EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS (PSYCHOACTIVE SUBSTANCES ACT 2016) (TRANSFER OF PROCEEDINGS) RULES 2016

2016 No. 546 (L. 7)

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes provision for the procedure when, in proceedings relating to the making, variation or discharge of a prohibition order under the Psychoactive Substances Act 2016 ("the 2016 Act"), a person against whom the prohibition order is sought or was made reaches the age of 18 after the proceedings commenced and it is necessary to determine whether the application should proceed and remain in the youth court or be transferred to an adult magistrates court.

3. Matters of special interest to Parliament

Matters of 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 Under section 17 of the 2016 Act, a prohibition order is an order 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 ("prohibited activity" being defined in section 12, covering the activities of producing, supplying, offering to supply, importing or exporting a psychoactive substance, or assisting or encouraging any of those activities).

4.2 Proceedings in relation to prohibition orders under the 2016 Act (applications for orders, applications for variation or discharge of orders, and applications for reimbursement of costs incurred in giving effect to orders which impose an access prohibition) are allocated (by virtue of sections 20, 24 and 28 of the 2016 Act) to a youth court if the person against whom the order is sought or was made is under 18, but otherwise in an adult magistrates' court. Section 35 of the 2016 Act concerns cases where that person reaches the age of 18 while the proceedings are continuing, and provides for rules of court to provide for the proceedings to be transferred to an adult magistrates' court or remain in the youth court. This instrument contains such rules.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 The territorial application of this instrument is 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

7.1 The 2016 Act makes provision for combating the production and supply of "legal highs", although it does not use that term, but refers instead to "psychoactive substances". It defines a psychoactive substance (in section 2) as any substance which is capable of producing a psychoactive effect in a person who consumes it and is not an exempted substance. Exempted substances are listed in Schedule 1 to the 2016 Act and include alcoholic substances, medicines, tobacco products and controlled drugs.

7.2 A substance is deemed to have a psychoactive effect if it affects the person's mental functioning or emotional state. A psychoactive substance is consumed in various ways. For example, this includes injecting, eating or drinking, snorting, inhaling and smoking.

7.3 The 2016 Act provides for a number of offences in relation to psychoactive substances, but also for a scheme for restraining activities in relation to psychoactive substances, based on prohibition notices and prohibition orders. A prohibition order will include a general prohibition on a person carrying out any prohibited activity or a specified prohibited activity.

7.4 Such orders are civil in nature (although they may be made on conviction as well as on a free-standing application), but breach of an order is an offence. In this respect, prohibition orders are similar to, for example, slavery and trafficking prevention orders and slavery and trafficking risk orders under Part 2 of the Modern Slavery Act 2015, which made similar provision to that in the 2016 Act in relation to proceedings against persons under 18. Rules of court (the Magistrates' Courts (Modern Slavery Act 2015) Rules 2015, S.I. 2015/1478) were made under the Modern Slavery Act 2015 to govern procedure in cases where the person against whom proceedings are brought reaches the age of 18 before the proceedings are concluded, and the rules in this instrument take a similar approach to those made under the Modern Slavery Act 2015.

Consolidation

7.5 Not applicable.

8. Consultation outcome

8.1 No specific consultation was undertaken on this instrument due to the technical nature of the rules and the existing precedents for the approach taken in them.

9. Guidance

9.1 No specific guidance was considered necessary given the existing precedents for the approach taken by the rules.

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.

11. Regulating small business

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

12. Monitoring and Review

12.1 It is proposed to review the Magistrates Psychoactive Substances Act 2016 five years after enactment and the rules will be considered as part of that review.

13. Contact

13.1 Lisa Dillon at the Home Office Telephone: 0207 035 0936 or email: Lisa.Dillon2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.