)-(10) repealed (E.W.) (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 29](#) (with ss. 413(4), 416(7), [Sch. 27](#)); S.I. 2020/1236, [reg. 2](#)
- F5** S. 6(11) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 295\(3\)](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); S.I. 2020/1236, [reg. 2](#)

#### Modifications etc. (not altering text)

- C1** S. 6 modified in part (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2) (3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), [ss. 1, 5\(2\)\(3\)](#); S.I. 2012/1236, [reg. 2](#)

#### Commencement Information

- I3** S. 6 in force at 26.5.2016 by [S.I. 2016/553](#), [reg. 2](#)

## 7 Possession of psychoactive substance with intent to supply

- (1) A person commits an offence if—
- (a) the person is in possession of a psychoactive substance,

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- (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.

(2) This section is subject to section 11 (exceptions to offences).

**Commencement Information**

**I4** S. 7 in force at 26.5.2016 by S.I. 2016/553, reg. 2

## 8 Importing or exporting a psychoactive substance

- (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
  - (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.
- (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
  - (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.
- (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.

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 section 11 (exceptions to offences).

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#### Commencement Information

**I5** S. 8 in force at 26.5.2016 by S.I. 2016/553, reg. 2

### 9 Possession of a psychoactive substance in a custodial institution

- (1) A person commits an offence if—
  - (a) the person is in possession of a psychoactive substance in a custodial institution,
  - (b) the person knows or suspects that the substance is a psychoactive substance, and
  - (c) the person intends to consume the psychoactive substance for its psychoactive effects.
- (2) In this section “custodial institution” has the same meaning as in section 6.
- (3) This section is subject to section 11 (exceptions to offences).

#### Commencement Information

**I6** S. 9 in force at 26.5.2016 by S.I. 2016/553, reg. 2

### 10 Penalties

- (1) 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 [<sup>F6</sup>the general limit in a magistrates’ court] (or 6 months, if the offence was committed before [<sup>F7</sup>2 May 2022]), or
    - (ii) to a fine,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,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,or both;
  - (d) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.
- (2) A person guilty of an offence under section 9 is liable—
  - (a) on summary conviction in England and Wales—
    - (i) to imprisonment for a term not exceeding [<sup>F8</sup>the general limit in a magistrates’ court] (or 6 months, if the offence was committed before [<sup>F9</sup>2 May 2022]), or
    - (ii) to a fine,

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- 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,
 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,
 or both;
- (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

#### Textual Amendments

- F6** Words in s. 10(1)(a)(i) substituted (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates' Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(1), **Sch. Pt. 1**
- F7** Words in s. 10(1)(a)(i) substituted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), 5(1), **Sch. Pt. 1**
- F8** Words in s. 10(2)(a)(i) substituted (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates' Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(1), **Sch. Pt. 1**
- F9** Words in s. 10(2)(a)(i) substituted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), 5(1), **Sch. Pt. 1**

#### Commencement Information

- I7** S. 10 in force at 26.5.2016 by [S.I. 2016/553](#), **reg. 2**

## 11 Exceptions to offences

- (1) It is not an offence under this Act for a person to carry on any activity listed in subsection (3) if, in the circumstances in which it is carried on by that person, the activity is an exempted activity.
- (2) In this section “exempted activity” means an activity listed in Schedule 2.
- (3) The activities referred to in subsection (1) are—
  - (a) producing a psychoactive substance;
  - (b) supplying such a substance;
  - (c) offering to supply such a substance;
  - (d) possessing such a substance with intent to supply it;
  - (e) importing or exporting such a substance;
  - (f) possessing such a substance in a custodial institution (within the meaning of section 9).
- (4) The Secretary of State may by regulations amend Schedule 2 in order to—
  - (a) add or vary any description of activity;

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- (b) remove any description of activity added under paragraph (a).
- (5) Before making any regulations under this section the Secretary of State must consult—
  - (a) the Advisory Council on the Misuse of Drugs, and
  - (b) such other persons as the Secretary of State considers appropriate.
- (6) The power to make regulations under this section is exercisable by statutory instrument.
- (7) 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.

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**Commencement Information**

- 18** S. 11 in force at Royal Assent for specified purposes, see s. 63(1)(b)
- 19** S. 11 in force at 26.5.2016 in so far as not already in force by S.I. 2016/553, reg. 2

**Changes to legislation:**

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Cross Heading: Offences.