

**Novel Psychoactive Substances: Implications for UK Drugs Policy**

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## **Thesis Abstract**

In January 2016, the UK Government legislated for the blanket prohibition of ‘new psychoactive substances’ (NPS), i.e. unregulated substances that were viewed as similar to already controlled drugs. This followed a six-year period over which these substances have, with increasing speed, been scheduled as drugs, while the harms associated with these substances has increased. This thesis critiques policy here in terms of the way ‘NPS’ has been represented as a problem for policy makers. Drawing on post-structuralist theory and Science and Technology Studies, it seeks to account for first, *how* and in what ways these substances have been represented as a problem, and what other possibilities for thinking about NPS are silenced in these accounts. To explore this, the thesis undertakes a documentary analysis of the production of the NPS ‘problem’ in the media, Parliament and technical and policy documents, alongside 19 interviews with participants who currently use, or had previously used, NPS.

This thesis argues that NPS policy has enacted a limited framework for engaging with the risks of emerging drugs markets, which is primarily concerned with the threats these substances pose to those who believe they are safe due to being briefly legally available. In turn, the interview data indicates that participant in this market offer a range of distinct accounts of NPS, indicating the mixed results of regulation, the strategies deployed for addressing risks, the contexts in which harms accrue, and the capacity to experience the effects of these substances as beneficial and pleasurable. In comparing these accounts, it is argued that policy here constructs a limited account of the ‘public interest’ which excludes the interests and alternative perspectives of NPS users, who may offer different constructions of these objects and the appropriate goals of regulation.

In turn, the thesis argues that critique should focus on the practices whereby the ‘public interest’ with which drug policy has to engage involves the exclusion of drug users from being able to participate in defining the nature of ‘NPS problems’. This exclusion has negative impacts for drugs users, in the sense of making drug markets more dangerous, but also limits the scope for thinking, in an inclusive way, about the goals contemporary drug policy might hope to achieve. In terms of future research, it is argued that drug policy is usefully critiqued in terms of how, to what extent and in what ways it constitutes drug users as part of the ‘public’ with which policy should be concerned. In the context of contemporary drug policy struggles in numerous countries, the mobilizations of the public undertaken here and their effects will be a matter of ongoing concern.

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### **Dedication**

This thesis is dedicated to everyone whose support made it possible. I owe you all a lot.

## **Chapter 1: Introduction**

### **Introduction and Thesis Structure**

This thesis addresses the research question: ‘how has the problem of NPS been represented, what are the limits of this representation, and could the problem be thought about differently?’ This introductory section will offer the background and context to this enquiry, while examining the structure of the thesis.

New, or Novel, Psychoactive Substances (NPS) are defined by the United Nations Office of Drugs and Crime (UNODC) as: “substances of abuse, either in a pure form or a preparation, that are not controlled by the 1961 Single Convention on Narcotic Drugs or the 1971 Convention on Psychotropic Substances, but which may pose a public health threat”. Over the last 10 years NPS have emerged as a subject of concern and a basis for legislative action for international and national authorities concerned with controlling drugs (ACMD 2011; EMCDDA 2015a; UNODC 2016a)..

In general, the policy response has been to accelerate the rate at which these substances can be brought under control. In 2016, this extended to the pre-emptive control of all non-excluded substances which have ‘psychoactive effects’ via the Psychoactive Substances Act 2016, which received Royal Assent on the 28<sup>th</sup> of January 2016. This Act attaches criminal penalties to the production, supply or offers to supply, possession with intent to supply or in a custodial institution and the importation and export of substances deemed to be ‘psychoactive’ and not otherwise excluded within the definition of the Act. Simple possession of psychoactive substances is not an offence listed within the Act. The meaning of ‘psychoactive’ is defined in s.2.1 of the Act as:

...any substance which— (a) is capable of producing a psychoactive effect in a person who consumes it, and (b) is not an exempted substance.

A ‘psychoactive effect’ is defined as taking place, per s.2.2, when “a substance produces a psychoactive effect in a person if, by stimulating or depressing the person’s central nervous system, it affects the person’s mental functioning or emotional state...”. In s.3, we are referred to Schedule 3 of the Act, which lists ‘exempted substances’ which are not within the scope of Act. These are medicinal products, nicotine, tobacco

products, alcohol, food – broadly defined – caffeine and controlled drugs, with this latter category remaining controlled by the Misuse of Drugs Act 1971.

With this Act, the UK joins New Zealand, Ireland, Australia, Austria and Poland in enacting specific legislation to control substances in terms of their ‘psychoactive effects’ in response to concerns about the threat of unscheduled, obscure substances emerging within the recreational drugs market.

In developing a critique of this response, this thesis engages with *how* NPS has been represented as a ‘problem’ for policy. Here, policy is approached as an active, productive process that gives shape to problems in the process of defining them (Bacchi 2009). In light of this concern with what Bacchi calls ‘problem questioning’ (Bacchi 2009) this thesis does not provide or recommend a specific policy outcome that would ‘solve the problem’ of NPS. Rather than engaging with the policy response wholly in terms of its evidential basis or likelihood for success, it seeks to approach NPS in terms of how this problem has been produced, what alternative perspectives are silenced and offers ways to think about the ‘problem’ of NPS differently. As shall be argued in this chapter, the drug policy paradigm offers a partial and contingent account of drug use, with important implications for these problems can be thought about. In developing critique of policy in this area, then, it is useful to critically consider these representations and their limits.

The principal argument presented is that the policy representation of the NPS ‘problem’ provides a partial and insufficient analysis of the intricate and complex issues raised by contemporary developments in the drug market. This problem has largely been predicated on perceptions of the vulnerability of NPS consumers who use the substances because they are legal. In doing so, policy has silenced a range of other ways of approaching this object and defines the interests of those who seek to consume these substances as in conflict with the broader public interest in repressing drug use. This results in a highly restrictive set of circumstances for thinking about the effects of drugs and how the question of harm can be thought about. To develop different approaches to NPS problems that would not rely on making this market more dangerous for consumers – i.e. prohibition - as a strategy of protecting the public, it is necessary to think critically about how and in what ways the ‘public’ can be defined in such a way to include the interests of drug users *as* drug users.

This argument will be presented in the following sequence. Chapter 1 outlines the research question and the theoretical approach underpinning it. To restate, the research question is: “*How has the problem of NPS been represented what are the limits of this representation, and could the problem be thought about differently??*”. Again, this is less a question of determining the *correct* response to NPS in terms of how the harms of NPS have been constructed, but rather engages with the terms in which policy responses are determined as such. This chapter argues, mobilizing insights from Foucault, Bacchi, and science and technology studies, that producing drugs as an object of knowledge involves enacting historically contingent frames of representation that can be productively critiqued in terms of the conditions under which this knowledge is produced. In turn, in developing a critical account of the NPS policy response, it is necessary to critically interrogate the claims to authority mobilized in these accounts, particularly in the context of the broader problematization of illicit drugs and the implications this has had for policy.

Chapter 2 provides an overview of the legislative and policy response to NPS in the UK and sets it in an international context. It then reviews the academic literature concerned with NPS consumption, markets, motivations and the relationship between NPS and illicit drugs markets. The first section argues that the UK, in line with other nations, has relied on legislative control of NPS as the principal strategy for responding to their perceived harms. While there is limited optimism that this approach will eliminate the harms associated with these substances, there also appears to be limited scope and minimal political will to develop alternative regulatory approaches to these substances. The evidence available about NPS consumption, moreover, is patchy – inevitably, given the recent emergence of these substances – and indicates a range of possible interpretations and concerns that resist simple characterization. The review also indicates that emerging forms of online commerce that have developed alongside NPS raise important questions for understanding the changed nature of the drugs market that has resulted from developments in global communication. The harms of NPS, moreover, do not appear clearly related to their legality, and may indicate ongoing challenges going forward, irrespective of the Psychoactive Substances Act. The contribution that this thesis makes to this literature is also outlined, which is primarily in terms of qualitative research engagement with the complexities of NPS consumption in a range of settings, its meanings and its potential diversity, and addressing these

specifically in terms of how these accounts relate to the dominant presentations of NPS as a problem for policy.

Chapter 3 describes the methodological approach adopted to answer the research question. In seeking to identify the terms in which NPS have been represented as a drug policy problem and the potential for alternative readings, a mixed methods approach was adopted. Specifically, this consisted of a documentary analysis of the terms in which the risks and policy implications of NPS were constructed in the news media, expert policy recommendations, and Parliamentary debates, the 19 interviews undertaken with participants with experience of consuming NPS, often alongside various controlled drugs. The documentary analysis is used to develop a critical account of the terms in which NPS have been problematized. In turn, the interview analysis seeks to identify the limits of these accounts of NPS, and considers the grounds on which an a more inclusive approach to NPS might be adopted.

Chapter 4 presents the results of the first part of this analysis, which considers the production and stabilization of NPS as a problem for policy. This section engages with Bacchi's framework for examining the representation of problems (Bacchi, 2009) and extends it to cover a range of documentary sources. The sources explored are news reports about NPS, recommendations produced by the Advisory Council on the Misuse of Drugs (ACMD) regarding the scheduling of certain compounds, policy recommendations from the ACMD and the Expert Panel on NPS – which recommended the generic scheduling approach - and two Parliamentary debates concerned with the passage of the Psychoactive Substances Act into law.

It is argued here that these sources construct NPS primarily in terms of their risks to health, the inextricable nature of these risks, and the specific appeal of these dangerous substances to consumers who believe they are safe owing to their legality. In this context, recommendations tend to emphasise the need for innovative solutions to bring these substances under control, which is constructed as having both the symbolic and practical capacity to address these harms, alongside the scientific authority to do so. The definition of the policy problem here constructs the lack of criminal law regulation in relation to these substances as central in how the NPS 'problem' is defined. The primary emphasis, here, on the harms that these substances pose to consumers who

would not otherwise use illicit drugs. Policy, however, does not account for drug users as having a stake or relevant voice in the management of NPS related problems.

Chapter 5 is structured around the results of the interview analysis. This chapter analyses the terms in which the participants conceptualise NPS, their effects, risks and the effects of their regulation, when relevant. It is argued that the way in which NPS are constructed by these participants is, in important ways, distinct from the terms in which the NPS are constructed as a problem for policy. Here, it is argued that, within this sample, there was limited regard for the normative influence of drug policy, but alongside concern in most cases for managing the harms of these substances. Unlike policy, which primarily defines drugs in terms of their harmfulness, participants here primarily engaged with NPS, and drugs more generally, in what their effects were capable of achieving, in relation to which risks were managed or rejected if considered too great. Engaging with these accounts offers important insights into understanding both the limits of the problem representation discussed above, but also draws critical attention to the question of *what* drug policy should be trying to achieve, both more broadly and with regard to the contemporary dynamics of the global drugs market and its adoption of technological innovation.

Chapter 6 analyses these findings in terms of the research question below. Here it is argued that the principal limitation of the way in which the NPS ‘problem’ has been represented is that, in adopting the broader aspects of the drugs policy *dispositif*, policy here necessarily excludes drug users from being within the scope of the general public that drug policy seeks to protect. In constructing the ‘public interest’ in terms that exclude drug users, policy acts to silence a wide range of alternative perspectives on these substances, while simultaneously exposing drug users to increased precariousness as a result of these markets being criminalized. Developing an alternative approach to NPS policy, in turn, requires a more inclusive approach to defining drug users *as* drug users as comprising part of the public with which policy should be concerned.

## **Background**

This section provides an overview of the emergence of NPS. The group of substances collectively referred to NPS include a wide range of primarily synthetic compounds that, by and large, fit into pre-existing categories of existing drugs. They include



Synthetic Cannabinoids Receptor Agonists (SCRAs) – synthetic cannabis – as well as various stimulants, sedatives, dis-associatives, synthetic opioids, plants, psychedelics, as well as miscellaneous compounds like nitrous oxide (see Table 1.1). The sudden availability of a wide range of novel and obscure drugs is the product of a number of intersecting innovations made possible by the internet and falling cost of information that follows from it (Griffiths et al. 2010; Griffiths, Evans-Brown, and Sedefov 2013; Brandt, King, and Evans-Brown 2014).

A key aspect of the NPS problem – as it has been defined in policy - concerns the consistent appearance of large numbers of unscheduled substances alleged to have similar effects to controlled drugs. As defined by the UN, 644 NPS were reported by 102 countries between 2008 and 2015 (UNODC 2016a). The emergence of unscheduled psychoactive substances – requiring updated domestic and international provisions – is not a new phenomenon. When the Hague International Opium Convention was signed in 1912, it formally controlled four substances. By the time of the 1971 UN Convention on Psychotropic substances, the total number of substances controlled internationally was 130, which would again increase to 234 by 2012 (D’Agnone 2015). Since the introduction of international controls, manufacturers and distributors have attempted to work around legal restrictions by producing substances not captured by regulatory mechanisms but providing similar effects, prompting a corresponding increases in the range of substances under schedule (Taylor 2015).

What distinguishes the current phase is speed (Seddon 2014). In the early 2000s the rate at which new substances began appearing increased dramatically, appearing as purchasable consumables in a complex market combining non-standard medicines, failed pharmaceuticals, new inventions and obscure plants (Brandt et al. 2014). Globalization– by lowering the costs of international transit and the exchange of information, as well by as opening up international markets to exchange - is central in accelerating this process, just as it has accelerated other aspects of market development (Griffiths et al. 2010; Power 2013; Seddon 2014).

Entrepreneurs in this market do not require advanced skills at chemistry, as labs in other parts of the globe can be employed to make products to prescribed formulas and deliver them to the UK (Power 2013a; Power 2013b). The internet also affords innovate drug market actors access to huge volumes of literature from which the potential structure for

new drugs can be obtained, including uncommercialized or discontinued pharmaceutical products (Cinosi et al. 2014), compounds – like SCRAAs – developed in medical research (Auwarter et al. 2013) or the myriad compounds – 2-CB for instance -developed by Alexander Shulgin in his research, which have diffused online since the publication of his work (Corazza et al. 2013).

<b>Table 1.1: Principal Categories of NPS</b>	
<i>NPS Type</i>	<i>Common Examples</i>
Synthetic Cannabinoid Receptor Agonists (SCRAS)	JWH-018, AM251, AB-CHIMINACA, AB-FUBICA, 4-HTMPIPO
Stimulant	Synthetic cathinones, i.e. mephedrone, MDPV, methyldone. Benzofurans, i.e. 5-APB, 6-APB. Methylphenidate analogues, i.e. ethylphenidate. Pipradol compounds, i.e. BZP. Aminoidane analogues, i.e. MDAI. 4-4'-DMAR
Disassociatives	Methoxetamine, diphenidine, methoxphenidine
Sedatives/Depressants	Benzodiazepine analogues, i.e. Etizolam, Phenazepam, pyrozolam, clonazolam. GBL.
Psychedelic	Substituted Tryptamines, i.e. 5-MEO-DALT, LSZ, 1P-LSD. Derived Phenethylamines, i.e. 25i-NBOMe, bk-2CB.
Synthetic Opiates	AH-7921, MT-45, Fentanyl
Other	Plant-based substances, i.e. Salvia divinorum, Kratom. Inhalants like Alkyl nitrate 'poppers' and nitrous oxide.

In the UK, these substances have been associated in recent years with an increasing number of deaths (Corkery et al. 2014; Ghodse et al. 2013; National Records of

Scotland 2015) with accompanying indication of NPS-related harm (Expert Panel 2014; Fraser 2014; National Assembly for Wales 2015; Stephenson and Richardson 2014). These findings are discussed in more detail in Chapter 2. More generally, the fact that these substances could until recently be sold openly in shops and online when marked ‘not for human consumption’ raised concern about how easily these substances are available and the communicative effects of being presented as legally for sale.

However, relatively little is understood about the NPS market. Uncertainties include the extent to how NPS markets relate to illicit drugs markets, the range and size of NPS user groups, how legal status affects the appeal of NPS, how different controlled NPS disseminate after prohibition and the extent to which NPS have become accommodated into markets in control substances more generally (Fraser 2014; Stephenson and Richardson 2014). These interrelationships are further complicated by evidence indicating that NPS may be available online through ‘hidden’ web vendors (like the infamous Silk Road) (Dolliver and Kuhns 2016) while also being sold in traditional drug markets as adulterants of controlled drugs (Power 2014) and becoming part of traditional drug markets (Moore et al 2013).

The primary groups of substances that have come to academic and legislative attention have been stimulants, often synthetic cathinones, synthetic cannabinoid receptor agonists (SCRAs) designed to mimic the effects of cannabis, various sedatives mostly from the benzodiazepine family of compounds, substances with disassociative properties that attempt to mimic the effects of ketamine, synthetic psychedelics, and other generic substances like nitrous oxide and salvia, which do not easily fit into a category of drugs but have, until recently, remained uncontrolled. The number of distinct NPS appearing in Europe has increased annually since 2008 (EMCDDA 2015a), and at present there are more NPS substances being monitored by the UN than are controlled by it (UNODC, 2015).

The above overview, which draws heavily on the frames adopted within policy rhetoric, offers some context for the research question: how has the NPS problem been represented, what are its limits and are there ways to approach it differently? The next section provides a detailed rationale for this research question by exploring the theoretical underpinning of this approach and the meaning and implications of the concern with ‘problematization’.

### **NPS, Problematization and the Production of ‘Policy Problems’**

The ‘problem’ of drugs is a particularly acute example of contemporary policy failure. Despite large investment in prosecuting the ‘war on drugs’ globally through law enforcement, multiple commentators have drawn attention to the myriad unintended consequences of this policy for global stability, crime, corruption, violence and the health of drug users (e.g. Chatwin 2016a; Degenhardt and Hall 2012; Global Commission on Drug Policy 2011; Godlee and Hurley 2016; Pryce 2012; Taylor et al. 2016; UKDPC 2012). What is also remarkable – and indicated by the policy response to NPS – is that prohibition has remained the central strategy employed for responding to this problem, despite its shortcomings (with some notable exceptions see Greenwald 2009; Rosmarin and Eastwood 2012).

In seeking to understand this inertia, it is valuable to examine *how* ‘drug problems’ come to be defined as such, and what is at work in these practices of definition. In doing this, Bacchi’s (2009) theoretical approach to questioning ‘what the problem is represented to be’ is valuable here. As Bacchi and Goodwin write:

WPR [what is the problem represented to be?] is an analytic strategy that puts in question the common view that the role of governments is to solve problems that sit outside them, waiting to be “addressed”. Rather, it considers how governmental practices, understood broadly, produce “problems” as particular kinds of problems. Alongside an through the production of “problems”, governmental practice contribute to the production of “subjects”. “objects”, and “place”. The WPR approach heralds the importance of directing critical attention to this *productive* activity. What exactly is produced? How is it produced? And, with what effects? (2016, pp. 14)

In Bacchi’s analysis, analysing a ‘problem’ is concerned *less* with discovering ‘what works’ or obtaining and disseminating privileged, objective knowledge and *more* with defining the ways in which certain situations are represented as problems, which assumptions govern this and the processes whereby knowledge and authority are constructed (Bacchi 2012). This approach has been productively deployed in research concerned with the policy representation of alcohol and drugs ‘problems’ (Bacchi 2015; Dwyer and Moore 2013; Lancaster et al. 2014, 2015; Lancaster and Ritter 2014).

This approach is underpinned by a number of Foucauldian insights. Foucault's critique has emphasised that contemporary governance takes place through the production of authoritative knowledge (Foucault 1980). Truth is understood here not as a property of reality but rather something that is *made*, while power, in turn, comes to be understood not solely as a repressive force but something with the power to construct objects and subjects (Foucault 1977). Knowledge, and therefore power, operate not on basis of making direct observations of reality, but through social and cultural practices which defines the conditions of what can be articulated as 'true'. Analysis may therefore productively turn to the chains of referents, knowledge practices and expertise that employed in this process have emerged in socially and historically contingent circumstances, which require analysis in terms not of their premises, but in terms of how these truths are composed (Foucault 1996). In turn, this directs our attention to the terms through which problems are determined as the appropriate site of critical scrutiny (Foucault 1997). This can be usefully approached via the concept of 'problematization'. For Foucault, problematization:

...does not mean the representation of a pre-existent object nor the creation through discourse of an object that did not exist. It is the ensemble of discursive and non-discursive practices that make something enter into the play of true and false and constitute it as an object of thought (whether in the form of moral reflection, scientific knowledge, political analysis, etc.). (Rabinow and Rose 2003, pp. 12–13)

This approach to knowledge and truth is highly relevant to the study of 'drugs problems'. While appearing to denote a clear referent *in a stable, objective reality*, the term 'drug' is better understood as mobilizing a series of *claims* about these substances and their effects. In turn, these claims presented as observations about the nature of distinctions that exist objectively and prior to the problematization of these substances. As Derrida writes:

...there are no drugs "in nature"...As with drug addiction, the concept of drugs supposes an instituted and an institutional definition: a history is required, and a culture, conventions, evaluations, norms, an entire network of intertwined discourses, a rhetoric...the concept of drugs is a non-scientific concept...it is

instituted on the basis of moral or political evaluations... (Derrida 1995, pp. 229)

While ‘drug problems’ are seen as self-evident features of global society, Foucauldian approaches concerned with understanding the historical development of this ‘problem’ have proved highly productive in critiquing the nature of and conditions under which those problems have emerged (see also Bull 2013). As the next two sections argue, this position can offer critical insights into the ways in which NPS have been represented and how these representations may be contested.

Drug policy itself may also increase the harms associated with illicit drugs. Negative consequences may include violence in producer countries, the sale of unsafe and poorly controlled substances and harm towards drug users in the form of arrests and legal sanctions (e.g. Global Commission on Drug Policy 2011; Molzahn et al. 2012; Pryce 2012; MacCoun and Reuter 2001; Reuter 2009). Repressive drug policies also may lead to the spread of infectious blood-borne diseases like HIV through needle sharing and involve racist and discriminatory policing, as well as geographical displacement as a result of drug eradication policies in producer countries (Csete et al. 2016).

### **Precarious Subjects**

This section considers the *subjects* of drug policy: those that policy seeks to govern, and the terms in which this is done. An engagement with the problematization of drugs is necessary partly because of the historical sense in which drug policy has exposed drug users to harm while enacting coercive restrictions over bodily autonomy. Genealogical accounts of the origin of drug policy have demonstrated how the term ‘drugs’ became associated with dangers around self-intoxication, colonial interests and a perception that certain segments of the population required management, while simultaneously being ‘decoupled’ from intoxicants like alcohol and tobacco which were more socially normalized (Seddon 2016). In this sense, the drug concept was “...developed to address perceived problems or threats posed by certain deviant social groups.” (Seddon 2016, pp.411).

Policy development here has often been associated with historically situated social and racial anxieties. Control of ‘drugs’ is often observed as emerging alongside concerns with specific groups, whether in relation to immigrant men in the UK in 1916 (Kohn

2013), or African-American men in the U.S. during the prohibition of cocaine and the subsequent demonization of crack cocaine users in the American ghetto (Reinarman and Levine 1997). In the UK, recent policy has circulated around dangers of specific drug users to the majority, first in relation to threat of drugs-related crime from addicted criminals (Hunt and Stevens 2004) and subsequently to the social and fiscal damage caused by welfare dependent drug users (Watson 2013).

The ‘Tough Choices’ policy programme that underpinned the UK Drugs Act 2005 is an example of the former. Here, policy was predicated on the view that addicted drug users represented a large and remediable ‘problem’ in terms of the criminal offending they were responsible for, and that this ‘problem’ was amenable to interventions within the criminal justice system to reduce re-offending through drug treatment (Seddon, Williams, and Ralph, 2012). Policy here developed to sentence those who test positive for certain drugs to treatment as a – compulsory and enforced – alternative to custodial sentences (Seddon et al. 2012). In contemporary policy, however, the emphasis has instead been on the economic risks and liabilities constituted by welfare dependent drug users (HM Government 2010). Since 2010, the Conservative party have increasingly deployed another version of the drug using subject, who is now to be approached with a view to a ‘full recovery’ resulting in drug abstinence and re-integration into society (Duke 2013).

In each case, the scope for defining ‘drug problems’ and their management becomes a complex question which seeks to address multiple social goals – crime, as well as public spending cuts – within a framework that emphasizes certain forms of expertise and knowledge. Viewed like this, it becomes possible to see how *social conflicts* may be reduced to technical questions about the appropriate techniques for managing pre-defined ‘drug problems’ and adopting appropriate regulatory practices for doing so (Roumeliotis 2015). Read like this, the governance of drug problems has *political* implications in terms of who is permitted to define them and who is defined by them (Roumeliotis 2015). Excluding voices which exist outside of the definition of the problem limits the scope to develop other accounts of the objects, subjects and relationships in play. The way both the subjects and the objects are constructed ‘set the terms’ for engaging with drugs and their users, particularly in terms of who has the authority to define how certain drug ‘problems’ are defined.

Identifying how certain subjects are excluded from the capacity to speak, and under what terms it could be otherwise is also important given the political ramifications of how drug users are framed. Butler points out how different ‘frames’ within which risks are perceived – through which the precariousness of different subjects is emphasised – has implications for whether they are perceived as worth protecting and worthy of grief (Butler 2016). In an illustrative example, she analyses the U.S. response to 9/11 and its political constitution of American lives as precarious and highly grievable - i.e. constituted as both vulnerable and as constituting a loss if killed – through a framework that de-emphasised the precariousness of those subsequently subject to military violence (Butler 2006).

This account provides a particularly nimble account of what is at stake in the framing of drug problems. Emphasising the precariousness of the ‘general public’ may, in turn, create conditions in which others – particularly those who persevere in deviant consumption – are considered expendable and their precariousness de-emphasised, despite the risk of having their freedom revoked for various offences associated with these substances and their health endangered by a potentially unreliable drugs market. Furthermore, these frames may support situations in which the right for drug users to petition the state for the material support that would permit them to safely live lives *as* drug users is denied. In this sense, policy must be interrogated in terms of the extent to which it emphasises the need to care for drug users, or correspondingly the extent to which it enables policy that may increase their risk of harm.

### **Contestable Objects**

This is especially so, given that the legitimacy of this uneven distribution of risks is a consequence of a historically contingent problematization of drugs. Like drug users, ‘drugs’ are also constituted through expert discourses which define their effects and harms (Fraser and Moore 2011). As noted above, the production of ‘drugs’ involves the mobilization of a range of discourses and practice that determine the scope of appropriate knowledge about them. In most cases, controlling a substance as a ‘drug’ occurs through listing the substance in the schedules that accompany both the UN Conventions and national legislation (in the case of the UK, the Misuse of Drugs Act, 1971) They may also be defined as such by analogue legislation, as in the U.S., where substances with similar effects are also controlled, or through generic scheduling as seen in the case of the PSA 2016.



Herschinger has recently characterized the international drug control system as part of a broader drugs *dispositif* (2015). This Foucauldian term refers to the body of interconnected knowledge practices that constitute what can be said authoritatively about drugs. As she writes:

...the particular constellation of discourses, institutions, practices, and beliefs created by the *dispositif* produces the conditions of possibility in a field like drugs and, thereby, creates the capacity for governance. The ‘drugs *dispositif*’ renders specific spaces governable on the basis of specific notions of norms, primarily the differentiation between illicit and licit drug use. (2015: 187).

The concept of a *dispositif* is useful here, as it directs attention both the existence of a global drugs governance regime, but emphasises the ways in which this governance operates through the production and reproduction of knowledge claims that determine the scope for engaging with drugs.

The concept is usefully deployed by Herschinger to demonstrate the ways in which particular governance practices result in a specific account of the materiality of drugs. She describes the schedules thus:

The schedules are a strategy of using administrative and scientific knowledge to inscribe the meaning of drugs as dangerous into the material object in order to arrange the resources of states, pharmaceutical firms, and civil society representatives, as well as individual doctors and street workers. With the listing practices, the regime thus cuts deep into the fabric of societies, as the practice is not (merely) about eliminating the danger of drugs but also about extending the *dispositif*: governing, securitizing, and controlling the danger that is ‘drugs’ shapes the conditions not only of the regime and its actions but also of the drug *dispositif* as a whole. (Herschinger, 2015, pp.191)

As this description suggests, inscribing the molecular pattern of diverse substances into the schedule ‘fixes’ them as stable and dangerous objects within the broader field of

knowledge (Herschinger, 2015). ‘Fixing’ the substances in this way, in turn, can be understood as enveloping them within the discursive system that problematizes their consumption and makes them the subject of particular types of knowledge, while granting discursive authority to various government authorities, health professionals, corrective officers and law enforcement practitioners to define nature, causes and solutions to ‘drug problems’.

In developing a critique of the way in which ‘drug effects’ are represented, critical drug policy scholars have increasingly mobilized insights from Science and Technology Studies (STS) to think about the production of knowledge about drugs. (Fraser et al. 2014; e.g. Thomson and Moore 2014). The key dimension of this argument for our purposes is that the practices of science can be understood as cultural practices of knowledge production, which require critical analysis in terms of how the application of methodologies can shape and produce the reality it seeks to *represent* (Law 2004). In this account, the world can be understood as multiple, varied, and subject to multiple interpretations, within which scientific practices seek to use particular ‘inscription methods’ – tools for translating data into statements that can be made about reality – which stabilize certain aspects of reality by excluding others and simultaneously ‘washing away’ the traces of this often messy process (Latour and Woolgar 2013).

To illustrate this, consider the example of mephedrone, a synthetic stimulant which was not controlled the Misuse of Drugs Act 1971 (MoD Act 1971). Mephedrone briefly became relatively popular from late 2009 to mid-2011 (see chapter 2). The substance was banned, alongside other synthetic cathinones, on the 16<sup>th</sup> of April via an amendment to the MoD Act 1971, following an ACMD report recommend its control and consistent media reporting highlights deaths and harms amongst young people which were – sometimes falsely - attributed to these individuals’ consumption of mephedrone (ACMD, 2010; Alexandrescu, 2013). .The recommendation to control the substance also followed several resignations from the ACMD, some of which publicly protested the undue political pressure being put upon the council to recommend control and disputes over the quality of the data being used to argue for controlling the substance (Walker 2010; Hough 2010).

Here, we can see various ‘facts’ about mephedrone being established. Drawing on Law’s framework, rather than there being a certain, unassailable truth of mephedrone, it is also possible to regard the substance as multiple and varied, about which different claims can be made. Determining which ‘facts’ are necessary to make official statements about mephedrone, and which to identify as representative of the substance more generally involves determining the relevant scope of the enquiry – harm, pleasure, capacity to reduce anxiety, and so on – but also finding ways to empirically substantiate these ‘facts’.

If mephedrone is to be dangerous, for example, this involves both representing this danger in terms of certain *traces* made using ‘inscription methods’, with the effect of making some aspects of this reality more apparent while obscuring others. To say the substance has been associated with death, for example, may require both emphasising the presence of the substance alongside the outcome in question, while often simultaneously de-contextualising other aspects that add complexity to these links, including the context of use. In turn, while a certain combination of factors may have resulted in a fatal outcome, many of the mediations that differentiate this set of circumstances from other, less harmful accounts may be excised from the final representation within which it may be stated that ‘mephedrone is associated with fatal harms’ and, in turn, that ‘mephedrone is dangerous’. Around a series of such observations, a stable identity may be constituted in scientific and policy literature around ‘mephedrone’, wherein certain partial accounts of mephedrone come to represent the *thing itself* and preclude other readings.

The sense in which objects are constructed through partial readings is usefully described by Law’s (2004) concept of a ‘methods assemblage’, which describes the practices through which methodologies produce ‘presence’, ‘manifest absence’, and ‘silence’. Presence here refers to the attributes of an object that are made manifest in methods – here, mephedrone’s risk of death – alongside manifest absences, which are effectively the ‘known unknowns’ of the object, such as its long term effects. In addition, this methods assemblage is produced via ‘silences’ when other senses in which the object might be represented are kept absent from consideration and excluded in its final consideration.

Here, the point is not to argue for the constructed, and therefore false, nature of empirical practices and futility of developing knowledge about drugs. Rather, it is to draw our attention to the fact that objects may be subject to multiple interpretations and contestation, rather than decisive, final readings which make other interpretations irrelevant (Thompson and Moore 2014). The point is also to extend critical analysis to the ways in which certain knowledge practices may stabilize certain realities with negative consequences. A useful concept for thinking about the *practices* by which reality is ‘done’ – that is to say, made, rather than revealed – is Law’s concept of ‘collateral realities’ (Law 2013). Collateral realities are the realities that are constructed in the process of representation, wherein methods used to investigate realities – empirical enquiries – build partial accounts of them. In these partial accounts, certain aspects of the described realities may be stabilized and emphasized while others are, as above, silenced.

Attending to how realities – about NPS, their consumers and the effects of regulation – are done in practice, draws further attention to the *work* being done in the process of representation. Here, practices of constructing objects can be usefully analysed in terms of what STS scholar Laws (2013) would call the ‘collateral realities’ which they enact, i.e. the objects, subjects and interactions they make visible and those which they exclude in the process of representing reality. This concept provides a useful way to articulate the ways in which particular accounts of reality rely on constructing these realities in particular terms, which may shape how these are thought of in subtle and problematic ways. Returning to mephedrone, the practice of enacting the substance as dangerous and therefore requiring control mobilises a number of collateral realities. These include the ‘common sense’ assumption that the term ‘mephedrone’ designates a stable object that is consistent across all contexts and not mediated by how it is used in practice, while also accepting that identifying dangerousness here exhausts the terms in which it is relevant to comprehend the substance.

Again, examining the practical way in which reality is ‘done’ raises the possibility for other accounts of drug use to be considered. Particularly relevant here is the fact that drug consumption may be motivated by and be able to produce pleasure, a dimension of use that is consistently observed as both a central feature of drug use and a consistent subject of silence in policy (e.g. Hunt and Evans 2008; Moore 2008; Ritter 2014). As shall be argued, in addition to critically examining how NPS users are positioned and

constructed in the policy problem, it is necessary to consider the alternative ways NPS can be enacted, particularly in terms of how this relates to their subjective effects. As shall be argued, arguments about what should be *done* about NPS – and drugs more generally – cannot be separated from arguments about what these substances *are* and what they *do*. Here, it may be necessary to develop policy that can be more sensitive to the fact that drugs may be subject to numerous readings, rather than insisting on harm as a defining, inextricable and determinative feature of the substances currently regulated as drugs. Here, the drugs *dispositif* can be thought of as designating *how* and *by whom* drugs can be authoritatively known. In turn, this functions in part to exclude the voices of those who use drugs that may complicate and contest the accounts of these substances provided in policy and scientific rhetoric.

### **Conclusion**

This chapter has argued that the policy response to NPS is best explored through a critical engagement with how the problem of NPS has come to be defined and the implications of this definition. This is motivated by both the large potential scale of drug developments here, alongside the limited framework that the criminal law provides for thinking about these. Put another way, in a context of relatively widespread drug use, rapid technological developments in the drugs market, alongside the emergence of hundreds of new substances, is it not a useful time to consider *what* drug policy should be trying to achieve?

Criminal justice policies on drugs have consistently been associated with the aggravation of drug related harms, and do not appear to discernably have the capacity to manage it except by a process of, effectively, quarantining drugs with a myriad of negative consequences for people who use drugs. The thesis argues that the problematization of drug use that underpins policy excludes drug users from the scope of legitimate concern and disqualifies drug users from defining the terms of the state's engagement with them. This farming makes harms to drug users more likely, as increased risks to this group may be regarded as a reasonable cost of protecting non-drug users. These problems with how 'drugs problems' are defined means that policy analysis cannot be simply reduced to empirical questions about 'what works'. Rather, critique must also be attentive to how problems are themselves defined.

The need for new thinking about drugs policy is particularly appropriate at the current juncture of technological upheaval. The emergence of online drug message boards and

forums supplying information, peer support and guidance for drug consumption also facilitate the constitution of a public space in which drug users can assemble *as drug users*, and has permitted the circulation of counter-narratives about drug use which operate on distinct premises from the dominant discourses of policy (Boothroyd and Lewis 2016; Maddox et al. 2016; Walsh 2011). Technological innovation - namely the sophistication, global reach, speed and complexity of market interactions permitted by the internet - even further contribute to the decline of state sovereignty over drug markets, as evidenced by the advent of encrypted online markets which anonymously and private sell illicit drugs and deliver them through the postal system (Christin 2012; Hout and Bingham 2013a). The emergence of NPS increases the complexity of the market and potentially increases the potential for harm by supplying cheap, highly potent substances which may be more dangerous than other illicit substances, increase the scope for drugs to be adulterated, and allocates complex chemical production to what may be far from scientifically rigorous laboratory settings. A key question to unpick in this context is *what* we should be trying to achieve with drug policy (Seddon 2014).

## **Chapter 2: Literature Review**

### **Introduction**

This literature review provides the context for this enquiry and an overview of the emergence of NPS. Two principal arguments are developed in this chapter which underpin the research question and the subsequent data collection. The first emphasises the importance of engaging with NPS in terms of how it has been represented as a policy problem. Data is presented here on the emergence of NPS which demonstrates that the phenomenon is subject to *multiple* readings. The evidence base on NPS, on its own, does not suggest either a unitary or a readily resolvable set of circumstances in the contemporary drugs market. For this reason, critically examining the terms in which evidence is given meaning – rather than seeking to develop counter-factual evidence in relation to government policy assumptions – is necessary in terms of thinking about whether different approaches are possible. At the same time, the evidence here suggests an ongoing relevance for these questions, in the sense that NPS harms are not necessarily amenable to legal control. Secondly, it argues that there is scope to contribute to the literature on NPS through further qualitative engagement with those who have consumed NPS, precisely in terms of how the developments in the drug market have been engaged with by participants, how this has been affected – or unaffected - by regulation and the way in which participants construct the meaning of NPS. While these questions are not unasked in the literature (e.g. O’Brien et al. 2014) what this study offers is an account of NPS consumption that engages with multiple sites of consumption and contexts, while specifically engaging with how the accounts provided here can be productively thought about in terms of in relation to the broader policy context.

### **The Policy context of NPS**

#### *Defining NPS*

The term ‘New Psychoactive Substances’ - NPS - has been widely adopted to refer to these compounds. In these contexts, the word ‘novel’ has often been used interchangeably with ‘new’, with the former being in more common parlance at the start of the research process, hence being used in the title. The term ‘New Psychoactive Substances’ first appears in the EU Council Decision 2005/387/JHA which consolidated European level provisions for knowledge and information sharing about these substances, building on structures developed in 1997 in relation to what were then referred to as ‘new synthetic drugs’ (Chatwin 2016b). In academic and policy

terminology, it has superseded terms like ‘legal highs’ and ‘designer drugs’ to describe the consistent appearance of novel, synthetic and obscure products that evaded legislative control (Corazza, Demetrovics, et al. 2012). At present the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) defines ‘new psychoactive substances’ as:

...a new narcotic or psychotropic drug, in pure form or in preparation, that is not controlled by the United Nations drug conventions, but which may pose a public health threat comparable to that posed by substances listed in these conventions. (EMCDDA 2015a)

The United Nations Office of Drugs and Crime (UNODC), which provides research guidance and assistance in the implementation of the UN Drugs Conventions, has offered a very similar definition:

New psychoactive substances (NPS) are substances of abuse, either in a pure form or a preparation, that are not controlled by the 1961 Single Convention on Narcotic Drugs or the 1971 Convention on Psychotropic Substances, but which may pose a public health threat. In this context, the term “new” does not necessarily refer to new inventions but to substances that have recently become available. (UNODC 2013a)

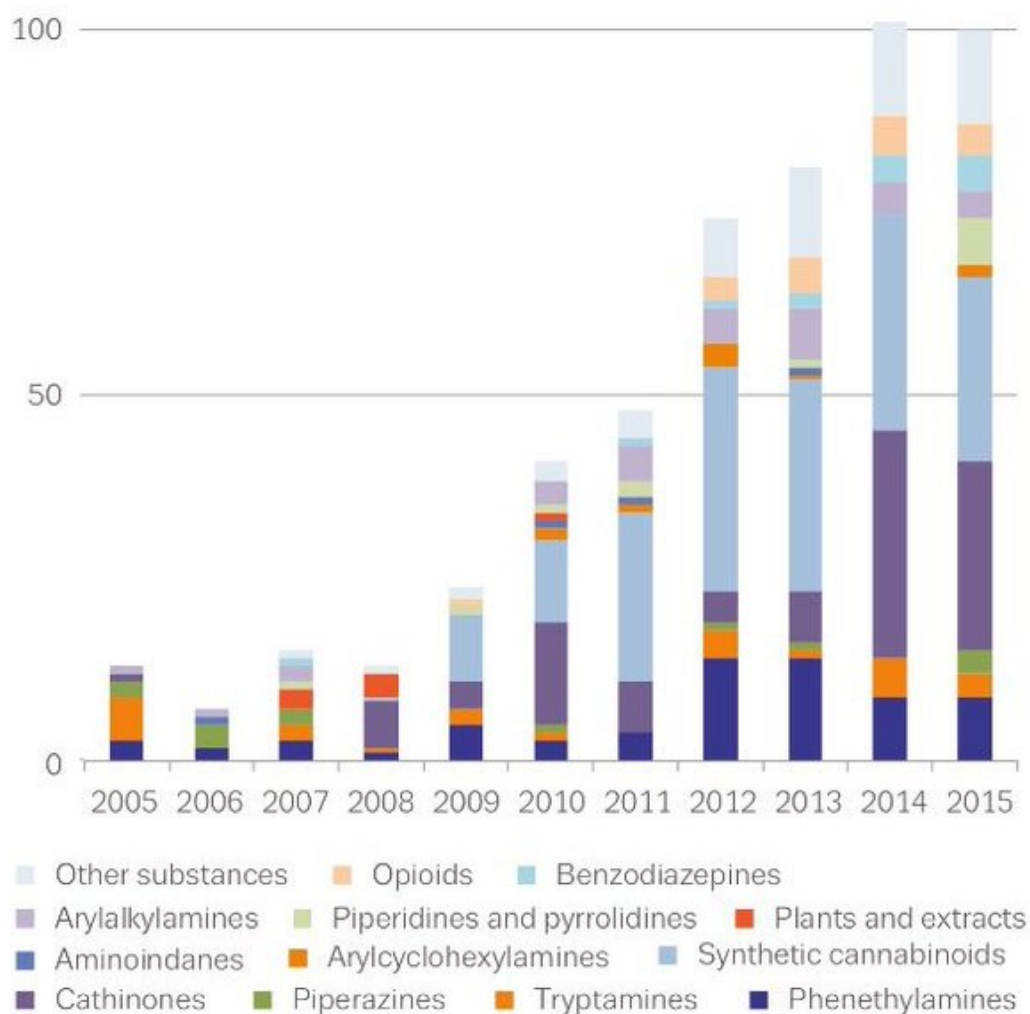
This definitional process can be thought of as enacting collateral realities. It organises a vast number of compounds, alongside the contexts of their emergence and use *within* the framework for drugs control. Here, it is important to recall that, as above, the term ‘drug’ does not refer to a clear natural or scientific distinction, but rather emerges from regime of governance. In this context, where a drug becomes so by being controlled as a drug, extending the remit of this definition to incorporate substances that are included *by virtue of their absence* in this control system is a considerable extension of political authority here. The boundaries are sufficiently blurry – ‘*may* cause a public health threat’ [my emphasis] – that it incorporates many substances that are not associated with considerable harm. While the UN qualifies this by stating the threat must be ‘comparable to substances listed in these conventions’, this does not clarify the situation very much, given the variable and distinct – as well as divergent - risks associated with, for instance, LSD as compared to heroin. In defining such a wide range of substances as



part of the singular phenomenon of NPS, moreover, it is possible that problems concerned with one substance can be read as increasing problems with *all such* substances define this way. This occurs when statements to the effect of ‘the harms of NPS are increasing’ are made. It may also imply that these harms have a common origin or aetiology, when this may not be the case.

Moreover, while these definitions provide a coherent framework for distinguishing NPS in an international context, matters become less clear when the term is deployed in the UK, as domestic drug control may regulate substances that are not recorded in UN Conventions. For instance, the ACMD’s definition of NPS – “substances not controlled by the UN Conventions or the Misuse of Drugs Act” - and the recent Expert Panel on NPS which defined NPS as psychoactive drugs outside the scope of UN Conventions (ACMD 2011; Expert Panel 2014) both point at different objects. The ACMD definition points to what have otherwise been called ‘legal highs’, i.e. substances that are unregulated due to their novel or obscure contents. While the former denotes a specific group of substances defined in relation to legal control, the latter definition groups substances with varying control mechanisms that are simply associated in terms of ‘novelty’ (though not necessary being new).

For the purposes of this thesis, the term NPS refers to the broad group of substances including mephedrone and GBL, that have come to public attention since 2009. Many of these substances have been described at points as ‘legal highs’. Ketamine, for these purposes, is not an NPS, nor is GHB. 2009 here is used as a cut-off as this was the year that introduced bans for both the first generation of SCRAs, BZP and GBL, and represents in this sense the beginning of legislative efforts to control unregulated but available substances. When the term ‘legal highs’ is used, this implies that the NPS in question are unregulated – in the sense that mephedrone was formerly a ‘legal high’ but is no longer. A further ambiguity here is the role of relatively novel psychedelics like 2CB, which is controlled by UN Conventions but is not a ‘traditional’ drug of the sort measured by the Crime Survey of England and Wales (CSEW). Where it is necessary to distinguish recent substances as distinct from more traditional ones, they will be referred to as ‘emerging drugs’.



**Figure 2.1:** NPS Notified to the EMCDDA Early Warning System for the first time, 2009-2015 (EMCCDA-Europol 2016c)

The distinction between the national and international levels is important in, for example, contextualising the claims of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). The EMCDDA operates a European wide Forensic Early Warning System (FEWS) which collects data about newly discovered NPS in Europe. The results of this aggregation have been consistently increasing estimates about the number of NPS available in ‘Europe’, although the substances in question may have only been encountered once in a single country, or already controlled in some national contexts. Research here indicates that the number of new substances identified in Europe has been increasing since the 2005-08 period (see Figure 2.1), with 101 new substances being identified in 2014 and 98 were notified for the first time 2015 (EMCDDA-Europol 2016). SCRA and synthetic cathinones – both of which are controlled generically in the UK, although SCRA definitions require consistent updating – comprised the majority of the substances identified in 2014 and 2015

(EMCDDA 2015a, ECMDDA-Europol 2016). This attention at the European level may not necessarily correspond with the actual problems that substances create for Member States on an individual basis, as many substances are transitory – if they appear at all - and for the most part, may not associated with serious harms (Chatwin 2016).

### *The UK Policy Response*

While the term ‘legal highs’ is used frequently, NPS exist in an ambiguous legal situation. During the often time-limited contexts in which certain NPS have been sold openly as ‘legal highs’ or ‘research chemicals’ and not controlled, they are often marked ‘not for human consumption’ (e.g. Schmidt 2011). While they are openly available for purchase, those retailing them may perceive themselves as unable to offer harm reduction advice or instructions about their consumption for fear of introducing a risk of liability for violated various trading regulations (see, for example, the case study in Expert Panel 2014).

As above, the UK policy response to NPS has almost entirely revolved around legislatively controlling NPS by scheduling substances that come to public or 'government attention as drugs, often alongside similar substances defined in generic terms. There has also been a consistent escalation in the legislative methods used to do so, shifting from standard practice of updating the Misuse of Drugs Act 1971 to accelerating the process for controlling drugs to introducing generic controls. In December 2009, GBL, BZP and a range of synthetic cannabinoids were simply added to the existing drugs schedule by the then Labour government following the recommendations of the ACMD. While the controversy associated with these events was not substantial, this would change with the emergence of mephedrone. Here, the ACMD's desire to offer a comprehensive review of the substance before making a recommendation for control, combined with the growing media and political pressure to ban the substance – which was associated with escalating numbers of sometimes falsely attributed deaths - led to several prominent resignations and political pressure to provide a recommendation for control (Sare 2011; Silverman 2012). Mephedrone and other synthetic cathinones were made Class B in April 2010.

The Conservative/Liberal Democrat Coalition that came to power in May 2010 introduced Temporary Class Drug Orders (TCDOs) via the Police Reform and Social Responsibility Act 2011. TCDOs permitted the Home Secretary to instantly introduce

criminal penalties for the production, distribution and supply of certain compounds, pending a full review of the substance by the ACMD and corresponding recommendations for permanent control. TCDOs, followed by full control under the MoD Act 1971, have been deployed consistently since their introduction (see Table 2.1). The scheduling of substances that have been defined as NPS has been varied. In some cases, substances have been directly added to the schedules of the MoD Act 1971 without first being subjected to a TCDO, often following a recommendation from the ACMD, as in the case of 4,4'-DMAR.

As noted in chapter 1, the Conservative government which came to power in November 2015 introduced generic restrictions on unscheduled substances possessing psychoactive effects via the Psychoactive Substances Act 2016 (PSA 2016). 'Generic' in this context refers to the fact that substances are banned through specific scheduling but rather in terms of their capacity to produce 'psychoactive effects'. The PSA came into force on May 28<sup>th</sup> 2016. There are no 'classes' of psychoactive substance, as there are in the MoD Act 1971. All offences connected with psychoactive substances – possessing in a custodial institution, possessing with intention to supply, production, importation and exportation, and supplying or offering to supply – are all subject to up to 12 months in jail and/or a fine on summary conviction, and between 2 and 7 years and/or a fine on indictment. (s.10). Simple possession is not an offence, unless with intent to supply or in a custodial institution. Importation, however, is an offence which would apply to those importing substances – by purchasing them online from another country - for personal use.

The Act also sought to prevent NPS being available from specialist retail outlets ('head shops'). In addition to banning sales, legal notices may be issued in relation to individuals in relation to specific activities – prohibition notices/order – or issued to those responsible for managing certain properties, i.e. premises notices/orders. Sections 12 to 33 provide powers to issue these notices and orders, alongside definitions and criminal penalties for breach. Prohibition *notices* are akin to warnings and may be issued by police to individuals in relation to certain NPS related activities specified in the notice. Prohibition orders, the violation of which is a criminal offence, may be ordered by courts. Premises notices and orders are a parallel enforcement tool that may be issued in relation to specific places where prohibited activities are believed to

take place. Provision is made within section 22(6) to attach access prohibitions to a premises for a period of up to a three months.

In the context of previous British policy, the PSA 2016 can be distinguished from previous pieces of legislation concerned with the disposal and management of drug-using offenders or addicts. In the last 20 years, British drug policy has focused principally on the management of problematic drug using populations. Under New Labour (1997-2010) policy emphasised the development of treatment referrals in the context of criminal justice, proceeding on the basis that requiring those committing high volumes of drug related crime to undertake treatment would put a downward pressure on criminal offending (Seddon et al. 2008, 2012).

More recently, the policy of the coalition and conservative government since have emphasised 'recovery' as a key goal for drug policy, conceptualised here as the cessation of drug use and reintegration with society and the labour market (Duke 2013). Suspending concern about the merits or evidence bases of these policy approaches, they emphasise drug using subjects characterised by the need for state interventions to provide treatment and interventions to orient towards more normative social goals. In both cases, the danger of drug users is conceptualised as relating to others who may be affected by their actions, like victims of crime (Hunt and Stevens 2004), or the broader fiscal burden placed on the welfare system by drug users in receipt of assistance (HM Government 2010). Conversely, NPS legislation appears primarily concerned with the process of classification and its effects, rather than providing the basis for more thorough state intervention with individual citizens, as illustrated by the fact that possession is not a criminal offence.

The broader context in the UK is one in which drug use is, as research suggests, far from a marginal activity amongst the population. In the 1990s, UK researchers began to document a process whereby sensible, recreational use of certain illicit drugs was undergoing a process of 'normalisation' (Measham et al. 1994; Parker et al 1999). In the *Illicit Leisure* study, they found that 60% of the 14-15 year old participants had been offered with drugs, with 36% of the sample using drugs in some capacity (Measham et al. 1994), with these rates increasing at subsequent follow ups and similar levels of exposure to drugs identified in comparative studies and government statistics (Parker et al. 2002). As further research accumulated and these concepts were developed,

‘normalization’ has been defined as comprising five features: increases in access to and availability of drugs, increases in drug trying, increases in use, increased cultural acceptance and social acceptability amongst non-users (Williams 2016).

While numerous follow up studies have been undertaken to test these claims, few have tested all of the claims of the normalization thesis and have not adopted experimental methods to do so (Snitzman and Taubman 2016). Amongst population surveys, drug experimentation levels have most frequently been studied, with over 60% of the included studies showing experimentation rates of above 40%. In six of the sixteen studies assessed, drug use was above 40% within their sample (Snitzman and Taubman 2016). However, rather than being understood as a binary concept – drugs as either normalised or not – normalisation can be better thought of as a conceptual tool for identifying the cultural processes whereby activities move in and out of the margins, and cannot therefore be considered a simple numerical question (Williams 2016; Parker 2005).

Other authors have argued that normalisation may be uneven and contested, in the sense that it varies widely across groups, places and substances (Shildrick 2002). Certain authors have also emphasised that drug use remains an uncommon and short-lived activity for young people, as well as the fact that establishing broader patterns of change in the last century is difficult given the lack of comparable data for earlier decades (Shiner, 2009, Shiner and Newburn, 1997). While these qualifications are important, their relevance here is to emphasise that normalization, again, should not be understood in binary terms. In this sense, while we can speak of the normalisation of certain forms of drug use amongst certain groups in the UK, it does not follow that we can speak about NPS as normalised by virtue of their being ‘drugs’. Indeed, the extent to which NPS can be considered ‘normalised’ is likely to vary considerably across substances and groups, as well as shift with accumulated experience amongst groups and individuals. In this context, identifying these differentiations between and amongst youth cultures with regard to drugs, as well as examining ‘normal’ recreational drug use amongst adults remain key points of focus for current and future normalisation research (Williams 2012; Askew 2016), as are the ways in which gender and ethnicity manifest themselves in the context of drug use (Measham et al 2011; Williams et al 2017).

As noted, while drug-use prevalence rates have fallen from the levels witnessed early in the first decade of the 21<sup>st</sup> century, drug use remains an activity pursued by a large minority. At present, prevalence statistics indicate that roughly one in five (18%) people between the ages of 16-24 reported consuming an illicit drug in the last year as did 8.4% of adults, of whom over a third of whom reported trying an illicit drug over their lifetime (Home Office 2016a). While this does not indicate that NPS consumption is a typical activity – as normalization research emphasises, only certain substances are normalised, and these may change – it does suggest that there is a substantial minority for whom – at least in general terms – drug use in *itself* is perceived as neither abnormal or necessarily deviant.

Simultaneously, the scope for policy responses primarily focusing on law enforcement is limited. Comparative research has indicated a limited relationship between policing and drug consumption (Home Office 2014b). Current government policies concerning drug treatment – and the emphasis therein on pay-by-results commissioning and an emphasis on abstinence based ‘recovery’ as preferable to methadone maintenance have been associated with a tripling of the number of drug-related deaths in the UK in the last 5 years (ACMD 2016; Middleton et al. 2016). Policing strategies have emphasised the diversion of those caught in possession of cannabis (Warburton et al. 2005) – the most popular drug in the UK – although evidence has suggested that the enforcement of these regulations has been racially biased towards non-white people (Release 2012). As noted, while PSA 2016 does not criminalise the act of possession, the use of custodial sentences for others involved in the NPS market may have unintended and somewhat perverse consequences given the extension SCRA use and distribution documented in these contexts (Ralphs et al. 2016).

**Table 2.1:** Legislative Control of NPS in the UK, 2009-2016

<i>Substance(s)</i>	<i>Date</i>	<i>Form of Control</i>	<i>Derivatives</i>
Synthetic Cannabinoids Receptor Agonists (SCRA)	2009	Various SCRAs added to Misuse of Drugs Act, Class B. The definition provided here was updated in 2013, and again in 2015.	In 2011-2015, FEWS identified 14 distinct synthetic cannabinoid products. The largest group of NPS.
GBL and BZP	2009	Made Class C in 2009. GBL is legal to possess if 'for a legitimate use'.	GBL produces GHB, controlled in 2003, when consumed.
Cathinones (including mephedrone, MDPV, methoxyline, naphyrone)	2010	Class B in 2010	Naphyrone was made Class B a month after the others, as it escaped the generic ban.
Phenazepam	2011	Subject to an import ban in 2011, made Class C in 2012.	There are numerous alternative NPS benzodiazepines.
2 -DPMP	2012	Class B in 2012	
Methoxetamine (alongside other non-	2012	Subject to TCDO in 2012. Made Class B	Perceived as similar to ketamine. Derivatives



controlled arylcyclohexylamines)		in 2013.	include methoxphenidate and diphenidate.
NBOMEe compounds (all substances)	2013	Subject to TCDO in 2013, made Class A in 2014.	
5-APB, 6-APB, 5-IT and 6-IT (and related benzofurans)	2013	TDCO in 2013. Class B in 2014.	
LSZ, AL-LAD, ETH-LAD, PRO-LAD (and other synthetic tryptamines)	2015	Class A in January 2015	Banned during update to the generic scheduling of tryptamines
AH-7901	2015	Class A January 2015	Opiate
Methiopropamine (MPA)	2015	TDCO and Class B in November 2015	
Methylphenidate derivatives (including ethylphenidate)	2015	Five derivatives subject to a TCDO in March with two added May 2015. TCDO extended by a year in July 2016.	
Nitrous Oxide, salvia, etizolam.	2016	Controlled by PSA 2016.	

In comprehending the persistence of policy in the context of these shortcomings, Garland's (2000) account of crime control in neoliberal societies offers some useful insights. In this account, societies are understood to adapt to the inevitability of high crime and low social cohesion through adaptive and non-adaptive responses (Garland 2000). Adaptive responses include those concerned with 'defining down deviance' and seeking to manage policy expectations, as is apparent for example in the decision to forego a simple possession offence connected to psychoactive substances. Conversely, the non-adaptive responses comprise 'denial' and 'acting out'. The U.S. governments perseverance in maintaining a 'war on drugs' is described by Garland as a vast exercise in *denial* – both in terms of Federal government's capacity to successfully reduce drug use and the disproportionate effect of drug policies on minority groups – that could be maintained largely due to the powerlessness of the affected groups and the political expediency of doing so (Garland 2001). 'Acting out', in turn, involves governments publicly disavowing their relative powerlessness in the face of persistently high crime levels, through recourse to symbolic gestures of sovereign power. In a description that may sound familiar to drug policy scholars, Garland writes:

For political actors, faced with the immediate pressures of public outrages, media criticism and electoral challenges over the subject of crime...the essential and abiding attractiveness of the 'sovereign' response to crime (and above all of retaliatory laws that create stronger penal sanctions or police powers) is that it can be represented as an immediate, authoritative intervention. Such action gives the impression that *something is being done* – here, now, swiftly and decisively. (Garland 2001, pp. 134–5)

Garland's arguments have been applied to drug policy, elsewhere, regarding the use of diversionary policing tactics as an example of 'defining deviance down' in the face of the limited capacity of the state to control drug use (Shiner 2013). What is useful in this approach is clarifying that, despite the high symbolic stakes invested in the PSA and drug policy more generally, it may be better understood as an attempt to *cope* with the co-existence of widespread drug use, limited social control, and the political necessities of evidencing authority rather than either a broad ideological commitment to drug control or belief that it will succeed. In this context, I would argue that engaging with the symbolic terms in which NPS have emerged as a problem may be more fruitful than drawing attention to its necessary – and potentially expected – failures.

### *Critiques of the Psychoactive Substances Act 2016*

In this context, it's worth considering the critiques of the Act that have so far been developed. These critiques have often emphasised the poor drafting of the Bill. As noted in the first chapter, the Act controls all 'psychoactive' substances, wherein psychoactive is defined as having a psychoactive effect: "...if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state". Here, critics of the Act have argued that by extending the scope of control extremely broadly, including potentially harmless substances, omitting harm assessments and with a loose definition of 'psychoactive', the provisions will be difficult to enforce (Stevens et al. 2015).

However, while they and other critics are correct to point out that operationalizing the concept of psychoactivity in practice may be difficult – psychoactivity cannot be equivocally proven other than through subjective experience, given the myriad routes through which psychoactive effects are generated (Pardo and Reuter 2016; Stevens et al. 2015) – most commentators on this point do not appear to dispute the importance of a framework for controlling these substances. For instances, Stevens et al (2015) indicate that they favour a regime akin to the New Zealand response, which also operates through generic controls and, in practice, has effectively amounted to blanket prohibition – with penalties for those in possession of NPS - despite its radical intentions of allowing NPS to be assessed by a regulatory authority (Wilkins and Rychert 2017).

Concern was also been expressed by the ACMD during the drafting of the Act, who noted that the use of the term 'psychoactive' does not distinguish between harmful and non-harmful substances and is poorly defined (ACMD 2015b). In their initial intervention, they suggested that the word 'novel' be maintained to narrow the scope of the legislation ACMD (ACMD 2015a), and would subsequently recommend that the definition of a 'psychoactive substances' be extended to include the sentence:

...as measured by the production of a pharmacological response on the central nervous system or which produces a response in in vitro tests qualitatively identical to substances controlled under the Misuse of Drugs Act 1971...  
(ACMD 2015b)

Critics have also noted that detaching penalties from harm raises normative issues in sentencing, as well as potentially bringing substances under control which pose little risk of harm (Reuter and Pardo 2017; Stevens et al. 2015). As Uchtenhagen argues, (2017), given the wide differences in harm profiles amongst licit and illicit substances, foregoing the process of assessing these harms neglects the possibility of developing less stringent control regimes, while neglecting the possibility that these substances could also offer medicinal benefits. However, while harm assessments may offer some limit to the number of NPS brought under control, ‘expert’ guidance is often based on minimal evidence and reflects the precautionary principle of controlling substances which may cause harm even if the risk is not certain (Krajewski 2016). As Stevens and Measham (2014) point out, this iteration of the precautionary principle is, however, deaf towards the increased risks that may follow control.

What is less clear is whether retaining an emphasis on ACMD recommendations as a tool for informing drug policy offers a clear alternative. Here, it’s worth emphasising that ACMD recommendations for lowering drug related penalties have been largely rejected by the government. including the re-scheduling MDMA from Class A to Class B, maintaining cannabis’ Class C status and not controlling khat, while numerous recommendations for increased control have been accepted (Stevens and Measham 2014). There is, in general, extremely limited optimism amongst commentators that the generic approach is likely to substantially reduce the harms of the drug market and may simply drive consumers back to traditional drugs, while leaving problems of supply-side intertwinement between NPS and illicit drugs unresolved (Reuter and Pardo 2017). Niches that have become established around NPS that are cheaper, more powerful and more accessible than controlled drugs may well remain given the limits of enforcement policy here.

These critiques are wide-ranging and valuable. However, the limitations of critiques concerned with the scope of the Bill and the control of non-harmful substances is simply that such objections are very open ended and are not clearly limited to the Psychoactive Substances Act. There are many reasonable disputes about the dangerousness of illicit drugs, which are complicated by the difficulty of appropriately conceptualising how policy impacts the dangerousness of drug consumption (Nutt et al. 2007; Rolles and Measham 2011). The classifications of drugs and the process by which these classifications are arrived at has consistently been subject to critique (House of

Commons Science and Technology Committee 2006; Police Foundation 2000; RSA 2007) and addressing these limitations may require a much broader engagement with the process of drugs control that goes beyond a focus on NPS.

Another limitation of this form of engagement is that the solutions proposed in these cases – the New Zealand system and/or a more narrow classification of NPS – are not likely to massively change policy outcomes. In the New Zealand case, this policy has effectively amounted to a different version of generic prohibition given the fact that no products have been licensed or are under consideration, and the restriction on the use of animal testing may have made the legislation largely unworkable within its current framework, save for potentially in the case of substances that have already been subject to research, like failed pharmaceuticals (Wilkins and Rychert 2017). While narrowing the definition of the PSA 2016 would exclude certain substances – like nitrous oxide, potentially – it is also far from clear that this would not simply result in the subsequent control of these substances by legislative authorities.

Other critiques have aimed at the broader implications of the operationalization of ‘psychoactive’ as category for regulating these substances. In an Australian context, a similar definition of the term ‘psychoactive’ has been adopted in legislation similar to the PSA – but provides an additional optional definition of NPS referring to their capacity to form dependence – that has been subject to critical attention (Barratt, Seear, et al. 2016). Here, the production of the term of ‘psychoactive’ – where it has come from and its performative effects – are subject to critical scrutiny. A key claim here is that this approach identifies ‘effects’ solely in terms of the materiality of the ‘drugs themselves’ and identifies these effects as sufficient grounds for control, with potentially negative consequences for those affected by increased legal interferences and the potential for harms associated with certain substances in this group leading to increased sanctions across the whole. This thesis can be understood as sharing ground with this approach, and seeks to access similar theoretical territory in developing an account of NPS policy in the UK has been constructed as a ‘problem’, how this has been deployed and how NPS might be approached otherwise.

Finally, other commentators have reacted to Britain’s commitment to undertake generic control as a refusal to concede ground on the basic necessity for drug policy reform, which is viewed as based on underlying evidential fallacies and driven by an emphasis

on the most dangerous aspects of ‘drug use’ which come to stand in for all substance use (Taylor et al. 2016). For these critics, the drug policy “apartheid”, which distinguishes certain substances as drugs and as worthy of punishment and others as privileged is *the* central problem with drug policy. This critique operates at a different level from those discussed above in fundamentally questioning the legitimacy of drug policy and the emphasising the harms associated with this policy approach alleged. However, this thesis disputes Taylor’s subsequent claim that NPS policy operates primarily through a focus on risk-bearing, dangerous outsiders (Taylor 2016). As shall be discussed, a closer look at the problematization of NPS indicates differentiated and conditional concern for various NPS consumers, and emphasising restricting harm (for some users) through responsiblization rather than criminalization. Here, this approach is valuable in terms of its direct engagement with the terms and structures of drug policy as being themselves problematic, and requiring engagement on a political level.

*The Psychoactive Substances Act 2016 in International Context.*

The policies adopted by the UK, including both accelerating controls and subsequently generic controls, are consistent with other European trends (see Table 2.2). Generic controls on NPS were adopted by Austria in 2011, Romania in 2011, Ireland in 2010 and in Poland through a medical products directive that generically defined psychoactive substances in 2010 (EMCDDA 2015b). Generic controls on certain substance groups like cathinones or synthetic cannabinoids are common, with examples of this approach in Norway, Cyprus, Lithuania, Norway and France (EMCDDA 2015b). The outcomes of these generic controls are difficult to evaluate, given their recent origin and lack of available data. However, it is clear that harmful consumption is not eliminated from the market by these methods.

Ireland, for instance, has experienced ambiguous outcomes. Here, research has indicated mixed outcomes, with some indication of decreased use amongst high-risk youth, without a parallel increase in harm produced through displacing the market onto other substances (Smyth et al. 2015). However, the harmful, dependent use of synthetic cannabinoids has been observed (Van Hout and Hearne 2016), and recent research has identified HIV infections amongst people who inject drugs associated with the injection of synthetic cathinones (Giese et al. 2015). Ireland was also recorded as having higher last year use of NPS amongst 15-24 year olds in 2014 than was recorded in 2011 (Gallup Organization 2011; TNS, Political and Social 2014). A recent review of expert

opinion expressed the need for a more comprehensive treatment, prevention and educational strategy to deal with ongoing NPS related harms, which are perceived to be concentrated amongst diverse user groups (Van Hout 2016).

<b>Table 2.2: Selected Examples of National NPS policy response</b> (Sources consulted: EMCDDA 2015b)	
<b>Rapid Temporary Controls</b>	Here, countries have introduced or used pre-existing measures for the rapid implementation of limited time bans, usually lasting a year. Examples of recent adoption include the UK (2011), Denmark (2008), Hungary (2012) and Singapore (2012), while pre-existing mechanisms have been used in, for example, the United States to certain NPS.
<b>Generic Controls on Specific Categories</b>	Here, large numbers of substances may be restricted as groups rather than individually, usually defined in terms of having similar molecular makeup. In the UK, prior to the PSA, there were generic controls on cathinones, SCRAAs (though the definition is frequently updated) and synthetic tryptamines, amongst others. Examples of this approach can also be identified in Cyprus, Italy, Luxembourg, Norway, France and Lithuania.
<b>Analogue Controls</b>	Both the United States and Canada control NPS through analogue controls. This means that substances may come under the control of controlled substances legislation if is a derivative or synthetic preparation of a specific controlled substance. In the U.S. this similarity operates on a substance by substance basis and is defined in terms of both the structure of the substance and its effects, meaning that Courts have to decide whether the law applies.
<b>Specific NPS Legislation</b>	In, for example, Poland, Romania, Australia, New Zealand, Austria, the UK and Ireland, specific legislation has been introduced to control substances defined in terms of having ‘psychoactive effects’. These vary in practice: in Romania a

	specific permit is required to sell a product likely to produce psychoactive effects that mimic controlled drugs, while in the UK and Ireland have created various offences concerning with the distribution of these substances.
<b>Consumer Safety Regulations</b>	Consumer safety regulations have been used to restrict the sale of NPS in numerous contexts, such as in 2010 when 1200 shops selling NPS were closed in Poland by the State Sanitary Inspectorate and police following modifications of the former groups' powers. In the UK, trading standards have been used to, for example, conduct test purchases using 16 year olds to invoke offences under other the Intoxicating Substances (Supply) Act 1985.*
<b>Miscellaneous</b>	In 2011, Sweden introduced rules to confiscate and destroy seized psychoactive substances, while taking no further action. In Finland and Poland, mephedrone was controlled as a medicine and thus subject to similar restrictions before the substance was controlled at a legislative level.

\*This is reported in the Home Office guidance to local authorities for engaging with 'head shops' using existing trading standards and customer protection legislation (Home Office 2015a)

International bodies have also responded to NPS. The UNODC, which defines NPS as substances unregulated by UN Convention but posing a public health threat, had identified 644 new substances as of December 2015 – the latest date for which these figures are available - in over 102 countries and territories (UNODC 2016b). However, this has yet to result in an update to scheduling procedures. So far, 12 NPS have been subject to international control via decisions at annual meetings of the Commission on Narcotic Drugs. AH-7921, 25B, 25c, 25I- NBOMes, MPDV, Methoylone, AM-2201, BZP and mephedrone were scheduled in March 2015 (UNODC 2015) and MT-45 and acetylfentanyl added in March 2016 (UNODC 2016c).

The EU also has competence in this area alongside broader convergence of European drug policies, despite the divergence between European drug control policies at a



national level (Chatwin 2003). EU Council Decision 2005/387/JHA makes provision for the risk assessment and European level control of specific NPS, which must be adopted by Member States within 12 months. Since the control of BZP in 2008, 14 additional substances – including mephedrone, MDPV and 25I-NBOMe - have been controlled, of which 12 were controlled in the last three years (Chatwin 2016b, EMCDDA 2016b). In 2016, new proposals have been put forward – following a stalled process in 2013 – to introduce a faster process for controlling these substances via a rapid response that assigned substances to high, medium and low tiers of risks with corresponding legal provisions regulating their availability (Chatwin 2016b). The overwhelming emphasis of European control in this area has been increasing the *speed* of control, with limited discussion of the possibility of alternative policy responses (Chatwin 2016b), in a sense that parallels the development of policy in the UK.

The most radical departure – in theory at least - from traditional drug policy responses occurred in New Zealand, which via the Psychoactive Substances Act 2013 initiated provisions for the licensing of ‘low risk’ NPS alongside the development of a process for determining which substances fit this description, after which they may be available for sale in restricted circumstances. By controlling all substances that were not subject to such a license, the Act dramatically reduced the level of NPS outlets from 3-4000 to only 146 speciality stores (Wilkins 2014a). However, the initial ‘interim licenses’ that had been granted to 46 substances were revoked in 2014, slightly over a year later, due to concern about the negative effects of these substances (Wilkins 2014b). Following a ban on animal testing as a method for assessing the safety of NPS for the purposes of licensing (Rychert and Wilkins 2015), it may now be difficult to implement the testing protocols in developed for NPS in 2014 (Wilkins and Rychert 2017). This, combined with the fact that no substances have been licensed as ‘low risk’ or are currently under consideration, policy here has effectively amounted to a generic ban, despite the more radical intentions of policy (Wilkins and Rychert 2016). On this basis, the NZ PSA 2016 has been characterised as an extension of prohibition by another name, as opposed to a more systematic engagement with the possibilities for reforming drug policy (Taylor et al. 2016).

### *Summary*

In light of these findings, it is argued that the UK policy response to NPS must be understood as operating with limited scope to address NPS related problems, given the

context of drug normalisation and the limited scope for the state to influence drug use. In this context, it may be less important to point out the shortcomings of the policy in terms of its efficacy but rather to engage with NPS in terms of how they have been represented. While certain critics of the PSA have tended to emphasise the consequences of abandoning the assessment of substances and the use of broad definitions, there remains limited scope to develop this critique into a broader agenda for rethinking NPS and drug regulation. Here, this thesis will contribute to the literature by demonstrating the limits of the *problem* of NPS, and the scope for thinking about these problems differently.

This is particularly relevant given the fact that generic controls, while not yet the *norm*, are observed in numerous contexts and may come to characterise the collective European response to NPS. What is particularly notable about the New Zealand example is that, despite the intentions of developing a different approach, developing a licensed, low-risk market has been, at least so far, impossible to sustainably achieve in practice. In this context, an engagement with the terms in which NPS have been represented as a problem is useful precisely because it seeks to unpick the processes by which these responses may come to be regarded as inevitable, and develop analysis in directions that are made difficult by certain ways of framing the dangers of NPS.

## **Research on the Consumption of NPS**

### *NPS Prevalence*

Studies exploring the prevalence of NPS amongst general or specific populations have adopted different approaches to defining these substances. In some cases, this research has employed a wide definition: the 2011 Eurobarometer survey conducted phone interviews with young people between 15 and 24. Of the sample population in the UK, 8% reported having used a substance ‘designed to mimic the effects of illicit drugs’, compared to the 5% European average (Gallup Organization 2011). In 2014, a similar survey found this number had increased to 10%, although only 2% reported using such substances in the last 30 days and 4% in the last month. In this context, the European average was 8%, with 1% use in last 30 days and 3% in the last year, placing Britain again above European averages (TNS, Political and Social 2014). However, the lack of clarification available about these figures – the legal status of the substances consumed, the nature of consumption and its association with harms, or the reasons for using these

substances – makes it difficult to infer much from these findings other than the consistency with which these substances have been detected across Europe and Britain’s relatively higher prevalence.

Other examples of NPS prevalence studies in the UK included a 2010 self-selecting online study aimed at university students, with 446 participants. One-third (31.40%) of these participants had consumed substances marketed as ‘legal highs’, which in 41.4% cases referred to salvia and in 20% referred to mephedrone (Corazza et al. 2014). In 2012, a voluntary and non-random online survey of 2, 181 participants, primarily students, found that 7% reported lifetime use of new psychoactive substances and 4% reported using them in the last twelve months (Bennett and Holloway 2014). In the first instance, this is consistent with the broader trends concerning mephedrone at that time, while in the latter the term NPS refers solely to GHB, mephedrone, ‘spice’ and GBL – understandably given the time frame – and thus offers limited perspective on the more general market.

The CSEW has measured the consumption of NPS, in terms of both the general category and specific substances. These findings offer an ambiguous account of NPS popularity, suggesting the brief popularity and subsequently declining use of mephedrone, from a peak in 2010/11 alongside minimal use of other substances (see Table 2.3). To contextualise these figures, last year use of ‘any Class A’ drug is recorded amongst 3.2% of the adult population, with MDMA recorded as 1.7% in the same group. The CSEW began recording NPS as a generic category in their 2014/15 survey. In 2015, 2.6% of the participants aged 16-24 reported use of NPS, half of which was recorded as ‘smoking blends’. 0.7% of the 16-66 population had consumed these substances, marking little change from the prior year (Home Office 2016a). Measuring NPS in general, as the CSEW does now, is fraught with uncertainty given the broad distinctions between these substances and the harms associated with their use. While the CSEW distinguishes between ‘smoking blends’ and other generic terms for NPS like ‘pills and powder’ or ‘liquid substances’, these have the capacity to increase responses to the survey but do not provide clarity regarding the situation nor allow detailed monitoring of policy effects.

**Table 2.3:** Last year use of selected NPS in the CSEW, where data available, 2009-16 (Source, Crime Survey of England and Wales)

	09/10	10/11	11/12	12/13	13/14	14/15	15/16
Mephedrone 16-24							
Last year		4.4	3.3	1.6	1.9	1.9	0.9
16-59							
Last year		1.4	1.1	0.5	0.6	0.5	0.3
GBL 16-24							
Last year		0.1					
16-59							
Last year	0.1	0.0	0.1				
SCRAs 16-24							
Last year		0.4					
16-59							
Last year	0.4	0.2	0.1				
BZP 16-24							
Last year		0.2					
16-59							
Last year	0.5	0.0	0.1				
Salvia 16-24							
Last year				1.1	1.8		
16-59							
Last year				0.3	0.5		
Nitrous Oxide 16-24				6.1	7.6		
Last year							
16-59				2.0	2.3		
Last year							
Amyl nitrate 16-24							
Last year	3.2	2.4	1.7	1.2	1.5	1.4	1.2
16-59							
Last year	1.1	0.9	0.9	0.8	0.8	0.7	0.6
‘New Psychoactive Substances’							

*** 16-24 Last year						2.8	2.6
16-59 Last year						0.9*	0.7**

\*61% ‘herbal smoking mixtures’

\*\* 52% ‘herbal smoking mixtures’

\*\*\*Defined in the survey in the following terms: “There are a range of substances sometimes called ‘legal highs’ that have the same effects as drugs such as cannabis, ecstasy, or cocaine. These are herbal or synthetic substances that you take to get ‘high’, which may or may not be illegal to buy. These substances can come in different forms such as herbal mixtures which you smoke, powders, crystals, tablets, or liquids.” (Home Office 2016b)

The popularity of mephedrone appears to have been on a different scale to comparable NPS besides nitrous oxide and amyl nitrate, the latter of which has been used for decades and, while controlled by the PSA, was declared exempt from its effects by the ACMD (Stone 2016). Last year use of mephedrone appears to have peaked at 4.4% in 2010 amongst 16-24 year olds (Home Office 2011). High mephedrone prevalence in this period has also been verified by other sources. For example, mephedrone use was recorded amongst 20.3% of a sample of 1006 college, university and school students in Scotland in 2010 before the ban on mephedrone was introduced (Dargan et al. 2010).

Mephedrone consumption as recorded in the Crime Survey declined steadily, as noted, from a peak at 4.4% last year use amongst 16-24 years to 0.9% amongst the same group between 2010/11 and 2015/16 (Home Office 2011, 2016a). These findings correspond with post-ban surveys indicating that the substance became less available and increased in price following control. In the data collected for the Global Drugs Survey – a large, online and self-selecting survey about drug use - 63% of those surveyed had continued to use mephedrone, alongside 55% saying they intended to use more following the ban, with much of the remaining market transitioning to purchasing it from more traditional drug dealers (Winstock et al. 2010). Earlier surveys have confirmed the sharp increase in mephedrone use and its subsequent decline from 2011 onwards (see Table 2.4). Similarly, a web-based survey of 1006 mephedrone users found that while 47% of respondents found it less available now it was illegal, 49% intended to use more MDMA now that mephedrone was illegal and 64% used it less. While 58% reported that they would not try to get hold of it now that it had been banned, 42% still intended

to purchase it post-control and 30% had stockpiled it prior to the ban (Carhart-Harris et al. 2011). These findings indicate that roughly half of the respondents were deterred by criminalization in the first instance, although the nature and degree of this deterrence is difficult to obtain from survey data.

A similar decline following control, albeit amongst a smaller user group, has been demonstrated in relation to methoxetamine, where an online survey of methoxetamine use, conducted in 2011 and 2012 with 15, 200 and 22, 289 respondents respectively found that methoxetamine use in the UK declined over the 2011-12 period (being controlled in 2012) from 4.2% and 2.8% for last year and last month use in the first instance and 3.0% and 0.7% in the second (Lawn, Borschmann, et al. 2014). As these figures derive from the Global Drugs Survey, they do not constitute a random population sample, but rather a sample of self-selecting drug users and, moreover, are concerned with small numbers, they should be treated with caution. The popularity of BZP peaked at 0.5% amongst adults in the 2009/10 crime survey (see Table 2.2), prior to its control in December 2009.

Naphryone, a synthetic cathinone that fell through a loophole in the generic ban and was restricted in July, remained relatively obscure. ‘Ivory Wave’ ingredients 2-DPMP was noted as a subject of concern and considered for control in September 2011, import banned in November and made a Class C drug in June 2012. Nothing suggests these substances have remained popular. Other indications of declining prevalence can be inferred from the fact that the number of enquires made to poisons information centres concerning specific NPS also appear to decline when they are controlled. For instance, there was 79-80% fall in methoxetamine related enquiries to TOXBASE (the poisons information centre) three months before and after controlling the substance (Hill et al. 2013) A similar sharp decline in mepehedrone related enquiries to TOXBASE was observed between March 2010 and March 2012, from 120 in the former to a stable number of 20 a week in 2012 (Loeffler and Craig 2013). As the latter authors note however, this may be also related to familiarity with the substance, or patients being more reluctant to seek medical help when intoxicated.

While this data indicates broad effects, it provides limited information on *how* and *why* these transitions happen, what differentiates contexts where usage continues, and what their consequences are. To improve our understanding of transitions from NPS use, it is

essential that qualitative research provides grounded accounts of how regulation affects consumption – symbolically as well as practically – requires engagement with the biographies of NPS users, and a greater understanding of what distinguishes these substances in the drugs market. Moreover, it's important to tease out *how* and *in what ways* regulation matters, and the other factors that may also be important in NPS cessation. The effects of control are likely to be distinct for different groups of consumers. For NPS users who, prior to the PSA 2016, had relied on shops to provide these substances, the effects of control will be different for those who are accustomed to acquiring a range of substances from cryptomarkets. Here, this thesis will contribute to the literature in mapping how these transitions are reported in practice, and the implications for thinking about NPS control.

The Global Drugs survey - formerly the *Mixmag/Guardian* drugs survey – is a large, self-selecting survey of primarily drug users. Data here on NPS, broadly speaking, confirms the trends observed above (see Table 2.4) (Dick and Torrance 2010; Global Drugs Survey 2014; Winstock 2011, 2012, 2013, 2015; Winstock et al. 2016). These findings indicate that, where specific NPS are measured, substances other than mephedrone, alkyl nitrate and nitrous oxide have been reasonably marginal, even amongst populations whose overall drug prevalence levels are much higher than the norm. It also indicates that the popularity of mephedrone dropped considerably after it was banned, as does the decline in the use of other cathinones (MDPV and methylone) which were controlled at the same time. The Global Drug Survey observed a general decline in the use of ‘research chemicals’ – the legal status of which is not clear, but more were controlled in 2015 than in 2012 - amongst their sample between 2012 and 2015, from 20% of the sample to around 8.6%. However, this increased again in 2016 in the UK (Winstock et al. 2016). The decline and stabilization of the use of specifically identified ‘legal highs’ or research chemicals between 2012-2016 roughly halved the size of the user population heret. It would be valuable to have more data here on what is a small, but not insignificant minority within this population, particularly in terms of which substances this involves and the forms in which these are purchased – i.e. as pure chemicals or as branded products.

**Table 2.4: Last year prevalence for selected NPS amongst UK respondents to the Global Drugs Survey, 2011-2016, where data available**

	2011	2012	2013	2014	2015	2016
Mephedrone	51	19.5	13.8	7.9		
Nitrous Oxide	37.5	27.2	26.9	20.4		
Legal highs/ Research chemicals		20	12	10.5	8.6	11.6
Synthetic cannabis	2.2	14.2		1.5		
'Unknown white powders'			14.5	10.9		
Benzo fury	2.3					
GBL	2.4	1.6				
MDPV	3					
Methoxetamine		4.2				
MDAI	4.7	2.2				
Methylone	9	1.4				
Cocaine*	62.7	41.8	41.5	33.7		
MDMA*	75	53.7	67	45.2		

\*included for reference.

Making inferences about legal status is challenging. While it is possible to infer mephedrone's popularity as resulting from its legality, given the steep decline in prevalence observed when the substance was controlled, such an explanation is incomplete unless it clarifies why comparable substances have received relatively little attention from consumers, at least as measured by the prevalence data here. It must also consider competing explanations for why the substances became less popular over time, that may relate to the perceived effects of the substance and transitions to other intoxicants, as well as cessation more generally. The changing drugs market – a nadir of cocaine and MDMA purity was observed at the same time as the emergence of mephedrone (Measham et al. 2010) – raises the possibility that these markets may, in part, have grown so rapidly through the pooling of existing drug users in the context of a gap in the market, with a corresponding decline in interest once the purity of MDMA and cocaine started to recover.



### *Situating NPS Consumption.*

While NPS are distinguished for the purposes of policy, the boundaries between markets in these substances and illicit drug markets is far from clear. National prevalence data has indicated that the majority (84.9%) of NPS consumers also consume illicit drugs (Home Office 2016a), while other research has suggested that NPS using populations are likely to be small relative to the user groups of comparable substances. For instance, methoxetamine is a disassociative anaesthetic that produces similar effects to ketamine. National statistics record between 0.3-0.6 per cent of the 16-66 age range as using ketamine in the last year, which has remained stable since its measurement began (Home Office 2016a).

The market for methoxetamine appears to be even smaller than this: in a sample of 7700 UK based polydrug users, in which almost 25% had consumed ketamine, only 4.2% reported using methoxetamine in the last 12 months (Lawn, Borschmann, et al. 2014). Of the 1.2% who had consumed NBOMe compounds – hallucinogenic, LSD like substances - in the 2013 Global Drugs Survey, 88.9% of these had consumed other hallucinogenic substances (Lawn, Barratt, et al. 2014). Overall, these figures compare to the roughly 40% of the sample who had consumed LSD and magic mushrooms, again suggesting that NBOMe consumption is subsidiary to hallucinogenic drug use more generally. The population of synthetic cannabis users, which peaked in 2009/10 national prevalence estimates at 0.4%, is far smaller than the comparable population who consume the natural alternative, which comprises 6.7% of the population. Evidence suggests, moreover, that the population of synthetic cannabinoid consumers primarily comprises those who have used cannabis (Winstock and Barratt 2013). In this sense, NPS may potentially be thought of as a niche within the drugs market rather than existing outside of it.

Another interesting dynamic here has been the emergence of dedicated online forums that develop and exchange information and advice about the safe and effective use of NPS/legal highs (Boothroyd and Lewis 2016; Soussan and Kjellgren 2014). Users of online drug forums undertake various steps to conceal their identities and remain anonymous in these discussions (Barrett 2011). These steps, which may simply include not publicly participating and ‘lurking’, involve moderating how much detail is provided about personal consumption, the use of anonymous online avatars, avoiding discussions of supply and using the term SWIM (someone who isn’t me) when

discussing drug experiences (Barratt 2011). Research on public discussion of eight substances on online forums found that in seven cases the control of these substances severely reduced the level of online discussion about them (Ledberg 2015). It is unclear whether this is due to declining use of the substance prompting less discussion, or whether the changed legal status deters publicly accessible admission of use. However, it would be surprising if the risks attached to discussing such a substance now that it was controlled did not *somewhat* contribute to this trend.

Research has also sought to understand the demand for NPS, although this may be hard to distinguish in practice from the broader demand for illicit drugs. Analysis of 612 online surveys completed by NPS consumers found that most, regardless of drug class, identified *pleasure* and *enjoyment* as the most important motivations for their use (Soussan and Kjellgren 2016). However, the precise nature of the enjoyment could be distinguished in relation to different drugs, with sedatives for example being more helpful with stress and psychedelics having greater use in terms of spiritual and self-exploratory pursuits. Interviews with 25 experienced Dutch drug users exploring the consumption of NPS found that the specific appeal of substances related to effects, price, effect duration and the context of consumption (van Amsterdam et al. 2015). In these contexts, we can regard NPS as being chosen from amongst a range of tenable options, rather than being chosen due to scarce alternative drugs or the appeals of legality. For certain drug users with wide drug repertoires NPS may prove interesting because they offer the option of exploring different drug experiences alongside offering the relative convenience of online purchasing (O'Brien et al. 2014).

### ***The Relevance of Legality***

There is limited support for the contention made that 'legal indicates safe' for the consumers of these substances. The Global Drugs Survey has shown that their survey respondents do not believe NPS to be safer than traditional drugs (Winstock et al. 2016). Interviews with 23 users in Northern Ireland who had used mephedrone in the pre-ban period indicated that none of these participants had thought that legality indicated safety, but were rather attracted to the relative availability of mephedrone and its price (McElrath and O'Neill 2011). An online poll of students in 2010 in the UK who had primarily consumed mephedrone and 'spice' synthetic cannabinoids found that the majority – 74.2% - thought that the substances being unregulated did not make them safer than illicit drugs (Corazza et al. 2014).

Research on methoxetamine consumption also found that the legality, or indeed the safety of the substance, was not perceived as the most important motivation for consumption, which were alternatively identified as curiosity, the poor quality of available ketamine or being sold falsely as ketamine (Lawn, Borschmann, Cottrell, & Winstock, 2014). The Global Drugs Survey, 2012, found that 73% of the participants who reported taking methoxetamine did so because it ‘easier to get hold of’, indicating that legal availability may have facilitated access, but does not clarify the broader normative implications of legality for these consumers. Other reasons included ‘curiosity or being sold it as ketamine’ (20%), ‘better value for money’ (20%) and less damaging to liver/kidneys (18%) (Winstock 2012). Research in Ireland has indicated that, pre-legislation, mephedrone use was attractive owing to its relative purity and how it compared to the alternatives, although participants generally regarded traditional ‘street’ drugs as superior (Van Hout and Brennan 2011). In the U.S., a 2013 school-based survey indicated that those who had consumed NPS, on balance, regarded them as ‘safer’ than those who had not consumed them. However, the margin of difference here was minimal: students who had consumed them ranked the substances 6.1 on a scale of 1 to 10 - where 10 represents not safe at all and 1 represents completely safe - relative to an average of 7.3, indicating that even those who had consumed them recognised that they carried risks (Poulsen 2015).

These findings show limited support for the contention that NPS are perceived as ‘safe’ due their legality. Survey based research also may struggle with the ambiguousness and relativity of the term ‘safe’ or the implications of being ‘legal’. If we assume that ‘safe’ means ‘not lethal’, most NPS *are* safe, at least at normal dosages. If ‘safe’ means occasioning no harm whatsoever, under any circumstances, while it is hypothetically possible that some consumers would infer this, this is difficult to establish. If it means *relative* safety, the question also can be qualified in terms of ‘do participants think NPS are safer than other drugs?’, or even ‘do consumers think *this* specific NPS is safer than the most immediate comparison’ which is a difficult question to answer and may well favour NPS in certain contexts. For example, if mephedrone was in fact higher purity prior to being controlled, it would constitute an example of a substance that had become *more* dangerous since becoming illegal.

The possibility of different meanings of ‘safe’ is demonstrated by research into young people’s perceptions of BZP during the period where it was legally regulated by New Zealand government – where it was legal rather than simply uncontrolled – indicates two meanings of safe that made a difference to consumption. In the first instance, some users – not all - assumed that the substances would do limited damage because they had been ‘tested’ and were ‘approved’, and therefore needed to be treated with less caution than other substances. Other consumers, in contrast, assumed that the product was guaranteed and not likely to be cut with other substances (Sheridan and Butler 2010). In the case of NPS, either perception (of which the latter may be correct) may lead a user to respond that NPS were ‘safer’ than illicit drugs. The same might be true in terms of being able to avoid buying drugs in the black market.

Qualitative comparative research of different examples of NPS consumption have indicated that perceptions of risk also should be understood in social context (Blackman and Bradley 2016). In a comparison of NPS use within a headshop in Kent, amongst vulnerable young people known to drug services, and in prison, legal highs and particularly SCRAAs were perceived as dangerous and potentially more harmful than illicit drugs. However, the different contexts mediated how these risks were acted on. For the prisoners, the relative risks of Spice relative to the boredom of being inside is a different calculation from the calculation of the university students who were concerned about the potential effects of these substances on their future. For those known to drug services, the relative cheapness of the substance was important, although they were perceived to be more dangerous than ‘traditional’ drugs (Blackman and Bradley 2016).

The non-illegality – safety in the sense of being undetectable to drug tests and not attracting law enforcement responses – may also be an appealing dimension of some NPS, although this is again likely to vary in different contexts. In a survey of German-speaking users, for instance, a large number – 61 per cent, and 77 per cent of herbal incense users – noted the legal availability of NPS as an important motivation in their use, with 51 per cent of the herbal incense users noting the non-detectability of these compounds as motivating in a German online survey (Werse and Morgenstern 2012). There is currently limited research in the UK on how NPS were approached from the perspective of *specifically* avoiding legal detection or police interference. However, the non-detectability of NPS is likely to be particularly relevant in contexts where specific technological forms of surveillance (drug testing, for instance) make these substances

necessary – as witnessed for instance concerning the use of synthetic cannabis in the U.S. military (Bebarta et al. 2012).

Something harder to measure precisely is the relevance of accessibility – i.e. being available online and in shops, as many NPS briefly are – in influencing consumption. Many of the above findings suggest accessibility as important in the appeal of the substance. However, this is a difficult variable to operationalise, in the sense that this again could mean different things. While being available online or in shops may facilitate access from someone without access to drugs market, availability may also mean ‘available in a social context’ or ‘available from dealers relative to other substances’. Substances that are easy to obtain may have minimal appeal, and in this sense describing them as ‘available’ might be inaccurate.

Availability may also exist in tension with other dynamics. As Moore et al (2013) argue in relation to mephedrone, this substance appears to have been added to club repertoires in the context of low cocaine and MDMA availability, and presently exists in a complex relationship to these drugs in terms of purity, availability and cost, wherein it may become less attractive as a substitute because of its increased price and lower purity, or may become embedded as a supplementary substance in drug repertoires. Legal availability – particularly the capacity to buy online - may be an important factor for some consumers (e.g. nitrous oxide consumers in Barnard et al. 2016) although in other cases it is plausible that ready availability offers a relative advantage that, while making a specific substance *more* attractive than it might otherwise be, does not preclude the broader accessibility of the illicit drugs market to consumers.

NPS also appear to sometimes cost less than traditional drugs. As the Global Drug Survey notes, SCRAAs retail at a lower price per gram and provide an average of 10 joints relative to 3 from a gram of natural cannabis, which may explain their ongoing use of the substance despite greater harms than traditional cannabis (Winstock et al. 2016). Price has been referred to as an important motivation for problematic NPS users involved in drug treatment services, and instances of low cost stimulants available in city centres have suggested the existence of NPS as cheap, generic alternatives to controlled drugs (Blackman and Bradley 2016; Measham, Hayward, et al. 2011). *Value* is also important in the sense that, if NPS provide a purer alternative to ‘street’ drugs, price may go further.

### *Challenges in Estimating NPS use*

NPS prevalence may also be hard to record accurately in self report surveys owing to the forms in which they are consumed. Popular substances might include both clearly measured research chemicals and branded ‘legal high’ products which make limited mention of their ingredients. A survey of 468 NPS users found, that of those that identified a ‘favourite’ NPS (258), 127 brand names were identified, with 62 participants noting synthetic cannabinoids as their preferred choice, with 101 naming specific research chemicals. Within the sample, there was a distinction between those favouring specified chemicals and measured doses, while dismissing the use of branded products as dangerous (Barnard et al. 2016). Accurate measurement is also challenging given the potential prevalence of what appear to be NPS powders, often with names like ‘bubbles’ or ‘energy’, that are not clearly marked as particular chemicals, or simply ‘unknown white powders’ (Measham, Hayward, et al. 2011; Winstock 2012).

Adulteration, wherein NPS are sold as controlled drugs has been observed in a range of contexts, further complicating the picture obtained from self-report data (Power 2014; WEDINOS 2014). It’s also unclear how long ‘average’ – if this term has much use here - NPS consumption typically lasts, creating uncertainty in the interpretation of successive annual prevalence estimates. In the above noted survey of 468 NPS respondents, 83 mentioned that they would not now take any NPS, with 95 respondents reporting an adverse experience that had taken place, while others had simply been unimpressed with the effects of these substances (Barnard et al. 2016). Uncertainty about how many users potentially exit the market due to negative effects, makes it hard to understand how NPS use in populations develops over time in the broader population.

Using prevalence to measure NPS use is also complicated because certain sections of society may also exhibit relatively high levels of NPS use relative to the broader population. For example, the prison population has been identified as a particularly concentrated site of synthetic cannabinoid consumption (Baker 2015; Kirby 2016). It is difficult to offer accurate estimates of prevalence here. SCRAs benefit from being more potent, thus more amenable to smuggling, as well as difficult to detect in mandatory drug testing (Baker 2015).

There has also been increasing concern about the use of NPS amongst homeless populations, which is also difficult to measure. The 2014 Drugscope Street drugs survey identified that every area reporting increased use of NPS, of which synthetic cannabinoids amongst opiate users, the homeless, socially excluded and prisoners was the most concerning, with price identified as an important driver here (Drugscope 2015). A survey with 56 respondents conducted in Manchester in late 2015 amongst homelessness service providers, which identified NPS use – particularly SCRAs – amongst the rough sleeping population, who made use of branded products. One in five respondents reported already buying NPS from a dealer (Homeless Link 2016), suggesting that black markets have already emerged here.

There is also evidence to suggest that those who partake in certain sectors of the urban nightlife scene, including electronic dance music events and gay clubs, may be more likely to consume NPS. In general terms, the CSEW 2015/16 observes that those who attend pubs and clubs are more likely to consume NPS (Home Office 2016). In November 2010, 207 adults were stopped at random in four city centres in Lancashire on Friday night, of which one in ten reported using mephedrone in the last year, with one in twenty having done so in the last month (Measham, Moore, et al. 2011).

Much larger numbers were detected in a 2010 survey of 308 ‘clubbers’ *in situ* at ‘gay friendly’ nightclubs found that 41% of the sample had used it in the last month and 27% were planning to use it or had used on the night of the study. NRG-1 – another synthetic cathinone – being used by 11% of the participants in the last month (Peterson, 2013). This particularly high prevalence was also found a year later, when the survey was repeated. The 2011 data collection found that 41% of the participants - a total of 315 - had used mephedrone on the night of the survey, and was the favourite drug of many (Measham, Moore, & Newcombe, 2010). The survey identified lifetime use of mephedrone at 63.8% and last month use at 53.2%. Use of assorted other NPS stimulants and assorted substances were also identified in the sample. Here, lifetime prevalence of BZP was 9.3%, MDAI was 7.7%, synthetic cocaine 9.9%, synthetic cannabis was 9% and methoxetamine was 6.4%. By comparison, 76% of sample reported lifetime use of cocaine.. The interest in certain NPS within the gay nightlife scene is also suggested by studies of club amnesty bins (locations where participants can dispose of drugs). One study, which involved the testing of two amnesty bins worth of substances from different clubs found that 66.7% of the liquid drugs comprised of

GBL, following by poppers at 30%, with mephedrone being the most common powder at 47.7% of the samples (Yamamoto et al. 2013).

These results suggested a population exhibiting high polydrug use repertoires comprising various NPS with lifetime prevalence rates far higher than national averages. Another context in which elevated use of certain NPS has been observed is in the context of what has been labelled ‘chem-sex’, i.e. sexual experiences – mostly involving men who have sex with men and sex with multiple partners and under the influence of drugs like GBL and mephedrone – which may pose increased risks to sexual health and for the development of dependence on these substances (McCall et al. 2015). Qualitative research with these consumers has suggested a need for harm reduction services relating to the dangers posed by adopting relatively novel drugs and the potential implications for dosing and managing risks (Bourne et al. 2015).

Another consumer group that has been identified in literature have been termed, alternatively, ‘psychonauts’, ‘e-psychonauts’ or ‘cyber-psychonauts’. This refers to those who exhibit a keen interest about available substances and relevant information concerning them, and study their use through self-administration and reporting the effects (O’Brien et al. 2014). Research into online drugs forum have characterised ‘e-psychonauts’ as highly knowledgeable about drugs, their effects, harm reduction practices, and in cases testing new substances on themselves to record these experiences and contribute to online drug-specific literature (Orsolini et al. 2015). These participants have been characterised as generally male, highly educated, young (in their early 20s) and motivated by a desire to minimise the potential negative impacts of purchasing drugs (Orsolini et al. 2015). In O’Brien et al’s (2014) the potential for cyber-psychonauts to contribute to NPS related-policy is noted, in a welcome example of research indicating that expertise may appear in non-official contexts, particularly given the relative novelty of most NPS from a research perspective.

### *Summary*

This section has provided an overview of the available evidence about NPS consumption in the UK. This has, in general terms, been the emergence of mephedrone as a popular substance that, following control, declined in use, and a large number of other compounds which have struggled to achieve remotely comparable popularity. Of those substances sometimes described as NPS or ‘legal highs’ that are also popular, it is not



clear that ‘poppers’ are appropriately defined in this way, having been available for decades as well as exempted from the scope of the PSA 2016 by the ACMD (Stone 2016). Nitrous oxide, equally, is an extremely old substance that has a range of legitimate purposes, and has been subject to relatively little public outcry despite remaining uncontrolled up until the PSA 2016.

This section has also demonstrated that research concerning the motivations of NPS users has, overall, failed to demonstrate that NPS consumption can be usefully characterised in terms of a certain group or specific motivations, but rather appears to develop in a range of contexts. While relative availability and purity may have in some cases influenced consumption, the complex nature of NPS demand appears hard to make generalisations about. For some, NPS could constitute poor substitutes for preferred drugs, while for others they could offer novel experiences that were appreciated on their own terms. Overgeneralisation here may result in ineffective policies, as the needs of different groups are likely to be distinct.

Quantifying drug use in this way has a stabilizing effect wherein a vast range of practices that would be recorded as ‘use’ of a given substance are all constructed as the same thing, with important distinctions in terms of practice and context obscured. Moreover, the falls recorded by prevalence reports, while not necessarily indicative of declining harm, may be inferred as indications of drug policy success. Drug use is turned into a discrete, measurable entity that is divested of any meaning, which is in turn potentially constructed in terms of how it varies with policy, despite the potential for drug use to come to an end for numerous reasons unconnected with regulation (Home Office 2014b). One risk here is that evidence of use reduction following control may act to legitimate policy, even if there are other important negative consequences that result from this that are concentrated amongst more marginal parts of the population. In addition, by demonstrating the statistical abnormality of certain conduct, prevalence measures may delegitimise the claims of those who consume these substances to have this activity legitimated. Prevalence, and particularly official statistics, also provide limited scope for participants to offer their own accounts of events, but solely to emerge within the framework of prohibition.

This thesis contributes the research here in the sense that – regarding the interview data – it emphasises the ambiguity of prevalence measurements in terms of the extent to

which they can be used to make inferences about legislative control. Moreover, it demonstrates that despite the range of potential NPS markets and niches described above, policy has sought to offer simple explanatory frames to account for demand as well as marginalising the perspectives of drug users in the formulation of policy.

### **The Evolution of NPS Commerce**

The emergence of NPS has been accompanied by several important developments in the distribution of unregulated substances, both online and offline, as well as the conditions that have allowed these products to become available in the first instance (see Chapter 1). As shall be argued, policy here offers limited scope for engaging with the ambiguities of these developments. This section offers an overview of research on the digitization of the drugs market, alongside discussion on other forms of NPS retail.

#### *Drug Digitalisation*

As noted in Chapter 1, the internet has increased the capacity for drug markets to develop rapidly and across considerable distances. This has permitted motivated entrepreneurs and organised crime groups to use Chinese, Indian and other countries' emerging manufacturing capacity and the accessibility provided by the internet to facilitate the sale of these substances to a global market (Brandt et al. 2014). The factors underpinning these developments have also caused certain forms of drug use to spread globally, in keeping with the tendency for globalization to trigger cultural exchange. For instance, ayahuasca, a ceremonial preparation of DMT, has emerged as a psychedelic of interest in the West, far from the geographical and cultural context of its Amazonian, shamanic roots (Tupper 2008; Walsh 2011).

In addition, the internet has facilitated the vast expansion of publicly available information about drugs, and diversified the voices that undertake definitional work and take on expert roles (Walsh 2011). The emergence of online drugs culture here is an important area for ongoing research. This diffusion of drug related knowledge facilitates the exchange of harm reduction information and guidance about the appropriate use of NPS and other drugs (Barratt et al. 2013; Boothroyd and Lewis 2016; Deluca et al. 2012). Research into the online forums that accompanied the silk road cryptomarket noted have characterised these as undertaking 'prefigurative' politics, in the sense of enacting collective practices of care alongside libertarian practices of freedom (Maddox et al. 2016). In this sense, the development of an online infrastructure for drug

discussion and distribution – of which NPS have been a central part – has been an important contributor to creating the space for a *collective* drug using subject, in the sense of having both an authoritative and representative voice, and approaching the harms of drugs through a distinct approach based on harm reduction.

#### *Online Consumer Markets and Cryptomarkets*

The sale of NPS online has enabled the rapid diffusion of these substances globally (Corazza, Schifano, et al. 2012; Griffiths et al. 2013). By potentially facilitating sale across borders, as well as online interactions between wholesalers, rapid trends may develop, as was observed in relation to mephedrone in the UK in 2010. Research suggests that the scale of online NPS markets is large: the EMCDDA's I-TREND study - covering France, Poland, Czech Republic, the UK and Netherlands- identified over 1000 websites selling these substances in 2013, although 18% were duplicates and these results included 'deep web' sites and personal ads on public sites, in addition to dedicated NPS sites.

Of the NPS users represented in the 2015/16 CSEW, 8% reported procuring their NPS from the internet (Home Office 2016a). The Global Drugs Survey, conversely, found that 58% of their respondents purchasing NPS in the last year had done so on the internet (Winstock et al. 2016). In the UK section of the 2015 survey, 15% of users had sourced drugs (in general) through darknet markets, marking an increase consistent with previous years (Winstock 2015). As above, there are open questions about the extent to which those who obtained NPS or controlled drugs from 'social supply' and 'dealers', ultimately were purchasing these from the internet but one step removed. Surveys in June 2013 of websites selling MPA and AMT between March and October 2012 indicated substantial decreases in price for these substances when bought in bulk quantities (Vermette-Marcotte et al. 2014; Wood and Dargan 2013), indicating that some may purchase them to sell them on in face to face retail settings.

Research into online markets has characterised these markets as unreliable in terms of the products they sell, although many of these results are relatively dated and may not reflect an overview of all markets, including the most popular. Analysis of products purchased from the internet between 2008 and 2011 has also indicated that many products contain two or more active compounds (Zuba and Byrska 2013) which may increase risks and make the consequences of use harder to predict. Between two and four compounds in products was also noted by the Forensic Early Warning System

(FEWS) in the UK (Home Office 2015a). The products sold may also be inconsistent. An analysis of test purchase data, collected over six months from five websites found that 25% of the sample - three products - exhibited a change in the active ingredient or an ingredient that was present in the first month but not in subsequent months in two cases (Davies et al. 2010). The online market may also operate at the fringes of legality. Substances sold as 'legal highs' may also contain controlled drugs. Five out of six analysed products after the control of cathinones in 2010 were found to contain controlled drugs, alongside limited or no information about their ingredients (Ramsey et al., 2010). Analysis of the product NRG-1, advertised as a legal replacement for mephedrone, indicated that the product frequently (in 70% of cases from 24 purchased products) contained controlled cathinones rather than replacement chemicals as advertised (Brandt et al. 2010).

Adulteration has also been confirmed by the UK FEWS which identified controlled substances in 8% of NPS samples (Home Office 2015a). The report notes that this is lower than the proportion in 2013/14 (19%) although it is hard to generalize from this (Home Office 2014a). WEDINOS, which forensically tests drugs anonymously submitted by users, has similarly found the presence of controlled substances in substances marketed as legal, as well as examples of the reverse situation wherein substances sold as traditional drugs contained uncontrolled NPS (WEDINOS 2014). This indicates greater ambiguity in the sales of 'legal highs', which may extend beyond simply selling uncontrolled substances, as opposed to a messier arrangement which involves, at times, false pretexts for selling illicit drugs. The capacity for controlled drugs to be sold online and - presumably owing to their obscurity - go undetected is also emphasised in a single snapshot of the availability of 4-Methylaminorex which found 20 websites selling the substance, despite it being controlled by the United Nations Convention on Psychotropic Substances 1971. Comparatively, only one website selling 4'-4-Dimethylaminorex was identified, despite the latter's uncontrolled status. The sale of controlled substances in the guise of licit substances is another wrinkle in assigning the law complete authority over the space of public drug selling.

What is clear within this research is that online markets may facilitate rapid drug diffusion. The high degree of instability in the market, as well as the highly variable levels of diligence employed in product provision indicates that, for NPS entrepreneurs, the market provides mixed incentives. It seems highly plausible that the lack of

accountability and short-term profits available in the NPS market would encourage ‘free-riding’, i.e. taking advantage of trust in online sellers to scam customers. It is also entirely possible that some sellers will attempt to retain consistency and reliability over long periods due to the relative benefits of doing so from a market share perspective.

Online drug markets that specialise in controlled substances have also emerged, with implications for the future of NPS distribution. The term ‘cryptomarket’ refers to online markets only available through encrypted connections to the internet, often through the *Tor* browser which reroutes internet connections through multiple servers and makes them anonymous (Barratt and Aldridge 2016). The sites also make use of cryptocurrencies like ‘bitcoin’, an online currency that facilitates secure online payments without the need for identity verification and thus, again, ensures relative anonymity (Barratt and Aldridge 2016; Martin 2013). Substances are delivered through the postal system, with sellers receiving feedback for ‘stealth’, amongst other aspects of their customer service (Barratt 2012). The ‘silk road’ cryptomarket appeared in 2011 and was seized by the FBI in October 2013.

The customers of online drug cryptomarkets appear to be largely educated men in their 20s, with research suggesting that recreational and ‘party’ drug markets are facilitated more than problematic or dependent drug markets, although both are in evidence (Barratt and Aldridge 2016). The cryptomarkets, through technological innovation, transform the nature of seller and buyer interaction within drug markets. Interviews with consumers have emphasised the appeal of the website in terms of quality, choice, variety and reliability, alongside the convenience of having drugs delivered (Barratt, Ferris, et al. 2016; Hout and Bingham 2013a, 2013a). Alongside the emergence of NPS, drug cryptomarkets have facilitated access to obscure drugs, and potentially allowed individuals to avoid ‘street’ drug markets. Cryptomarkets also influence broader supply dynamics, with estimates suggesting that wholesale purchases may have accounted for around 20% of the original silk road’s revenue (Aldridge and Décary-Héту 2016) and a quarter of purchasers reporting giving them to friends (Barratt, Ferris and Winstock 2016).

It has been suggested that drug cryptomarkets may provide numerous forms of harm reduction in drug markets, by reducing the risk of market based violence and facilitating the trade of reliable products owing to the negative repercussions of dishonest or

inaccurate labelling (Barratt, Ferris, et al. 2016; Hout and Bingham 2013b). Research into the original silk road and subsequent markets have identified the use of public customer feedback mechanisms that may provide for reliability, honesty and consistency in sales interactions (Barratt 2012; Dolliver 2015; Martin 2013; Tzanetakis et al. 2016). At the same time, there are numerous incidents of cryptomarkets closing following the theft of deposited bitcoins by the administrators or external hackers, alongside scams - based on customer feedback – and the threat of blackmail based on revealing a purchasers’ identity, with no technical arrangement yet developed fully controlling for risks (Tzanetakis et al. 2016).

A survey of the Agora marketplace – a successor to the silk road that is estimating to have had, at its height, grossed double the income per day (\$600 000) than the silk road cryptomarket grossed – identified several classes of NPS available (Dolliver and Kuhns 2016). NPS as a category of this market ranged between 18% to 15% over the course of the data collection, with synthetic phenethylamines and synthetic cathinones comprising the top two categories, plant based substances, phencyclidines and MDAI rarely advertised, and SCRA and synthetic tryptamines being reasonably common. Why *these* particular substances are for sale, how these sales relate to ‘street’ markets and whether there are substances for which there is considerable unmet demand, require further research.

Insofar as cryptomarkets and online sales provide for safer purchasing and consumption, this can be understood as innovation emerging directly in response to regulation which makes such markets impossible in ‘public’ and therefore amenable to more customer protecting regulation. Their use, much like the emergence of unregulated substances, is also indicative of the ways in which technology is raising further challenges to state-led prohibitory efforts. The implications for harm require ongoing monitoring. Interviews with silk road users indicate mixed findings, with the new-found availability often increasing consumption, but decreasing harm by not having to ‘hoard’ and, typically, resulting in a tapering off of use without the need for intervention, alongside other cases facilitating high use through high availability (Barratt, Lenton, et al. 2016).

### *Head shops and the 'street market'*

There has been little systematic evaluation of head shops selling NPS in the UK, or their customers. Head shops themselves are not new inventions, having existed in previous years primarily specialising in drug paraphernalia and other drug-related material. The Metropolitan police have estimated that, prior to the ban (there are not yet available figures for current numbers) there were 335 different head shops selling NPS in the UK, along with 100 online retail outlets (Shapiro 2016). Prior to the PSA 2016, the response to head shops involved the use of public space ordinances and trading standards efforts at a local government level to restrict the public use and sale of NPS (Home Office 2015b; Lincoln Council 2015). To an even greater extent than online forums, they represent 'public' drug use, in a way that has important implications for the framing of the NPS problem. As noted in chapter 2, extensive legal tools are now available to enforcement agencies for restricting this trade.

The 'street' market in NPS is more ambiguous. While it certainly exists, given the ongoing consumption of NPS following their control – at least insofar as this can't be accounted for by 'hoarded' supplies prior to restrictions coming into force – it has not been the subject of extensive study. In addition to selling controlled NPS, traditional – mobile and 24/7 – dealers may also be able to exploit certain aspects of drug market demand, as was documented in relation to the 'student party' market in mephedrone in 2009 (Aldridge 2012). Specialist prison markets have also been observed, where research indicates high profit margins for prisoners who can exert control over the supply of SCRA into custodial settings (Ralphs et al. 2016).

### *Summary*

This section has argued that the development of NPS markets can be understood as occurring alongside various developments in drug market retail. While head shops are likely to become largely irrelevant, except insofar as they have permitted NPS market consolidation that will influence future distribution, the broader technological developments described here will remain consequential. There are plausible contexts in which online markets in NPS have the capacity to reduce harm and build communities of interest around safe drug use, but at the same time also have the capacity to extend drug repertoires and introduce consumers to new substances, either through direct purchase or by supplying 'street' markets. The capacity for drugs to rapidly diffuse will remain, as will the new production networks made possible by the internet.

The concept of the ‘assemblage’ offers a useful approach thinking about how shifts in the market influence consumption. The term ‘assemblage’ – deriving from Deleuze and Guattari (1988) – emphasises that events occur through the combination of forces, rather than emanating from the discretion of sovereign individuals. This approach has been productively employed in studies of drug use to refer to the *range* of forces, irreducible to one input, that comprise events of consumption (Duff 2013). The forces combining to produce specific instances of drug consumption may include the substance and its properties, the body of the consumer, the information at hand to the consumer, the subjective position available to the individual in this context, the spatial dimensions in which consumption takes place, and the technologies used to procure substances (Duff 2013).

The assemblage is a tool for thinking, in detail, about how these forces interact in the events of drug use, rather than leaving discussion of context to more abstract sociological details and macro-level dimensions, while also drawing attention to the array of non-human actors that partake in consumption events, which have expanded in the context of drug market digitalization (Duff 2013). As noted, this approach de-emphasises sovereign individuals as source of action, while directing attention towards the ways in which subjectivities are produced in the context of an assemblage (Duff 2013). For instance, the assemblages that form markets may influence their safety. In the case of head shops the lack of information, guidance and reliability of the products may facilitate different subject positions than those that emerge in dedicated NPS forums, with important implications for health.

Moving drug markets online, then, may change the dimensions of interacting with the drugs market, in the sense that discretion may be operated over a wider range of potential substances, while the dissemination of information may permit the cultivation of these experiences towards harm reduction and benefit maximization (Tupper 2008). Collective, politicised identities may develop in these spaces, as noted in regulation to the libertarian discourse that thrived in the original silk road forums in what is described as an emergent political community (Maddox et al. 2016). However, as research, particularly on NPS markets, has often drawn on surveillance methods (Dwyer and Moore 2009), there is as yet insufficient clarification on how these markets are engaged with, whether these engagements change or how the use of markets relates to perceptions of safety Qualitative engagement with the ways in which participants who



consume NPS relate to the markets in these substances, and how they vary in practice and are navigated, as presented in Chapter 5, can provide useful insights into the emerging context of a complex and varied drugs market and how subjects are formed in relation to the constraints and opportunities these permit to emerge.

The thesis also argues that the way the ‘problem’ of NPS is conceived of necessarily remains insensitive to these mediating dimensions of use. The legal approach of scheduling enacts a collateral reality – in which controlled drugs are inherently and necessarily dangerous – that excludes alternative approaches to the nature of these harms that could differentiate between potentially different contexts. At the same time, it is argued that the problem of NPS is represented in terms of protecting the general public from exposure to these substances. In this sense, critically interrogating how policy is co-constituted in terms of ‘the public interest’ is here important in understanding what is at stake in the exclusionary practices of drug policy.

### **Conceptualizing NPS related harms**

While there have been numerous instances of hospitalizations and fatal intoxications throughout Europe in relation to NPS, there is limited information about the real extent of harms or the public health implications of NPS consumption more generally (ECMDDA 2016a). In the UK, NPS related deaths - though not primarily NPS that have been available legally at the time of consumption - have increased since 2010, while other problems like deaths associated with SCRA in prison appear to have intensified in recent years (Newcomen 2016). Harms may be difficult to describe at a national level because of their local manifestations. For example, beginning in 2014, there was a large increase in heroin users turning to injecting ethylphenidate in Lothian, Scotland which caused harm to mental and physical health, as well as concerns about needle sharing and increased pressure on services concerned with preventing bloodborne infections (Lafferty et al. 2016). However, it is conceivable that similar local manifestations of harm might not be picked up by local health services.

Harms are also likely to be unevenly distributed across consumers, and may cluster amongst already vulnerable populations. The adoption of NPS benzodiazepines by heroin using populations in Scotland have also been observed (McAuley et al., 2014), as has the use of synthetic NPS opiates for the management of opiate addiction (Kjellgren et al. 2016) and the presence of NPS in the urine samples provided by heroin treatment

patients in Finland (Heikman et al. 2016). Here, more research is required to ascertain how NPS use overlaps with problematic drug use and its implications for drug user health.

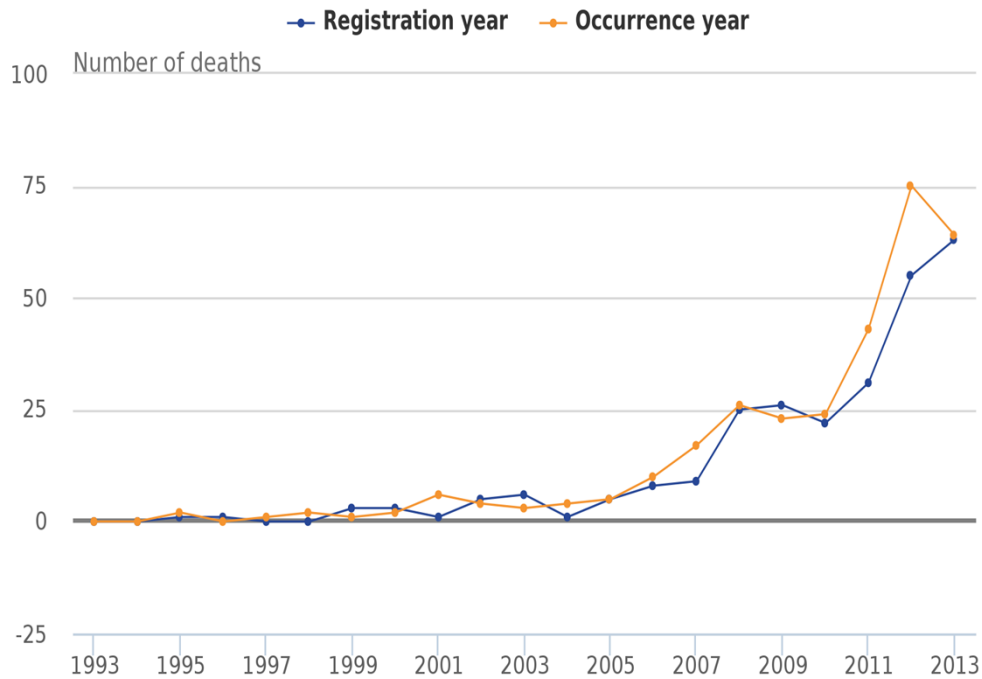
Here, and throughout the course of the thesis, ‘drug-related deaths’ is used as an indicator of harm. These statistics do not provide a perfect account of NPS related harms, given that they omit NPS-related treatment presentations as well as non-fatal hospitalisations resulting from these substances, but they do provide national indicators of harm that do not require collation from multiple sources of - often confidential and protected - medical data. In addition, while hospital records and other forms of patient information may have shed light on the nature of NPS, recording practices may be inconsistent and vary across services and may be more appropriate with regard to, for example, a situated case study.

One limitation with measuring drug-related deaths, in relation to NPS, is that forensic toxicologists may struggle to identify these substances post-mortem for various technical reasons (Tetty & Crean, 2015; UNODC 2013b). Nonetheless, while drug-related death figures may well be incomplete, the extent of unreported harms is nonetheless likely to be much larger than the extent of unreported drug related deaths.

NPS-related mortality remains much smaller than the mortality related to ‘traditional’ drugs. In 2015, there were 3 376 deaths in England and Wales related to controlled drugs, accounting for the highest number on record (the number was 2 652 in 2011), relative to 115 deaths associated with NPS. In Scotland, there were 706 drug related deaths in 2015 – the highest on record - of which 74 also involved NPS, although *solely* NPS were detected in only three of the deaths (National Records of Scotland 2016). The majority of these deaths indicate NPS used in combination with largely illicit opiates, while a small number of cases involve multiple stimulants, including an overdose of MDPV. The emergence of distinct groups of victims here – between late-twenties stimulant users and older consumers, often with histories of drug-related treatment dying due to NPS benzodiazepines, has been remarked upon in case analysis (McAuley et al. 2014). The deaths associated with methadone, heroin and morphine occur alongside a general increase in the number of deaths associated with these substances in Scotland (National Records of Scotland 2016). Whether the adoption of NPS by this population is increasing the number of deaths associated with traditionally problematic

substances, or whether other pressures on the traditional drugs market are encouraging polydrug use involving NPS is unclear. Nonetheless, reducing the number of drug related deaths here may require a multi-faceted response beyond simply restricting the availability of the NPS in question.

In England and Wales, there are indications of increasing deaths associated with a broadly defined class of NPS (see Figure 2.2), although many of these harms accrue from substances that were legally regulated at the time of death. The ONS reports 114 NPS related deaths in 2015, up from 85 in 2014 (ONS 2016a). However, identifying the substances associated with these deaths is difficult, and a detailed breakdown is not provided in the ONS report. The report notes that 44 of these deaths were associated with mephedrone, which is both illegal in the UK and was controlled by UN Conventions in 2015 (UNODC 2015). GBL, also controlled, was responsible for 24 deaths in 2015, most often in combination with alcohol. Of the remaining 46 referenced, 25 are reported to involve substances legal at the time of death (ONS 2016a). In 2014, similarly, NPS-related deaths were primarily the result of controlled substances, with 42 deaths associated with either mephedrone or GBL. The number of unregulated substances – ‘legal highs’ - involved in these deaths is smaller, but still increasing. Of the deaths recorded between 2004 and 2013 in England and Wales, only 76 involved substances that were not prohibited at the time of consumption, of which 42 occurred in 2012 and 2013, mostly involving novel benzodiazepines, methiopropamine and AMT (ONS 2016b).



**Figure 2.2:** Deaths involving NPS in England and Wales 1993-2013 (ONS 2015)

The tendency for harms to either increase or stabilize after the introduction of prohibition is troubling. In the case of mephedrone, deaths increased immediately following control in 2010 (ONS 2016b) and has since 2012 been the NPS most commonly associated with death. The substance was associated with 22 deaths in 2014, which doubled to 44 in 2015 (ONS 2016a). Similarly, GBL deaths have remained at a consistent level since the introduction of controls in 2010. In this sense, the evidence here is troubling in two directions: not only are new substances driving harm, these harms may continue to escalate following their control (ONS 2016a).

There are other troubling signs that harms increased with recreational drugs like cocaine and MDMA are increasing. It is also worth noting that, while not an NPS, PMA/PMMA has also emerged as a concern in the drugs market as it may be sold as MDMA and raise the risks of harm to consumer. PMA/PMMA is listed as responsible for 23 deaths in 2014, and 29 in 2013 (ONS 2015). Cocaine related deaths also in England and Wales tripled between 2011 and 2015, while amphetamine - including MDMA - related deaths are the highest since records began (ONS 2016a). The escalation in harms is not limited to heroin/morphine users, even if they comprise the majority (ONS 2016a).

In terms of drug related deaths more generally in the UK, these are currently the highest on record in both England and Scotland (National Records of Scotland 2016; ONS 2016a). It's worth noting that, in England and Wales, the average age of those who died because of uncontrolled NPS – 'legal highs' – between 2004 and 2013 was 28, a decade younger than the average age of a more traditional drug-related deaths (ONS 2016b). 9 teenagers have died in this period, the youngest of which was 18. In this context, while the greatest harms are for those between 20-29 – 4.2 per million – the rates of death for those between 15-19 and 30-39 are equivalent (2.6 to 2.8). It may indeed be the case that 'young people' require specific interventions here, even if there is debate about how this should be conceptualised.

Deaths in prison associated with NPS also appear to be escalating. The trade in and use of SCRA in these environments may magnify violence and require considerable resources to detect (Kirby 2016). This occurs in a context in which the conditions in prisons in England and Wales have been deteriorating, violence has been escalating and overcrowding has been reported (HM Chief Inspector of Prisons for England and Wales 2015). In the U.K. as a whole, there were 64 deaths – 44 of which were self-inflicted - in prison between June 2013 and June 2016 in which the prisoner in question was believed or known to have used NPS before their death (Newcomen 2016). As the report notes: "...some involved the prisoner suffering psychotic episodes potentially resulting from NPS. For others, NPS drug debts appeared to exacerbate vulnerability, triggering suicide and self-harm." (Newcomen 2016, p. 2). Limited data means that the scale of this problem is difficult to estimate in detail.

The synthetic nature of cathinone – primarily but not exclusively mephedrone - related harms also require more research. As noted, mephedrone – a synthetic cathinone - is the NPS most commonly associated with drug-related deaths (ONS 2016a). Casework on mephedrone related deaths has indicated that these events often involve combinations with other substances, including opiates in 35% of cases and cocaine in 45%. 41% of the deaths reported as related to cathinones involved hanging or mechanical suicide (Elliott and Evans 2014). Here, characterising these harms is challenging: should these outcomes be thought about in terms of the toxicity of the substance, the risks of combination, or the broader context in which consumption took place? Does drug policy have the scope to engage productively with the potential for links between this form of consumption and suicide? A demand for treatment in relation to mephedrone has also

been observed, with 2 840 clients in England and Wales presenting for treatment citing in 2015/16 (Public Health England 2016).

Other evidence has suggested that cathinone related harms also appear to be concentrated amongst MSM, who made up 68% of the recorded mephedrone deaths in 2015 (Hockenhull et al. 2016). Similarly, while the SCRA harms or use are not nationally measured with precision, evidence suggests that these substances may be associated with particularly high incidence of harm. Data from the Global Drugs Survey 2012 has suggested that synthetic cannabis users are 30 times more likely than natural cannabis users to seek medical treatment as a result of consumption (Winstock et al. 2015) and, as of the 2016 Global Drugs Survey, these substances have necessitated emergency medical responses more often than any other substance for four successive years (Winstock, Barrett, Ferris, & Maler, 2016). Of the 2 728 clients presented for treatment in 2015/16 seeking help in relation to new psychoactive substances, 1 277 of these presentations related to primarily cannabinoid products (Public Health England 2016).

Harm is difficult to be precise about in part because it is mediated by context and chance, making it difficult to isolate relationships between use and harm, particularly in the context of so many emerging compounds. The complex understandings and active participation of drug users in the management of harms and potential risks has been well-attested to in qualitative literature (e.g. Demant and Ravn 2010; D. Moore and Fraser 2006; Race 2009). As has been well established in drug research, many drug users undertake practical steps to maximise the benefits of intoxicating substances while minimizing the potentially harmful effects (Zinberg 1984). This is also relevant for understanding how NPS risks are managed in practice. Research has indicated examples of practical harm reduction steps being undertaken by NPS consumers to control risk, alongside the emergence of certain norms for maintaining safety with unknown substances observed within ‘cyber-psychoaut’ communities (Barnard et al. 2016; O’Brien et al. 2014). However, the distribution of these practices in the broader population of consumers and their influence on consumption remains undertheorised. Again, developing practical accounts of harm reduction may have important implications for developing policy for consumers whose use persists despite the introduction of comprehensive controls.

In developing an account of NPS harm that can be practically deployed, it will be necessary to gain a greater understanding of the specific ‘assemblages’ – as above - in which NPS use takes place. In effect, this approach extends the focus of research into the relationships between different objects and their combinations in the ‘event’ of consumption. For example, the objects mobilized – and attendant risks – employed in the act of obtaining a specifically identified synthetic cannabinoid from a drug cryptomarket, and consuming it privately in the context of a pre-identified and measured dosage can be distinguished from consumption of the same substance in the context of a ‘legal high’ bought at a festival and smoked like cannabis in a tobacco based joint.

One implication of this approach is that thinking about drug-related harms cannot be reduced to abstract qualities about the harmfulness of the substance. Rather, “...the properly empirical task is to document the technologies, bodies, affects and spaces involved in assemblages of AOD [alcohol and drugs] use, and the work each does to either promote or diminish harm. This suggests that harm should be regarded as a property of the assemblage and not of any one discrete body therein.” (Duff 2013, p. 634). Researching the ongoing harms of the NPS market and the assemblages in which they emerge is an important focus for ongoing work in this area.

### *Summary*

Evidence indicates that the harms associated with NPS, while far smaller than the harms associated with other drug-related deaths, are increasing, while also suggesting that these harms do not necessarily disappear once these substances are made illegal. This is consistent with the broader history of drugs policy, although the future direction of these harms is difficult to predict. At the same time, drug-related harms remain concentrated in the UK along familiar indices of socio-economic disadvantage, despite their broader circulation within the population (Stevens 2010). As noted, drug-related harms are currently increasing, with opiate related harms resulting from the increasingly complex needs of an ageing population alongside socio-economic changes induced partly by various funding cuts to public services and alongside changes to treatment services which encourage fast turnover of patients (ACMD 2016). Cuts to drug treatment service budgets have also been noted by various service providers (Recovery Partnership 2015). In this context, the potential for NPS to complicate an already complicated and dangerous situation is considerable.

Here it is argued that, given the potential here for increased harm, the problematization of NPS can be critiqued in terms of how it increases in precariousness of certain drug users with a view to protecting a broader public interest. At the same time, the conceptual issues raised by managing NPS related harm are extremely relevant in terms of thinking about how NPS problems might be approached differently. As noted, the drugs *dispositif* identifies harm with the *substances themselves*, and excludes the potential for alternative ways of reducing harm. While prohibitory discourses seek to minimize harm through the quarantining of harmful substances, drug users as noted may seek other ways to manage these harms that remain sensitive to possibilities of pleasure these substances also provide. In other cases, contexts may dictate that, whatever the constellation of NPS risks, they matter less than the immediate escapism they offer, as documented in prison contexts (Blackman and Bradley 2016; Ralphs et al. 2016). At the same time, policy may emphasise certain harms – of those exposed to seemingly ‘safe’ drugs – in terms that obscure the harms that emerge from criminalizing the drugs market, making it important to engage with the terms in which they are deployed and how this approach might be challenged.

### **Conclusion**

This chapter has outlined and contextualised the major policy responses to NPS in the UK and the findings of academic research into this market. In the first instance, it was argued that the national and international adoption of generic and rapid scheduling responses is indicative of a general lack of alternative strategies within the context of drug policy for addressing drug market developments. Moreover, given the widespread use of drugs in the UK and the limitations of prohibitory policies, it was argued that this policy response must be understood in terms of their symbolic value, or the sense in which they reflect the UK state’s desire to enact sovereignty for performative purposes, despite a lack of pragmatic ability to govern the problems in hand. In this sense, an engagement with the ‘problem’ of NPS as it has been represented, may provide scope to think critically about the broader symbolic stakes at work in policy here.

It has also been argued that NPS using populations appear to be varied and hard to generalise about. While certain substances have attracted widespread use, with the exception of mephedrone, the most popular substances have been relatively benign substances like nitrous oxide and ‘poppers’, which have been consumed in the UK for a



very long time. As a population, there does not appear to be a clear dividing line between NPS users and illicit drug users, nor is it clear NPS use can be understood as, in most cases, distinguished from illicit drugs in terms of the communicative affects of their legality, while other issues like availability and purity raise more complex issues. Characterising in general terms the more diverse, dispersed population of NPS users is hard, and policy is problematic here partially because it often constructs this population in precisely these terms. In developing a more inclusive approach to NPS policy, as shall be argued, it may be necessary to facilitate a wider range of voices in defining how these substances can be understood and what they are capable of, as well as the practical dimensions of reducing their risks.

Harms involving NPS raise complex questions. The effects of criminalization, by and large, appear to reduce prevalence but does not necessarily eliminate it, and may be associated with increases in harm for consumers in a context of lowering use over all, which suggests the need for caution in deploying this approach. In addition, the creation of online markets and forums about these substances allows them to spread quickly, both in terms of distribution but also in terms of the rapid diffusion of consumer generated information about them. It has also been argued that the contexts in which NPS have emerged are indicative of and co-produced by changes in the drugs market, enabled by technological developments. Here, it will be contended that by framing policy primarily around the importance of controlling substances, policy here offers limited engagement the changing nature of drug market participation.

It should also be observed here that, while policy can be understood as a process of focusing on specific dimensions of a situation to fit into certain problem frames, the NPS market is subject to a range of plausible interpretations which exceed the narrow scope of controlling substances more rapidly. It is highly plausible for instance, to account for synthetic cannabinoids as a reflection of the long-term consequences of failing to develop a regulated cannabis market, wherein prices, availability and the risks of drug testing have necessitated some individuals to, at certain points, increase their risks. Increasing deaths from stimulants – including both NPS and controlled drugs – may also require the development of new forms of harm reduction that include a range of recreational drugs. In this context, the perception that NPS are unreliable should be contextualised in the sense that, at present, while cocaine purity has increased since its nadir in 2009 it remains under 40%, with over 50 adulterants identified in seized

samples (ACMD 2015c), while deaths resulting from the adulteration of MDMA have increased since 2011 from 1 to 24 in 2014 (ONS 2015). Harms related to benzodiazepine NPS may be better addressed by improvements to the treatment of problematic drug use and the facilitation of harm reduction here. The harms in prison can be approached as another indication of the current problems with prison governance, in which conditions have considerably deteriorated (HM Chief Inspector of Prisons for England and Wales 2015).

This thesis argues for an engagement with the taken for granted assumptions about the problem that NPS policy is trying to solve, with a view to thinking about how more inclusive approaches to NPS policy could be developed. In this context, this thesis will demonstrate the sense in which NPS can be contested at the level of politics: *specifically* in terms of whose concerns are emphasised in these accounts and whose remain marginal and silenced. Here, it is argued, an emphasis on which problems are adopted and the effects of these, can provide a more useful approach to engaging with NPS in terms of evaluation from the perspective of ‘what works’.

## **Chapter 3: Methods**

### **Introduction**

This chapter outlines the methods and materials that will be used to answer the research question. Examining the construction of the NPS problems and its limits required both an elaboration of the terms in which NPS have been problematized and exploratory data collection to inform the question of how these problems might be thought about differently. The production of the ‘problem’ of NPS as a matter for policy is analysed through a documentary analysis outlining the ways in which NPS are represented as a problem in various sources: policy reports, media reports, harm assessments and Parliamentary debate. In turn, the exploration of alternative constructions of NPS is undertaken through empirical data collection gathered in 19 semi-structured interviews with current and former NPS users about their history with NPS, views on their effects and risks, and perspectives on the effects of NPS regulation (see Table 3.1). In setting out the mixed methods approach adopted in the thesis, this chapter reviews, first, the sources used to examine the ‘problem representation’ of NPS and the analytical methods for doing so and, second, describes the interview methods, data collection and framework for analysis.

**Table 3.1: Bacchi’s WPR Approach (Bacchi 2009)**

1. What is the problem represented to be in a specific policy?
2. What presuppositions or assumptions underlie this representation of the problem?
3. How has this representation of the problem come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the problem be thought about differently?
5. What effects are produced by this representation of the problem?
6. How/where has this representation of the problem been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

The principal framework for analysing the terms of the NPS ‘problem’ is Bacchi’s WPR approach. The WPR approach offers a heuristic for interrogating the ways in which

problems are made in the process of representing them. It is expressed in the form of six questions to be directed at policy proposals (see Table 3.2). These questions can form the background of an analysis or be explored systematically (Bacchi 2015). In this context, these questions form the background of the enquiry, with different chapters engaging with different aspects of Bacchi's approach.

Chapter 4 mobilises several of Bacchi's questions: *how* has this problem has been presented and what assumptions underpin this reading? In turn, it answers Bacchi's fifth question: what effects are produced by this account of the problem? Question 3, regarding *how* the representation has been brought about, is engaged with throughout in terms of knowledge circulates through these accounts and underpins the enquiry into and analysis of the policy documents.

Chapter 5 explores Bacchi's fourth question: where are the silences in this account? This engages with certain dimensions of NPS that do not emerge in the policy problematizations and how these objects may be constructed in practice by NPS consumers. While this account does not rebut the view that NPS consumption may be unsafe and involves risks, it indicates a distinct set of concerns, positions and objects that are silent within the policy account of NPS. Specifically, these relate to the complex and contested meanings of legality, the relationship of NPS to other drugs, the nature of consumption and its goals and the possibility for using NPS for specific goals, all of which are largely silent in the policy account. Chapter 6 engages with Bacchi's final question: the terms by which this policy problem might be contested and argues for extending scope for constructing the NPS problem to permit a wider and more participatory method for defining how NPS related problems should be dealt with.

In effect, the documentary analysis develops answers to the first three questions, while the interview analyses provides a basis for analysing the fourth question. The conclusion considers the effects of the problem representation, while arguing that this representation of the problem is best contested in terms of how the 'public interest' is defined in relation to drug policy, and considers how this could be made more inclusive to drug users.

**Table 3.2: Sources of data**

News Reports	70 news reports on NPS collected during 2009-2015. 28 reports from <i>BBC News</i> , 14 from the <i>Daily Telegraph</i> , 14 from the <i>Daily Mail</i> , and 13 from <i>the Independent</i> and one from the <i>Huffington Post</i> .
Harm Classifications	4 ACMD reports: "Consideration of the Cathinones", "Update to the Generic Schedule of Tryptamines" "Methoxetamine report" and "NBOMe Compounds"
Policy Reports	ACMD: 'Consideration of the New Psychoactive Substances (legal highs) and the 'Recommendations of the Expert Panel on NPS'
Parliamentary Debates	2 <sup>nd</sup> and 3 <sup>rd</sup> Readings of the Psychoactive Substances Act in Parliament
Interview data	19 interviews with current and former NPS consumers with a range of drug using experience.

### **Constituting NPS as an Object of Discourse**

The documents analysed are policy documents, technical reports and news reports.

These comprise 70 news reports about NPS (termed 'legal highs' in this context), harm assessments of specific NPS that were for control under the Misuse of Drugs Act 1971, the two Parliamentary debates that accompany the second and third readings of the Psychoactive Substances Act in Parliament and the ACMD and the 'Expert Panel on NPS' reports on controlling NPS (see Appendix A-B for a full discussion).

The decision to consult multiple types of documents for the purpose of analysing NPS policy was with a view to giving a broader account of this problem has been defined beyond simply focusing on policy documents. Here, while technical documents were essential for understanding the processes by which problem representations are given authority, I was concerned that simply emphasising 'expert' discourses risked neglecting the ways in which NPS were associated with specific anxieties in media and Parliamentary accounts. For this reason, an overview of different, interconnected, sites

at which NPS have been constituted as ‘problems’ was decided as the best means of approaching the problem. This is consistent with Bacchi’s ‘What is the problem represented to be’ approach, which suggests that a range of texts including the sources noted above may be useful in comprehending how policy has represented a problem (Bacchi 2009). As she notes: “Given the almost endless variety and numbers of texts that could be selected, it needs to be recognised that choosing policies to examine is itself an interpretive exercise.” (2009, pp. 20).

These sites can be understood as mobilizing distinct frameworks of knowledge and concerns. As Laws notes, discursive objects are constituted by their *circulation* through different semiotic fields rather than being finally constituted at any specific point (Law 2009). In practice, this means that there is no *totalising* or *central* reference point that contains all the features of NPS – they are not finalised in the media, or the text of the Psychoactive Substances Act 2016 – but are rather are contingently assembled in practice, often through a combination of referents. Discussing NPS – as the results indicate - involves drawing together *traces* from different sites. Analysis of multiple sites therefore allows a richer picture of the ways in which technical-scientific discourses, folk sociologies of drug use, tabloid newspaper reports and the experiences of Parliamentarians in their surgeries can both mutually reinforce the claims and validity of each.

### *News Media Analysis*

In general terms, the media reporting of crime or deviant behaviour emphasises the ‘newsworthy’ aspects of crime characterised by uncommon and shocking events (Jewkes 2012). Criminologists have drawn attention to the development of ‘moral panics’ – occasional eruptions of acute public concern that lead to short-sighted, confrontational policy responses (Cohen 2002) – as a means by which the media may contribute to harsh and punitive responses to perceived wrongdoing. Scholars have emphasised the ways in which the news media deploys melodramatic narratives that emphasise the confrontation between social deviance and the state, and legitimize state interventions on the basis of upholding social order and redressing wrongs (Wright 2015). The news media has also been characterised as employing narrative frameworks that frame crime in relation to public order, providing an account of ‘where things fit’ in the broader social structure (Ericson et al. 1991), while providing a key site for the dissemination of the views and analysis of ‘primary definers’ like policymakers,

politicians, scientists, research institutions and other empowered decision makers (Hall et al. 2013).

In terms of drug policy, research has emphasised the capacity of the news media to increase concern about drug use as a policy problem (e.g. Fan 1996), mobilize public support against certain policy directions (e.g. Christie 1998) and elicit public and political concern about certain forms of drug use, including mephedrone (e.g. Critcher 2000; Sare 2011; Silverman 2012). Newspaper reporting here has frequently been criticised as inaccurate, sensational and promoting stereotypes about drug users (Coomber et al. 2000; Taylor 2008).

The analysis here is concerned with how the problem of NPS is represented, by whom, and in what terms. Existing research into the media's representation of drug use can be understood as mobilizing a range of concerns and occasional concessions. In some contexts, drug use may be reported with relative approval or understanding in the context of celebrity stories (Haines-Saah et al. 2014). In most cases, however, quantitative analysis undertaken on Australian newspapers indicates that harm provides the dominant framework through which the media engages with drug use, although crime is also a common cause of reporting (Hughes et al. 2011).

Scholarship has indicated the media does not enact equal concern for all drug-related deaths and harms. Research comparing the reporting of MDMA related deaths to deaths resulting from volatile substance abuse (VSA) in the UK found that, despite the greater harms of VSA, deaths involving ecstasy were reported far more often (Manning 2006). While the latter could be framed within an account of a 'threat to the innocent', VSA was too associated with despair and poverty to make a compelling story about the menace of drugs. Quantitative analysis of the Scottish media similarly found that the most newsworthy stories in terms of the coverage afforded to them were those involving young (under 21) drug users, which were covered far more frequently than more common sources of harm like diazepam and methadone (Forsyth 2001).

In discussing the newspaper reporting of mephedrone, research has observed that the discursive frames adopted emphasised the threat to the innocent – young and naïve drug users – posed by the sudden emergence of this substance (Alexandrescu 2013). As Alexandrescu (2013, pp. 34) notes "...mephedrone was portrayed by the tabloid media

as the source of a fatal disease that was both destroying its victims and using them to spread the seeds of a moral corruption that bore the mark of a ruthless invading force.” At the same time, other drug users have in others contexts been primarily constructed as a social threat to be controlled, often carrying signs of socio-economic risk and racialized fear of the other (Jewkes 2012; Lloyd 2010; Reinerman and Levine 1997).

To investigate the representation of NPS in the media, the research required a dataset that was both sufficiently large to allow repeating themes to emerge, and diverse enough to provide for the potentially divergent elements of how NPS were portrayed. At the same time, it had to be sufficiently compact to allow detailed analysis in the context of a multi-site study. While television news production is also an important site of news reporting, textual news reports were selected due to accessibility and ease of comparability. In total, a sample of 70 reports covering the period from 2009-2015 from British media outlets was selected.

The sample was obtained using *Google News*. The term ‘legal high’ was used to search *Google News* archives periods corresponding to each year from 2009 to 2015. 10 stories were selected for each year of data collection. To obtain balance, a range of news outlets were sought in the sample for each year, equating to 4 BBC reports per year, with another six stories from newspapers – four broadsheet (two from the *Daily Telegraph* and two from the *Independent*) and two tabloid stories from the *Daily Mail* - providing 70 stories in total. In 2011, a story from the UK Huffington Post was selected instead of the *Independent*, due to a lack of relevant stories in the *Independent* that year.

When displaying search results, *Google News* presents results clustered around key ‘events’ related to specific dates relevant to the search term. To create the sample, I chose one story representing each event, within the above sampling frame. To illustrate: the 2012 sample included 4 stories from the BBC covering, in turn, reports of increasing deaths from in relation to NPS, the control of ‘black mamba’ and methoxetamine, the hospitalization of 9 by ‘annihilation’, and increased reports of harm from Glasgow health boards. The *Daily Mail*, in turn, report on the high rate of new drug emergence and a story of an acute incident of NPS intoxication. The *Telegraph* stories cover warnings on ‘benzo fury’ following its alleged involvement with a death reported at a music festival, and comments from the police that chasing ‘legal highs’ was a poor use of police time. Finally, the *Independent* provides an interview with Matt Bowden (an



NPS entrepreneur) and reports a health warning about the potential ill-effects of methoxetamine, despite marketing claims that it is ‘safe ketamine’.

This small sample cannot provide the basis for making observation about the relative balance of reporting, the extent of bias in the media or the relative volume of reporting over time. However, what it does provide for is an examination of terms in which various ‘primary definers’ give accounts of NPS, and observe which frames are consistently engaged when making these claims. Further quantitative research would be necessary, however, to establish the extent to which certain articles were read, shared, and came to the attention of decision makers or informed subsequent activism in response to NPS.

*Parliamentary Debates (2<sup>nd</sup> Reading of Psychoactive Substances Act, Oct 19<sup>th</sup> 2015, 3<sup>rd</sup> Reading of the Psychoactive Substances Act, January 20<sup>th</sup>, 2016).*

The second group of documents for analysis concerned the debates accompanying the 2<sup>nd</sup> and 3<sup>rd</sup> readings of the Psychoactive Substances Bill (as it was then) in the UK Parliament. Debates in the UK Parliament serve to scrutinise legislation, as well as articulate the reasons for pursuing specific policies. For this reason, while these publicly available debates do not necessarily determine the outcome of votes they offer a useful site for exploring how MPs publicly construct the NPS problem and regard this of relevance to their constituents. These debates also facilitate an analysis of how opposition to the Psychoactive Substances Act was articulated and evidence mobilized towards arguing for alternative approaches.

### *Harm Assessments*

The next set of documents are a selection of the reports published by the ACMD making recommendations on the scheduling of particular NPS. For shorthand, these reports are referred to as ‘harm assessments’. These harm assessments are, effectively, technical policy recommendations whereby the ACMD reviews the evidence on a substance the government has referred to its attention – or it has independently undertaken to review – and makes a recommendation concerning its control. The ACMD may be overruled, and tend to be when they recommend no control, as in the case of khat (ACMD 2013a) which was banned by the government despite the opposite recommendation being given. While these reports may still be produced – to recommend a ‘psychoactive substance’ to the Schedule of the MoD 1971 – they will no

longer be undertaken before a substance comes under legislative control. At the same time, most NPS made illegal prior to the Psychoactive Substances Act were controlled on the basis of generic scheduling, wherein whole chemical families were made illegal – i.e. cathinones – on the basis of considering a specific iteration of this group – i.e. mephedrone.

For new drugs, the assessment process may follow the ACMD's own initiative or a substance being referred to the ACMD by the Home Secretary. This commences the process of gathering together the scientific evidence available about the substance from the available literature. Determining whether the substance is associated with harm is often a central question here. There appears to be no clear 'minimum threshold' of harm below which a substance can fall to avoid being classified as a drug. Evidence available on which to make classification decisions is also likely to be minimal. As Reuter writes, critically:

Admittedly, the existing system has an element of farce. It requires review of what is almost always an extraordinarily thin scientific literature. The novelty of most of these drugs means that there has been little time to conduct research on the health consequences of use, let alone explore the population health consequences of the drug. (Reuter 2012, p. 1903).

The reports here consider cathinones (which include mephedrone), methoxetamine, the NBOMe series and the assessment of novel tryptamines. The reports assemble 'facts' about these substances to substantiate the requisite criteria for identifying 'drugs' here, i.e. their molecular identities and the contexts in which they have been associated with harm. The four reports were analysed in terms of the objects, and collateral realities, they produce. Here, the focus is specifically to unpick the terms in which the materiality of these substances is constructed as a result of being enveloped within the drugs *dispositif*, and what potential accounts are silenced in this account.

*Policy Reports: 'Consideration of the Novel Psychoactive Substances' and Recommendations of the Expert Panel on New Psychoactive Substances*

Finally, two key policy documents concerning NPS are considered. These documents were chosen as they represent the most comprehensive accounts of the NPS 'problem' for policy makers are the reports produced by the ACMD – 'Consideration of the New

Psychoactive Substances’ and the report from the ‘Expert Panel on Novel Psychoactive Substances’, that made policy recommendations (including for generic scheduling) in 2014 (ACMD 2011; Expert Panel 2014). By contrast, other comparable reports produced by the Home Office and the Welsh and the Scottish national governments comprise evidence briefings about the range, nature and consumers of NPS (Fraser 2014; Stephenson and Richardson 2014; National Assembly for Wales 2015). While these represent detailed and useful research efforts, they are primarily concerned with providing evidence briefings and, while recommendations are made to devolved Parliaments in some cases, they are not primarily concerned with making legislative recommendations for drug policy on a national level.

#### *Reflexivity in Documentary Analysis*

My principal concern here was that the results may indicate a greater degree of consensus about NPS policy that was present at the time, given the sources used. For example, the report of All-Party Parliamentary Group on Drugs Policy suggested – creating a ‘Class D’ for NPS without attached criminal penalties and making the ACMD independent (APPGDPR 2013). Non-governmental advocacy bodies like Demos (Birdwell et al, 2011) have suggested a more cautious approach to NPS and emphasised the importance of further-ranging drug policy reforms. In both cases, the reports were not used given their limited relevance to the policy decisions undertaken by government. The findings are therefore qualified in the sense that they do not exhaust the scope for policy problematisations of NPS, even if they do engage with the dominant framings that provided the basis for legislation and policy development. Similarly, much critical policy commentary from drug users themselves is doubtlessly omitted, as it is unlikely to appear in newspapers or the other documents discussed here.

Another analytic concern influenced by reflexivity was that, while the methods may indicate a general ‘public’ sentiment in the media reporting, this should not be taken to indicate a more general ‘public feeling’. While moral panic theory has often invoked the notion of an outraged public sentiment (Cohen 2002), this can be distinguished here in the sense that while a policy problematization certainly emerges this can and should be distinguished from questions about the *extent* or *magnitude* of actually existing public

sentiment from the vantage point of policy analysis. It is far from clear that there was a unanimous 'public' view on NPS, nor is there a readily apparent way to demonstrate this. As has been long remarked, counter-cultures may thrive on attention (McRobbie and Thornton 1995), as seemingly indicated by research suggesting that mephedrone coverage may have driven online interest in it more generally (Forsyth 2012).

### **Constructing NPS narratives**

The second source of data was narrative interviews with participants who had previously consumed NPS. These interviews were collected between July 2014 and November 2015. This section of the research was designed to collect data on NPS consumption to provide context for analysing the representation of the NPS problem in policy. Here, my concern was to understand how NPS consumption was approached by participants, the meaning and evaluation of this consumption and how consumption is realised in practice. Qualitative, semi-structured interview methods offered an appropriate methodology with which to approach these questions (Denzin & Lincoln 2008). While surveys with standardised questions have been employed widely and effectively in the research of NPS (e.g. Carhart-Harris et al. 2011, Global Drugs Survey 2013, Soussan and Kjellgren 2016, Barnard et al. 2016) it was felt that the interview setting would allow for a more exploratory approach, which allowed me to seek clarification and be guided by what the participant felt was important to emphasise in their account of NPS use. Undertaking a sequence of interviews, in the context of ongoing analysis of the findings, meant that the lines of questioning adopted and the matters of concern could evolve over time. The direct interface with the participant also allowed the development of rapport. While participant observation methods and ethnographic methods would have increased the level of detail obtained, the limits of an immersive approach to this research was simply that, for most participants, NPS use was not a characteristic of their everyday lifestyle in a way that would be amenable to ongoing monitoring. In addition, for many of these participants, NPS use had been transitioned out of, making these methods unviable.

### *Ethics*

The ethical approval for the interview portion of the data collection was provided by Manchester University Research Ethics Committee 1, with permission granted on the 10<sup>th</sup> of June 2014. The key ethical issues at stake were, of course, providing participant anonymity and confidentiality and preventing harm resulting from the data collection

process. In the first instance this was undertaken by, in the process of transcription, deleting identifying information from the data, while saving files in password protected documents on an encrypted USB. Identifying information about locations and occupational status were omitted. The voice recordings from the interviews were deleted following the process of transcription and checking.

In terms of reducing the risk of harm to participants, the key focus here was in obtaining informed consent and providing notice of the topics of the interview. The former was obtained by reading, at the start of each interview, a script – that had been approved by the Ethics Committee - informing the participant about what would happen to the data – as noted above – and that, in the event of participants indicating serious threats to themselves or others, the conditions of anonymity would be breached. The latter was undertaken through a Participant Information Sheet that was e-mailed or physically provided to a potential participant at least 24 hours before undertaking the interview, informing them of the proposed contents of the interview and the terms of reference for making complaints about the data collection process.

In terms of ethical uncertainties, my principal source of anxiety here was how best to approach the tone of these conversations, which varied both between different participants and within narratives. I was simultaneously engaged with participants in co-constructing narratives which were, at times, humorous, and concerned with the positive effects of the substances in question and, at other times, much darker and concerned with NPS related harms to participants or those known to them. This required that I remain conscious of my role in shaping the discussion and negotiating the process of both being non-judgmental and appreciate of what participants gained from drugs while having due regard for the terms in which they were harmful.

For me, following harm to participants, the most important ethical concern during the interview process and subsequent data analysis was fulfilling my responsibilities to my participants in terms of accurately representing the data provided in these interviews. The complexities of the narratives resist clear characterization and are not approached here in terms of normative evaluation, nor would I feel qualified or entitled to do so. What became increasingly clear as the data collection proceeded was that the frameworks identified by participants for thinking about substances that were distinct from the terms in which these appeared in policy rhetoric. This, in turn, provoked a

**Table 3.3: Interview Sample**

<b>Interview</b>	<b>Participant</b>	<b>Format</b>	<b>Non-NPS Discussed</b>	<b>NPS Discussed</b>
1 (07/14)	Male, white, 30-35, residing in urban centre.	Face to face	Cannabis, MDMA, Cocaine, Alcohol Tobacco.	Mephedrone, AMT, GBL
2 (09/14)	Female, white, 20-25, residing in urban centre	Face to face	Cannabis, MDMA, Alcohol, Tobacco.	Mephedrone, SCRA's, Nitrous Oxide
3 (10/14)	Male, white, 20-25, residing in urban centre	Face to face	MDMA.	Mephedrone, assorted NPS stimulants.
4 (11/14)	Male, white, 25-30, residing in urban centre	Face to face	Cannabis, MDMA/, Alcohol, Tobacco, Ketamine, Psylocybin, 2C	Mephedrone, branded stimulants, DOM, synthetic

broader interest in thinking about how these limitations pointed towards broader limitations in the approach to knowledge embedded in drugs policy, and a concern with the terms by which these could be contested.

Finally, the fact the a 'snowball' sample had been used meant that, inevitably, some participants were and are aware of the identity of others in the sample. In this context, I was in certain contexts conscious to avoid reproducing statements that might be identifiable with particular events or social contexts which would make these identifiable, particularly when the stories in question were particularly embarrassing or private. Generic terms used to describe legal highs have been altered in cases where these were thought to be specific to the locations in question.

### ***Data Collection***

The interview data was collected between July 2014 and November 2015. The sample comprises of 16 men and 3 women, who had consumed a range of NPS, alongside controlled drugs and licit substances like alcohol and tobacco (see Table 3.3).

			series.	ketamine, salvia
5 (03/15)	Male, white, 25-30, residing in urban centre	Face to face	Cannabis, Alcohol, 2CB.	Various branded stimulants, salvia.
6 (01/15)	Female, white, 20-25, residing in urban centre.	Skype	Cannabis, MDMA, LSD, 'magic mushrooms' (psilocybin/psilocin), DMT	Methoxetamine, AMT, 5-MeO-DALT, Nitrous Oxide, salvia
7 (03/15)	Male, white, 40-45, residing in urban centre.	Face to face	Cannabis, Alcohol, 2CB, DMT	NBOMe compounds, AL-LAD, other 2C-series substances.
8 (03/15)	Male, white, 20-25. Residing in urban centre.	Face to face	Cannabis, LSD, 'magic mushrooms' (psilocybin/psilocin), speed, Valium, change (DMT)	5-MeO-DALT, ethnobotanicals, 3,4-CTMP
9 (03/15)	Female, white, 20-25, residing in urban centre	Skype	Cannabis, Alcohol, Tobacco, MDMA	5-MeO-DALT, Nitrous Oxide
10 (06/15)	Male, white, location unknown	Skype	Cannabis	Methoxetamine, 4-FA, AL-LAD, LSZ, NBOMes, MPA, 1P-LSD, GBL, kratom
11 (06/15)	Details unknown	Encrypted webchat	Ayahuasca (DMT)	SCRAs, 1P-LSD, bk 2CB, MDAI, methamnetamine,

				ephedrine, salvia
12 (09/15)	Male, white, 20-25 Semi-rural, deindustrialised town.	Face to face	Cannabis, Alcohol, Cocaine, amphetamine.	‘sparkle’ (generic NPS stimulants). SCRAs, salvia
13 (09/15)	Male, white, 20-25 Semi-rural, deindustrialised town.	Face to face	Cannabis, Alcohol, Cocaine	‘sparkle’ (generic NPS stimulants).
14 (09/15)	Male, white, 20-25 Semi-rural, deindustrialised town.	Face to face	Cannabis, Alcohol, Tobacco, MDMA, Cocaine, Amphetamine	‘sparkle’ (generic NPS stimulants), salvia
15 (09/15)	Male, white, 25-30 Semi-rural, deindustrialised town.	Skype	Cannabis, Alcohol, Tobacco	SCRAs
16 (09/15)	Male, white, 55-60	Face to face	Cannabis, MDMA.	MDAI, branded NPS, ‘synthetic ketamine’, SCRAs, Nitrous Oxide, BZP, various NPS stimulants, salvia



17 (09/15)	Male, white, 35-40	Face to face	Cannabis, Alcohol, MDMA, Tobacco,	BZP, salvia mephedrone, SCRAs, etizolam
18 (10/15)	Male, white, 25-30	Face to face	Cannabis, Alcohol. MDMA, 'magic mushrooms' (psilocybin/psilocin), cocaine	Mephedrone, methydone, SCRAs.
19 (11/15)	Male, white, 30-35	Face to face	Alcohol	Branded products, mephedrone, methoxetamine, 'B2', 5-APB,

Obtaining participants for this sample faced two barriers. First, there was the fact that NPS use is both relatively rare and, as with drug use more generally, a relatively hidden activity. Within this limited frame, there was also the fact amongst who had consumed NPS, many would not make appropriate candidates for interview given their limited engagement with these substances and markets. Second, there was the fact that NPS use, like drug use generally, was a relatively private activity and thus confiding this kind of information would require trust and some sense of security.

To facilitate access to a hard to reach and somewhat hidden population, a 'snowball' approach was adopted, which is common in research investigating hard to reach populations (Faugier and Sargeant 1997). 'Snowball' sampling uses initial points of contact into a population under study to conduct interviews, before seeking to broaden out the sample through ongoing referrals from these participants (Faugier and Sargeant 1997). In my case this involved, initially, making enquiries amongst my peers as to whether they, or those they knew, had had experiences with a group of drugs I either named specifically or referred to as 'legal highs'.

This method was productive, with contacts referred to me as a result of these enquiries yielding 17 of the 19 participants in question. Interviews were typically arranged via an initial contact from the participant or someone known to them, after which the goals of the research process would be described and I would send them a participant information sheet providing further details. However, this approach involved a lengthy period of data collection. Despite my intentions, most participants were not able to forward me onto to other individuals who consumed these substances, or chose not to. In three cases – participants 7-9, 12-14 and 17-18, the participants formed part of a common social network and shared the same location – but otherwise represented singular instances of direct referrals of personal contacts, except for 10-11, which were obtained following enquiries made in a drugs forum. This is indicative of a limit in my ‘snowball’ sampling approach generally, as it did not appear that these NPS users were necessarily socially networked in terms of their consumption. However, while the method perhaps produced too many participants sharing social networks with researcher, the sample nonetheless includes a range of ages and forms of drug consumption were reported here. The gender balance, however, is uneven, with the result that these interviews may offer specifically gendered accounts of the effects of drugs, which in itself is a subject that requires further research.

In all cases except the five in which Skype provided a far more convenient alternative, I travelled to the participant’s geographical location to conduct the interview. I have decided to withhold data about the participants’ geographical locations due to specifying in the preamble to the interview that identifying information would be withdrawn. In some cases, this reflects the fact that the communities from which participants come from are small and, alongside the narrative information that is relayed, could potentially be identified. However, while the risks of this may be very small, the main consideration informing my perspective is that, given my reassurances to participants that identifying information would be withdrawn, it would feel remiss to produce this information here. In general terms, the dimensions of the locations are broadly consistent. While in the cases of individuals engaged with through forums, information was neither supplied nor apparent, the two settings represented in this sample are large cities in the North of England and Scotland, as well as two smaller locations in the broader UK which are characterised here as semi-rural towns, largely post-industrial, that are characterised both by relative poverty and being separate from the city in terms of its major drug distribution hubs. A breakdown of this distinction for

different participants is in Table 3.1. For our purposes, the principal dimension of place that became apparent in these contexts was in one context where a semi-rural location constrained access to the participant's preferred drug, and the effects of deprivation on risk perspective, but these were mediated by various other factors.

Several contacts were initiated which resulted in interviews not being pursued further, often due to participants simply ceasing contact, at which point I didn't pursue matters further. As I was consistently aware, discussing private matters like drug control, even with the offer of anonymity, may be a daunting process for a relative stranger, particularly as in some cases these experiences may be unpleasant to recall.

The sampling process instead adopts a theoretical approach drawing on 'grounded theory' (Glaser and Strauss 1967). Here, sampling is undertaken through a process of conducting initial interviews, undertaking analyses that guide further selection of participants to clarify emerging understanding until this reaches 'saturation' – the point at which new findings are not emerging - and then seeking to supplement this sample with further participants that offer to extend the scope of the analysis (Glaser and Strauss 1967). In practice, this meant that after the first five interviews I began to feel that the category of recreational NPS stimulant was reaching saturation. In turn, I became more interested in understanding whether similar findings would be identified in relation to psychedelic NPS, and the nature of my focus shifted to engaging with participants using a range of psychedelic and disassociative substances.

Following an interview with a participant whose use of psychedelics involved a blending of online drugs cultures and emerging online technology – Interview 7 – I became interested in exploring the perspectives of those loosely identified with 'psychonaut' culture, and posted an explanation of the research and a request for participation on a UK drugs forum, receiving three contacts and two interviews thus. From here, the remaining sampling process involved trying to extend the number of substances under discussion to include synthetic cannabinoids, as well as identifying a new context in which stimulants were being used – in a semi-rural, post-industrial context – that shed new light onto my analysis. I was also able to identify and interview a participant who had never engaged with illicit drugs market prior to their involvement with NPS, and would primarily continue to avoid these markets. The result was a sample with a range of NPS experience (see Table 3.3). Where the sample is lacking

(beside the lack of a treatment/highly problematic drug using population) is in terms of its engagement with the gay nightlife, which has been identified as a common site for NPS consumption, and in terms of its gender balance. Here, the lack of available participants and the end of the data collection period led to this omission.

The theoretical sampling approach informed by grounded theory also reflects the general uncertainty about the parameters of the NPS using population, which is hard to statistically characterise. It also allowed me to intentionally seek out accounts describing different examples of regulation and its consequences – for example speaking to participants who had only ever consumed illegal NPS versus those who were introduced to the substance through non-controlled markets - and permitted sampling around concerns identified here. This meant that when questions came up - has anyone enjoyed this substance being described as really unpleasant here? Is this experience of online markets consistent? etc. - data could be sought out on these points specifically. Over time, my questions became more concerned both with the positive effects of these substances.

A treatment population was not sought for this interview project, as this was felt to be less representative of the broader population here, which aimed at ‘casual’ or ‘recreational’ – though not necessarily unsophisticated - NPS users who were likely to comprise a larger component of the consumer base. The sample does not represent a random cross-section of this population and as such cannot be said to be statistically representative. The data here is difficult to contextualise in terms of what a ‘standard’ example of NPS use is, and suggests that the category may be too broad to allow for generalisations here. For future research, it may be better to approach NPS more specifically in terms of classes of substances – i.e. psychedelics or stimulants – in a more general sense and contextualise NPS within these contexts.

### ***Interview Structure***

Before proceeding with the interviews, I conferred with the participants about the purposes of the research and my research question, as well as often clarifying with the participant which substances were of particular interest, given that the boundaries between research chemicals, legal highs, novel drugs and traditional substances could sometimes be blurry. For some, it emerged, they emphasised the distinction of being available online, whereas for others they primarily associated substances here called

NPS with ‘legal highs’ and branded products. The interview would commence, following a confirmation that the participant had read the information sheet and consented to the conditions of the interview, with a general request for the participant to explain how they became interested in drugs and specifically what had attracted them to NPS. While most participants had specific substances they had consumed, 3 were more concerned with exploring these substances *in general* and discussed their experiences of this, focusing on individual substances when this was appropriate.

In each interview, I sought to clarify information on several themes: which markets were relevant and why, how information was obtained about the substances that were consumed, how risk was managed and whether this was successful, what benefits and deficits were observed in relation to the substances, and how legal regulation was perceived and, where relevant, its effects on NPS use. Due to the interactive and semi-structured nature of the interview, the precise ordering and wording of these questions differed between interviews. Interviews ranged between 15 and 84 minutes, while the average length was approximately 40 minutes. When interviews were shorter than this, as they were in two cases, this was usually owing to lack of rapport being established with the participant and shorter answers to questions being provided. Longer interviews, in turn, usually reflected the participant having a lot to communicate and a strong rapport being established.

As noted above, I was particularly interested in understanding what experiences NPS made possible. The status of drug effects in subjective terms is a central question for drug policy. ‘Pleasure’ is generally absent within policy frameworks (Moore 2008). The subjective experience of the drug user is increasingly conceptualised, at least within some parts of addiction science, as one characterised by a ‘hi-jacked’ brain with defective functioning (Fraser et al. 2014) From this perspective, it felt important to understand how the subjective experiences of drugs were conceived and what this could offer to regulatory critique.

Many of the participants (13/19) had ceased consuming substances that could be characterised as NPS at the time of interview, which meant narratives were mainly retrospective. This may mean that, on balance, this sample represents participants who have had lacklustre or negative experiences with these substances. However, it is also highly likely that, given the historically higher prevalence of NPS before controls are

introduced, *most* NPS consumers have ceased their use. This is particularly true in the case of mephedrone. At the same time, NPS adoption, particularly after the PSA 2016, will continue provide an interesting subject for future research in this area.

### ***Coding and Analysis***

The full coding structure is reproduced below, in Figure 3.1. The interview analysis was undertaken with a view to understanding how participants constructed the NPS market and how consumption was experienced. I was interested in understanding the appeal of NPS, with a view to understanding what was *at stake* in the question of access to psychoactive.

1. NPS Effects and Benefits
  - a. Ambiguous effects
  - b. Exploring the new
  - c. Functional physical benefits
  - d. Social bonding effects
  - e. Therapeutic effects
  - f. Transformational effects
  - g. Trip effects
2. Assembling NPS Spatially
  - a. NPS at festivals
  - b. Traditional drug dealing
    - i. Harms of the criminal market
    - ii. Positive elements
    - iii. Interviewee participation
  - c. Online markets
    - i. Cryptomarkets
    - ii. Clearnet drug markets
  - d. Spaces of initial NPS consumption.
  - e. Dimensions of local disadvantage.
  - f. Head shops
3. Drugs as a source of concern.
  - a. Perceiving and regulating harm
    - i. Contextualising NPS related harm
      1. Alcohol harms by comparison
      2. Cannabis by Comparison
      3. Harm from medicine
    - ii. Experiences of harm.
      1. Compulsive behaviour
      2. Criminal offending to pay for drugs
      3. Negative effects on friendships
      4. Negative physical effects.
      5. Negative psychological effects
      6. Reckless behaviour
      7. Perceptions of risks for others
      8. NPS and suicide.
    - iii. Managing harm
      1. Safety practices and perceptions
      2. Counter-public consciousness
      3. Trip reports
4. Points of distinction.
  - a. General dislike of NPS.
  - b. Comparative effects with other drugs.
  - c. Improvements on existing drugs.
  - d. Relative costs of NPS
5. Relevance of Regulation
  - a. Effective repression leading to NPS use.
  - b. Identity management
  - c. NPS prohibition as ineffective.
  - d. Objections to drug policy and policing
  - e. Relative effects of regulation
    - i. Stocking up in response to illegality.

**Figure 3.1:** Full Coding Structure for Interview Analysis

At the same time, I was keen to understand how participants constructed their interactions with the market, and the different forms of technology - including knowledge and information - that were mobilized in doing so. The practical dimensions of using drugs – how they were measured, the forms in which they were purchased – was also a consistent theme in these discussions, as were the accounts of why and how participants had changed their drug use over time. Another set of codes were also developed to account for the various ways in which state regulation was experienced by the participants. The different NPS markets and how participants perceived them was also of great interest. Space and location also emerged as important features of NPS use. National and international drug trends were mediated in very local, particular ways which have important implications for thinking about the limits of the collateral realities enacted in policy. Not only do local dimensions appear important from a harm perspective, but they also may require specific and contextually sensitive interventions. Here it also became apparent how different versions of the NPS market contain and evoke different concerns and risks.

The data grouped under ‘Drugs as a source of concern’ is concerned with the ways in which participants conceptualised and managed the potential for harm resulting from NPS (and other drugs). Here, it is detailed both when participants themselves have come to harm, as well as the methods for making the novel drugs market more secure. ‘Points of distinction’ concerns the ways in which participants distinguished certain NPS (and sometimes all NPS) relative to drugs in general. This provides interesting and ambiguous evidence about both the potential for NPS to improve upon traditional drug experiences or offer comparative benefits, as well as data that dismisses them more generally as a category.

Finally, the regulation section is concerned both with the practical effects that NPS control has had on these participants and how these regulatory efforts are perceived. As shall be argued, the effects of regulation are mixed, with examples of legal changes influencing consumption alongside examples where legal status does not appear to play a discernible role. Price and availability also played a role. While the coding process was initially open to data concerning the perceived importance of legality implying safety and thus encouraging consumption, data indicating this wasn’t particularly forthcoming.



### ***Methodological Limitations***

What is missing from the documentary analysis is the ability to discern how the stakeholder *interaction* informed policy and where disputes have emerged in policy discussions. It would be extremely interesting, for example, to learn more about the nature of drug policy disputes at a political level. Similarly, the contestation of NPS at a cultural level – whether online or in alternative media – would be an interesting direction for future research. The interviews are limited in the sense that they rely on partial, truncated accounts of a participant's history with substances, insofar as they are willing to report them. The interviews here are therefore not biographically comprehensive, and cannot be said to provide exhaustive accounts of the participants' drug use or having verifiability beyond the accounts given. Participants were required to provide an account of themselves, disclosing situations concerned sometimes with illegal behaviour or activities they associated with harm, to a relative stranger (albeit one who for the most part was indirectly known to the participant as part of a larger social network). Given the stigmatised nature of drug use, it seems entirely plausible and understandable that participants would emphasise certain aspects of their drug use and omit others. However, the benefit of the interview method, despite this imprecision, is that it also permits accounts to emerge which invest accounts of NPS with meaning and emphasises their subjective dimensions. Focus groups, whether online or in person, would make a useful source for future analysis on the basis that it might allow further contestation and elaboration amongst participants, indicating unknown parts of the data and looking for consensus and collective sentiment.

***In addition, data collection here would have benefitted from a more creative approach towards data generation in terms of incorporating more documents into the qualitative analysis. While the theoretical analysis here emphasise the importance of drug-using 'assemblages', the data makes very limited use of non-human objects in the investigation of context. A more thorough and creative approach the materials under consideration – NPS packages, forum profiles, interviews which integrated locational and spatial aspects – would benefit future research on these questions in the future. Reflexivity in Qualitative Research***

In seeking to be reflexive in my approach to data collection, I adopted Wacquant's framework for thinking about reflexive concern for this project. Wacquant emphasises three principle sites for critical reflexivity in knowledge production: the personal, the discursive and the conditions in which this knowledge production takes place (Wacquant 2011). In each context, reflexive concerns informed the methodological decisions I undertook. In terms of my personal reflexivity, I was conscious to consistently challenge my own somewhat taken for granted sympathies to the goals of drug policy reform and risk producing an unduly positive account of NPS use. At the same time, this sympathy comes from a concern that current policies exacerbate rather than ameliorate drug-related harm. In this sense, I was keen to obtain a better understanding of the complexities of the problem and the evidence base for current policies. The effects of this sympathetic perspective are hard to be precise about. Certainly, the lack of normative disapproval implicit in my interview approach may have made participants feel more comfortable discussing certain aspects of illicit behaviour. At the same time, it may also have led participants to effectively attempt to, effectively, 'give me what I want' in terms of a sympathetic reading of NPS, although this was not apparent given the range of negative stories that were disclosed.

This was addressed by using semi-structured interviews wherein participants could take an active role in guiding the topics under discussion. In most cases this was highly beneficial and resulting in rich data collection and participant focused narratives. A concern with reflexivity also led me to look for counter-factuals to my own examples. I was cautious to avoid simply reproducing this narrative and diversify my sources to include participants whose use could not be characterised in this way and, in a similar vein, limit my engagement with highly articulate NPS users sourced from online forums to prevent these accessible accounts from dominating the findings.

In terms of Wacquant's second set of concerns, the discursive issues brought up in researching drugs are considerable. As has noted above, the drugs *dispositif* constructs drugs and their effects in certain, restrictive terms for the purposes of administration. In describing and presenting the interviewees, I as an author am afforded considerable scope to evaluate and potentially critique behaviour here, particularly given the presumptive deviance of drug using behaviour. At the same time – with regard to reflexivity concerning the conditions in which knowledge is produced – it is important to emphasise that drugs research is always a *political* activity in terms of what it makes visible and which aspects of drug use are silenced (Moore and Measham 2012). The

decision to expose certain practices to academic discussion and scrutiny may also have implications for how NPS problems come to be understood. Drug policy may, in turn, adopt evidence in the formulation of problems, which invites ethical questions for researchers about the uses that their knowledge might be put to when the consequences of policy attention may be to increase harm.

In terms of seeking to avoid the confines of the discursive regime of drugs policy in constructing the nature of ‘drugs problems’, or seeking to isolate variables that would encourage more specific and targeted forms of criminal law control, the analysis also had to avoid imposing these discursive frames. So, for example, rather than looking for inconsistencies with drug users’ perspectives and mainstream accounts, thus emphasising the need for education or further research to close this gap, I was interested instead in understanding how participants themselves sourced knowledge and developed their own forms of expertise about these substances. .s. The drugs discourse is problematic, as has been argued more generally in this thesis, in part because it insists on a limited and partial approach to representing these substances which excludes other discursive approaches.

In terms of the site of knowledge production itself – i.e. the context in which findings are produced - this also influenced my choice of participants. A limitation of this sample is, as noted, that it does not engage with NPS users who would be considered problematic in the sense that they are either in or presenting for drug treatment. This was done for several reasons. It seemed that participants receiving treatment were unlikely to be representative of the broader NPS using population more generally, as was the case with other illicit drugs. I also had ethical concerns about engaging with problematic drug users about the benefits of NPS in a context where this could adversely affect their treatment.

### *Conclusion*

This chapter has described the methods that will be used to examine the question of how the problem of NPS has been represented, and the limits of these accounts. In brief, the data collection undertaken here covers five sites at which NPS have been constructed. Four are concerned with the enactment of the policy problem of NPS – indeed, constitute the conditions under which it has been produced – and are analysed at the levels of the realities they and the means of producing them. The interviews seek to

elaborate how participants construct NPS, their effects and the subjectivities that can be produced with them. While the former seeks to narrow down the parameters and establish what government should do and what ‘evidence supports’, the latter is concerned with what other features of NPS might be significant and lead to complexity for policy and evaluation.

## **Chapter 4: The Production of the NPS Policy Problem**

### **Introduction**

This chapter considers the limitations of the ways in which NPS have been represented as a policy problem. The results presented here answer the first part of the research question, namely, ‘how has the problem of NPS been represented and what are its limits?’. This chapter makes two central claims. First, the problem discourse *primarily* emphasises concern for NPS harms in terms of those who would not normally use drugs – and use NPS because they are ‘legal’ – and the scope of the state to censure this behaviour as a means of preventing this from happening. In this sense, prohibition is primarily constructed as a means of symbolically designating risks, rather than comprising an adequate strategy for responding to these harms. Secondly, this account of the problem defines the interests of the ‘public’ in a way that emphasises the threat of NPS to vulnerable non-users, while NPS consumers who do not fit into this frame are excluded from having the capacity to define the goals of policy. The limits of this account are further analysed in chapter 5.

This chapter applies theoretical concepts introduced above Both media and Parliamentary accounts emphasise their concern for certain subjects as grievable and precarious and shaping policy around these subjects, while potentially making life more precarious for other, ignored and unrieved subjects. In the section on harm assessments, insights from STS are applied to critique the conditions under which this ‘scientific’ evidence base has been accumulated, and what it excludes. Finally, the policy documents are analysed directly using Bacchi’s questions on what the problem is represented to be.

### **Newspaper Analysis**

The news reports sampled here exhibited a high degree of affinity on the key discursive dimensions of the NPS ‘problem’, the frames offered by primary definers, and the sort of events that triggered coverage. Subjects for stories included reports issued by authoritative institutions or groups - including think tanks and charities concerned with NPS – alongside reports of NPS-related harms and the initiation of new controls by the governments. The main themes in the reporting emphasise the escalating harms associated with NPS which are often called ‘legal highs’, a specific set of harms related to the substances appearing to legal and therefore safe and the highly diverse and therefore dangerous NPS market and the state’s efforts to contain this.

### *The Escalating Problem of Legal Drugs*

In this sample the substances largely referred to as ‘legal highs’ are consistently presented as an escalating threat to health. In 13 stories, statistics are provided indicating an increasing number of drugs related to these substances. While the legal status of the substances in question is sometimes clarified, as in, when methcathinones are referred to as ‘now-banned legal highs’ in one story (BBC News 2012c), this is more often not the case. The following statements are representative of how these deaths are described:

Deaths from legal highs in England and Wales almost doubled to 52 last year.  
(BBC News 2013c)

The latest official UK figures show 68 deaths were linked to legal highs in 2012, up from 10 in 2009. (BBC News 2014b)

Various statistics are used to evidence these claims, with the 52 deaths recorded in 2012 noted in 4 reports, 68 deaths mentioned once, and 97 deaths in 2014 mentioned 4 times. In each context, it is to emphasise that deaths are increasing, with one of the 13 reporting on David Nutt’s claim that estimates of the number of deaths are ‘inflated’ (Brown 2014).

Presenting these deaths as resulting from ‘legal highs’ may be – perhaps entirely unintentionally - misleading. For instance, in a report on the incoming control of the NBOME series of hallucinogenic NPS, the *Independent* notes that:

Official figures also showed the number of deaths involving legal highs soared by 80% last year to 52, from 29 in 2011. (Grierson 2013)

In this case, the dataset in question comes from the Office of National Statistics (ONS) (ONS 2013), and comprises 40 deaths recorded in relation to substances (piperazines, cathinones and GBL/GHB that were controlled in 2009-2010).

In another instance, figures cited as indicating that there were 97 NPS related deaths in 2012 NPS-related deaths are used by the Centre for Social Justice as indicating that the problem of NPS would soon surpass heroin:

Legal highs were linked to 97 deaths in 2012 and hospital admissions rose by 56% between 2009-12, according to new CSJ data. The think-tank estimates that on current trends deaths related to legal highs could be higher than heroin by 2016 - at around 400 deaths a year. (Telegraph 2014)

The 2012 figures in question relate to National Programme for Substance Abuse Deaths (NP-SAD) figures, which only record 68 of the substances as being a 'cause of death'. Of these, 54 of the 68 relate to substances that had been controlled, for the most part, by the end of 2012 (methoxetamine, phenazepam, n=10), PMA/PMAA (n=20) and often earlier (methcathinones n=24).

The juxtaposition of figures referring to aggregate NPS deaths alongside more detailed discussions of harms resulting from 'legal highs' is observed at numerous points in the reports. For instance, in a particularly dramatic instance, the *Daily Mail* reports on the NP-SAD figures discussed above, noting an eightfold increase in deaths between 2009 and 2011 associated with NPS: 'Legal highs deaths rise by 800% in three years: Users warned they are 'dancing in a minefield' after huge increase' (Doyle 2014). As is clarified within the story, NPS were established as a cause of death in two-thirds of cases. The story, which also mentions Hester Stewart, describes the death of young man who appears to have consumed the psychedelic AMT, a substance not controlled at the time of consumption and appears to have been purchased on the internet four days prior to the death. Using this event as an example of the risks here, alongside the constant repetition of the term 'legal', may imply that this instance is representative of the broader risks of NPS. While I wouldn't argue in any sense that the problems underpinning the deaths resulting from – or mediated by – legal availability are unimportant and do not merit reporting or appropriate policy responses, constructing the harms of NPS as a problem of 'legal highs' offers a narrow way of approaching NPS related harms that centralises the relevance of legal availability and, in turn, emphasises the importance of prohibition.

The above is not to suggest that NPS harms *aren't* a 'problem' or that the escalating harms associated with controlled and uncontrolled NPS isn't a subject of legitimate concern. However, insofar as the *problem* is framed as one centring around legal availability – as the term 'legal high' permits – it is possible to see the frame for debate

being narrowed. In this sense the term ‘legal highs’ enacts a collateral reality in which diverse substances are both grouped together – necessitating a continuity between NBOMe related harms and, for example, harms associated with mephedrone – and consumption is understood as a function of the legal availability of these substances.

### *Framing the Harms*

The reporting of NPS related harms also tends to emphasise young victims and the role of legal availability in encouraging their consumption of NPS. A specific individual, 21 year-old medical student Hester Stewart, who died after consuming GBL and alcohol, is referenced 25 times in 15 - just over a third - of the stories. There are no comparable individuals on which reporting converges in a similar way, with the next most frequently mentioned victim noted in 3 reports. Hester’s mother, Maryon Stewart and her organization the Angelus Foundation which campaigns against legal highs, are also a frequent source for defining the harms and dangers of NPS, referenced in 10 of the reports. In the reporting of this case, the narrative emphasises the fact that GBL was legal at the time of consumption and that this was what motivated consumption. As Maryon emphasised, when the story was first reported:

We do, however, want the world to know that we intend to campaign as a family to get this lethal substance banned in the UK. If the Home Office had followed advice, our daughter would still be alive and we would not now be living in Hell. (Bracchi 2009)

Further anger with the definitional system was expressed later in 2009 by another member of the family, who stated in response to the government’s decision to make GBL a Class C drug that:

We're disgusted. The drug is lethal when you mix it with alcohol...She absolutely wouldn't have taken it if she had understood the risks, and making it class C doesn't communicate those risks to people. (Lefort 2009)

In a widely reported story, the deaths of two young men on the same night which was believed to be associated with mephedrone – but would turn out to be a result of methadone – the reporting would similarly emphasise the centrality of the legality of the substances as playing an important role in this tragic outcome:



Matt Smith, brother of 19-year-old Nicholas Smith, who died on Monday, said the legal status of mephedrone could have given him a, "false sense of security". He said: "If he thought he was taking something illegal, that he shouldn't have been taking, he wouldn't take it." Tony Smith, Nicholas's father, said: "We are now aware the Government are looking at making this drug illegal, but the fact is that young people have already died and had something been done before now our son would still be with us." (Laurance 2010)

In another account, the physical availability of head shops – rather than the safety implied by legality - is given as a primary reason for another death associated with NPS:

...these are dangerous substances and selling them on the high street encourages people to try them....'I know you can get it online but people, like Jimmy, are just after a quick fix....'There's no way he would have bothered to search online and pay for it and then wait for it to be delivered. It just wouldn't have happened. (Robinson 2013)

In all of the above cases, the intention of this discussion is not to argue that framing is necessarily wholly incorrect: there may certainly be cases where NPS consumption occurred because the substances were either more available than they otherwise would be or were perceived as safe, and these are a legitimate subject for intervention. However, the critical problem is that the narrative frames a very specific account of who those at risk from NPS are, emphasising those members of the public who would not have taken these substances *but for* the fact that were not controlled. This frame, in turn, necessitates increasing drug market controls with a view to limiting these harms.

Further emphasising this dimension of consumption, the claim that the unregulated status of NPS is central to their consumption, as it is alleged to imply they are safe, is made consistently by primary definers: young people are reminded that legality does not equate to safety in 24 of the stories. Representative examples of this include the following:

Tim Hollis, the lead on drugs policy at the Association of Chief Police Officers, said it welcomed plans to introduce temporary bans on legal highs... He said:

“All too often people think that just because a product is legal, it is safe. However the make-up of these substances is often unknown and can be dangerous.” (Hope 2010)

Prof Les Iversen, who chairs the ACMD, said: "Users of 'legal highs' should be aware that just because a substance is being advertised as legal does not make it safe, nor may it be legal....Mr Browne [Crime Prevention Minister] said: "People who take 'legal highs' are taking serious risks with their lives because often they do not know what they are taking and the drugs may contain harmful substances. (BBC News 2010c)

As noted, this is often connected with the work of campaigns concerned with NPS, including the Angelus Foundation:

Mrs Stewart, whose Angelus Foundation will next week launch a nationwide campaign warning of the dangers of legal highs, added: “They are called legal highs which implies they are safe but that’s really not right”. (Doyle 2012)

As was discussed in chapter 2, there is little evidence to indicate that NPS related deaths – in which increases are frequently reported, as above – are *for the most part* driven by the perception that these substances are safe, particularly given that many of these deaths are associated with controlled NPS. This framing again characterises the risks of these substances in their capacity to appear safe because they have not been controlled, which in turn offers an explanation for their consumption and emphasises the necessity of control as an appropriate solution. In this context, NPS users are understandably afforded little definitional authority to articulate other motivations for consumption (although see the last part of this section).

The term ‘young people’ appears in over half (n=37/70) of the stories to denote those particularly at risk of these substances. Statistically, this is an ambiguous claim: the greatest harms – at least from uncontrolled NPS – have been concentrated amongst the 20-29 age range, although several instances of teenagers dying as a result of uncontrolled substances has been noted (ONS 2016b). While the average age is younger than that associated with drug related deaths, the accuracy of the statement effectively relates to what people typically interpret ‘young people’ to mean. The performative

effect, however, of emphasising ‘young people’ appears to be, in this context, to emphasise the vulnerability of these consumers and their potential to be harmed by the complexity and duplicity of the NPS market. While one report recounts the story of a pensioner being mugged by an unemployed man to purchase legal highs (Evans 2015) and another refers to a young woman going on a ‘rampage’ after consuming ‘benzo fury’ (Cooper 2012) the evidence on the risks to young people is the primary focus more generally. Norman Baker, who offers here a construction which hints at the uncertainty of the figures described above, is quoted as saying:

“The coalition government is determined to clamp down on the reckless trade in what are somewhat inaccurately called legal highs, which has tragically claimed the lives of far too many young people in our country. (BBC News 2014b)

The emphasis on young people as *victims*, rather than deviants or ‘folk-devils’, is associated here with a certain ambiguousness about the goals of punishment. In some cases, inclusive forms of risk management are reported, where young people are warned about dangers in a way that seeks to invest them with responsibility rather than emphasising criminal sanctions. These include a drugs intervention in one case for school age children using mephedrone (BBC News 2009), an information campaign regarding the dangers of GBL (BBC News 2009) the police spreading awareness about the dangers of certain substances, like ‘vertex’ in 2015 (Merrill 2015) and in 2010 music festivals being requested to warn participants about the dangers of legal highs (BBC News 2010b).

In the state’s discourse, criminalizing the ‘young’ is ‘unnecessary’, as noted in their account of the lack of a possession charge connected to Temporary Class Drug Orders:

...There will be no penalties for anyone caught in possession to “prevent the unnecessary criminalisation of the young”, the Home Office said. (Hope 2010)

Conversely, prisoners who use NPS – a problem appearing in the media from 2014 – are to be afforded only harsh treatment via Psychoactive Substances Act which avoids exempting them from possession offences:

We take a zero tolerance approach to illicit material in prisons, and work closely with the police and CPS to ensure all those caught are prosecuted and face extra time behind bars. (Jones 2015)

Zero tolerance is also reserved for those associated with legal high use and anti-social behaviour, as made clear by Lincoln City Council's account of their ban on people using these substances in the city centre.

The wording of the public order, which will apply only in the city centre, says: "Persons within this area will not ingest, inhale, inject, consume or otherwise use intoxicating substances... Although a council motion, Lincolnshire Police would help enforce the order, and the measure has the full backing of the force. Anyone found breaking the rules would be committing a criminal offence [sic] and could be handed a fixed penalty notice or a court imposed fine. (Agency 2015)

In sum, there is an escalating problem of legal highs – which is problematized in terms of these gaps in state regulation and their capacity to normatively condone drug use – to which criminalization is necessary as a form of, effectively, public ordinance. The 'public' that are framed as relevant and whose interests are emphasised here are defined in terms of their distinction from drug users – being motivated to use these substances because they are not illegal – while limited space is afforded to emphasise the harms that may accrue as a result of making these markets more dangerous for consumers through prohibition. Other NPS users, whose motives may be more intractable or less sympathetic, are positioned outside the frame of concern here, both in the sense of having a legitimate interest – NPS consumption – to be facilitated or made safer, and in the sense of having the capacity to offer counter-definitions of NPS use.

#### *Chasing After a Changing Drugs Market*

Another consistent theme is the construction of the NPS market as a vast regulatory challenge comprised of a multitude of new substances and ever-increasing complexity requiring further intervention. Both EMCDDA and UNODC figures are used to substantiate this claim. For instance:

Of the 41 new psychoactive substances reported to authorities, the largest ever found in a single year, 16 were found in the UK while a further four were found in Ireland, a report by two leading European bodies said...New drugs were becoming available at an 'unprecedented pace' and the emergence of legal highs was a 'major feature of Europe's drugs problem today', they added. (Daily Mail Reporter 2011)

Statistics referenced the number of new drugs appearing in Europe and globally are reported on in 8 of the stories, emphasising that these numbers are increasing. This, in turn, is constructed as increasing the potential for harm due to the range of unknown products:

Dr John Ramsey, a toxicologist from St George's Medical School, University of London, said: "There are 50 new compounds emerging each year. There were 49 in 2011 and 29 so far this year. What can we do about it? It is clearly not right that young people should be able to buy and use recreational drugs that have never been tested. (Laurance 2012)

The number of new NPS here are constructed as complicating inexorably the level of unknowns in the drug market, resulting in risks due to the 'untested' nature of these products. This sense of proliferating risks is noted by a European Commission spokesperson in the Independent 2013:

"Speed makes all the difference," Viviane Reding, vice-president of the European Commission, said today, warning that young people could be dying in the months it took to ban legal highs "Most of these substances have never even been tested on humans and nobody can say what risks they really pose to human health," she said. "Far too often, these 'legal' highs are lethal." (McDonald-Gibson 2013)

The metaphor 'Russian roulette' is used in 7 reports and provides a useful shorthand for the construction of risk offered here as inevitable, yet uncontrollable and unpredictable. In 20 reports, NPS are explicitly constructed in terms of their highly unpredictable risks. These statements emphasise danger due to unpredictable packages, a lack of

information about the substances in question, the untested nature of the substances in general and controlled substances being falsely sold as NPS. Illustrative quotes include:

Mr Browne said “people who take ‘legal highs’ are taking serious risks with their lives because often they do not know what they are taking and the drugs may contain harmful substances. (BBC News 2012b)

“Anyone taking this kind of drug in any kind of quantity is potentially walking into the unknown, into disaster really,” Mr Wiseman said. (BBC News 2013a)

Users can never be sure what they are taking or what the serious consequences can be. The adverse effects on an individual’s health are not known but there is potential for short term or long term harm from these substances. (BBC News 2012a)

This diversity is also understood as related to the seemingly endless capacity of manufacturers to replace banned substances with new compounds and, in turn, requiring further regulation. As early as 2009 there are concerns about the re-emergence of NPS despite efforts to control them:

Wednesday's ban is unlikely to be the last. The Advisory Council on the Misuse of Drugs will next year consider a new wave of so-called "legal highs", which are based on a group of chemicals known as cathinones. (Portal 2009)

The UN are reported as offering a similar account of this picture in 2013:

The UN drugs office has warned that the problem is “hydra-headed”, with chemists simply tinkering with their formulas to create new, legal substances as soon as one is banned. (McDonald-Gibson 2013)

Certainly, the way in which this statement has been interpreted potentially is not wholly accurate. Generic bans of compounds control a range of substances and, as noted, many emerging compounds are synthetic cathinones, which are already generically controlled in the UK. As the Expert Panel note in 2014, 85% of the substances that had been documented in Europe were, at that time, controlled by the MoD Act1971 (Expert Panel

2014). However, constructing policy as a matter of ‘hydra-headed’ international drug markets of infinite supply and correspondingly infinite risks has implications for thinking about NPS. It centres on state legislation as the central dynamic at play in this phenomenon, as well as possessing the most appropriate means for addressing this harm through further scheduling.

The policy and legislative agenda of the Government is central in these reports. The Home Office, particularly Ministers James Brokenshire, Norman Baker, Alan Johnson and Mike Penning, play an active role in defining the government’s response. They are mentioned specifically in 30 reports, and in 27 of these they are referred to as driving the agenda/defining the problem. At certain points in 2009, the government is criticised for their failure to ban GBL fast enough. However, reporting largely reproduces the government’s emphasis on controlling emerging drugs, with announcements of new substances being controlled and coming under review.

The frames adopted by the government emphasise taking an active, morally infused approach to the emerging NPS market, as visible in the following two examples:

The drugs market is changing and we need to adapt current laws to allow us to act more quickly...the temporary ban allows us to act straight away to stop new substances gaining a foothold in the market and help us tackle unscrupulous drug dealers trying to get round the law by peddling dangerous chemicals to young people. (BBC News 2011)

The UK is leading the way in cracking down on new psychoactive substances by banning them while the harms they cause are investigated,” said a spokesman. “Drugs ruin lives and cause misery to families and communities. Our strategy is to keep drugs off the streets and punish the dealers. (No Byline 2016)

This aggressive construction of the British policy response is also emphasised as a reason for avoiding the development of an NPS policy at the EU level, reported in the BBC in 2013:

Home Office minister Norman Baker said joining the scheme would "fetter" attempts to ban new drugs coming on to the market ... Mr Baker added that the government "strongly" disputed "the evidence base stated in the EU Commission's impact assessment which estimates that 20% of new psychoactive substances have a legitimate use" (BBC News 2014a)

Here, British policy is not only potentially faster and more effective than a European response, but the European response even appears too lenient in mischaracterising certain substances as having a status other than as dangerous drugs. The decision to introduce the PSA is also framed in these terms:

Home Office minister Mike Penning said the measures would "fundamentally change the way we tackle new psychoactive substances... They would end the "game of cat and mouse" whereby new drugs appeared on the market more quickly than the government could identify and ban them, he said.... He added: "The blanket ban will give police and other law enforcement agencies greater powers to tackle the reckless trade in psychoactive substances, instead of having to take a substance-by-substance approach." (BBC News 2015)

This statement conveys the notion of an active, vigilant state seeking to draw the line under a reckless trade that, as noted above, ruins lives and families. Clearly, the emphasis here is on 'toughness' in the prosecution of the NPS problem. Here, we see the different elements of this framing – young victims, manipulated by legality and harmed by an ever-rising tide of dangerous unpredictable chemicals – to which the state is required to respond through the enactment of symbolic barriers to consumption.

#### *Alternative Frames and Voices*

As noted, there is a great deal of consistency in the frames adopted in these reports. In addition to being triggered by NPS-related deaths, reports are often concerned with the statements and research of institutions like the UNODC, the EMCDDA and the Office for National Statistics. Public sector workers are also routinely quoted, including coroners, council leaders, forensic toxicologists, hospital staff, police officers, alongside charities and third-sector organizations concerned with drugs (although Release and Transform do not feature in this sample). The Centre for Social Justice, Addaction and the Angelus Foundation – organizations which campaigned specifically for the control



of NPS – are also widely quoted. As noted above, parents and family members are also quoted when stories are specifically concerned with a sudden NPS related death. Investigative reports which unveil newsworthy events are uncommon (but not absent).

There are, however, some examples which critique the government's approach. In one case, this involves anger from Maryon Stewart that Class C does not accurately convey the risks of GBL. David Nutt is quoted by the Independent in three separate reports critiquing government policy, in the context of his objections to banning mephedrone (Laurance 2010) noting the ban will seriously hinder scientific research (Ward 2015) and arguing that the number of 'legal high' deaths is exaggerated and alcohol is more harmful, (Brown 2014). At a few points, the reporting frames the substances differently. In two reports, Harry Shapiro is quoted as stating that making substances illegal is unlikely to solve the problem, as harms and use are likely to continue (BBC News, 2010; Huffington Post 2011). While police officers often act as primary definers explaining the risks of NPS, the Association of Chief Police Officers (ACPO) are also reported to be unconvinced by policy in this area, stating in response to TDCOs, which do not contain possession offences:

The police will continue to focus their energies on serious criminality and take a less robust enforcement approach on matters relating to personal possession. (No Byline 2012)

Those involved in the drug market are occasionally quoted, although profiles tend to emphasise the negative effects of the drug. In one case, however, a mephedrone user is interviewed by the BBC in 2009. However, they reiterate that they perceive mephedrone to be safer because it's legal, although this is primarily framed in terms of the conditions in which mephedrone is supplied:

Unlike cocaine and ecstasy, mephedrone is pure and doesn't come mixed with household products," he said...."I've only taken it a few times but every time I have, the buzz has kept me up all night and well into the next morning...."It is quite addictive and the majority of my mates have been taking it most weekends." (BBC News 2010a)

A more direct assertion that the participant feels 'safer' using the substance because it's legal is made in another story, although whether this is health related or law enforcement related is not clarified:

By the end of the weekend it was all gone. It's very similar to the effect you get with coke but much cheaper, so now I only do meph. It's easier to get hold of because all you need is a debit card and internet access. It makes you talkative, happy, a bit spaced, energised and time seems to go faster. Because the high is short you end up using quite a lot. The comedown is worse than for any of the illegal stuff I have tried; it makes you really emotional and anti-social. But I feel safer using it and I know it's legal. (BBC News 2010c)

Shop keepers are also permitted to comment, albeit in the context of defending their trade from the allegations of related deaths. Statements therefore tend to emphasise their lack of liability for harm:

'We care about our customers,' insisted Mr Tune. 'Their safety is important to us. Should people choose to ignore the warnings and use the product to get a legal high, to ensure their safety, we include free measuring pipettes to enable doses to be measured accurately and prevent accidental overdosing.' (Bracchi 2009)

In another case, the *BBC News* reports that head shop owners have written to Theresa May (then Home Secretary) to defend their outlet and ethical policies (BBC News 2013b). In another, in the *Independent*, a manufacturer of legal highs is interviewed. This article is interesting, insofar as the interviewee effectively advances the principal counter-narrative apparent in this reporting. Here, Matt Bowden states that:

The goal should be to encourage development of progressively safer alternatives to alcohol and the other drugs," he said, as figures were released showing an explosion in the number of new chemical substances coming on the market and in the number of online shops selling them...It is clearly possible to regulate. The level of regulation should be commensurate with the level of risk, and the majority of these drugs carry a level of risk far lower than the risks associated with many other normal daily activities including driving a car, swimming off the beach and drinking alcohol. (Laurance 2012)

This account, which articulates that field in entirely different terms – drugs as variably dangerous, of states having a regulatory role in monitoring the production of safe drugs – is as striking as it is unrepresentative. These accounts, are marginal relative to the dominant policy frameworks described here.

### *Summary*

This analysis of 70 UK news reports about NPS has argued that NPS – though largely referred to as ‘legal highs’ - have been constructed in news reports as an escalating threat to young people, characterised by self-replicating substances that cause harm because they are perceived as legal, while having unpredictable effects, and are appropriately responded to by a doubling down on prohibitionary policy to symbolically demarcate the fact that they are illegal. These themes are reinforced throughout the reporting by primary definers and authoritative institutions, as well as the framing of individually recorded drug harms. The focus on young people here confirms existing research in the area which has emphasised, alternatively, the way in which the risks of mephedrone and spice have been depicted as particularly threatening to young people and requiring a re-emphasising of the symbolic barriers to their use (Alexandrescu 2013; Barton 2014; Collins 2013).

There is limited scope for alternative frames, which are sparsely represented and critiques tend to emphasise the unintended effects or limits or the approach being pursued, while rarely questioning its premises (except in the case of David Nutt). What is particularly stark in the media is how a particular set of victims and narratives are consistently framed as representative of the majority of harms and deaths associated with legal highs. These accounts emphasise young individuals, often inexperienced in drug use, whose lives were cut tragically short by acute instances of NPS related harm. In this context, the government are clear to frame messages around their strict and ‘tough’ controls to remove the public sale of NPS, in some cases framing NPS consumers as victims rather than deviants. The lives of young and – in particular – non-drug using people are here constructed as at risk *both* from these substances and the criminal law.

Conversely, the accounts of prisoners and those targeted by town square ordinances primarily emphasise the risks these NPS users pose to others. Butler’s (2008; 2012)

analysis allows us to think about how these frames may be interconnected and that the lack of grief displayed towards non-conforming drug users is a function of the perception that they pose a threat to the large social majority who do not use illicit drugs. Insofar as non-drug users are constructed as highly precarious, developing more participatory ways to approach NPS may be challenging.

In this sample, it would be insufficient to describe the reporting as ‘evidence free’ or solely a matter of prejudice: the inaccuracies emerge in the context of insisting on a particular frame of reference relating the legality of these harms to their dangerousness here which, as we shall see, is also reflected in the Parliamentary Debates on the PSA 2016.

### **Parliamentary Debates**

The Parliamentary debates here consider the merits and limitations of the PSA 2016 during the second and third readings of the Bill in Parliament. For the most part, there is a broad cross-party consensus on the necessity of controlling NPS, although there is dispute on the merits of generic control, the legitimacy and likely efficacy of controlling ‘poppers’ and the need for educational strategies to complement law enforcement strategies.

#### *Second Reading of the Bill, 19<sup>th</sup> October 2015*

For those in favour of the legislation, the danger of NPS is expressly constructed in terms of the threat that these substances pose to consumers who believe that, because they are not controlled, they are safe. Mike Penning, the Minister responsible for the Bill, opens the Second Reading with the following words:

I hope that during this short Second Reading debate we will be able to convince those who do not think it is a good thing, because last year 129 people lost their lives in this country because of what they thought was a legal, safe high.

(Hansard 2015, Column 731)

These 129 deaths, mentioned at another two points during the debate, are invested with great significance, although it is not clear precisely which figures are being referred to here. It appears to be a combination of the figures for Scotland reported by the National Record of Scotland of NPS contributing to drug related deaths (62) and the initial ONS

estimate for 2014, which estimated 67 deaths reported in the House of Commons research briefing (Barber 2015) on the subject, but has since been revised (see ONS 2015). If this is correct, then it is not clear that these deaths can be attributed to the substances being legal, given the fact that many of the substances in question – and the substances along with which they were consumed – were controlled at the times these harms accrued.

Similarly, Lyn Brown, MP, the Labour Party lead on the Bill, in a response to a dissenting view about the merits of control, emphasises the importance of legal availability as framing the problems posed by NPS:

I accept what the hon. and learned Gentleman says, but one of the things I find particularly repulsive is that our young people see these head shops in front of them on the high street, and then think that the shops are legal and safe because if they were not, the police would have come along and nabbed them. (Hansard 2015, Column 742)

Here, ‘young people’ are constructed as particularly vulnerable to these substances. Brown later notes two examples of young men – 18 and 14 – consuming synthetic cannabis, suffering harms and in the case of the former, having a heart attack and dying. These harms are subsequently emphasised alongside the need to avoid ‘normalizing’ the drug market:

Head shops and other high street retail outlets normalise drug taking and encourage people to experiment with and use drugs. The names and packaging are designed to attract young adults to experiment, and free samples are regularly used as part of marketing strategies. The fact that substances can be bought on the high street in broad daylight without any sanction whatever gives the illusion that the substances are both safe and legal. There are hundreds of internet sites that sell these substances online, with little or no knowledge of who they are selling to. (Hansard 2015, Column 741)

Many of the critiques are framed as technical questions about efficacy, but these are largely dismissed and confined to oppositional positions. For example, Norman Lamb, MP’s concern that the ban will simply give the market over to organised crime is given

the following response, which indicates the lack of concern for this possible outcome:

If I thought that was going to happen, I would not be standing at this Dispatch Box. It has not happened elsewhere; it did not happen in the Republic of Ireland. (Hansard 2015, Column 732)

In another context, the urgency implied by the perception that harms are increasing is raised when the possibility that Ireland's policy should be evaluated before being adopted. This is dismissed on the basis that the increasing problem demands immediate action:

The answer is no, because I do not want any more deaths, which will happen if we hold back now and wait for more studies, for more this and for more that. New South Wales have done this in the past five days. If I look around the Chamber, I see most people nodding and perhaps one or two people doing otherwise—I do not know how the Hansard reporters will work that out later, but they can try. At the end of the day, I am determined to protect the young and old... (Hansard 2015, Column 736)

At a subsequent point, Lyn Brown, MP responds to the concern that prevalence had risen in Ireland following control by effectively claiming that she hadn't heard this and so was not concerned:

...I have only been in this job for two weeks, but if I had been in it for a bit longer and the Public Bill Committee was not next week, I would have nipped over to Ireland to find out. My information is that the ban has closed down the head shops. (Hansard 2015, Column 745)

The sense of urgency in the legislation is remarked upon several times throughout proceedings, with the aforementioned statistics and others being deployed to make this claim. The fact that most of the deaths referred to in these statistics were caused by substances that were illegal when they were purchased is not raised here.

In this context, however, concern is articulated that young people are not harmed by the extension of control here. However, ‘harm’ here is restricted largely to the harm of getting a criminal record for drug possession, rather than other dangers that might emerge in an unregulated market. The terms of this exception to criminalization are unclear in the Second Reading, however. Mike Penning characterises the motivations for not criminalizing possession in the following terms: “We do not want to criminalise a whole group of people who have, for many years, been buying a product that was perfectly legal.” However, Mike Penning is unable to clarify whether purchase, per se, is legal or not, given that only the offence ‘importation’ is listed, which seems to suggest that the substances would be illegal if bought online but not if purchased from a head shop or a dealer. This, we are told, will be remedied at a later date.

However, the intentions here are clear. A Steve Brine, MP, describes the reasons for avoiding the criminalisation of those in possession of these substances:

...we must be careful about criminalising young people for silly mistakes. A criminal record can also ruin lives, and education about the dangers of these drugs—legally as much as physically—must not stop if this Bill receives Royal Assent. (Hansard 2015, Column 748)

A corresponding endorsement is given by Anne McLaughlin from the SNP:

Our primary interest should be in keeping them safe and healthy, not in punishing them. I therefore welcome the commitment that I believe the Bill provides to criminalising suppliers and not users. I also welcome the Minister’s assurance, following interventions from Members on both sides of the House, that he will iron out the anomalies in clause 8. Not sitting in moral or legal judgment of those who use these substances will give us a huge head start when we are trying to find ways to discourage them. (Hansard 2015, Column 754)

‘Education’ was also advocated as a useful strategy for responding to drug use:

The use of illegal drugs has been going down not because of locking people up and criminalisation, but because of education. We all want these chemicals not

to be used, but we must not overreact and not use education enough, because it is a key tool. (Hansard 2015, Column 743)

It is interesting that protecting the health of young people here constructed as meaning also restricting state interference with them. However, this view is not extended to all those framed as affected by the Act, as Steve Brine suggests an amendment to the Bill that would make possession in a custodial estate a criminal offence (Hansard 2015, Column 737). The discussion here is ambiguous, emphasising both the considerable problems of NPS use in prison, but offering limited engagement on how control would improve the situation here, even when directly asked by Paul Flynn, MP (Hansard 2015, Column 750). The ‘stretched’ nature of the public sector is noted here (2015, Column 749), as are the failings in the prison system (2015, Column 749), but these are given limited attention in the debate and do not become a basis for policy.

#### *Third Reading of the Bill, 20<sup>th</sup> January, 2016*

The third reading of the Bill debates possible amendments to the Act and reiterates themes of the previous debate. Anne McLaughlin, MP, expresses concern that young people who buy this substance online and distribute it may be criminalised (2016, Column 1462). Here, she emphasises precariousness of young people, whose “life chances would be greatly diminished” due to “stupidly buying stuff for friends” (2016, Column 1463). This indicates another example of debate around how the ‘public interests’ should be constituted and safety distributed: are young people distributing these substances appropriately labelled drug dealers, and judged outside the scope of the state’s protection, or should they be retained within the scope of the public and protected from the harms of criminal punishment?

The importance of education is re-emphasised, with Lyn Brown MP emphasising the government’s responsibility to lower demand through its communicative capacities:

I feel that, unless we get across the message that these so-called legal highs are neither legal nor safe, the demand on the internet will become even greater. We need to get across the core message that the Government are sending through this Bill: these drugs are not legal and not safe. The demand on the internet needs to be curbed as well, which is why we need to make sure that we have proper education and information out there. (Hansard 2016 Column 1442)



However, the most interesting elements of the discussion relate to the discussion of alkyl nitrite ‘poppers’, in the context of an amendment recommended by the Home Affairs Select Committee that would exclude these substances from the scope of the PSA 2016. To clarify, ‘poppers’ are used for recreational intoxication, and come in a variety of chemical forms including isopropyl nitrite and amyl nitrite, which is inhaled. While formerly ‘legal’ intoxicants that would be covered by the PSA 2016., they may not readily fit the definition of NPS as they are not newly misused, having been used in Britain for decades. However, the *terms* in which the use of poppers is accounted are interesting. Here Lyn Brown, MP, argues:

I have noted the Home Secretary’s response to the report of the Home Affairs Committee in which she recognises the representations made about a beneficial and health relationship effect and the concern that a ban will have, especially on men who have sex with men. (Hansard 2016 Column 1446)

Here, what is striking in this and subsequent discussion is that claims suggested that ‘poppers’ should be exempted are substantiated partly in terms of their long-duration in the UK – having been around for over a century – and their relative lack of harms, but primarily in terms of the potential pleasure they facilitate. For instance, while it noted that these substances have been associated with eye damage in some clinical cases, these harms are constructed by Lyn Brown, MP, as possibly akin to the harms of alcohol, i.e. increasing with increased consumption (Hansard 2016, Column 1448). In another case, Lyn Brown, MP, observes that control would:

...take the sale of poppers out of this successful regulatory regime and users might end up being pushed underground, where unscrupulous and unregulated sellers, who are in it for the profit, are more likely to provide harmful compounds and possibly drive users towards harder and more harmful drugs. (Hansard 2016, Column 1449)

During this discussion, Crispin Blunt, MP ‘outs’ himself as a poppers user in Parliament:

I use poppers—I out myself as a popper user—and would be directly affected by the Bill. I am astonished by the proposal to ban them, as are very many other gay men. It simply serves to bring the whole law into disrepute. If this drug—which I use and which has, as the Opposition spokesman, the hon. Member for West Ham (Lyn Brown), said in her extremely good speech, been used for decades—is banned, respect for the law will fly out of the window. (Hansard 2016, Column 1456)

Blunt argues that banning these substances will increase the risks for gay men - “The policy might put someone like me into the hands of criminals” (Hansard 2016, Column 1456) – and may lead to more dangerous substances being consumed if access to this market is removed. The precariousness of those subjected to the poppers ban is also emphasised in terms of its potential harms to health. This involves discussion of their role in adder bites (Hansard 2016, Column 1459), but more crucially in relation to their capacity to enhance sexual relationships. As Mike Freer, MP, argues:

If people want their relationship to be as intimate as possible and poppers facilitate that, they are an important element in the emotional wellbeing of that couple. Therefore, if we are talking about the medicinal benefits, we have to include the emotional and mental health benefits that the use of poppers in a relationship can bring.

When we are talking about risks—I have mentioned proportionality—it is important that we do not start banning things on the basis of one or two incidents. There has to be a significant risk of significant harm to a significant number of people, otherwise we would be banning cigarettes and alcohol tomorrow. (Hansard 2016, Column 1459)

For our purposes, the key point is that the construction of poppers users here involves, at least on the part of their advocates, constructing poppers users as a ‘public’ who are constructed here as entitled to pleasure, autonomy and having some scope to define what is in their best interest. While these amendments fail, ‘poppers’ are subsequently declared ‘not psychoactive’ within the terms of the Act by the ACMD (Stone 2016).

Disputes about the Bill are also more marked during this debate. In addition to the concerns mentioned above about prevalence increasing following bans (evidence from Poland is also brought on this point), Paul Flynn, MP, closes the third reading with a statement about the failings of drug prohibition:

Evidence-free and prejudice-rich, this Bill will do harm. It is evidence-free because the House has ignored the evidence of the countries that have taken this step before and have increased drug use. We banned mephedrone, and the result was that its use increased again. By banning a drug, we make it more attractive, drive it underground, increase the prices, and have more irresponsible people selling it. I have been in this House for every cannabis debate—every drugs debate—for the past 28 years. It is the shared foolishness of the House to believe that prohibition works. It does not: it makes things worse. Drugs will not be controlled by this Bill just as they are not controlled in our prisons, where there is illegal drug use in every single one. This is a foolish Bill based on prejudice and not on evidence. (Hansard 2016, Column 1507)

This critique of the Act can be differentiated from the discussion of ‘poppers’ above. Paul Flynn, MP, emphasises the unintended consequences that are likely to flow from the Act. In this account, the government is critiqued as ignoring evidence about the failures of drug policy generally, and the increased prevalence of these substances in Ireland and Poland is noted.

### *Summary*

These debates can be understood, in part, as involving competing interpretations of the public interest in terms of the construction of NPS and policy responses to it. In this context, various ‘publics’ emerge, which emphasise those who believe these drugs are safe, communities – often constructed in terms of constituencies - that are affected by the harms of these substances and those who are at risk from the drug trade becoming normalised. The principal construction of the ‘problem’ concerns the danger to the young posed by the alleged legality of the compounds, making the imposition of a blanket ban both necessary and, owing to the escalating harms, urgent.

However, other subjects of concern also emerge. Avoiding the criminalization of young people is emphasised as within the public interest, with experimental drug use

constructed as non-deviant and the harms of a criminal record to the life chances of those concerned emphasised. In this sense, NPS consumers are considered part of the public insofar as they are not regarded as necessitating criminal punishments. However, particularly in light of the emphasis on education, these consumers are not constructed as having a public interest *as* drug users, or in offering alternative interpretations of these substances. The exception here concerns ‘poppers’ where, conversely, a distinct public is enacted – albeit without success in terms of the relevant amendment - with an invested interest in the pleasures of a substance whose access to the market should be facilitated.

Butler’s concepts are also relevant here. While the life chances of a young person experimenting with NPS is considered worthy of protection, even at the cost of potentially compromising the enforcement of the PSA 2016, we are explicitly reassured that this leniency will not be extended to those in prison who are caught with these substances. Protecting and insulating the public space, as noted in the discussion of head shops and internet sales, is emphasised, while the effects of this on those making use of these resources is not.

Here, while there are important parallels between the media portrayal of NPS and the parliamentary account, identifying a specific direction of influence here is challenging as both mobilize similar primary definers and accounts to represent NPS.

### **Harm Assessments**

This section considers the ACMD reports that consider specific substances and recommend their control. Harm assessments provide an account of whether substances are sufficiently dangerous to be considered drugs and, in doing so, they make a useful site for analysis. This process of recommendations involves gathering together ‘facts’ about the substances to constitute a stable object to which harms can or cannot be assigned, rather than being concerned with the broader policy implications of NPS use and proliferation. Responsibility for assessing emerging substances is granted to the ACMD in s.1(2) of the MoD Act 1971. The ACMD has, in recent years, been responsible for an increasing of substance assessment owing to the influx of unscheduled NPS (Measham 2013).

This section applies the insights of STS that ‘facts’ emerge through a process of refinement and are shaped by data collection processes. Specifically, it seeks to critically analyse how facts about NPS are produced in technical discourse, with a view to exploring what these accounts make visible about reality and what they conceal. Harm assessments provide a useful account of how substances come to be defined in expert discourse, which can, in turn, underpin references to these substances in other accounts, such as when it is observed that control has been recommended for a given substance in light of its recorded harms. In collecting and selecting the appropriate evidence, the harm assessments bring together the findings from different ‘inscriptions methods’ (Latour and Woolgar 2013) that record the negative outcomes of drug use. Harms are the principal focus here. From a perspective concerned with establishing harm as sufficient grounds upon which to base control, this is not in itself objectionable. However, investigating the terms in which these harms are constructed facilitates reflection on whether there are other aspects of these substances silenced in these accounts. These results analyse the reports on cathinones (including mephedrone), synthetic tryptamines, NBOME drugs and methoxetamine (ACMD 2010, 2012, 2014).

#### *Constituting NPS in terms of Controlled Drugs*

The first sense in which the NPS in question are constituted empirically is through elaboration of their molecular structure, which is contextualised with reference to their molecular similarities to other controlled drugs. In this context, cathinones are compared with amphetamines (ACMD 2010, pp. 6), methoxetamine is compared with ketamine and PCP (ACMD 2012, pp. 4-5) and emerging tryptamines are compared with psilocybin/psilocin (‘magic mushrooms’) and LSD (ACMD 2014, pp. 4–5). The NBOME substances are rendered as having comparable neurological effects via affinity for the 5-HT<sub>2</sub> receptors, and are therefore effectively analogous to LSD (ACMD 2013b, pp. 6)

Constituting the materiality of the NPS in question in terms of our already existing knowledge of pharmacology enacts a collateral reality wherein the ‘drug like’ properties of these substances provides a core component of their materiality, and integrates them into the already constituted field of drug knowledge. The properties of the substance are identified directly with its molecular correlates, which are in turn cast as a differentiating feature of drugs generally. This similarly has the effect of determining the substance as, at the least, suspicious, and may in these contexts be used to infer the

potential harms of a novel substance. For instance, methoxetamine's harm is inferred through reference to ketamine's harms to the bladder, alongside reports of an experiment involving three mice that chronically exposed to the substance suffered harms to their bladder and renal systems (ACMD 2012, pp. 7, for elaboration of the experiment, see EMCDDA-Europol 2014).

While the attempt to account for harmfulness in this way has some intuitive appeal in the sense that similar substances may have similar effects and appeal, it is also highly problematic when viewed in a broader context. There is not a clear mark of distinction at a molecular or objective level between those substances that are regulated as 'drugs' versus those that are not (Taylor, et. al., 2016, Boland, 2008, Ayres, et al 2016).

Numerous substances classified as 'drugs' were classified as such despite limited evidence of use or harm (Stevens and Measham, 2014). Moreover, many controlled substances are 'dual use' in the sense that they have medicinal properties (Herschinger 2015). Synthetic opiates, of course, have wide application in medicine. Similarly, ketamine is a controlled drug simultaneously regarded as an 'essential medicine' by the WHO (WHO 2016).

There are also important reasons to be sceptical about the merits of the drug schedule as providing basis for objective prior decisions about drugs classifications. For instance, in relation to the 2001 ACMD recommendation that dried magic mushrooms be put into Class A (where they had previously been exempt owing to a legal loophole allowing dried preparations to be sold), the then Chair of the Council was asked by the House of Commons Science and Technology Committee why 'magic mushrooms' were in Class A in the first instance. The answer provided was as follows:

I have no idea what was going through the minds of the group who put it in class A in 1970 and 1971...It is there because it is there. However, since that time there have been few publications on psilocin...Since that time, there has been virtually no work done at all. (House of Commons Science and Technology Committee 2006, pp. 26).

In this sense, the problem with constructing substances in this way is that it assumes the validity of a range of pre-existing decisions which may, in themselves, be subject to dispute. In this sense, the pre-existing drug schedule constitutes a 'hinterland' (Law

2004), i.e. a pre-existing set of decisions that exercise determinative control over how psychoactive substances can be constructed. Critique here is particularly necessary, particularly given the fact that these substances have often been controlled in large, generic groups which seek to include close molecular relatives of these substances, a process Stevens and Measham (2014) have called ‘guilt by molecular association’.

### *Documenting harmfulness*

The second technique for rendering these substances as appropriately contained with the drug control bureaucracy is to indicate their capacity to harm health. In this section, harm is identified through medical reports, individual contributions – which are referred to but not reproduced - and academic literature. In the cathinones report, harm is presented in two separate sections: ‘Physical harms (toxicity, dependency and mental health)’ and ‘Societal harms’. The first section of the former report lists ‘Acute harms’, including mephedrone related admissions to Guys and St Thomas hospital in London. Here, 34 admissions are recorded, 80% which involve patients being discharged from the Emergency Department or going into observation (2010, pp.17). These document negative side effects of mephedrone recorded in clinical settings (2010, pp.16-7) and self-reported negative side effects of mephedrone (2010, pp.17) and methylone (another cathinone derivative) (2010, pp.18), which include, amongst others, agitation, tachycardia, temperature changes, nausea and headaches. The report also lists incidents recorded by the National Poisons Information Service (NPIS) – i.e. when a clinician has contacted the centre to request information – in relation to mephedrone (2010, pp.19). Anecdotal reports are provided that indicate that mephedrone consumed alongside with amphetamine caused “violent episodes” and “personality changes” (2010, pp.18).

Deaths related to the substance are also noted. The report notes 18 deaths in England in which cathinones have been implicated. In seven of these, the presence of mephedrone has been confirmed, with one being declared ‘natural’ with the remainder awaiting inquest at the time the report was published (2010, pp.19). Seven deaths are reported in Scotland (2010, pp.19), where the substance is suspected but only confirmed (in mixture with methadone) in one case. Guernsey, Wales and Northern Ireland also have cases in which mephedrone’s involvement is suspected on the basis of a positive result in toxicology in the former, with the other two awaiting more information (2010, pp.20). Chronic toxicity cannot be confirmed (2010, pp.20) and a single case of dependency is

referenced (2010, pp.20). Building on the amphetamine analogy, a “risk of dependency” is attributed to mephedrone (2010, pp.20). Under ‘Societal harms’ prevalence findings and indications of the popularity of the substances are listed, and two cases of acquisitive crime caused by mephedrone are mentioned (2010, pp.21). Practices of rapid re-dosing are also mentioned (2010, pp.22) along with the observation that users may stockpile the substance prior to the upcoming ban.

Methoxetamine has a shorter harms section, with limited - but not absent - evidence of negative effects. The ‘Pharmacology’ section of the ‘Methoxetamine Report’ cites an example of a patient experiencing a ‘dissociative catatonic’ state alongside hypertension and tachycardia following methoxetamine use in clinical case report (2012, pp.4). The ‘Acute Harm’ section of the report lists 47 telephone enquiries to the National Poisons Information Service and 298 enquiries to the online database of poisons used by practitioners in the UK’s National Health Service – TOXBASE - in relation to the substance (2012, pp.6). Six hospital admissions from sources in the literature are also listed with negative effects distilled from these, resulting primarily to a lack of co-ordination, but also stimulant features 2012, pp.6). Methoxetamine is listed as not being responsible for any UK deaths (2012, pp.7). In the ‘Chronic Harms’ section it is argued that there is no evidence that methoxetamine is ‘bladder friendly’ as it had at times been marketed, and may cause similar harms to ketamine, while referring to the animal study noted above (2012, pp.12). Social or societal harms are not listed separately, where the substances is said not to be a “crime generator” (2012, pp.7).

The *Update to the Generic Schedule of Tryptamines* records minimal harms associated with the substances under consideration and is primarily concerned with detailing the background to current tryptamine controls and recent developments. The principal harm noted is the slight increase in the deaths caused by substances within this class. Deaths from these tryptamines are characterised as rising from 1 in 2009 to 4 in 2014, particularly concentrated amongst AMT (2014, pp.13). NPIS enquiries related to these substances are noted, of which there have been 69 in relation to AMT , 13 in relation to 5-MeO-DALT and 4 in relation to 5-MeO-DIPT (2014, pp.13), alongside 208 TOXBASE accesses in relation to AMT in 2013 (2014, pp.13). Various negative side effects of AMT emerging from telephone enquiries are also noted, including stimulant features and hallucinations (2014, pp.13). Numerous non-fatal intoxications are mentioned in the harms section of the NBOMe report. Here, evidence of three UK



deaths potentially involving NBOMe are listed in as harms of NBOMe, including a man who drowned (2013, pp.9), a non-confirmed case from September 2013 (2013, pp.8) and one recorded by the the National Programme on Substance Abuse Deaths (NPSAD) (2013, pp.9), alongside several hospitalizations that were non-fatal (2013, pp.8).

Substantiating the terms in which these substances have been constructed as harmful here is indicative of the limited scope of these claims. To be clear, this is not to claim that the harms in question have been wrongly attributed to these substances. Rather, the concern is that these accounts offer only a limited contextual account of what differentiates harmful interactions with NPS from counter-factual examples where consumption was not associated with harms. The possibilities for non-harmful use or the distinct characteristics of harmful use are not considered, nor are they meaningfully inscribed within the datasets that inform these assessments. Instead, the association of death and harm with the presence of these substances simply in terms of the presence of the drugs constructs these harms as inevitable or, as above, a matter of ‘Russian roulette’.

As noted in Chapter 2 the concept of assemblages offers an alternative to this approach to construction of drug-related harms. In this context, Duff distinguishes the ‘zero tolerance’ model of risk – wherein the harms of substance are both inevitably and unevenly present, making safe use impossible – as quite distinct from the more contextual analysis of risks documented in social science research on drug use (Duff 2013). The argument here is that harms are not solely located in or reducible to the effects of the drugs but rather can be analysed at the level of the multi-faceted interactions between people, spaces, time, affects, substances and non-human objects that constitute drug consumption (Duff 2013). As Duff writes:

...zero tolerance arises as a result of the elimination of chance in this assessment in that advocates argue that drug use invariably produces various harms and dangers because of the very nature of the substances in question. There is not a risk of harm, rather this harm is certain to transpire, if not in the short term then certainly in the longer term. In this respect, the very nub of zero-tolerance turns on the question of harm, and the manner in which harm is identified and catalogued. (Duff, 2003, pp. 287-8).

The contention that social context mediates drug use is, as Duff notes: “is the inaugurating condition of a social science of drugs” (2014, pp. 125). Research here has demonstrated the importance of the drug, mindset adopted by the consumer and the setting of use all playing a role in determining the outcomes of consumption (Zinberg 1984). As Race writes: “A drug is not a thing – or not only. Its safety and specific effects vary according to complex assemblages of composition, interaction, timing, conduct, history, digestion, inscription, and communication.” (Race, 2009:54). The ‘risk environments’ created by macro-economic and socio-economic contexts also play a role in generating harm (Rhodes 2009). While it is naturally the case that an elaboration of these contexts would have been largely unavailable in any of the cases noted above in terms of the data reproduced, the lack of focus on these aspects makes a more nuanced account of harm impossible. In this sense, identifying harm as a stable fixed quality of the substances in question, may limit the scope for approaches to reducing harm that are not premised on eliminating use.

### *Subjective Effects*

While the molecular structure of these substances and the instances in which they have been associated with harm are emphasized in these reports, there is limited regard paid to the subjective effects of these substances. These effects are not absent, and may be reported as side effects (e.g. ACMD 2010, pp.27-8). For example, in relation to methoxetamine, the ACMD report states that “The wanted effects include euphoria, empathy, dissociation from the physical body, hallucinations, but these may be accompanied by adverse side effects, which include dizziness, confusion, psychomotor agitation, and cognitive impairment” (ACMD 2013, pp.2). The Cathinones report notes self-reported features including euphoria and enhanced appreciation of music (2010, pp.10).

Similarly, the NBOME report draws on anecdotal information to indicate that the effects – listed under ‘Medical harms’, include: “...effects that can last between 6 and 10 hours, if taken sublingually. These self-reported, anecdotal user reports included the following effects: euphoria, mental/physical stimulation, feelings of love/empathy, a change in consciousness and unusual body sensations.” (2013, pp.8). However, the construction of pleasure is never far from the corresponding constructions of excess and addiction. A good example of this is found in the cathinones report, where the list of effects is juxtaposed to the findings of animal studies which demonstrate rats

responding to the drug compulsively in certain settings and cross-generalizing from amphetamines to cathinones (2010, pp.10). Placed side by side like this, the pleasure referenced first is cast more as a compulsive, joyless administering of a ‘fix’ rather than a productive or potentially beneficial feature of the substance’s effects.

In this sense, while pleasure may be noted, it is not emphasized as an aspect of the substances with which policy need to be greatly concerned. This accords with numerous studies that have also reflected on the absent or limited role ascribed to pleasure in the articulation of official drugs policy (Duff 2008; Keane 2009; O’Malley and Valverde 2004; Race 2008). Viewed in the context of these assessments, it is difficult to imagine how ‘pleasure’ could be assigned an empirical value and assigned value relative to the potential for harms, particularly when these are viewed as inevitable risks. Pleasure, unlike the effects of medicine, is not immediately amenable to empirical substantiation or clear measurements. The question of how pleasure might be *inscribed* raises difficulties, particularly because it is not one thing, or reducible to a *sole* dimension like the drug or individual experience, taking place as it does within a broader *assemblage* of forces.

From this perspective, it is hard to imagine a ‘balancing act’ between the construction of harm as directly accruing from the substance and a pleasure that is similarly direct and subject to abstract measurements. As such, appeals for ‘pleasure’ to be measured as a benefit to be traded off against harms (e.g. Ritter 2014) require further elaboration if they are to provide a response to harm assessments. A slightly different formulation – of pleasurable to less pleasurable effects – has been attempted by online self-selecting survey (Global Drugs Survey 2013), which certainly widens the range of discussion but also simplifies the object, but also constructs ‘lack of pleasure’ as an analogue for harm. The possibilities raised by pleasure in understanding and re-articulating drug use are discussed in Chapter 6.

### *Summary*

This section has elaborated the way in which the problem of NPS have been elaborated in the context of technical harm assessments. STS emphasises that scientific accounts of phenomena may be best understood as constructing the terms of the reality which, in turn, is reproduced within scientific contexts. In this way, ‘scientific knowledge’ about drugs involves defining certain features which constitute drugs – harms – and which

features do not, i.e. the nature of their subjective effects. In this way, while reports on these substances may be critiqued owing to a lack of evidence, evidence itself should not be seen here as neutral.

What emerges is an account of NPS that constructs them primarily in terms of their resemblance to controlled drugs and harms and deaths with which they may be implicated. While it is legitimate to critique these accounts in terms of their limited evidence base, what is also apparent here is that the terms in which ‘drugs’ are accounted for as material phenomena – and therefore the terms in which NPS are produced for assessment – provide a limited scope for engaging with the complexities of these substances. This is particularly so in terms of the contexts in which harms accrue. While the accounts here situate NPS-related harms as the sole responsibility of the substance in question, the need for more complex explanations is necessary to account for the counter-factual instances where this does not occur. In addition, this account has limited capacity for engaging with the subjective dimensions of these substances to inform their classification and control, despite being the central reason for their consumption.

### **Policy Documents**

*ACMD: Consideration of the Novel Psychoactive Substances (‘Legal Highs’) (2011)*

The 2011 ACMD report in question was written to provide “...advice on high level issues that ACMD believe the Government should give careful consideration to in addressing legally available psychoactive substances” (2011, pp. 2) and recommends a range of possible policy responses. NPS are described in the Background chapter in the following terms:

NPS are drugs which mimic, or are claimed to mimic, the effects of illegal drugs. There is a common, but mistaken, perception that because such drugs are not legally controlled or banned they are safe. (2011, pp.9).

While the claim that NPS are perceived as safe is not sourced, it is restated in the subsequent chapter (2011, pp.10). The category of NPS is noted as including generic branded products, named and specific substances, medicines and herbal materials. It is unclear what ‘substances related to medicines’ means, as this could either mean off-

brand pharmaceutical use, or it could mean analogues of medicinal products (2011, pp.10). This aggregating, wherein distinct drugs are grouped together for collective analysis, is a useful example of the capacity for the term NPS to encompass a wide range of dissimilar substances. In the subsequent chapter, the ACMD provide the following definition for these substances:

psychoactive drugs which are not prohibited by the United Nations Single Convention on Narcotic Drugs or by the Misuse of Drugs Act 1971, and which people in the UK are seeking for intoxicant use (ACMD 2011, pp. 10).

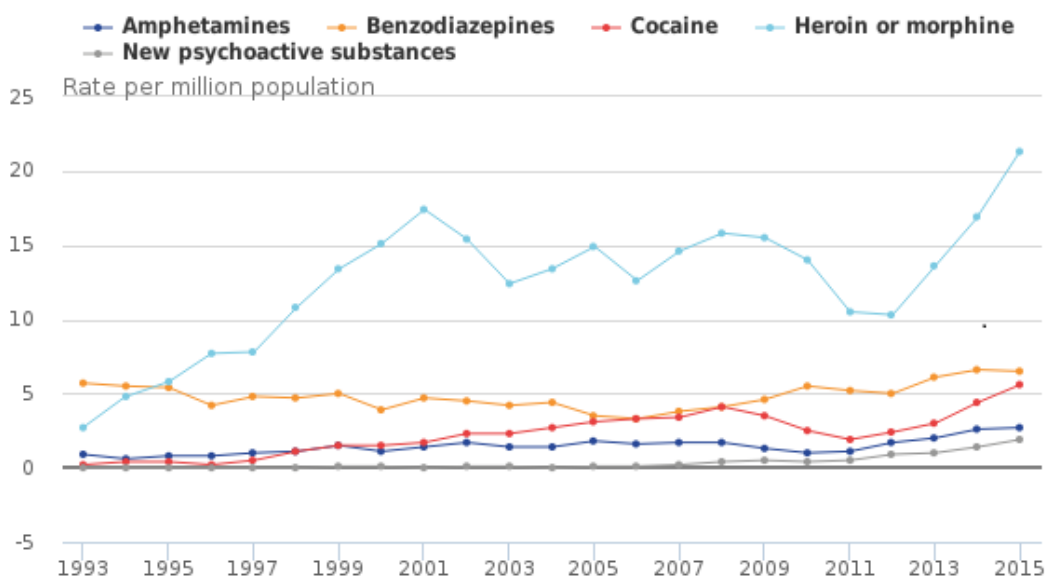
The ‘problem’ of NPS is illustrated with two cases studies, which demonstrate the capacity of these substances to emerge quickly (2011, pp.11). The first is mephedrone, which is recounted in terms of the alarming speed with which this substance emerged and was adopted by first-time drug users (this claim is unsourced). The second concern is 2-DPMP – better known as the branded product ‘Ivory Wave’, where it notes that some test-purchase samples of ‘Ivory Wave’ contained controlled NPS when inspected. However, these cases studies do not identify a single or stable ‘problem’ and may also be seen to evidence the emergence of popular substance from a family that continued to be marketed legally despite being controlled, alongside a less popular legal successor. While also indicating potential cause for alarm, this account would conversely raise questions about the *limits* of legislative control.

Chapter 4 is titled ‘The Changing Drug Scene’. It begins with the statement that drug use in the UK is coming down overall (2011, pp.12), with the emergence of NPS characterised as breaking with this trend. This statement can be understood as enacting a collateral reality in which drug policy is characterised as a successful pursuit that is being disrupted by the emergence of NPS. This is not to dispute the factual accuracy of the claim: the peak use amongst adults of ‘any drug’ was in 2003/04 at 12.2% which subsequently declined to 10% in 2008/09 and remains stable at present around 8%. Amongst Class A drugs, the trend is flatter, being broadly stable at 3%, with hallucinogen use declining alongside increasing cocaine use. Amongst young people, however, the decrease is more marked – largely determined by a fall in cannabis use – as is currently around 10 percentage points lower at present than in 1996. At the same time, cocaine use rose between 1998 and 2008 (with a slight decline in 2007/08), but peaked in 2009/10 and has remained above 2% since (compared to 1% in 1999) (Home

Office 2016a). Ecstasy use has remained relatively stable amongst 16-59 year olds, (between 1 and 2%). Amongst young people, it did drop considerably from a peak in 2001/02 – although recent increases have been noted (Home Office 2016a).

Viewed like this, while it is accurate to say drug use is falling – in relation to certain substances, at least, while evidencing more ambiguous trends more generally - it remains a relatively common activity statistically. At the same time, these falls should be viewed in the context of a historically high baseline. Moreover, most NPS users also use other drugs (Home Office, 2016). At the same time, drug-related harms have – albeit inconsistently – increased since 1995, and particularly since 2011 (see Figure 4.1) with deaths currently the highest on record (ONS 2016a).

In section 4.4 (2011, pp.12) the issue of NPS replacement is raised. Here, it is noted that the replacement of mephedrone with naphyrone within weeks of the ban is indicative of reflexivity and speed of this market in terms of replacements. While this a useful point, it may also emphasise the wrong aspect of this transition: while naphyrone harms and use have remained largely unreported, the ongoing use and harms accruing from mephedrone have been considerable (e.g. ONS 2016a, Hockenhill et al. 2016). As is noted (2011, pp.12) the adulteration of NPS with illicit – and often recently banned - drugs is also an ongoing problem. However, the persistence of the illicit market here does not detract from the subsequent recommendation for ongoing updates to drug schedules as a principal strategy for responding to this market.



**Figure 4.1: Drug-Related Deaths in England and Wales, 1993-2015 (ONS 2016)**

At 5.3 (2011; p. 14) the ACMD note the potential of people carrying NPS, that may be in fact illegal, alongside the increased complexity and uncertainty in the drugs market raising potential risks for consumers. Section 5.4 (2011; p. 14) notes that some products may simply contain caffeine, which can be harmful in the quantities being consumed. While the potential unreliability of NPS cannot be denied, it is strange that this section does not note the broader problems in the drug market concerning the reliability of the market. The effects of banning mephedrone are also noted, as surveys about the post-ban period have indicated more involvement with criminal markets, declines in purity and an increase in price. Interestingly, the report also notes (2011, pp.13) that the current NPS market is often supplied by, effectively, bedroom entrepreneurs who have little previous involvement in the drugs trade. The potential implications of their replacement by more traditional criminal actors is not discussed. Section 6 (2011, pp. 19-22) discusses the prevalence of NPS, which is largely focused on survey data indicating the extent of mephedrone use.

Here, it is noted that use fell following control, with numerous surveys – discussed in Chapter 2 – that describe lower availability and consumption following the introduction of legislation (2011, pp. 19-20), while noting the results of one survey (Carhart-Harris, 2011) which noted that 49% of the survey respondents intended to consume more MDMA now mephedrone had been controlled (2011, pp. 20). The higher use of these substances in ‘gay-friendly’ clubs is also noted (2011, pp. 21), and it observed that “It is highly likely that NPS with similar levels of popularity to mephedrone will appear in the future.” (2011, pp. 20). What is particularly interesting about this statement is that it indicates the effects of mephedrone in shaping the general response to NPS. While, as noted in Chapter 2, these markets may be more accurately categorised as diffuse and fragmented, with harms accumulating in specific niches, the construction in this report emphasises instead the risks associated with the sudden emergence of widely popular NPS.

The discussion of harms is parallel to those in the Harm Assessments, albeit on a wider scale and more cognizant of the limitations that face attempts to infer harms from hospital records that may not accurately record them. In terms of solutions, a long section (2011, pp. 23-29) discussing supply reduction options suggests various

measures for control, including consumer protection legislation and import bans, but considers the MoD Act the primary legislation through which supply reduction can be potentially achieved. Various strategies for reducing demand are discussed (2011, pp. 30-34). In discussing measures to reduce demand, it is observed that that NPS raise challenges due to the social contexts in which they are used which may involve the mixing of NPS with alcohol and other drugs (2011, pp. 30). This chapter also quotes the 2010 Drugs Strategy, which emphasises that strategy should be concerned with continuing the drug abstinence – described as the condition of the clear majority - and helping those that do consume these substances to stop.

Chapter 9 considers ‘public health messages’ to reduce consumption, emphasising the role of educational and preventive approaches here. The challenge of evidencing credible authority for educators on a wide range of obscure drugs, in this context, is not discussed. The need for practice sharing in treatment provision is also observed, and examples of emerging practices including the ‘club drugs’ clinic in London are noted (2011, pp. 34). Harm reduction is a focus here, although the importance of treatment is noted and the strong support for treatment in international literature is noted. This is not, however, contextualised into the context of contemporary policy shifts in this area towards a recovery agenda (Duke 2013). Chapter 10 considers regulation, and provides a wide range of recommendations for future legislation, including an endorsement of the government’s proposal for Temporary Class Drug Orders, noting that:

The primary reason for having the new drug orders is one of responsiveness. The Government considered that the time taken to ordinarily control a given drug was not commensurate with the rapidity with which NPS has been seen to come onto the market and become part of users’ repertoires. (2011, pp.35)

Other suggestions include improving networks for information sharing (36). Chapter 11 reviews the merits of analogue legislation, and proposes a system whereby an independent body could be established to determine whether substances could be accurately characterised as analogues of controlled drugs (2011, pp. 41). The ‘Conclusions and Recommendations’ chapter, which concludes the report, advocates further measures to expedite the rate at which new substances can be controlled and the development of responses involving regulations related to Trading Standards and Medical Regulations (2011, pp. 44-5). Further research into these substances is



recommended (2011, pp. 46), as is the development of best practice for health practitioners (2011, pp. 47). Finally, demand reduction strategies involving education, prevention and treatment are recommended (2011, pp. 48).

To summarise this section: the ACMD (2011) present the threat of NPS in terms of the health risks posed by these substances, which are constructed as emerging in a context where drug use is declining. Here, despite the ambiguity surrounding the effects of controlling mephedrone, the fact that this appeared to have reduced overall consumption indicates the effectiveness of control here. In turn, given the fast-moving nature of the NPS market, expedited legislative controls are necessary. In turn, demand for NPS should be reduced via educational and public health initiatives. The principal limitations of this account relate to the way in which harms are presented – as already discussed in the previous section – alongside the emphasis on the appeal of NPS relating largely to the appearance that they are safe. The report is also problematic in the sense that it does not account for the increased potential harms that may result for those who continue to consume controlled substances, or at least insofar as accounting for this would necessitate harm reduction measures or the consideration of alternative strategies.

The main principle danger of NPS is framed in terms of this market's capacity to generate sudden spikes in the use of certain substances – as evidenced in the context of mephedrone – and respond to control by introducing replacement substances. In this construction – where the legal market constructs a distinct demand, which is moreover substitutable when compounds are controlled – the necessity of fast, responsive legislation appears to be a natural inference. In this sense, by constructing the NPS market precisely in terms of the 'gaps' in prohibition, rather than seeing this market as co-substantive with and overlapping with illicit drugs markets, it becomes possible to observe a specific and necessary role for control here, despite the historical shortcomings of this policy approach.

#### *Expert Panel on NPS (2014) Report of the Expert Panel*

The next major set of policy recommendations on NPS were provided by the 'Expert Panel' on NPS policy in 2014, having been convened in 2013 to offer an informed set of policy proposals to respond to the ongoing problem of these substances. This report recommended a generic approach to scheduling that would be implemented in the PSA

2016. The report aims to make credible recommendations based on expert guidance. As is noted:

The Panel members were drawn from a range of areas, including enforcement agencies and prosecuting authorities; local authorities; medical and social science experts; forensic science experts; and academia. In addition, other experts and interested parties, including those from government departments, devolved administrations, international administration and experts in the fields of education, prevention and treatment were invited to provide the Panel with evidence and support during their deliberations. (2014, pp. 3)

In the report's introduction, NPS are constructed in the following terms:

In recent years, the United Kingdom has seen the emergence of new drugs that have similar effects to drugs that are internationally controlled. These drugs can be collectively called New Psychoactive Substances (NPS)... These drugs have been designed to evade drug laws, are widely available and have the potential to pose serious risks to public health and safety and can even be fatal. (2014, pp.3)

This construction blurs an important distinction between drugs that briefly evade legislation and the broader global context in which new networks of communication and exchange are permitting the development and distribution of obscure, unknown drugs.

The sense in which policy is expected to achieve multiple, potentially contradictory goals is apparent in the Guiding Principles. These contain a range of potentially contradictory injunctions, requiring the reducing of harms, protecting individuals from "untested, unknown and potentially harmful substances", "be proportionate to the evidence base, but remove the accessibility of the market "which portrays the message that drug use is acceptable". (2014, pp. 5). It requires that "compliance opportunities" for the market in NPS are maximised alongside successful prosecutions while "limiting the involvement of organized crime and the interaction with the illicit drugs market." It must remove the risk of "legislative responses" producing "evolution of the NPS market", while also utilizing the existing control framework for NPS (2014, pp. 5).

The first section of the report describes NPS as a ‘global’ concern, while elaborating the role of the internet in facilitating this market: “The internet has provided a global marketplace and the emergence and sophistication of the darkweb is concerning and gives a further platform for the growth of the market” (2014, pp. 7). While noting the potential for large numbers of new substances to be synthesised, this section contextualises the high numbers of NPS noted by the EMCDDA:

Whilst generally there has been an increase in the number of novel NPS detected, it is important to note that the vast majority are permutations of groups of similar substances with similar effects...or dissimilar substances that produce similar effects...rather than distinct types of drugs. (2014, pp.8)

The report then goes on to note that many substances identified in Europe haven’t emerged in the UK and that many may be very short-lived in the market (2014, pp. 8-9). The report then notes that while purchases online do not appear to be particularly common, there appears to now be improved consistency between the information on packages and the actual contents, with suppliers being attentive to the letter of the law in terms of which products are appropriate to sell, apart from when no ingredients are listed (2014, pp. 10). The darkweb is noted again as an important feature of these emerging markets (2014, pp. 10). The report then reviews prevalence estimates concerning the use of various NPS, noting that, per the CSEW (which measures mephedrone, salvia, GBL/GHB, Spice and BZP) use had fallen since 2010 (2014, pp. 10). The limitations in survey methods for recording the use of quickly emerging substances is noted, as is the apparently high prevalence in certain subgroups like those attending gay-friendly nightlife venues (2014, pp. 11).

They note that measuring harms is similarly challenging, given the lack of systematic reporting (2014, pp. 11). The report notes the EMCDDA’s observation that NPS only constitute a public health problem if considered as a group, while individually they are of limited consequence. The number of deaths is recounted in relation to the 2012 ONS figures (52 in 2012). The reports notes that these are associated mainly with cathinones and GBL/GHB, despite the controlled nature of these substances (2014, pp. 12). The motivations of NPS consumption, it is noted, are not understood ‘comprehensively’, while demand is explained in relation to the existing market in traditional drugs (2014, pp. 13).

These nuanced readings of the data distinguish this account from that found in the media or in Parliament. The report also distinguishes between some segments of the NPS market. Cyber-psychoanauts - internet users who research drugs and share their consumption experiences online - under 18s, prisoners and military personnel are suggested as groups for whom legality may be particularly important (2014, pp. 13). 18 year olds are argued to have less access to alcohol and illicit drugs, although these claims are not sourced. The different perceptions of these substances and differing attitudes to risk are also noted: For example, there is evidence that some users are unconcerned about the content of the substances they are taking, purchasing stimulant white powders containing variable mixtures of cathinones, sold as 'Bubble' in the north-west of England (Measham et al., 2011b). By contrast, research in contemporary dance clubs (Measham, 2015) suggests that MDMA remains popular in pill, powder and crystal form and that NPS are considered 'cheap and tacky' among some experienced clubbers. (2014, pp.14)

Motivations of sellers are considered, with the report noting that while some felt a duty of care towards customers, this should be regarded as irresponsible due to the harms that could be caused by these substances (2014, pp. 14-5). The emergence of a black market, and the increase in possible organized crime groups is noted (2014, pp. 16).

Finally, the report discusses the UK policy response, reporting that 85% of the 410 substances identified in Europe up to 2014 were currently controlled (2014, pp. 17). Alternative legislation, and ongoing challenges are reviewed. Here it is argued that current responses are limited because they are "...unlikely to get fully ahead of the NPS market" and allow "NPS suppliers to adapt their range of NPS on sale in response to new controls." (2014, pp.21).

While the emphasis is clearly on the need to 'do more' about the NPS problem, much of the evidence presented at this point does not suggest a particularly widespread problem, or indeed demonstrate that legality is a particularly important contributor either to use or to the harm that accrues from this market. While different user groups are identified, the different needs and capabilities these users have is not an apparent concern. Moreover, the fact that legal coverage is relatively comprehensive somewhat defuses the apparent necessity of immediate intervention. However, the conclusion makes a familiar claim:

At present, NPS appear to be less used and associated with less harm than traditional illicit drugs, particularly opiates and crack cocaine. However, all available indicators suggest that the harms from traditional illicit drugs are largely declining while the harms from NPS are increasing. This, together with sizeable evidence gaps about the impact of use and the rapid pace of development, means that NPS remains an area of concern and interest. (2014, pp.16)

The contention that harms from traditional drugs are ‘largely declining’ while NPS harms are increasing is, as above, open to contestation. Moreover, the increases in harms already noted in relation to both illicit drugs and broadly defined NPS indicate that, not only should NPS harms not necessarily be distinguished in these terms, but that increasing harms does not necessarily recommend a prohibitory response.

Chapter 4 is concerned primarily with potential regulatory options, and provides a systematic analysis of what are constructed as the possible regulatory responses. More than the previous sections, this section considers how the problems observed as being caused by NPS are evaluated in relation to policy, which reveals important dimensions of what the problem is defined to be. The different options are described and evaluates them in relation to potential effects on the supply chain; demand; harm; enforcement; forensic science; legal services; associated costs; and messaging and communications. It’s worth first noting the responses which are rejected: the analogue, restricted sale and full regulatory models.

The Analogue Approach – or approaches as countries have applied this differently – would seek to regulate substances based on their chemical similarity to controlled substances, as currently undertaken in the U.S. This approach is ultimately rejected because it would do little to advance the current UK position from the perspective of the goals of the panel. Enforcement, it is argued, would be complex and costly and it may do little to remove head shops from the high street/retail environment, and may spur further chemical innovation (2014, pp. 26-7). The ‘Full Regulatory Approach’ – which would mimic New Zealand by permitting substances which were approved of by a review process that determined if they were low-risk, while banning all others - raised concerns about practicality, particularly around what a ‘low risk’ substance was and how this could be demonstrated. It also raised issues in terms of the controls for riskier

substances and the potential to produce confusing messages. As the report notes: "...a mechanism for controlling NPS that were not 'low risk' would still be needed which *could lead to confusing messages about NPS overall.*" [my emphasis] (2014; p. 42).

A similar response is given to the potential of a system of limited availability, i.e. the 'Class D' solution, that would allow the retail of NPS under controlled circumstances and through licensing. As well as potentially exposing some customers to harm (which one of the groups mentioned above as consuming NPS for legal reasons would be harmed is not discussed). A problem noted with both approaches is also that, by having some NPS visible (albeit in a controlled setting) this could potentially communicate that NPS were safe (2014, pp. 45).

One interesting dimension of these accounts is that they appear to hinge on the perception that while legal availability communicated relative safety to consumers, the creation of a Class D or low-risk criterion which explicitly attempted to use this to modify consumption would not have this effect. This belief capacity for other forms of regulation are unable to communicate risks, and the supposed efficacy of drug policy in doing this has a limited empirical basis.

Conversely, a neurochemical approach is recommended which would specifically control SCRAAs based on their capacity to effect CB1/2 neurotransmitters. This is presented as a conceptual shift in drugs policy, but potentially effective in the context of controlling SCRAAs, given the diverse chemical structures of these substances, despite risks to legitimate scientific research this may pose (2014, pp. 18-21).

The General Prohibition approach, which provides a definition of psychoactive effects and would restrict their sale on these grounds, is alternatively constructed as providing the advantage of clear communication and removing "the risk that national legislation is a driver for innovation, including to more potent products." (2014, pp. 35). This is seen to provide clarity for enforcement, and reduce use for those concerned about legality or unable to access illicit markets, and provide a clear message, while indicating that "government is addressing public concern over NPS" (2014, pp. 36).

Displacement is the main negative noted here, but this concern was not reflected in the concluding comments or weighed against the upsides. Rather, the primary concern

noted is the “conceptual move” (2014; pp. 38) that the step involves, rather than the potential to simply create another highly lucrative black market. As they state:

...the Panel also recognised that there were some risks, including whether this type of approach was a proportionate response to the problem of NPS in the UK, and whether, as in the neurochemical approach, this approach represents a conceptual move in respect of the basis on which the UK drugs policy model has historically been based. A precautionary principle would now be used rather than one of acting proportionately in response to evidence of harm. This is already the case to some extent for generic drug legislation but this approach goes further than both the existing legislative response and the proposed approach to tackling synthetic cannabinoids by using a far wider net targeting any psychoactive substance or substance sold for the purposes of intoxication, rather than a group of chemicals that have a described structure. (2014, pp.38)

These risks, however, do not undermine the approach so much as necessitating careful application. Treatment is stated as a central pillar of the drugs strategy, but there is no indication in this report – which admittedly is concerned with recommending legislation to control NPS - that greater resources will be devoted towards it or any new initiatives aimed at NPS consumers nor is it clarified whether and how NPS will be incorporated into the ‘Recovery Agenda’. Principally, the need to address public concerns, send a clear message about the dangers of drugs and prevent the emergence of copy-cat legal substances in the wake of substance control are emphasised as the reasons for favouring a generic approach to scheduling.

This construction, in turn, enacts NPS users as both cognizant of and attentive to government ‘signals’ about which drugs are harmful, as well as attentive to the legal status of these substances. This construction is explicitly identified in the Government’s response to these recommendations:

Based on international experience, it would remove the open sale and availability of non-controlled NPS in high street ‘retail outlets’ and on UK domain websites. The Panel identified that this approach could lead to a reduction in NPS use, *particularly for those who are unable or unwilling to*

*access criminal markets*, leading to a downward pressure on harms related to NPS. [my emphasis] (HM Government 2014, pp. 4)

The extent to which this group represents the broader category of NPS users is highly contestable. It is not that this is not observed – the panel makes similar points about diverse user groups – but the constitution of the target of this policy intervention proceeds without much regard for these points.

The assumptions about ‘innovation in the market’, however, require more elaboration. While it is certainly the case that making all substances illicit limits the incentives to produce and distribute non-controlled substances - assuming a loophole in the legislation is not found - this is a limited view of how innovation within the drugs market takes place. Over the last 30 years, the drug market has evolved considerably in the UK, involving the general deployment of mobile phones as a tool of drug dealing (e.g. McEwen 2011), houses which specialise in drug-selling (e.g. May and Hough 2004), and the use of online and social media techniques for selling (e.g. Thanki and Frederick 2016). These have all evolved through adaptation to policy efforts to restrict open drug markets. Similarly, fashions and trends change. For example, the development of MDMA culture and the cultivation of new dance-drug assemblages happened following the control of the substance (For discussion of the history of MDMA/ “ecstasy” culture, see Collin 2010). The specific dimensions that characterise NPS beyond that are not directly related to being available to consumers in an unregulated capacity – i.e. the potency and low-cost of these substances for producers and distributors – will likely mean ongoing developments in these markets. This is discussed further in the concluding chapter. Here, it is worth noting again that while many of the developments in online drug distribution that have enabled NPS to emerge are noted by the Panel, these concerns do not appear to offer much of a counter-weight to the decision to recommend generic scheduling.

Finally, it is worth noting the importance of the NPS problem frame here, as constitutive of the Panel’s recommendations. While the Panel makes use of a wide range of evidence and expertise – as does the ACMD’s report – the drug policy frame within which they are required to engage with NPS limits the range of available policy recommendations. While it is possible to debate the merits of certain findings on NPS,



the fact that NPS have been constructed as an urgent matter which demands policy development is outside the confines of expert policy discourse.

### *Summary*

It has been argued here that the construction of NPS within the above policy documents have constructed the NPS market as distinct from the broader drugs market in the sense that it is a site of increasing harms. These constructions have emphasised the fast-moving nature of NPS markets and the corresponding need for expedited or enhanced control. NPS are characterised primarily in terms of the risk they pose to health, which is characterised as emerging largely because of their toxic – yet hard to be precise about - effects. The fall in mephedrone use following control here is also used to indicate the effectiveness of prohibitory responses here. General prohibition is constructed as clearly demarcating the status of formerly ambiguous NPS as harmful and illegal, with a view to communicating that they are harmful and restricting their availability. In addition, the voices of drug users are absent in both accounts. While the Expert Panel notes that possession does not have to be criminalised in a generic approach, the reasons for avoiding this are not elaborated.

The focus on consumers who are otherwise unable or unwilling to access drug markets also provides a restrictive scope for policy, while predicating concern for their consumers on their broader deference to the government's approach to controlling drugs. Here, the relevant 'public' as being the subject of legitimate concern are precisely those who are constructed as otherwise conforming to the strictures of drug regulation – who consume these substances because they appear to be safe and are legally available - while drug users who do not conform to this image remain excluded from the scope of the public interest as enacted here.

The mobilization of expert discourses and the networks of expertise that they assemble restricts the scope for defining drug policy problems to expert representation. Here, the unquestioned assumptions about who should be accorded expertise in the definition of NPS, their effects and their attendant risks should not go unobserved. As the concluding chapter will argue, developing alternative approaches to the challenges raised by the emergence of NPS may require more inclusive and participatory accounts of how NPS – and other drugs – can and should be thought about from the perspective of reducing harm.

## Conclusion

In the introduction to this chapter, two arguments were advanced. The first was that problem of NPS was largely represented in terms of the threat posed by these substances by virtue of being ‘legal highs’, i.e. legally available drugs with the corresponding implication of being both available and appearing to be safe to consume. Secondly, it was argued that this framing enacts a discursive closure on the definition of the problem, wherein drug users who are not motivated by the ‘legality’ of these substances, but rather their effects, prices, etc., are not permitted scope to contribute to the definition of NPS. In turn, this may result in increased risks for these consumers, as discussed in more detail in Chapters 5 and 6. In reviewing the media reporting, Parliamentary debates, policy reports and harm assessments of NPS, it is possible to observe both a consistent rhetorical emphasis on the harms of this market that were directly related to legality, while mobilizing statistics in ways that clearly overemphasised the relevance of legality in the escalating number of deaths associated with NPS. In turn, policy recommendations emphasised the importance of rapidly controlling these substances, with a view to eliminating and getting ahead of the market in uncontrolled psychoactive substances.

This account has drawn on Bacchi’s framework for questioning policy representations. The problematisation described here reproduces a drug policy premised on the importance of protecting non-drug users from NPS, with comparatively little scope for addressing the harms risked by those who use these substances knowingly. STS has been used to identify the limits of claims to scientific authority, by maintaining that producing *objective* information on these substances involves both determining the terms of their *presence*, while also silencing certain aspects of their materiality which are not amenable to the inscription methods used.

As observed in the discussion of harm assessments, the characterisation of these substances as enacted in expert discourse operates by associating these substances with harms without further investigation or elaboration of *the context* in which these harms accrued while simultaneously reducing their subjective effects to secondary considerations. As the next chapter will argue, this ontological approach to NPS can be contrasted with alternative approaches to these objects which emphasise what NPS are capable of helping participants achieve. Reflecting the overarching prerogatives of the

drug *dispositif*, psychoactive consumption is here framed as drug use is necessarily perceived as a social problem, with the broader public interest best served by the minimization of drug use.

While this can be articulated as the necessary outcome of a broader, general health prerogative, it is also possible to – as was argued in Chapter 1 - regard drug policy as enacting the consistent rationalisation of a scheduling system that emerged in contingent historical circumstances. In the context of a universal claim that drug use is dangerous, any claim that drug users might have towards constituting part of the public interest may therefore be overruled. As we have seen, this may be done to avoid ‘sending the wrong message’ to the public at large, who are constructed in terms of their vulnerability to quasi-legitimate markets in NPS. In this sense, emphasis on how the problem of NPS is represented draws critical attention to the broader truth claims within which this policy operates.

In turn, in thinking about developing critique here, it becomes necessary to consider the sense in which the governing problematization of drugs restricts the scope for other perspectives and constructions of drug policy, particularly those which emphasise the potential uses of these substances for pleasure and protest the coercive forms through which drugs are governed. As above, this ties into Butler’s arguments (2012). As noted, the young people who may be misled by claims of legality are here constructed as at great risk and in need of protection. Comparatively, the vulnerability of more marginal groups, prisoners and intentional drug users is not emphasised in this account, and largely seen as marginal or expendable with regard to protecting non-drug users through the public sanctioning of NPS. As the remainder of the thesis will ask, is it possible to adopt a less exclusionary framework for engaging with NPS?

Chapter 5 advances these arguments, directing us towards Foucault’s concern with ‘subjugated knowledges’ (Foucault 2003) that are silenced within these discursive frames. As he observes, in the investigation of historical processes of problematization:

... we identify a perpetual question which would be: “how not to be governed like that, by that, in the name of those principles. With such and such an objective in mind and by means of such procedures, not like that, not for that, not by them. (Foucault 1997, pp.45)

It is towards the possibilities for alternative articulations of NPS consumption that this thesis now turns.

## **Chapter 5: Constructing NPS Differently**

### **Introduction**

This chapter provides analysis of 19 interviews conducted with NPS consumers between July 2014 and December 2015. The results, it is argued, indicate important differences between the participants' account of NPS and the construction of the NPS problem in policy. This is not to say, of course, that the interviews indicate unambiguously positive accounts of NPS, on the basis of which we could readily dismiss the above concern as a 'moral panic' that has spiked up in relation to nothing. Like the policy discourse of NPS, there is not a singular discourse about the experience of NPS consumption, even when similar substances are involved. At certain points, participants characterise NPS as dangerous and unpredictable, and potentially more dangerous than illicit drugs. However, there are also important differences in these accounts, relating specifically to the construction of drug policy, the range of ways in which technological changes have changed drug markets, the account provided of harms and the identification of beneficial aspects and functions for some of the substances under discussion.

This chapter contests the problem frames described in chapter 4. Overall, this chapter presents three key findings about the nature of NPS consumption discussed here and their relationship to the problematization outlined in chapter 4. First, it is argued that, as distinct from the account provided in the previous chapter legality was not the principal motivation for NPS consumption, and played an ambiguous role in this sample, with mixed findings on the relevance of the legal status of NPS and the consequences of regulating this market. Second, it is argued that the discussion of harms in these interviews constructs harm as a variable aspect of use, mediated by the markets in which substances are obtained, and may be approached with a view towards pragmatic risk reduction. When these discourses were absent in interviews, this appeared more indicative of a degree of recklessness towards harm in the context more generally, rather than owing to perceptions that the subject was 'safe'. Third, it is argued that, distinct from the preoccupation with harm noted in Chapter 4, these participants also offer constructions of these substances that emphasise what they are *capable of*. This section analyses the ways in which the participants invested certain NPS and other substances with beneficial effects, which motivated consumption. The implications of these findings is explored in Chapter 6.

### **Unpicking the Complexity of NPS Markets**

This section reviews the participants accounts of being introduced to and purchasing NPS, as well as the effects of regulation. The data here is argued to demonstrate the complex assemblages within which NPS consumption emerges and the difficulty inherent in characterising this market solely in terms of the appealing and seemingly safe nature of legally available psychoactive substances. This section develops the claim that the way in which NPS problems have been represented offers a restrictive and limited view of how NPS consumption emerges. These problems, in turn, offer a limited view of how the public interest should be defined and for whom policy should be developed, which does not extend to the alternative perspectives elaborated here.

#### *Motivations*

It is difficult to characterise within this sample a uniform set of motivations for NPS consumption. NPS use was principally motivated by the effects that these substances provided, although the desired states and purposes of such use varied between participants. Some participants took seriously the pursuit of their wellbeing through reflective drug use, whereas others were primarily motivated by a desire to take drugs to enjoy themselves, but did not otherwise take them that seriously. Differing substances served different purposes for individuals within this sample.

Decisions to initiate NPS use also varied, while trajectories and patterns of use were frequently informed by the effects of the substances and external events. Effects which were perceived to be beneficial or pleasurable, on balance, were pursued, although the substances also aligned to quite specific temporalities, in the sense that ‘tripping’ on psychedelics might be a less frequent experience than consuming stimulants. Lifestyle changes or relocations may interrupt and develop the use of substances, as well as new friends or partners who were interested in drugs. Negative effects will often motivate cessation, although negativity here appeared relative, and certain practices are described as, at times, compulsive.

It is not clear that being NPS, or indeed being ‘legal’, expresses the same thing to all consumers. In these narratives, we see NPS emerge under several guises. The participants for the most part existed in a culture where drug use was relatively

normalised, and NPS at times provided certain potential advantages in certain situations. The main 'genres' of NPS experiences were as follows:

- *Poor, but available, substitute:* at certain points, NPS were used as a substitute for preferred or desired substances, which they were briefly – a supplier falling through on a particular night, for instance – or generally unavailable. And other times they could be a stand-in or supplement to consumption profiles. For instance, participant 5 describes buying a 'legal high' called 'silver bullet' following another drug purchasing arrangement falling through. In another case, because they were unable to locate speed, participant 8 bought a legal stimulant online, and had an unexpectedly negative reaction to it.
- *Adulterant:* Sometimes NPS emerged unexpectedly in substances believed to be other products. Sometimes this was benign, but at others times unnerving. Participant 18, for instance had purchased MDMA which they believed to have been methylone, whereas participant 6 describes buying ketamine that appeared to be methoxetamine cut with something else.
- *Cheap alternative:* sometimes NPS meant cheaper versions of the more traditional 'street' drugs like MDMA or cocaine. For instance, 'sparkle' is described by participants 12-14 as selling for £10 a gram, with multiple discounts at higher purchases, making it extremely competitively priced. For another, certain 'legal highs' like mephedrone and methoxetamine were distinguished in terms of being less expensive than drugs like cocaine and MDMA.
- *Purity and reliability:* In some cases NPS were viewed as superior to 'street' drugs because they could be obtained in relative purity and in convenient settings. For many participants who had or were taking an active interest in exploring drug effects, the fact that NPS could be obtained conveniently was advantageous. This was more consistent with participants who largely bought substances online, who regarded the internet as a reliable source and took advantage of it. In some cases, these participants might also use the darknet, but this was not always the case, with technological barriers and fears about detection limiting accessibility for some.
- *Interesting possibilities and Improvement:* In some cases, certain NPS came to be regarded as preferable to comparable substances, with mephedrone (participant 1), AL-LAD (participant 7) and methoxetamine (participant 8 and

19), for example, were characterised as having particularly positive attributes and less negative side effects than comparable substances. For some, particularly participants 10, 11 and 18, there was also great appeal in exploring new drugs which were interesting because they were unknown.

As these examples show, NPS may emerge both as poor substitutes or superior alternatives to controlled drugs, depending on the intentions of those consuming them or the context in which they are bought. The distinction of being novel and unregulated also meant different things to different participants. In contexts when NPS were effectively used as a bad substitute or cheap alternative they might be considered more harmful than ‘traditional’ drugs: *“If anything, legal highs were looked down on more than – were viewed as more dangerous than illegal drugs”*. (Interview 5, white, male, 25-30). Similarly, participant 2 referred to mephedrone disparagingly as a “kiddy drug” that they now associated with immaturity, having at an earlier point found it appealing. There were also important distinctions *within* the category of NPS, with several participants distinguishing between research chemicals that were obtained in a pure chemical form and more dangerous, branded legal high products. Identifying a linear causality between the availability of NPS and their consumption is difficult, but being differentially available – whether online or cheaper or sold offline – often played an important role in decisions to consume them.

Many decisions to initiate NPS consumption were contingent and contextual, rather than proceeding directly from the inference that the substance was legal. Participant 2 characterised their decision to use mephedrone in University Halls as effectively, because they were interested in trying it and lots of people were using it in their vicinity. Similarly, participant 3 emphasised the sense in which the City he lived in at the time as having “kicked off” with a local mixture of NPS stimulants in 2009, referred to as ‘bubbles’. In this context, as when another participant describes using mephedrone as a substitute for MDMA, these substances are largely bought through friends or traditional dealing networks, rather than in shops.

Contexts of polydrug consumption, such as at festivals or parties, could also lead to NPS use, as participant 17 notes concerning festivals:



You know, I know I've been given pills by other people, which were legal highs. Which, in the maelstrom of a festival when you're already taking other stuff and someone says 'try this' and you do...you don't remember what you've taken in the morning, you know? And I can't remember for the life of me what I've taken...it gets lost. Which is part of the drugs culture. Multiple simultaneous drug use is not uncommon. You know? (Interview 17, male, white, 35-40)

For participants 12-14, the local conditions of the NPS market in their town – which was highly supplied with, amongst other things, a blended mix of seemingly NPS stimulants they called 'sparkle' [real name withheld] that was widely available – was determinative of their drug market experiences. As one participant notes, their consumption began at school in the context of high background consumption:

Um, yeah, it's...uh...I started off with like um, we took little keys of energy off people in school and stuff. Like on a dinner time you'd throw a stone and someone in school had sparkle on them like...So, um, yeah they'd offer you a key and you'd go over and have a quick key at dinner time. You'd be off your nut for the rest of the day then, like! (Interview 12, male, white, 20-25)

This participant would continue to use this substance on a recreational basis for some time following this, but also appeared to have access to other illicit drugs markets for stimulants and cannabis. However, here the social availability of this substance resulted in its use and identification of its benefits.

This substance was also characterised as extremely cheap. As Participant 13 observed:

Researcher: I heard the price is really low.

Oh, ridiculous. It's so easy. Like £20 for three and a half grams of it. And that'd be all night then, like 5 til 5 o'clock in the morning and you'd still have stuff left (Interview 13, male, white, 20-25).

This was far cheaper than the available alternatives. As this participant went on:

The only reason that I done it rather than buying coke is because coke's so expensive and you wouldn't get as much of a buzz. It'd be like £40 for coke. And that'd be a gram. And you'd get rid of that so quick. But with the 'sparkle' you'd spend thirty quid and you'd get three and a half and that'd last you so much longer and give you a more intense head. Way better and just easier. It weren't nothing in my head about it being legal. It didn't make no difference to me. (Interview 13, male, white, 20-25).

Cost was also a relevant factor for participant 8, who recalled that purchasing mephedrone facilitated access to the drugs market both when they were too young to afford MDMA, and also provided an opportunity to explore emerging. In the current context, they observed that price of substances like methoxetamine when bought online was far more competitive than comparable drugs:

...it's a huge difference. It's so much cheaper. It's like, you would pay £40 for a gram of MD and you could go through that in one day whereas you would pay like – I can't even remember how it was for MXE – I think it was like between £15 and £20 a gram, but that you could get high 20 times on that. (Interview 8, white, female, 20-25)

For participant 15, it was the remoteness of where they lived – a semi-rural, geographically remote location - that made the supply of illicit drugs irregular and thus made buying NPS from head shops and online a more reliable alternative. The context of this observation is a harmful local drugs market co-existing with deprivation in the area, which is described as:

I don't know what it was that first got me into trying legal highs. I think it was...probably ...not having, like, access to drugs. Access to weed like. I know in my area people turn onto harder drugs because they don't have access to the regular drugs. (Interview 15, male, white, 25-30).

For this participant, cannabis was identified as a much safer and more sensible choice than alcohol, which they perceived to be the "worst" drug. In turn, a decline in the availability of cannabis would prompt an interest in SCRAs, which would come to be seen as having both advantages over traditional cannabis as well as greater risks.

There were also examples of participants who had become interested in drugs more generally by reading about the drugs market and engaging with the internet as a solitary venture. Participant 11 described becoming interested in drugs because of their reading as a teenager:

I'd say my interest in drugs really started with the kind of literature I was reading when I was a teenager – *On the Road*, *One Flew over the Cookoo's Nest*, basically all the counterculture stuff from the 50's and 60's, along with an interest in cyberpunk which links into the drugs world via magazines like *Mondo 2000* etc. It was around the time that *salvia divinorum* was just becoming known and available, so I ordered some tincture off the internet and that was my first real drug. (Interview 11, details unknown)

This interest in drugs would waver, then re-emerge, over time with the discovery of other substances.

This section has sought to emphasise how NPS consumption was not, in this sample, primarily motivated by a perception that these substances were safe, but rather reflected a range of factors.. While being legally available clearly played a role – as we shall see – in permitting certain markets to exist, decisions to use these substances were also often situated in contexts that made their consumption socially acceptable and socially available, in the sense that they offered a shared experience. At the same time, others expressed, as above, an interest in drugs culture and use that was informed by the broader cultural context in which this use was situated. While lines of causality can be drawn in some – not all – cases where being available was an important factor, this has to be contextualised within a broader context in which, for these participants, drug use was already a somewhat normalised - or at least not perceived as highly stigmatised - phenomenon.

As we can see, these findings contradict the emphasis on legality described in chapter 4. At the same, as discussed below, being available quasi legally did give NPS advantages. The internet in particular facilitated access to information, reliable supplies and perceived safety from legal sanction and untrustworthy 'drug dealers', but did not communicate that these substances were safe because they were not controlled.

## *Purchasing NPS*

### ***Traditional Drug-Dealing***

For several participants, NPS were first experienced as, effectively, outgrowths of drug markets they already had access to. In most cases, when traditional dealers were described in this sample it is in the context of buying stimulants – mephedrone, ‘sparkle’, bubbles, etc. – rather than psychedelics and dis-associative substances which were more often acquired online.

One aspect of traditional dealing markets that was noted was 24/7 availability, which facilitated certain patterns of consumption:

Because they’re up at 4am, dropping off to you, because they’re the 4am dealers. They’re the ones who you ring at 4am because they’ll be awake, they’ll know people will be awake and seshing and they’ll make a killing at 4am, you know, once everyone is clucking and the house party everyone’ll who, right how much have we got, £180, ring someone. (Interview 14, male, white, 20-25)

This participant characterised ‘sparkle’ dealing as very common in his local area, stating he had previously had up to eight contacts from which to purchase ‘sparkle’.

Conversely, participant 1 described a situation in which a reliable supplier provided a trusted source for mephedrone:

The guy I’m buying mephedrone from, - obviously he makes a product – but I’ve witnessed his quality control. I’ve seen him skin test it. Cause he just picked up a batch, I was his first top off and he’s aware that it’s some of his clients. And he himself said it’s madness and it’s dangerous but he knows some people who inject. So he came here, brought out a small very small shot kit. He didn’t go intravenous but he skin tested the mephedrone. Because he was like, I can’t give this to people, knowing they’re going to inject it, and it cause a problem. But that’s not the sort of people who sell heroin. You know? (Interview 1, male, white, 20-25)

Traditional dealing interactions also facilitated drug use in the context of festivals, which could in some cases involve access to obscure substances. Distinct from reports of cut ketamine were offered above, participant 16 described a far more carefully curated customer experience:

...the festival we went to last weekend, there's a great, great dealer there who can just rely on the quality of his stuff. He comes around with a little menu, it's just fantastic. And you're like "oh, mmm, two of them, three of them" ...all the 2Cs were listed. (Interview 16, male, white, 50-55)

As noted below in the discussion of subjective effects, this participant would also describe consuming both 'synthetic ketamine' – presumably methoxetamine – and nitrous oxide following a social offer at a festival. Participant 2 and 5 similarly noted festivals as a site at which drugs were widely available, including NPS.

In both these cases – stimulant sales and festivals – the possibility of high-volume custom was notable. It is rather harder to imagine NPS psychedelics being sold at 4am for £180, given the more considerate and infrequent usage patterns that often characterise these substances. The nature of these markets may engender certain risks, as in the case of high volume purchasing and the risks of debt. As participant 14 recounted:

Yeah, I've had a 20-odd year old knock me out for that. But, you know, that's the thing though. I can't be like 'some drug dealer attacked me'. It was, I owed him money and, that I'd refused to pay, I'd been like 'fuck you I haven't got any money' even though I did. Just cause I was addicted to drugs. And now I wouldn't blame those people, do you know what I mean. I didn't get battered or anything. I had a man, you know, give me a clip and be like, you know, fuck up your ideas and that was the end of it do you know what I mean? (Interview 14, male, white, 20-25)

This participant's account also described drug-related debt in more serious terms, noting: "A lot of us got into debt actually. My mate [name] especially. He got himself into about four grand debt and had a lot of people coming to fuck him up." (Interview

14, male, white, 20-25). The higher risks of physical violence and its threat in traditional 'open' and 'closed' drug markets relative to cryptomarkets have been noted in the literature (Barratt, Ferris, et al. 2016). Here, the threat of violence was most common in 'open' markets involving interacting with strangers, followed by closed markets involving peers/friends, with the cryptomarket being the least associated with these adverse events.

The unreliability of the street market was also noted, with the possibility of buying cut substances noted particularly in the context of 2009 and the low point in MDMA quality. As participant 16 noted:

There was a time when the first pill would be £10 or £15. And it would last you all night, no problem. Then during my time of going down regularly I found they were selling them for £5 each. And then they were 5 for a tenner. And you'd need all five. And then you were taking ten. You know because they were so weak. And I've have bad experiences on them where they didn't – I'd feel poisoned, I'd felt sick, I'd felt nauseous. (Interview 16, male, white, 35-40)

Participant 15, in addition, described the coercive nature of their local drug markets:

Yeah. Very, like, it's a common case that people go to get drugs from their dealers, it's a tactic of drug dealers, to, is to have a certain supply of drugs and then once they don't have it start to sell them harder drugs. I don't have any of this but I have this. And so, that's how they...it's a tactic of drug dealers to get people onto harder drugs. (Interview 15, male, white, 25-30)

On the basis of these accounts then, while these accounts of the market are unlikely to fairly characterise what may have in many cases been routine and unremarkable interactions with illicit drugs market, some of the examples here indicate the potential for drug dealing markets to increase risks to consumers. This may both be in the form of sustaining harmful habits and compulsive consumption habits, as well as exposing consumers to risks from adulterated substances and the threat of violence related to drug-related debt.

### *Head Shops*

Most participants did not make use of head shops, whose consumers have yet to be fully characterised by research. Participant 9 found nitrous oxide could be conveniently purchased nearby, and therefore did so. While Participant 15 initially procured SCRAAs in this way, they would later shift to buying them online when this became perceived as more convenient. These interactions seemed largely predicated on convenience and were non-remarkable. In some cases, when I asked whether participants about whether they used these outlets, they emphasised the lack of information available therein as a disincentive to shop there:

I've been to headshops, but to be honest I've never...um...I've never trusted them. Because they'll always say whatever they've got is amazing, haven't they? Um, and you can't do the independent research that you can on the internet before you buy anything. (Interview 16, male, white, 55-60)

Participant 19, who first purchased mephedrone in a branded legal high, regarded the products sold in these locations as highly problematic due to their cut ingredients and poor packaging. A particularly negative account was provided by a participant who discussed a head shop he had worked in. While this account does not relate to substances a participant has consumed, it seems relevant to include given the unrepresented nature of the people being discussed, who were engaged with on a face to face basis by this participant, and appear to be suffering acute harms:

...it feels like you're sitting in a shop playing neighbourhood poisoner pretty much. The same people would be in. Some people would be in for 3g of the 'incense blends' which are basically the cannabinoids sprayed onto marshmallow leaves...tobacco substitute stuff. 3 grams a day, every day, for the few months that I was there. And you can just see their eyes dimming. And everything that comes with selling harmful drugs from a set location, you can see everything in the surrounding area even start to ... sort of... change a bit. It was pretty grotty. (Interview 3, male, white, 20-25).

The participant noted that many of the customers seemed poorly informed about what they were buying and in some cases appeared to be consuming the substances daily.

Discussing a member of the public who had come in asking for a branded product named ‘Walter White’, he recounted:

...we do still try and stay on top of the game and keep ourselves aware of what we’re doing. Some people just don’t...at all...Who knows what drove her to go in and look for these [Walter Whites]? I don’t know what was going on there. It felt...quite important being in that position to be honest without incriminating anyone or...giving people honest advice. If they ask ‘which one is the best’ be like ‘none of them’. ‘they are all totally horrible, they will really fuck you up, don’t come back here’. They’d pretty much ignore you but compared to a lot of people who sit in these shops and pretty much see the profit coming in and going ‘fine...I’ll sell this to anyone’. (Interview 3, male, white, 20-25)

While this was a particularly negative view and emerged alongside this participant’s own experiences of the negative effects of NPS stimulants, the perception that certain ‘legal highs’ – particularly those without marked ingredients and instructions - were risky came up several times in the interviews. Negative experiences of these are also discussed in the section below on harms.

However, while these objections – which the participants in some cases share with policy makers here – may be valid, what remains to be investigated in future research is how individuals who had become accustomed to purchasing substances at head shops will have responded to these substances becoming subject to control and no longer available in these outlets. Preliminary findings from Ireland, where a full ban on head shops was initiated in 2010, there have been some indications that the use of NPS and attendant health problems has declined (Smyth et al. 2015). While the particular assemblage of risks that may emerge in head shop settings, where there is wide availability but limited information or advice available about the substances in question may be correctly categorised as problematic, it remains to be seen how and in what ways these markets persist.

### ***Digital Drugs Market***

For many participants, the online market in NPS – and in some cases controlled drugs - was viewed as more convenient, less risky and offering better purity than comparable



drug markets. Participant 6 characterised this in terms of the convenience of the interaction:

That's the main attraction I think. It's just like trying to more in control of the situation. To be honest, I don't think the legality of it is that attractive...it wouldn't stop me taking like coke for example. But it's very easy for you to order and it'll arrive 2 days later at your house. (Interview 6, female, white, 20-25)

As this participant went on to observe, discussing the appeal of the online market:

Every time we'd bought something it would be consistently pure and...because they were so...they weren't, well they would've been cut with things but it was unlikely and, um, yeah, you just wouldn't have the same physical side effects of taking drugs on the street that are like full of shit. (Interview 6, female, white, 20-25)

A similar account was given by participant 11, who primarily bought substances from the 'clearnet':

...the advantages of clearnet vendors is that they're legitimate businesses and, aside from a few obvious scam sites, operate that way. They've come a long way since the mephedrone days. So, when I buy from a vendor with a good reputation I can expect to receive exactly what I've ordered delivered in a timely manner and well-packaged...at this point, the market works well and the vendors recognise that trust and competence are major selling points. (Interview 11, details unknown).

Participant 16 compared this favourably to markets in controlled drugs:

I suppose the other driver from my perspective is -I know people say 'why would you buy drugs off the internet, you don't know what the hell you're buying - and I know that's true, but then, in some ways if someone's telling me they're giving me a particular product, I feel a little bit more confident than just getting a pill. (Interview 16, male, white, 55-60).

For these participants, the removal of online markets seldom removed their access to illicit drugs in general- one case of this was observed - but did remove a dependable source for specific compounds that was regarded as trustworthy and reliable. In this sense, we can see here populations ‘unable or unwilling’ to access ‘criminal markets’ in certain substances in the sense of having to source substances elsewhere. As above, criminal markets in methoxetamine and AL-LAD were rejected. In this sense, regulation will likely restrict these markets to those who are not sufficiently motivated or skilled enough to use drug cryptomarkets.

The darknet potentially provides an alternative, sharing many attributes of these markets, but with a greater range of substances. As one participant noted:

[I] read Pikhall and Tikhall – Shulgin’s books - in the mid-nineties, when they were released actually. And I found it really fascinating, utterly fascinating. I remember thinking at the time, um, wouldn’t it be amazing if these books came with the substances they were describing or there was any way of having access to the substances. And, um, fast forward probably, what, twenty years, something like this and, uh, I read the Gawker article with everyone else about silk road and got very curious so I got access to silk road which was quite difficult because there was no one really to show you how to do it....And suddenly there’s, I didn’t know this was going to happen, I wasn’t expecting to see it on silk road but there were all these things I’d been reading about in Pikhall. 2CI and DOM and it was like “wow, actually – I can actually start experiencing all these things I really wanted to so um, I remember slight psychedelic research mission that lasted two or three years maybe after discovering silk road. (Interview 7, male, white, 40-45)

In this sample however, while some consumers had used the darknet, many were slightly apprehensive of this, though realised the benefits it might accrue. Even within the participants who were accustomed to acquiring illegal drugs online, the demise of silk road had made this option less attractive. As the above participant noted:

...the thing is none of the other crypto-markets were the same. I guess people still struggle along with them but it was really the only one, silk road was the only one that could actually be trusted. (Interview 7, male, white, 40-45)

For participant 4, the use of encrypted web browsers was regarded as potentially attracting police attention. For participant 9, the sense of being more ‘visible’ online – while perhaps not credible given the nature of encryption technology – was a deterrent:

Do you know what buying online does actually scare me, and I wouldn’t buy online because I feel like you could get tracked down much easier online than you can meeting someone on the street...cause they could find your IP address and like, I don’t know. Yeah I much prefer to meet someone in person than buy it online. (Interview 9, female, white, 20-25)

Online markets also offered the opportunity for fraud, particularly in contexts of emerging substances. Participant 19, who described purchasing the vast majority of the substances he consumed from clearnet vendors, described a scam involving a fraudulently marketed compound:

He [an online vendor] sold what turned out – I think it was like 5-MMC – something like that. It was supposed to be the new big thing. I was actually like hyping it up to people. He said it was the new formula, “I make it myself”. He put an ad on youtube that is still there. An ad! On youtube. Of him coming out of a factory. Stuff like that. He’d made people believe this was something he’d come up with. And we were on forums asking him “so what is it?”. “What’s the secret thing you’ve...what’s the small molecule you’ve changed?”. And he went “can’t tell you, can’t tell you, man, people are going to copy it” ... he sent it out and people bought it. And a guy who I legitimately consider a friend, he died. (Interview 19, male, white, 30-35)

### *The Effects of Regulation*

#### ***Perspectives on Regulation***

The effects of regulation on consumption here were largely constructed as pragmatic obstacles, rather than having symbolic or normative significance. While the policy

rhetoric emphasised the importance of state authority, these sentiments were broadly rejected by the interview participants. This isn't to imply that they dismissed the need for drug control in some form, simply that the present arrangements were seen to be flawed. These objections tended to emphasise, in turn, the illegitimacy and futility of drug prohibition, the perspective that it increased harms within the drugs market, and, in some cases, a confrontational view towards state authority in this context. Participant 17 framed their objections specifically in terms of a comparison between medicine they'd been prescribed and their experiences with MDMA:

...my very strong views come from the fact that I can be prescribed stuff like that, for relatively – you know, an unpleasant situation - but not something that deserves an anti-psychotic. Or, I'm sure it helps some people, but the side effects for me, I remember it being very distressing and I felt basically like my brain had moved sideways to somewhere else and I wasn't connected to me and I felt ungainly and very strange and odd. And I think I only took it once or twice. And I took this drug ecstasy. And I was one of the most beautiful experiences I've ever had in my life. (Interview 17, male, white, 30-39).

This participant also criticised the disregard of scientific evidence informing drug policy decisions:

And the arguments for the banning of drugs, as Professor Nutt found, are not rational. When he said more people, per head of population who ride horses, compared to per head of population who take ecstasy, more of them die from falling from a horse, therefore the horse riding is more dangerous. And he gets fired or asked to leave. But he was being honest. And that's the truth. And this is the battle a lot of people I think have with the drugs laws. (Interview 17, male, white, 30-39)

Specific instances of control could be particularly frustrating when they lacked an obvious rationale, as participant 7 noted:

Is anybody involved in the banning able to actually give a simply logical answer to why AL-Lad has been banned? It doesn't harm you, it's not poisonous, it's not bad for anybody, there's no victims...it's just like "it's a drug so let's ban it".

It's fucking ridiculous. Keep it legal so people don't take LSD instead because it's a better drug than LSD, less people freak out, less people feel ill, so great, keep it like that. (Interview 7, male, white, 40-45)

In some cases, these objections to drug policy were regarded not as outsider views, but were seen as consistent with the broader thrust of policy movement here, albeit stalled in the UK by the media:

...the direction the world is moving in is legalisation and regulation. mostly because nothing else works. Everyone, even the politicians know this. "There's broad support for a full review of UK drugs policy and limited trials of legalisation. It's authoritarian bullshit that trades favourable stories in the Daily Mail for the lives of children and the people behind it are essentially murderers. (Interview 10, male, details unknown).

For participant 1, the lack of reform was understood politically rather than in terms of the best policy approaches to drugs:

...it's been turned into a politicised issue as opposed to a health issue – health and welfare issue because it's been politicised, it's become entrenched. And governments aren't very good at saying when they're wrong, especially if the reasons for it weren't entirely legitimate. (Interview 1, male, white, 30-35)

The harms of policy were also emphasised by this participant in terms of how it increased the risks of harm:

You can't be out in a place publicly and ask someone behind the bar and say 'I've just taken 2 grams of this and this is how I'm feeling'. Because they'll have to say 'you'll have to leave here the now, we'll have to phone the police. You could speak to me...but I can't publicly be giving out guidance on how to use drugs. (Interview 1, male, white, 30-35)

Views about the ill-effects of drug prohibition reflected the perspective that it increased harms in the drugs market, and that drug use was a normal and common activity. The presence of violent drug markets was noted, for instance:

You would cut out all this, you would cut out...I read about a guy who made thousands and thousands of pounds of being a nasty, nasty, nasty, violent drug dealer. You cut all that out. And we would have safer, nicer, better drugs with less violence and less damage to people's life chances if we get caught with stuff. (Interview 4, male, white, 30-35)

The lack of organised criminal gangs was noted by participant 8 as a potential advantage of research chemicals:

Researcher: In what particular sense? I feel I know what you're getting at but do you mean the trade?

I feel like it's sort of people sitting in a lab putting chemicals together rather than destroying landscapes and like, there being loads of attempts, drugged violent crime and stuff. (Interview 6, female, white, 20-25)

One participant noted that the worst aspect of drug use was the potential for criminalization:

...currently the main thing that's bad about drugs is the criminalization of it. Because once you become a criminal it's very difficult to unbecome a criminal. It's not even just like, you don't know anything else. If you try to get a job or if you try to be somewhere else you're labelled and once you're labelled

Researcher: Once you're labelled...

Yeah, you're labelled, like. The only way you can get out of it is to get out of this town and how can you get out of this town without any money? ... (Interview 14, male, white 20-25)

Others expressed anger about drug control in more general terms:

Do I feel like the law prohibits me taking...? No I don't to be honest. I don't really care. Like if it did I wouldn't buy MD. Um. Yeah, I just don't give a fuck

really about what the state tries to impose on us? I think you're talking to the wrong person if you want to know why the laws put people off. I don't really give a fuck about law and like hierarchies and state structures so it doesn't put me off... (Interview 9, female, white, 20-25)

As numerous participants noted, while they did not regard drug policy as legitimate, they were still required to undertake risk management to limit the negative consequences of both formal drug regulation and, in some contexts, the social regulation of others that disapproved of this consumption – as in the case of parents above. The participant who favoured synthetic cannabis – interview 15 - was aware of the relative unacceptability of this substance to people who used cocaine and other such substances. The reputational effects of energy consumption were also noted by participant 14. Another participant from the same area also emphasised a lack of regard for the police, noting that in their context parents had been a more important influence on their drug consumption:

No, no one knew if it was legal or illegal when we were doing it. So, it was a cool thing if it was illegal. You'd do it anyway. I don't think – I think that's the funny thing about people in [place name]. You're more scared – you're not scared of the police, you're not scared of what the law's going to do to you. You're scared of what your parents are going to do to you like. (Interview 13, male, white, 20-25)

It should be noted that none of these participants were naïve about the potentially harmful effects of drugs, having been bereaved or witnessed the negative consequences of consumption. A reasonable number also regarded certain NPS as more dangerous than controlled drugs, and were confused by the unregulated status of certain NPS compared to controlled drugs:

Me and the boys, we've had its in where we've liked smoked huge humps of green all the time. And one little bag of that stuff [SCRAs/'black mamba'] and it ruins you, it ruins you like. I never got why that was legal and cannabis is illegal...it just didn't make sense. (Interview 12, male, white, 20-25)

This point was also observed by participant 3, who described the substances sold in a head shop at which they worked as extremely harmful compared to what they'd witnessed with illegal drugs. However, these concerns did not detract from the fact that the broader legal regulation of drugs was not widely seen as having normative force here or offering a helpful or legitimate response to policy problems.

In five cases discussed here, the primary NPS consumption – involving stimulants – was unaffected by control. For participants 1 and 2, this was simply because consumption commenced following control. In this context, participant 2 notes that the sudden unavailability of a seller – combined with their own concerns about the extent and side-effects of their use – facilitated their cessation of consumption. For those consuming 'sparkle', as discussed in more detail in the next section, they bought these substances from dealers both prior to and after controls of cathinones were introduced in 2010, with the purchasing arrangement unaffected.

### *Adaptation*

In the context described above, in which regulation emerges primarily as a practical impediment, various adaptations to control were noted. At the same time, however, it's important to emphasise that many participants ceased using NPS due to a lack of interest or the perception that the substance had negative effects, while others as above adopted substances after they had become illegal or were unaffected by legal changes. For other participants, however, who were no longer able to obtain preferred substances in the manner they had become accustomed to due to legal changes, varying responses were developed.

For one participant, stocking up on MXE was the natural response to the incoming controls:

So the ban for MXE. I knew it was coming. And I was well stocked so I wasn't worried. I was actually kind of gloating...Because...because other people were panicking so much. And I was like 'I have it from the most reputable site who are 100% pure and I have it in these big bags.' And like I said I would hold and it was just...uh....it was...I felt like a real pimp. (Interview 19, male, white, 30-35)



Upcoming bans also generated perverse incentives, as participant 1 noted in relation to (then) upcoming ban in AMT:

...ironically, this could put me in business. I make an investment in something that's about to become illegal, and when the ban comes in, I've made myself a license to print money. And that's so counter intuitive in terms of how state regulation of substances goes. (Interview 1, male, white, 30-35)

For other participants, it was a matter of finding something new to consume, which in the case of participant 15 simply involved finding comparable brands of synthetic cannabinoids to the substances that had been controlled:

There was always the looming threat. Sometimes you would show up and you'd get told 'they're gonna stop making this' and you'd think 'right', but it didn't really matter. Sometimes it did happen, they'd stop making it when they said, and, eh, you'd just get another one. And sometimes they'd say they're gonna stop making this and it'd keep getting made. But it's just the name. It's just the name on the label that changes and it's still the same base and the same chemicals. (Interview 15, male, white, 25-30)

For participant 16, who was more interested in stimulants and the social aspect of drug use, the inconvenience of having certain substances controlled also created enjoyable opportunities to search for new substances (in a pre-generic control context):

I think after BZP had been banned, there was something in my head going, "well, they've banned the best stuff and you're never going to get anything good again." And then that kind of reignited my interest and curiosity in legal highs. I was like "Well, if that's available they must be out there still doing and making new stuff. I'm gonna find something brilliant out there..." (Interview 16, male, white, 50-55)

Substitutability was also observed in the case of certain psychedelics, where there were a range of substances with differing degrees of availability, with legal regulations providing one amongst many factors. Participant 7, who bought NBOMes when they

were legal, ceased doing so when they were banned, but continued to source controlled psychedelics from the cryptomarket. As they explained:

...there's a massive range of psychedelics available to you and some of them are legal and just as good as the ones that aren't legal, then obviously you're gonna...and let's say you're interested in exploring all of them, then obviously it's just easier available and less risk and less hassle and feeling paranoid about them coming to your house and stuff, so I just got in NBOMEs because there all these drugs, all these psychedelics I might as well have explored the NBOMEs because they were legal. After they became illegal they were just one of lots of different drugs I could explore so I still probably continued exploring them a bit but equally I explored 2CB [a controlled substance]. (Interview 7, male, white, 40-45)

Participant 10 described a similar situation. They described AL-LAD in these terms:

It's a tool that doesn't offer a significant advantage over other tools despite having a higher cost. Especially now that it's illegal. So, when it was legal obviously, it was a great advantage but, now that it's not I would rather use the less expensive – something like 4-HO-MET alternative. LSZ, that kind of thing. (Interview 10, male, details unknown)

Substances that had previously been sourced online when legal, but emerge in 'street' markets, may be less reliable. Participant 8, who had stocked up in response to the incoming ban on methoxetamine observed that the substance remained available, but in unreliable forms. As they explained:

I would very much be up for buying some more on the internet and like dealing with it myself but I don't think I would ever buy it from a dealer.

Researcher: Has that option come up?

Yeah, I've been offered it before. I've been offered it at festivals.

Researcher: Just to go into a little bit into the research questions: I'm very interested in how people are adapting to the fact the drugs market is much more open ended now, but equally what happens when you clamp down on things.

Like, everyone's just selling MXE and saying it's ket.

Researcher: You think so?

Yeah, definitely, I bought 2 grams of ket at ...and it was 100% MXE but cut with something else.... (Interview 6, female, white, 20-25)

Here, again, we can observe participants making nuanced distinctions within the drugs market about the relative effects of legality. While the substances were the same, the changed regulatory framework changed the parameters of trust in the market. While this can be seen as an advantage of criminalization in this case – although it did not deter the purchase of ketamine in this case – it is also likely to have unevenly distributed effects, depending on how seriously consumers take the risks of potentially adulterated substances.

In most cases, while individual NPS might be transitioned away from, the participants did not appear to cease using 'drugs', more generally. Here, the post-NPS trajectories are mixed. For two participants – participants 19 and 14 – the unavailability/cessation of NPS consumption is described as precipitating the use of alcohol on a more regular basis, which both participants regarded as a problematic substance. For others, their transitions were explicitly characterised in terms of maturing and becoming more considerate and conscientious about their drug use, but not ceasing consumption entirely (participants 4 and 10). In one case, mephedrone was first replaced by MDMA – which was viewed as a far superior substance - and then followed by a declining interest in drugs generally (participant 2).

### ***Summary***

The effects of regulation described in this sample are mixed. The normative implications of drug policy are largely absent in motivations to consume these substances and do not largely appear to influence their cessation. At the same time, NPS

here have filled various niches in drug repertoires, in ways that have sometimes reflected their greater availability, availability online or lower relative costs, as well as in some cases reflecting their preferred effects. At the same time, the contexts of widespread and shared drug use described by many participants suggests that NPS here should be thought about *alongside* the broader processes of drug ‘normalization’ identified more generally in the UK (Aldridge, et al, 2011). For future research in this field, understanding whether and in what capacity these niches are met in current drug markets following the advent of the PSA 2016 will remain an interesting question.

The effects of regulation are hard to generalise about. They are mediated by both the lack of regard held for drug policy in this sample, as well as the substitutability of the substance in question. Stocking up was common in response to incoming bans when substances were regarded as particularly worthwhile, while in other cases substitution was a more attractive or straightforward option. The implications of Clearnet NPS vendors being restricted by the PSA 2016 may have mixed implications here, as discussed in the next chapter.

The messy and mixed relationship between NPS and legal regulation described here offers a sharp contrast to the account described in Chapter 4. While the data here clearly does not negate the existence of NPS users primarily motivated by and, in turn, endangered by the perception that these substances are legal and therefore safe, it also suggests counter-readings that are excluded in this account. For these participants, the risks of substances, particularly in a context of drug diversification, have to be navigated *alongside* state regulation, rather than being, effectively, *protected* by it. In this sense, it is possible to distinguish a different policy constituency here, that is effectively silenced by the dominant representation of the public interest as protected from the potential harms of seemingly legal drugs. While this does not, in itself, suggest a different policy option as optimal, it does suggest the possibility of a broader scope for defining who policy should work for. As argued here and in Chapter 6, the effects of regulation, moreover, are premised on making this market more precarious for subjects who do not conform to the dominant image of the public represented in policy.

### **Summary**

The above data provides a complex pictures of the contexts in which NPS are purchased, the motivations for this consumption and the mixed effects of regulation.

Here, it can be observed that while regulation here clearly exerts an influence on consumption, this appears to be most evident at the level of participants whose participant in the NPS market relies on their access to online or in head shop supplies. Here, however, the effects of this depend on the extent to which participants have access to other drugs markets, which was the case in all these accounts apart from participant 19, who instead purchased large quantities of substances when their control was announced.

The characterization of the NPS using population as motivated by the appeal of these substances on the basis of their legality and safety noted in the above accounts is largely unobserved here. Conversely, participants were largely sceptical and in some cases hostile to drug policy, believing it to increase risks, wrongly characterise certain drugs and be largely a product of exaggerated fears about drugs. In this sense, it is possible to characterise policy as enacting a public that largely disregards the perspectives encountered here, insofar as they could be regarded as having a legitimate interest in having access to reliable and seemingly less risky drug markets or consistent access to less risky substances. This is, of course, not to claim that this is what the NPS market solely or even largely consists or consisted of. However, as observed here and further, detailed below, the NPS market and emerging aspects of the online drugs culture are constructed here as facilitating both the enhancing of drug effects and the minimization of their harms. However, in so far as regulation here is predicated on removing drugs from the ‘public sphere’ in the form of their open sale, policy appears to necessarily exclude this perspective. In this sense, the representation of the NPS problem can be understood as enacting a particular, and limited frame of the public interest which excludes the perspectives and situations described above. Whether these policy changes, in turn, are likely to reduce harm, is far from obvious, as this may simply concentrate NPS sales in more hazardous markets with a lower overall user base but intensified risks. The difficulty in assessing prevalence trends in these markets, moreover, will make this transition difficult to detect.

### **Bad experiences and cessation decisions**

This section reviews the data on the negative experiences of NPS, which in many cases provided the motivations for ceasing the consumption of these substances. Here, the principal argument advanced is that, as distinct from the emphasis on harms emerging

directly from the toxicity of the substances in question, these accounts offer a more nuanced account. Certainly, there were numerous examples of sudden, acute, negative effects that usually amounted to feeling ill and overwhelmed by the effects of a substance. However, as this section will elaborate, the harms as constructed here also have to be contextualised in the broader assemblages in which they emerge, while also being attentive to the measures taken in many cases to reduce and moderate risk. While instances of reckless behaviour were reported, these accounts are also nuanced, and at times raise broader questions about the social contextualisation of risk.

#### *Negative effects of Psychedelics and Synthetic Cannabinoids*

There were a few events described in these narratives that emphasised the possibility of intense and unpleasant experiences brought on by the use of psychedelics and hallucinogens. Here, a participant describes their experience of consuming what appears to have been a large dose of 5-MeO-DALT in an unsuitable location:

I was like ‘Fuck!’. I feel like I’m going to die, I feel like I weigh a thousand tonnes. And everyone’s faces look really weird, their eyes look like they’re going to pop out of their head, oh my gosh, I feel like I’m Iron Man, and like.... yeah. I went to bed and came back and spoke to my flatmates and they kind of calmed me down a bit and I was lying in bed and I thought I was gonna die, but I was telling myself ‘it’s ok, you’re safe, like if you die now it’s fine, you’re in bed, you’re warm. You’re not naked on the street or whatever. If you die here you’re gonna be fine.’ So I like kind of rode it, and I could feel my body rejecting this drug and it was really scary. Cause like my body was just trying to get rid of it. (Interview 9, female, white, 20-25)

At another point a participant noted an allergic reaction to a psychedelic substance bought online:

And I got one that actually almost – I’m not kidding – killed me. I think I had an allergic reaction to something that was in it. my throat actually seized up and I couldn’t breathe... (Interview 19, male, white, 30-35)

In both these cases, the risks appeared to mainly manifest physically, due to an unexpected reaction on a physiological level. In these cases, the risks of consuming

potentially unknown substances and limited risk management are clear. The potential for psychological risks accompanying psychedelics was also noted by a participant who described the following outcome following the use of AMT:

It did get to the point where I was sitting in the living room...I became aware that I had bad thoughts and it was beginning to spiral. And I had the presence of mind to realise it was an artificial state and it would be time limited. And I was aware we were looking at potentially twelve-hour duration. So, I knew at that stage I knew I could get through five more hours. Because I had a partner, they got up, so we went to Tesco so we could be somewhere where there were lights and a bit of a hum. And it meant I could distract myself. (Interview 1, male, white, 30-35)

The experiences described above were characterised by the uses of substances with which the participant was, at the time, unfamiliar and, in all cases, would involve them avoiding the substances in the future. Each evidence the potential risks of consuming unfamiliar substances, while also emphasising the sense in which these harms were mediated by contextual factors. The flatmates in the first account and the partner in the third account may have reduced the potential severity of these events, while in the second the private nature of the consumption may have increased the risks of the substance in question, alongside the unclear ingredients in the package.

Another participant emphasised the importance of psychological preparation for managing the potential risks of certain psychedelics:

It's just psychological risk. And if you understand, if you have some conceptual framework with which to interpret the experience it will without doubt be helpful for you, even if it's harrowingly difficult. If you have a conceptual framework with which to assimilate it into the rest of your life, you'll learn perhaps even more powerful lessons from the difficult trips than from the easy ones. The problem is that it blindsides people. They've never experienced anything like it before and there's no way of interpreting what's happening to them. All of a sudden Pandora's box opens and all of a sudden all the shadow archetypes they've been building up their whole life are overwhelming them and

it's like 'what the fuck' and they probably never do it again. (Interview 8: white, male, 20-25)

Here, managing psychological risk was a matter of orientation, but this did not mean that, for this participant, experiences were naturally pleasurable, as distinct from potentially challenging and in some cases hard work. In some cases, intense and hallucinogenic experiences were more ambiguous, as these states might be valuable for some but harrowing for others. As participant 19 recounts:

Oh, to give you some of the bad experience, I guess. I did have bad experiences I guess. Which were some of the most terrifying moments of my life. Which, I also hold in, again, I, it's what I hate so much about the fucking Advisory Council's criteria. They would count this as a bad thing whereas to me I count this as a good thing. Maybe not 'good'. But like, I enjoy horror movies... (Interview 19: white, male, 30-35)

In terms of SCRAAs, the discussions raised interesting questions about methods of administration and their relationship with harm. For participant 11, certain synthetic cannabinoids were perceived as effective and manageable, but required consumption in liquid form to allow accurate dosing. This experience was very distinct from other reports of experiences of SCRAAs that characterised the substance as 'too intense'. As one participant described arriving at a friend's house after using synthetic cannabinoids:

And I said no, I'm actually quite spun out and fucked up. Partly in a nice way, partly in a disturbing way. My brain is having its own magical mystery tour, that I'm no longer in charge of. And I used to take it fairly regularly but I reached a point where I just, I ended up giving it away to somebody. ...My friend then gave me some of his where he'd reached the point where he was like 'I don't want to try this, I've had enough of this'. And I'd reached the point, you know, where I thought 'No this is actually too strong'. This is some of the worst elements of cannabis. None of the paranoia but it's a lot of the sort of head spinning internally. A lot of feeling very, um, unsure about things. And when I'm looking at a park that I know really well – at that time I'd lived here about 3-4 years, and I knew the park really well by then – to be riding across it thinking 'where am I going? I don't know what I'm...'. the autopilot part of my



brain got me there and I had to cross a main road and everything was just really confusing in the fog. And thinking ‘this is weird’. And I had a few more experiences like that. (Interview 17: white, male, 35-40)

Here, again, the negative effects prompted cessation. However, the potential for risks, as noted by the lack of cognition while cycling, is notable. As Participant 11 elaborates - later in this section – SCRAAs sprayed on herbal smoking blends result in products that are extremely hard to dose accurately, making the potential for overwhelming effects considerable.

Another discussed their growing concern about the compulsive nature of their synthetic cannabinoid use:

But running out was like, desperate. You had to really.... cause you smoked like regularly, like a little bit, often. That’s how I smoked it anyway. But running out was quite a desperate affair cause like, you knew that it was gonna be...you just, you just...I had this missing thing. Like every so often you’d realise you wanted something, and you’d realise of it’s that I want. And that was what really made me realise it was, partly, the true nature of addiction was this. (Interview 15: white, male, 25-30)

The feelings of dependency here are troubling, and accord with other accounts emphasising the high rates of dependence formation in relation to SCRAAs in self-report surveys (e.g. Winstock 2016). The broader contexts in which dependent habits can form here may require ongoing research engagement.

#### *Negative Effects of Stimulant NPS*

NPS stimulants were also reported as having harmful effects in certain contexts. At times, this was a matter of intense, acute effects of a stimulant - 3,4-CTMP – which the participant had bought following a positive experience – discussed in the next section – involving speed:

...and it comes on gently and just gets stronger and stronger until it wears off and I just had, like, a really horrible experience of it and just gave into

nerves...It was so upsetting. I was an absolutely wreck the next day. The same, and quivering and on a brutal comedown. (Interview 8: white, male, 20-25)

In another context, a participant recounted an unpleasant experience of consuming a legal high bought at a head shop:

And it was like being on a roller coaster. I felt like I was coming up and was like 'oh'. Feeling a bit out of sorts. And then I felt like I was coming up again...and I thought 'oh I'm feeling quite nauseous on this, and my head is spinning a bit, and this isn't nice, and it's getting stronger.' And I didn't like it.... And I'd went to a festival and I'd took it and it fucked me up badly. I was trying to dance to this and I felt like I was made of lead. And I ended up going back to the tent. And my stomach felt awful... on the Friday or the Saturday when I got up, I felt wrecked. And I could barely move and by the time I got down to the dance tent on the Saturday night, I sat on a bale of straw for about an hour and then went back to bed. I lost the whole festival to this awful legal high. (Interview 17: white, male, 35-40)

These are cases of specific, time-limited negative events, but emphasise the sense in which the market in NPS can lead to highly unpleasant encounters. While it is outside of the scope of these interviews, it would be extremely interesting to gain a better understanding of what produced these reactions, whether it was a matter of dosage, specific bodily reactions, or other factors. This is particularly so in the first case, where the purchase followed the reading of favourable reviews about 3,4-CTMP. In the second case, this particular instance was not the first negative experience of a BZP related legal high, although it was particularly acute.

Another consistent form of harm identified was concerning the accumulation of negative effects from ongoing stimulant use. This was observed by the majority of participants who had used stimulants, although there were equally examples of controlled and measured use in the accounts of participant 1 and 10. Often, the frequency of consumption and sense of accumulating negative effects would result in cessation. As one participant described their decision to cease using mephedrone:

We were using it too often. I think at one point..cause you could just buy it online...I think at one point we had bought some and then had been up for two or three days and during that two or three days ordered more. And then that arrived. As soon as that lot ended it was quite sore like...this isn't, this isn't great. I think it...there was a kind of problem where I woke up in the middle of the night after taking it and couldn't breathe sort of thing and that was like...OK, that's enough of that kind of thing. (Interview 18, male, white, 25-30)

A similar account was provided by another user who was in full-time education at the time, who noted the accumulating effects of using mephedrone:

So you have classes, supposedly? So I dunno. There was a week where I went into do a presentation after staying up all night getting high. And, it was fine and everything. I did it. I remember thinking 'wow I feel rough'. And, I got, I started getting really quite bad comedowns. Where I'd literally just like 'there is no happiness in the world'. So I started to be like, 'woah, no, this is not great'. (Interview 2, female, white, 25-30)

For another participant, stimulants were less immediately problematic because of physical effects, but rather in terms of the results for a group of friends who began consuming 'bubble' – a mix of synthetic stimulants – when this was widely available:

When I was at parties in...there were lots of mates doing exactly the same thing at the same time. And it went from being just too many parties lasting too long, and there were points where, unless any ecstasy, there was sort of...got a room full of best mates 24 hours not able to say a single word to each other and people leaving without saying goodbye....that combined with the real life that came from almost failing uni and everyone just genuinely falling out with each other and the house being completely wrecked by the end of the year...it was just like 'nah' this is just dirty and not something I want to carry on...I was sort of told off a couple of times for being extra preachy and telling people 'stop it stop it stop it stop it, it's nonsense'. Not letting people in and chucking people out. Before there was death and it was banned it was flowing but quite quickly people began to come round and move away from it. It definitely wasn't the

legality that changed people's minds. It was the experience of that year.

(Interview 2, male, white, 20-25)

For this participant, the problem of 'bubbles' – which they believed to be a combination of mephedrone and methylone – was seen as sufficiently problematic that many in their peer group ceased using it.

These experiences can be contrasted with the positive accounts of mephedrone effects described in the section below. In these cases, it appears that the lack of controlled use of the substance, combined with the potential to affect personalities and social relationships, resulted in the accumulation of negative effects. More pressing accounts of the negative effects of synthetic stimulants were provided by the sample of the interview population consuming 'sparkle'. For one of these participants, they had had to stop using the substance following the accumulation of health problems:

...about a month ago the experience I'd had, I mixed amphetamine and the energy and I woke up and I felt like I was going to die, but the doctors, I had the hospital and they just said 'you've got anxiety' I was having panic attacks and it just made me knock everything on the head, really... (Interview 13, male, white, 20-25)

For another participant, who did not characterise major problems from their use, and didn't use the substance everyday:

...it's a really euphoric drug. But you never think of the other side of it when you're coming back down and it's crushing. It's like a weight has been dropped on you....

Researcher: What are the after effects like cause it did sound pretty horrible some of the things you're...

So like a hangover effect, in a way, but then there's like really bad depression. And like, you like don't want to do anything, Your eyes hurt because they're been like...your nose hurts cause you've been...it's not like a little powder, it's

not fine. It's like crystals. So you crush it up and you sometimes you don't rush it right and cut all the insides of your nose away. It's...it's harsh like.

Researcher: How is it for your jaw?

Yeah, your jaw is...you can't eat the next day...All your mouth gets blistered and rough like. It can last.. I've had like three or four day comedowns of it. but that's off like sniffing a lot... (Interview 12, male, white, 20-25)

The discussion of 'bad depression' is particularly concerning in the broader epidemiological context of cathinone related deaths often involving mechanical forms of suicide (Elliott and Evans 2014). Another participant from this group discussed the depressive effects of comedowns and the potentially disastrous effects of this:

The depression gets you like fuck, for ages. There was points where... I've not been close to doing...I wouldn't say I was about to kill myself but I certainly crossed my mind. Just to stop it all. Certainly crossed my mind. And everyone would tell you the same. There would be times when you'd be lying there thinking 'is this worth it anymore' do you know what I mean? Just get rid of it like, just end it all. But saner heads prevail once you sober up. But that's the thing a lot of people don't sober up, and saner heads don't prevail. (Interview 14, male, white, 20-25)

The risks of suicide were clearly observed, with this participant having been personally affected by the suicide of a friend, which was believed to be connected to the substance:

[they]'d be up sniffing all night and ... was gonna go back on it...he'd gotten ready, he'd gone out...And [killed himself]. (Interview 14, male, white, 20-25)

In this context, these effects were accounted for in terms of the economic deprivation of the local area:

It were definitely the whole lifestyle, the same sort of thing of, mundane, you know, just you don't care about anything anymore. You just see everything. And you go, this is it, this is what's happening. Am I gonna deal with this for the next

20 years and die anyway, or am I just gonna do it now. A lot of people kill themselves, a lot of people...But yeah, I dunno. I can't blame that all on drugs. But I can blame it on the situation. (Interview 14, male, white, 20-25)

Other discussions about the psychological effects of the substance bear some resemblance to the account provided above about 'bubbles' and the inter-personal effects. A similar, family-contextual account of this was provided by the same participant regarding 'sparkle'. This participant also strongly associated 'sparkle' use with compulsive behaviour. As this participant clarified the term 'clucking', when I asked:

It's essentially the feeling you get when you're addicted like. Gasping, or like, I don't really know what the equivalent is. Clucking is like the feeling of...when you really, like, you need it. Like you are clucking for it like...Like if I woke up in the morning, say I'd been sniffing last night, I wake up today, I'm not clucking. I'm not...I don't care. I'm fucking... I'm fucked I want to go to bed. But that wouldn't be the thing of thinking I need it. That'd be thing of waking up and thinking I want to go and do it again. But, like, I can't describe to anyone the feeling of, 4am, when you realise you're out of sniff, you're sat in someone's house, you come round, you're sat in some disgusting house in the [place name]. You're surrounded by people you hardly know who you've been sniffing with all night. You've got no money left, you've got nothing left. You've got two options. You can do something to get money or you can go to bed. And there's that feeling of 'I need a line...I need a line...I need a line'. And I can't describe to anyone that...that urge. That's one of the most intense things ever. (Interview 14, male, white, 20-25)

At certain points, the compulsion to keep using the substances would result in acquisitive crime:

Do I seem like a thief to you at all...But once you're on that drug it'll be, we'd see a petrol or like something or like a phone in a party and it's there on the floor. And you'll just go, your only thing will be like 'I can get £150 for that, that's my sesh' sorted tonight'. Bang, you put it in your pocket and you walk out. (Interview 14, male, white, 20-25)

To contextualise these comments, the other participants interviews in this context did not characterise the use of ‘sparkle’ in terms this stark. At the same time, of three participants with whom energy was discussed, this was the participant with which the greatest rapport was established at the time, which may have contributed to the greater willingness to discuss negative stories and harms.

The compulsive nature of stimulant consumption was also emphasised in Participant 19’s account:

Because stimulants are a very very different experience than me sitting around in my room listening to music and reading. Like, I got books of the greatest art in the world and just sit and stare at it and that sort of shit. On stimulants it would be me and my friends and we’d like fucking, just hoovering this stuff up and, this is the B2, and we would want to go out. (Interview 19, male, white, 30-35)

This section has reviewed the various harms assigned to stimulants by the participants here. Clearly, there is a wide spectrum in terms of the severity of these harms, with the risks of crime and suicide mentioned by one participant clearly dominating. What is also worth noting here, however, is that the harms described here often involve an accumulation of negative effects from long periods of uncontrolled and heavy use. While this does not negate the reality of these concerns, it also indicates that the harms may be appropriately viewed in the context of how drug use is practised in these accounts, rather than being *solely* reducible to the toxicity of the substances.

It should also be noted that the context in which the most pressing harms are described, the substance in question is regarded as still largely available and undeterred by criminalization. While criminalization may reduce the access to online supplies of these substances, it is unlikely to remove the market incentives for distributors to sell high volumes of cheap stimulants, whether or not these are illegal. This is also likely to be the case insofar as dependent habits develop around SCRA, the possibility of which is noted here.

In terms of the drug-related crime and suicide noted in one of these accounts, the account provided by this participant can be starkly distinguished from the other

accounts of NPS provided here. It is useful, I think, to approach this in terms of how this participant described their view of the risks of 'sparkle' in the broader social and economic assemblage in which they participate. Participant 14 expressly framed the extensive drug use in his own town in this way:

There are many reasons that people take drugs around here and I couldn't pin it on one thing, but I'd say the main beneficial factors would be, depression. Lack of money, lack of, lack of drive, do you know what I mean? Cause when you're in a place like this which has such a bad economic crisis, and it really is bad...I had a sense of purpose, not so much me now, but me back in the day, if I had more of a sense of purpose, and I felt that I had things that I could do with my life, then I probably wouldn't have done it, because I would've thought 'why would I throw that away for this?'. But I thought 'I've got nothing to throw away' so, I've got no risks like... You've got no consciousness to be able to look at the bigger picture and think 'well, you know, I can get out of this place and I can do certain things with my life'. But that is a massive part of it is, just, despair, do you know what I mean? A lot of people round here just feel like there is nothing here for them and they're either gonna get out of this town or they're gonna die in this town. And once you've hit the point where you think you're going to die in this town, then you don't care when you die. You're dying in this town. You know, you're going to make the most of it while you can. And, yeah, that's a massive part of it I think. Definitely. (Interview 14, male, white, 20-25)

Here, risk is explicitly constructed in contextual terms. For this participant, the lack of purpose resulted from their experience of their immediate area, which lowered the stakes considerably in terms of potential harms they were willing to risk and the motivation they experienced less motivation to moderate consumption. This is made particularly vivid in the following anecdote, in which they describe feeling ill following a particularly extensive bout of drug use:

And it just, I felt like I was going to faint, I felt like I was going to collapse, my head was spinning. I was like this for about four hours. I felt weaker and weaker and weaker by the second. And I just thought, this is bad, something is going to happen, something is going to happen. So I started to go home because I



thought, if I'm at my home I can deal with things...But at the same time, there was that part of me, that despair part that just didn't care, you know? I just carried on seshing. I knew something bad was coming but I just carried on because just thought I don't care, you know? If something bad happens, I might die. If I don't, I'll wake up in hospital and I'll fuckin, I'll be alright. (Interview 14, male, white, 20-25)

In a parallel sense, two other consumers who experienced negative effects of stimulants were compelled to stop using them in part because of the negative experiences they were having on the participants' pursuit of full time education (Interviews 2 & 3). Drug consumption in a context of full-time University attendance, while experienced as having negative effects, was ceased by these participants once the negative effects became clear. It is highly likely that many students will have similar experiences with alcohol and other substances, with drug use appearing to be high at university more generally. This assemblage can be distinguished from a context in which the use of the substance is contextualised in a setting that comparatively offers little hope and the risks of harm are in a sense, perceived as less serious. Research has suggested, in this context, differential association with risk is observed in comparative analysis between NPS users in prison, known to youth services and those attending head shops in the City (Blackman and Bradley 2016). In these contexts, the negative effects of use were responded to in different terms, given comparatively higher priorities like price, availability, and the relative boredom.

#### *The Adoption of Harm Reduction*

Across the sample, the concern with harm reduction was variable. Often, participants constructed themselves as having becoming less reckless in their drug use over time, with others describing the adoption of harm reduction practices following learning more about drug use. Youth tended to be associated with more reckless use. The broader question of encouraging risk aversion in young people – whether in relation to alcohol consumption, drug use or anything else – is not within the scope of the enquiry here, but certainly a relevant question in the context of NPS. For example, participant 7 describes the following transition:

I was, you know, in the nineties. It could've been just because I was an irresponsible stupid kid, right? But the web didn't exist when I was necking all

sorts of shit in the nineties. The websites started in like 94: I was eating acid in 91, 92. There was a lot of acid around and it was really really cheap, uh... But then, later on in my life – I've veered away from the question again, sorry – but later on in my life, um, it was more like I would buy something on silk road, I would go and read about it on Bluelight [drug message board]. I would then have a methodology which was basically Shulgin's methodology and a lot of other people were talking about it where you start very small and, kind of you know, do kind of allergy tests and work up to the right dose it would be more like a project. Now I'm working on this one, now I'm working on this one, getting the right dose etc. Whereas you know in the nineties I would be like 'oh I'll just chuck it down my throat'. (Interview 7, male, white, 40-45)

Discussions about harm reduction often focused on the appropriate methods for maximising the pleasurable aspects of the substance while avoiding the negative consequences. For instance, participant 10 described using GBL – a liquid form of GBH – using a specified set of containers, to provide convenience and account for the high potency of this substance:

...So with G you, I mean you can do that [weigh it] but it's not really ideal, especially you're out. So the way that I do is to either use a syringe or a pipette if I'm indoors with friends in an environment where you can get away with that. If I'm out I've got miniature spray bottles which can hold 3 mils or 5 mils of the liquid...and they give about 0.1 mil per spray. And, so that makes it really, really easy to control the dosage quite finely to get to a point which is good. So I'll usually start off with 1 or 1.5 mils at the beginning of the evening and then I'll put in subsequent soft drinks about 0.04 to 0.05 mils depending on how quickly I'm drinking. (Interview 10, male, details unknown)

As noted above, participant 11 consumed synthetic cannabis in a liquid form through an e-cigarette, which made dosing an appropriate amount far more manageable. As they note:

1mg is a tiny amount, small enough that you can only really measure it using the kind of sca

Participants 1 and 19 also emphasised the use of nutritional food to avoid bad side effects. As 19 noted:

...people talk about comedowns and stuff like that, but...it's because I was...For energy, I actually, I was actually having no comedowns because I was eating bananas the entire time and I was drinking a lot of water cause I was looking up how to look after myself. So I wasn't having all these problems that all these fucking people were having. Cause, I was replacing electrolytes, I was hydrating. And I knew from the Leah Betts thing that she had overhydrated. So I stayed within my limits and stuff like that. (Interview 19, male, white, 30-35)

Learning to use substances safely – insofar as safety can be obtained here – often involved methodological approaches to information gathering, again concerned with identifying beneficial effects and the scope for managing risks. Information online often took the form of ‘trip reports’: reports compiled by consumers of substances as to their effects, duration and potential side effects. As participant 16 notes:

...I started reading all those really weird reports on erowid [drug information website and forum], you know, that uh of those sad Americans who sit there and have a lonely evening and take a pill and then write down what happens instead of just going out and enjoying themselves. I never quite understand that bit really. But anyway, thank God they did! I found some absolutely amazing stuff because of it. (Interview 16, male, white, 55-60)

This statement captures both the richness of the information available online for developing an interest in drugs, alongside the occasional lack of reliability that such a market almost inevitably possesses. Equally, forums might also become relevant when participants come across unfamiliar substances and are looking for guidance, as part of a broader harm reduction strategy. As another participant stated:

I suppose afterwards it's about...so if it's something I haven't taken before I'll take a very small amount of it at first. And do a lot of research before. Forums. Bluelight probably being the one I've used the most. Try and wait...just try and be a bit more sensible. You go on bluelight you'll get recommendations off

people on dosage and stuff like that add maybe like the starter doses and I'll weigh it out. (Interview 18, male, white, 25-30)

Approaching new substances from a perspective of minimising risks may also involve technique and discretion, as participant 1 indicates:

My system for erowid revolves around, if you've got a 10 page thread on a particular substance, people asking for their experiences. The first three pages you can more or less discard as being reactionary nonsense. Either people saying this is terrible. I took this for ten days all my teeth fell out and I stopped having sex forever.... Usually by the middle of the thread you'll find people who say 'I work at the stock market and I use this'. This is something I found with mephedrone. Someone saying 'I work at the stock exchange, I can take this on a Wednesday. I have to be on the ball at work. What you're saying is nonsense, it's all about moderation.' So when you get to the middle you usually get the middle of the argument and that gives you your compass points almost where you begin to say 'this is the optimum experience for someone' and you can read back through to either end of the spectrum... (Interview 1, male, white, 30-35)

### *Summary*

This section has argued that the harms presented in these accounts can be constructed in terms distinct from the way in which NPS related harms are produced in the construction of these substances as controlled drugs, wherein they are assumed to have unavoidable risks that inhere within their materially toxic properties. While this is not to dispute the instances of risks that appear very much like 'Russian roulette' – wherein participants are overwhelmed by sudden effects, even if these do not appear to result in lasting harm – there are also alternative accounts of harm and negative effects that can be observed here. Two particular constructions are observed, that challenge simplistic accounts of harm. The first is the sense in which the potential risks of certain substances may be constructed, and are here, as at least sufficiently knowable and manageable in the context of consumption. This is important in the sense that it brings *pleasure* back into play, particularly in the sense that the risks reported here largely relate to unpleasant subjective experiences which were not intended. Doing drugs effectively and gaining pleasurable effects from them, in this context, may be commensurate with reducing harm. The second construction from the discussion with participant 14 about 'sparkle'.

What emerged here was less a perception that the substance was ‘safe’ and didn’t require management, but was reference to the broader context of depression and indifference they assigned to the community in which they lived. In both cases, what is at stake is the account offered in policy that harm is necessarily managed through a restriction in use, both in the sense that this excludes other approaches to risk management that may be less bodily restrictive (Race 2009) while simultaneously ignoring the differential senses in which social context may shape concern for risks.

### **Constructing NPS use and Pleasure**

This section substantiates the final claim of this chapter, which is that despite the limited emphasis on pleasure in the policy account of NPS, the constructions offered here emphasise the role of the effects of these substances in motivating their use. Moreover, it is argued that the constructions here define NPS – and drugs more generally – in terms of what they make it possible for participants to do, and it is from this vantage point that questions of potential harm are addressed, albeit in different contexts. The account of these objects that emerges is, however, excluded by drugs policy insofar as it necessitates the framing of these substances primarily in terms of their dangers. A more participatory account of drug policy goals, as shall be argued in the next chapters, necessitates an engagement with these alternative ontological approaches.

Three consistently observed themes are identified in discussions of the perceived positive effects of these substances. First, there are discussions about contexts where NPS and others drugs have made it possible for consumers to experience their body or consciousness differently, in beneficial ways. Secondly, participants emphasised the capacity for these substances to facilitate immersion into social contexts. Third, examples of experiential and self-exploratory benefits resulting from psychedelic use are discussed. These categories are not exhaustive, nor are they necessarily wholly distinct with firm boundaries. However, they offer useful tools for clarifying the more consistent narrative accounts of the positive dimensions of NPS and drug use that emerged in these accounts.

### *Enabling Bodies and Pleasant States*

For one participant, a NPS benzodiazepine – etizolam - allowed them to exert greater control over their sleep when it was otherwise difficult:

... it was a revelation. I don't know how – I think I found them. I found this drug online called etizolam. And there were variations of it. And I just bought some. And some friends and I all discovered it at the same time, and said 'try this drug'. And you'd take just 1mil of this and you feel - at the end of night, or after a festival, or when you got home from a rave, and you'd take this and you'd be like 'oh god, I feel like I can actually sleep'. And you would sleep. And etizolam I would still take because we all, most my friends, most of us, have all had the same experience. (Interview 17, male, white, 35-40)

Participant 8, as noted above, described a sense of feeling mentally stimulated by 'speed' in a way that was highly productive, in this context being conducive to writing:

...so I kind of took the speed, then feel asleep, but because I was also coming up on the speed it was normal sleep, I was falling asleep and falling awake at the same time. So I was in the room still, still moving my body, but sleeping, I don't know. But it really really pleasurable and my body was filling up with this stimulated sensation so it was like 'yeah'. I was going in both directions, down to asleep and up on the stimulants and it was like, I'd described it as falling into a reverie. Everything was rose tinted and blurry. I pulled the buttons off of my shirt. And the pendant on my necklace looked so good it like [makes noise]. And that got into the right state to write. And I was getting on with it. and it was so enjoyable to write, I was really enjoying thinking all the concepts. I was playing in the intellectual realm which is something it's really difficult for me to engage with normally and I wrote a really good essay... (Interview 8, male, white, 20-25)

For participant 16, the beneficial aspect of NPS stimulants was that they facilitated dancing despite this participant's consistent experience of arthritis:

I mean that was one of the absolute revelations for me, that first time I went raving. It was like, to someone who loves to dance, and I used to dance through

the pain. To suddenly be in that bubble of total joy where I could really really enjoy the dancing, and...and just absolutely go with it and flow with it. That's why...that's why it changed my life really I think. (Interview 16, male, white, 55-60)

For participant 17, discussing MDMA rather than an NPS, characterised a highly regarded initial experience of the substance in terms of allowing them to more readily engage with the music in a night club:

And I was like "what is this fucking music, this doesn't make any sense, this is irritating". And when I walked in and I was on ecstasy I was like "aaaaah, I get it. I get it." and I felt really in tune with the music, and then it genuinely felt like something had happened in my head about colour and shape and I felt like I was feeling the music as much as I was hearing it. (Interview 17, male, white, 35-40)

For participant 1, mephedrone was valuable precisely because it afforded access to a sense of wellbeing which they were otherwise unfamiliar with:

It was very clear. I had two lines and I felt...I was exactly where I wanted to be, I was totally in control and my head felt clear. And I felt more mentally healthy than I'd ever done in my entire life...it was the first time that I felt properly mentally healthy. I feel good a lot of the time, but you always have the sense that there is a lot going on, a lot of noise, a sense of having to repress things, to be in control, and I just felt 'I feel really really really good here'. (Interview 1, male, white, 30-35)

Participant 15 also described the effects of SCRAAs as, in certain contexts, providing a sense of mental satiation and comfort:

You just, you were...completely satiated I think, mentally. You could sit and have a smoke and your brain didn't want for anything. You could just sit and think. As long as I had a bit of smoke. I used to like, live all sorts of places. And, like, long cold nights and loneliness and whatnot. And could just have a smoke, just have a think, and you could just choose...yeah, just having the luxury of your own...of your brain being satisfied, and...not having to do anything or go

anywhere. And your brain didn't have to deal with anything. Your brain knew who it was. It did feel like quite a mental drug. (Interview 15, male, white, 25-30)

Finally, for Participant 10, it was the use of novel substances and the exploration of their effects that was particularly of interest:

I've done a lot of different drugs but not really a lot of drugs ever in one sitting or in one short period. It's always been more about learning about the drugs than it has about, been about an indulgence or a hedonistic thing for me. (Interview 10, male, details unknown)

In these cases, the effects of NPS are constructed in terms of allowing the participant to pursue meaningful activities, find mental solace in the context of the substances' effects or, in this latter case, simply explore the available options. While it is entirely possible to problematize the desires expressed here – ranging from less physical pain to reduced anxiety – it is equally possible to instead emphasise here that, as constructed here, NPS can also be understood as providing access to states perceived to be beneficial to participants.

### *Social Intensification*

Another sense in which these NPS – and others drugs – were characterised here as beneficial was in terms of their capacity to intensify social contexts. Participant 16 offers the following description of it in relation to a session consuming a combination of NPS “synthetic ketamine” and nitrous oxide following a random meeting at a festival, as noted above:

So that was three hours of my life, absolutely blissed out. Totally and utterly blissed out. Rabbiting away for hours about...I told him my entire life story, including all the stuff I'm not meant to tell anybody that I do, you know. You're kind of like, woah, I don't know if that's what ketamine does to you but it just totally relaxed me and made me totally trusting and like, bloody, hell, what did I just tell him, you know? But it was a really really good night. (Interview 16, male, white, 55-60)



Despite the negative characterisations of ‘sparkle’ in the above sessions, positive evaluations were nonetheless offered of its effects on ‘nights out’. As participant 14 noted:

You’ll tell a stranger about how your nan is in hospital and how you love her to bits and stuff. You’ve just got no perception of like what’s embarrassing anymore. Just, you’ll tell them and then wake up the next day and be like ‘ I had a deep chat with that guy I barely knew’. But in a way that was kind of good with it because you’d, uh, you know, you’d get stuff out that you wouldn’t normally get out. That was something about it for me that I thought...it gave me the ability to go and....I wasn’t too much of a...I was a confident child in school and that, but I didn’t really go out and do stuff like. I would be confident in my own little way, do you know what I mean? But once we were on sparkle I had this, like, invincibility, do you know what I mean? I could go up to any girl and say anything, or I could go up to any boy and just make a friend, like, do you know what I mean? Just have a chat. Whereas normally you’d be like really timid and really shy in those sorts of situations. But it just gave you this ultimate euphoria of I’m in the right place at the right time, I’ve just got to say these combinations of words like. (Interview 14, male, white, 25-30)

Participant 12 similarly expressed the sense of anticipation and excitement that the prospects of going out on the substance provided:

Huh, I don’t....I would say some of my best nights out was when I was on sparkle like. Just, I dunno what makes it so.... like you can’t wait for what’s gonna happen next, sort of thing. You’re like, ‘nothing’s gonna happen’ but you’re excited to see what’s happening next all the time. Everything is a good idea. [from later in the interview] But it’s literally because there’s nothing else to do. It makes nothing something. It makes...you’re doing nothing but it’s fun because you’re off your nut like. (Interview 12, male, white, 25-30)

Intense physical intimacy was touched on by participant 10 in a specifically sexual context:

...the second time I took it it was amazing...I don't know, we kind of like bonded over it, and it was like, we both had orgasms together, it was a really special moment between us. (Interview 9, female, white, 25-30)

Physical closeness was also emphasised in other ways: participant 8 spoke about the intense bodily intimacy produced by 5-MeO-DALT:

...your body melts and you feel like you melt into each other if you're cuddling. It's and you're all like \*noises implying relaxation\*. And you melt into each other. And I get this in my stomach and can put it in yours. It's like this really intense bodily interaction that goes on, that happens if you take shitloads in one go. (Interview 8, male, white, 20-25)

Participant 1's account of the social potential of mephedrone – which contrasts with some of the discussion of the anti-social dimensions of stimulants described above – emphasises the capacity of the substance to improve communication:

....so what we discovered was that we could, without seeking to party as such, we just found we could start to have quite profound social...social development. When alcohol was involved for years...Over the course of a night...everyone tends to drift off into their own headspace. Whereas we found we were forging quite deep, quite strong bonds that we could carry forward when we weren't on drugs. (Interview 1, male, white, 30-35)

Participant 2, who had consumed mephedrone but stopped using it due to the negative effects, but had had greater success with MDMA:

...later on, you start to realise things like you take MDMA with your friends quite a lot and you build up quite an intense personal bond with them because it makes them quite lovey. And if you drink when go out it's quite a lot easier to dance. You combine the two it's quite...you relax...you're quite dancey but you're quite lovey dovey and there is trippy stuff going on. So. Pot also kind of relaxes you in social situations as well. So I guess drugs can help you be social in that sort of goey out, nightlife sense. They can be quite soothy as well if you're feeling down. I think they can also, having a drink, smoking a J. Even

going out with your friends, letting of some steam, take some ecstasy and you feel like...and it puts you in that mindset where everything that seems bad in your life is somehow surmountable...I'm not saying any of this stuff is a great thing. But yeah. (Interview 2, female, white, 25-30)

The rejoinder that such activities might not a 'great thing' may be indicative of both a desire to present a certain normative denouncement of drug use with a view to presenting an acceptable version of the self, or equally may simply reflect personal doubts about the legitimacy of using drugs as a method for achieving these goals. Nonetheless, while this discussion doesn't concern NPS, it does construct a way of relating to drug use, again, in terms of the interpersonal dynamics it constructs and perspectives it makes possible.

Here, the substances are used both to loosen self-inhibition and create a sense of social solidarity and an emotionally invested assemblage that was valuable to the participants, both for what it made durable and what it temporarily achieved. Drug effects here can be grouped around what they make possible in social contexts that appears both useful and beneficial to participants. While these endeavours may prove harmful at times, as noted in relation to the negative instances of consumption noted above, these accounts provide a sense of what participants may be aiming for in these contexts. Here, again, it is possible to think of the constructions of NPS here as offering a largely distinct account of the objects in question in of the features that are considered relevant.

### *Self-exploration*

Finally, within this sample, certain NPS and other drugs were imbued with the capacity to engender personal reflection and beneficial self-exploration. Participant 19 emphasised the benefits acquired from the use of methoxetamine in terms of their capacity for engendering self-reflection:

...mxe should be called something like...reflection. Or something like that. Cause it forces you to think about yourself and how you reflect on other people. What your life is and what life itself is. And all that stuff. And you have the most subjective...I will say this...and I will literally, you could torture me, and I...the best experiences of my entire life, the most meaningful experiences of my

entire life, and I say this as someone who has been in love... (Interview 19, male, white, 30-35)

Another participant discussed their initial experience of ayahuasca – a psychedelic that is controlled, and not an NPS - as a deeply moving and healing experience:

The trip was the single most astonishing experience of my life. I was everything and everyone. Every thought split off into fractal branches of sub thoughts. After a while, it was like my mind shattered into thousands of pieces, all off exploring the universe by itself. And then I felt all of my mind reassemble itself all at once, and I was sat on my sofa trying to make sense of what had just happened. I don't tend to think of drugs in a mystical way, but looking back I have to wonder if I didn't fix the broken pieces of my brain when I put myself back together. There was medication and therapy happening, too, and recovery from depression took time and effort, but the point at which I started to get better was definitely when I took ayahuasca. It's hard not to think of psychedelics as something incredibly special after something like that happens (Interview 11, details unknown)

For participant 18, the use of 'magic mushrooms' was experienced as helping to reduce their anxiety, whereas participant 4 described consuming 2CB and ceasing to smoke as a result. For participant 8, psychedelics – which may, but did not have to include substances that could be bought legally online – were seen as effective tools for self-development and healing, characterising his narrative in relation to drugs as one concerned with developing spiritual practices. These forms of consumption can be characterised as *therapeutic*, where the experience invested perception in a way that was felt beneficial to the health of the participant. For participant 8, this was clearly distinguished from drugs as a purely hedonistic pursuit. As they stated:

It's a really serious purpose for personal growth and healing and stuff and it's not an awful lot of fun, shining light into the dark corners of your souls and seeing all that.... It doesn't make for a very addictive drug when you have to be confronted with all your guilt and fear and shame and pain and things like that. But it is bloody useful because you can actually heal those parts of yourself that feel guilt and pain and shame and so on. (Interview 8, male, white, 25-30)

Here, the potential lack of pleasure does not deter further exploration from the perspective that, here, use is invested with a meaning that transcends drug use in a less controlled and hedonistic sense. Several participants would distinguish between their drug use and the practices of ‘getting off one’s face’ that had either preceded it or characterised the drug use of others.

At the same time, the exploration of consciousness more generally was expressed as valuable by participant 9, who characterised NPS in these terms:

...we block off so much from our visual field, we programme ourselves to only see certain things or predict certain things from like induction. Or like it’s the same about the brain. We only ever like predict or expect to have certain experiences within the brain, um, therefore we don’t unlock the other experiences that are there. So, like, using drugs and using nos [nitrous oxide] especially has helped me get into a place that I’ve never been to before which I don’t think is synthetic, I think it definitely is inside the brain, and I definitely think those feelings that are induced by it are internal. But, I haven’t ever been able to get there apart from with the help of drugs. Which is like a completely positive thing, like. (Interview 9, female, white, 20-25)

The sense that hallucinogenic and psychedelic experiences could have positive psychological effects was noted by several participants. To contextualise these claims, the possibility of medicinal applications for certain psychedelics has been observed in academic literature (Sessa 2012). Here, again, the constructions of these participants, which are able to incorporate the subjective dimensions of effects of these substances into their accounts, provide access to a range of aspects of these objects which are otherwise silenced in policy.

### *Summary*

This section has argued that, in the constructions of NPS and other substances here, participants identify a range of features in these substances that are silenced in the accounts discussed in Chapter 4. In this context, the capacity for these substances to alter the subjective perceptions of these participants enabled them to use them to accomplish valuable goals, which in turn was frequently, though not always, informed

by concerns to minimise risks and enhance benefits. In silencing these potentially beneficial aspects of NPS and other drug use, as observed more generally in policy (e.g. Moore 2008), the representation of the NPS as a policy problem constrains the scope of not just *who* can participate but on what terms. As shall be discussed in Chapter 6, developing an account of the public interest that incorporates the concern of drug users who do *not* normatively conform to the imperatives of the drugs *dispositif* may require a more plural and inclusive regard for pleasure here and the alternative ontology it enacts.

## Conclusion

This chapter suggests three problems with the policy account of NPS. First, the relationship between legality and consumption is far more ambiguous and inconsistent than the policy discourse recognises. Secondly, the policy account ignores the contextually mediated nature of harm and its management. Third, it silences the sense in which these substances and their effects may be regarded as having importance to their consumers. In this way, drug users are excluded from drugs policy discourse in terms of being able to define the nature of ‘drugs problems’.

Applying the insights of STS, it has been argued that NPS are constructed *partially*. The ‘knowledge’ produced about NPS has tended to exclude the accounts of drug users who willingly use illicit drugs and are not deterred by illegality, while silencing the relevance of context in accounting for harm. This opens up interesting possibilities for thinking about NPS, and drugs more generally, in different ways. As has been argued here, the contexts in which NPS emerge are diverse and the effects of making substances illegal are inconsistent. Moreover, the account of harms provided in the interviews differs from the account given in policy, and that the substances in question also have the scope to produce beneficial effects for participants.

Here, I should clarify that it is likely that NPS consumption will decline even further in light of the PSA 2016, given the consistency with which criminalization has had this effect in the past. However, as the differential responses to regulation indicate, declines in prevalence are likely to be concentrated amongst those for whom the legal availability of the substance was a principal part of its appeal, usually as a result being able to obtain it online. However, many of the participants that could be characterised in this way, either in relation to specific substances or NPS more generally, did not necessarily cease using drugs, at least insofar as they continued to want to.

It is important however to emphasise that lowering the use amongst the sorts of recreational users described in this sample will not have an important influence on overall drug related harms, given the conscientious use described in these contexts. Conversely, in the contexts where the most notable harms have described, the main source of NPS was an illicit black market that effectively mirrored a traditional drugs market, albeit at a far lower cost than other substances. In this sense, regulation can be understood from this perspective as offering a limited and relatively untargeted intervention into the harms of this market. Moreover, as these discussion indicate, drug policy was seen by many participants as a generally problematic policy that could potentially increase the harms of the drugs market.

Irrespective of the problems these accounts raise for implementing prohibitory policy, it is also possible to think about how they relate to the account of the public interest emphasised in the policy discussions. The perspectives reproduced here, insofar as they emphasise the limits of drug policy and the potential for achieving agreeable states through drug use, are provided limited scope to inform *what* the goals of drug policy should be. While this exclusion is, in a sense, self-evident, the decision to exclude drug user accounts of what drugs are capable of can only be justified in terms of an a priori determination that these substances are not only harmful, but that these harms are the most relevant aspect of their materiality and constitute the legitimate grounds for their governance. As discussed in chapter 1, however, this contention is embedded within historically contingent policy framework, rather than inhering within the contested dimensions of the substances *themselves*.

While I am of course not arguing here that drug use does not raise risks, I am maintaining that the frameworks within which these risks are apprehended by policy does not have a non-contestable claim to offering the sole legitimate means of interpreting the materiality of drugs and describing their effects.

In this context, alternative perspectives on these matters reproduced in this chapter are forcefully excluded from the scope of policy concern. As observed above, the relevant public constructed for the purpose of making policy decisions is constituted in terms of requiring the state's symbolic resources to deter them from drug use. Chapter 6 will consider the implications of this exclusion and consider possible means for addressing

it. To clarify, this is not to say that this sample indicates a clear or uniform articulation of a common interest, nor is it likely to be the case that the interests of people who use drugs are easily generalizable. In discussing the existence of a distinct interest, I am concerned here more the sense in which the goals of drug policy may be conceived of differently when viewed from a perspective of what these substances are capable of and how risks might be avoided in obtaining their benefits.



## **Chapter 6: Drugs in Public**

### **Introduction**

The research question outlined at the beginning of the thesis was as follows: how has the ‘problem’ of NPS been represented in policy, what are the limits of this reading, and are other accounts possible? Chapter 4 has provided an account of how the NPS problem has been constructed, while chapter 5 has developed a critique of the limits of this framework. This chapter offers an analysis of how these incompatibilities and limits might be addressed and the possibilities for a more inclusive approach to defining ‘drug problems’.. Tthis chapter develops the claims made in the last two chapters about the scope of the ‘public interest’ constituted by drug policy and the exclusion of drug users from participation within it. It argues that the framework for engaging with NPS is problematic because it legitimates strategies which may increase the risks confronted by drug users, while excluding this group from having authority to contest the problematizing frame to which they are subject. The broader discourses of the drugs *dispositif* restricts the scope for alternative approaches to drug policy that could incorporate a wider range of perspectives.

In turn, it is argued that developing a more inclusive and participatory approach to drug policy requires an ongoing engagement with the discursive frameworks that characterise the public as, by definition, threatened by greater exposure to effects of drugs. It is argued that the challenge here is developing an account of problem that is open to difference – in terms of pleasure and the desire to use drugs – while simultaneously attentive to the capacity of a policy concern with the ‘general public’ to withdraw concern from more marginal groups. While the dominant policy approach emphasises *harm*, it may do so in a way that works against developing more caring ways to engage with drug-related risks that are more prominent and difficult to address.

The chapter is structured as follows. The first section argues that, while NPS use may change in light of the PSA 2016, the fact that this has been achieved by making the NPS market more *precarious* – i.e. more hidden and less attractive to potential consumers – means that the risks to individuals seeking to access this market may simultaneously increase. Moreover, the challenges for regulating the NPS markets are unlikely to be ameliorated by developing different strategies for defining the scope of drugs legislation. Insofar as the account of the problem of NPS is underpinned by the broader

framework of the drugs *dispositif* (Herschinger 2015), however, contesting this policy in terms of any claim to bodily autonomy on the part of the participants is, in advance, limited because of the problematization of NPS as a problem for health and the broader majority of the public who do not use drugs.

The second section of the chapter considers how this problem might be challenged. As above, it is argued that this requires defining the ‘public’ in a more inclusive way that does not rely on excluding drug users through the apparatus of criminal law and the dominant practices of defining drugs. This section situates this notion of a public interest within a theoretical context and considers the implication of these accounts for thinking about NPS policy. The two principal dimensions of drug use discussed in this thesis – pleasure and harm – both raise important questions for thinking about how the scope of the public might be addressed here. In terms of pleasure, it is argued that while the *use of drugs* is, indeed, the most consistently observed counter-narrative about consumption, the status of pleasure here is deeply ambiguous and requires further theoretical elaboration. Second, the question of drug-related harms, and their silencing through the discourse of NPS and its emphasis on the perceived safety of these substances, also provides an important site for thinking about the boundaries of the public and how they might be contested.

### **No Exit: Post-PSA NPS**

As indicated in Chapter 4, prohibiting NPS was undertaken largely with a view to protecting individuals that might consume these substances owing to their legal availability and/or the normative force of not being controlled. All non-regulated psychoactive substances have been controlled, precisely to prevent substances from being marketed openly. This change is explicitly framed in terms of making the drug market less attractive to certain consumers, who would otherwise not seek to access these markets (HM Governments, 2014). As noted in chapter 5, there may be instances where the removal of online markets in products does, indeed, restrict their consumption, although the broader effects of this and its relation to harms is unclear. At the same time, numerous contexts are reported where illegality provides a minimal boundary to consumption, and in a number of contexts both licit and illicit drug markets posed risks, in part due to the terms in which they were regulated.

To varying extents and degrees, the regulation of psychoactive substances exposes consumers to risks. Here, the thesis seeks to apply Butler's concepts of grievability, introduced in chapter 1. Butler's (2016a) concepts of precariousness and precarity provide a useful way of thinking about the distribution of these risks and the social processes it involves. While the precariousness of life – the susceptibility to injury and death – is a universal feature of human existence, the differential allocation of the resources for caring for life involves differential exposures to *precarity* (Butler, 2016a). Precarity here refers to "...that politically induced condition in which certain populations suffer from failing social and economic networks of support more than others, and become differentially exposed to injury, violence and death." (2016a, pp. 33).

As this definition stresses, the degree to which precariousness affects certain populations – here, 'drug users' – will differ just as access to social and economic networks do. However, in seeking to increase the costs of drug use for deterrent purposes, the precarity of these users may increase. In doing so, it may make drug use more subject to the potential for harm and undesirable results, particularly for those with the least social power. It is important to emphasise that, with the exception of those in custodial institutions, possession will not be a crime, and so consumers will not necessarily be subject to arrest. However, it is not clear that the government is committed to ongoing efforts to reduce harms for those who continue to use these substances. Insofar as criminalization disrupts NPS markets without eliminating access to them, it potentially increases the risks associated with these behaviours. Indeed, this is in a sense *precisely* what the criminal law seeks to do, particularly in a context where the state simply does not have the resources of normative authority to exert meaningful control over the distribution and consumption of illicit drugs. Making the purchase of NPS impossible through legitimate traders and consigning trade either to the 'street' market or the darknet is a deterrent for those using these substances precisely because such a prospect increases the risks to the consumer.

As noted, this is premised on the continuation of these markets. However, as shall be argued, this is highly likely and is indeed observed by the Government in response to the Expert Panel's recommendations. As they write:

We recognise that there is no easy answer to this matter. There are considerable gaps in our knowledge and understanding of NPS. There will remain a range of residual and future challenges that will need to be addressed, as there may be with traditional illicit drug use. (HM Government 2014, pp. 2)

More broadly, this conclusion is consistent with the historical failures of prohibitory policy to eliminate drug use or the harms associated with it, particularly in the context of the last 40 years, during which the range and popularity of several controlled substances has dramatically increased, while prices have fallen, both in the UK and more globally, despite ongoing repression (Aldridge et al. 2011; Costa Storti and De Grauwe 2009; Pryce 2012). Given the range of other factors involved, it seems unlikely that criminalization is likely to seriously change the burden of NPS harms accruing in prison or amongst the homeless insofar as they remain available for purchase, although criminalization may increase price.

The potential for ongoing growth in the NPS market becomes clear when the supply-side dimensions are considered. A critical benefit NPS markets offer to sellers is their relative costs (Daly and Sampson 2013; Power 2013; Wainwright 2016). As often relatively obscure substances can be industrially sourced, rather than having to rely on already existing criminal supply chains in controlled substances, they may be far cheaper for distributors to obtain wholesale which and, in turn, increases the profit margins available. Daly and Simpson (2013), for instance, describe how packages of mephedrone cost between £2500 and £4000 per kilogram to import, but could then be sold on at £10-15 a gram, resulting in potential net profits of up to £7500 per kilo. While the margins on cocaine could be higher, here, a kilogram was recorded as costing £50 000 after having passed through UK customs, significantly increasing barriers to entry in this market, while also reliant on contacts with criminal sellers, although this may have changed with the advent of the darknet. For similar reasons, it seems unlikely that the PSA 2016 will eliminate the prison market in 'spice'. While an ounce of this substance can be procured outside prison for as little as £3 a gram, in prison this was marked up to £100 per gram (Ralphs, forthcoming). While these costs may fluctuate somewhat, particularly with the added risks of importation resulting from the PSA 2016, it seems highly unlikely that such opportunities will be foregone by enterprising distributors.

A useful – if pessimistic for our purposes - way of thinking about NPS market dynamics is provided in Seddon’s analysis of how drug market regulation operates (Seddon 2013). Seddon’s approach here is to emphasise that whether or not markets are illegal, they emerge in response to the limits of their regulation. This is to say, whereas a proponent for regulation might argue that the illicit drugs markets are wholly unregulated, and a prohibitionist might in turn argue that the opposite of control is ‘chaos’, it is possible to see both as simply involving different regulatory approaches. In Seddon’s analysis, regulation is regarded as the process of introducing friction into markets, causing them to slow down, become subject to analysis or evaluation, while at other points allow them to move with less hindrances. For example, while the regulations governing the free movement of goods with the European Union, permit a certain type of mobility for goods and services, the enforcement of unified standards also means that certain points of friction are introduced. At the same time, actors within markets continually work to the limits of what is possible in a regulatory sense – with blurring of legal lines possible when incentives are great enough – which in turn motivates innovation (Seddon 2013).

This has clear applicability to NPS. Here, a constellation of actors – including drug users, entrepreneurs and producers – have innovated around drug policy limits, in a context where the schedule itself provided a reference point for where innovations were possible (Seddon 2014). It is certainly possible that *certain* NPS will simply vanish from the market, having been primarily appealing due to their legality and easy availability, while lacking competitive features in a more crowded illicit market. However, regarding substances for which demand remains, attaching risks to the distribution of NPS will not make potential profits disappear. This is particularly true for, as has been observed in the literature, stimulants and synthetic cannabinoids, if at least some of a huge range of potential precursor ingredients remain available and borders remain permeable. It is also clearly demonstrated in the literature review that use, while diminished, often continues amongst certain segments of users, indicating the rapid diffusion of dealer networks to supplement these markets. In addition, based on the evidence reviewed in Chapter 2, certain niches of use like prison and homeless populations, as well as psychonauts and clubbers, may continue to favour NPS, at least in certain circumstances.

Moreover, increases in NPS related harm may be hard to monitor in detail. For instance, in the event that the CSEW next year records a decline in prevalence of NPS, it will be

far from clear whether lower consumption here is indicative of these consumers engaging, instead, with other controlled drugs. It is also unclear whether lower overall prevalence will result in lower harms, or if use will simply end up being concentrated amongst certain users and result in similar or higher consequential dangers. At the same time, actors within markets continually work to the limits of what is possible in a regulatory sense – with blurring of legal lines possible when incentives are great enough – which becomes a source of innovation. In a context where self-report surveys continue to record MDMA and cocaine, but these are not verified in forensic terms – this is, of course, hard to imagine practically – it will be difficult to detect the ongoing levels of NPS adulteration. Moreover – and this is perhaps a more speculative point – there will be no metric for accounting for the loss of benefits that may have accrued from NPS consumption for participants who now no longer have access to substances they had identified benefits in.

In a context where life becomes more dangerous for drug users, it is also likely that these difficulties will be concentrated where there is the least social and economic power. The concentration of drug-related harms amongst the most disadvantaged has been observed generally in the UK (Pearson 2001; Reuter and Stevens 2007; Seddon 2006; Shaw et al. 2007; Stevens 2010). There is little reason to suspect the situation with NPS will be different, particularly if NPS can provide – as observed in the interview data – cheap alternatives to controlled drugs in situations of socio-economic disadvantage. In this context, is there scope for effective NPS harm reduction, particularly given the potential restrictions legal control puts on discussing these substances publicly?

Another potential driver of NPS related harm concerns the prospects for adulteration or poorly prepared products. While online markets may have limited this in some cases, it seems likely that the removal of these markets will concentrate purchases in ‘traditional’ face to face drug sales, which moreover may be more accessible to young people living at home than drug cryptomarkets. Discerning purity, and communicating information about potential harms, may become more challenging in this context, while the question of how NPS are produced for street level distribution is largely speculative at this stage. Concepts like drug-testing (to ensure that MDMA rather than PMA is being consumed) have been trialed at certain UK music festivals (Brooks 2016), but it is harder to imagine testing facilities – able to differentiate between dozens of NPS compounds with

reference materials – that would be more generally be made available outside of these environments in the context of ongoing control. An exception to this is WEDINOS project administered by Public Health Wales, which publicly displays the test results of drug samples that are sent to it, as a harm reduction initiative.

However, in terms of the broader prospects for harm reduction as a policy strategy, it is also important to note that the current government has explicitly distanced itself from an emphasis on ‘harm reduction’. As is noted in the 2010 Drugs Strategy:

...a fundamental difference between this strategy and those that have gone before is that *instead of focusing primarily on reducing the harms* caused by drug misuse, our approach will be to go much further and offer every support for people to choose recovery as an achievable way out of dependency. [my emphasis] (HM Government, 2010, pp.2)

This, combined with the rejection of various harm reduction initiatives focused on reducing opiate related deaths late in 2016 (Gayle 2016) suggests a limited appetite for policy change here. As a result, harm reduction will, where it persists, largely remain a practice of ‘counter-public’ health, i.e. practises of health preservation and enhancement performed in opposition to rather than in accordance with public health interventions that normatively proscribe certain behaviours (Race 2009).

Approaches to drug policy emphasising Human Rights potentially provide scope for including the interests and rights of drug users into policy. The major successes and research efforts in this area have focused on access to treatment and the necessity of a human rights framing concerning drug users who are particularly at risk. For instance, a review of 900 studies of the human rights abuses of drug users and the effects on HIV related care, finding that punitive drug laws may interfere with service delivery and negatively affect the health of those dependent on them and approaches which emphasise human rights in relation to drug use also deliver better outcomes overall (Jürgens et al. 2010). A successful challenge to prison policies of restricting access to substitute opiate prescribing has been mounted, for example, in relation to this interfering with the claimants Right to appropriate treatment (BBC News 2006).

However, beyond situations in which the requirements for medical interventions are regarded as superior to the requirements to monitor drug use, the promising potential of Human Rights approaches have yet to be fully realised. While there have been consistent efforts of scholars and parties to court cases attempting to frame a human right to drug (Van Ree 1999) a right to freedom of thought which protects the right to consume psychedelics (Walsh 2016), or the use of illicit drugs for pleasure or relief from pain with medical conditions as being protected by a Right to Health (Bone and Seddon 2016), these have yet to be upheld in Court.

In this section, it has been argued both that the problematization of NPS is likely to increase precarity for NPS users overall, even if overall consumption falls. It has also been argued that these harms are unlikely to be addressed by the preventative effects of the criminal law in eliminating this market through policing. As I argue in this chapter, this distribution of precarity can be understood as resulting from the construction of a ‘public interest’ that does not or only marginally includes drug users as a subject of concern. Instead, the goals of NPS policy – eliminating NPS use – are premised on the identification of these substances as harmful and, as seen in Chapter 4, do not assign validity or participatory authority to drug users, nor regards them within the scope of concern *except* insofar as their deaths are emphasised to be a result of the legality of the substances in question and emphasise, in turn, the legitimacy of drug policy. In this sense, drug criminalization is problematic precisely because it is grounded in a conflict between reducing the precariousness of drug use and protecting the majority from these substances. By identifying ‘drug use’ as a problematic activity which demands repression for the benefit of the majority, the harms that may accrue to drug users may justifiably include adulteration, the risks of drug markets and unreliability, while those with the least regulatory incentive to monitor and reduce addiction in their customers are provided exclusive control of the market.

In terms of reducing the precariousness of drug users, it is also unlikely that mechanisms for providing more rigorous or detailed harm assessments on NPS would achieve this goal. An alternative policy, that permitted conditional consent for certain NPS is unlikely largely because the political ramifications of policy changes causing harm could be considerable (Chatwin 2016a). This is particularly true concerning NPS (Reuter 2011), where the limited scope for assessing evidence on NPS makes recommending these substances for availability an even greater risk. However, even if



the circle could be squared – more technically rigorous processes for discriminating harmful from non-harmful NPS – this would leave unaddressed the increased precariousness of NPS consumers whose drugs of choice were regarded as more harmful.

### **Is Another Public Possible?**

If the representation of NPS as a problem is limited by its constitution of a public interest from which drug users are excluded, how might this representation be challenged? This section engages with question of the scope of how the ‘public interest’ is approached and might be reconstituted in three parts. The first unpacks the meaning of ‘public interest’ raised above, and what it would mean for drug policy to adopt a different public. The second is the question of how the issue of *goals* can be addressed in a way attentive to the potential for multiple perspectives on drugs, which are plural and inclusive rather than exclusionary. The most critical distinction observed in the comparative analysis – in a way consistent with much qualitative literature in this area – is that it is precisely the subjective effects of drugs which are excised from the NPS problem that mark the most important ontological distinction here. Here, the implications of ‘pleasure’ and the need for further theoretical clarification and research in this area is developed. Third, the question of drug-related harms is discussed, in terms of how these are mobilized in the NPS policy problem and the whether other approaches are possible.

### *Publics and Counter-Publics*

It has been argued so far that the problem of NPS has been framed in such a way to emphasise a certain ‘public interest’. The term ‘public’ is informed by Warner’s (2002) definition. In this account, publics are understood to be reflexive communities that are brought into existence through shared attention to the discursive practices that constitute this public. In less abstract terms, while there is not a sense in which all *Daily Mail* readers know each other, the newspaper nonetheless addresses a general public, in which the newspaper’s readers may participate to various degrees with virtue of remaining attentive to concerns that shape this public. In this context, it has been argued that policies can also usefully be understood in terms of the publics around which they operate and by virtue of whose interests they are concerned with (Fraser et al. 2016).

The concept of ‘publics’ has been usefully deployed to think about the position of marginal identities, including sexual and drug using minorities (Race 2009; Warner 2002). Here, the focus has been on the sense that while certain publics may be constituted within the policy process and mobilised, other publics – counter-publics – emerge in the context of opposition to the dominant norms through which the public interest is represented (Warner 2002). Similarly, poststructuralist critiques have emphasised the way in which ‘public’ discourse may be structured around exclusion of certain voices from being able to speak as part of the ‘public interest’, often constituted along gendered, racial and socioeconomic lines (Dahlberg 2014; Fraser 1990).

Drawing on Warner’s work, Fraser et al (2016) argue that publics are – like problems – made in policy. Drawing on interviews with policy makers, they discern the appearance of three ‘publics’ that appear during the policymaking process, who alternatively need to be educated, managed, or consulted. The descriptions of the publics in question, incidentally, do not emphasise drug users as constituting part of this public. As the authors note, the publics with which policymakers must reconcile may result in having to support questionable policies. In this account, these publics are viewed as existing as an anterior and stable feature of the world, rather than brought into being by the policy process itself. Here, the concern is for what this version of public interest may exclude or, as the authors write: “Insofar as knowledge-making can be said to produce certain defined publics, it does so at the expense of others” (2016, pp. 16). This accords with the findings here, in which the public interest defined in relation to NPS is predicated on publics defined in terms of the risks they and their communities face from untested and legally marketed psychoactive substances, and in doing so appears to restrict the relevance of other ‘publics’ that might be imagined in relation to NPS.

An illustrative and interesting example of this was noted in the context of parliamentary debates on the Psychoactive Substances Act concerning ‘poppers’. Here, the recognised function of ‘poppers’ for a recognised public – in this case, gay men who use poppers with which Crispin Blunt MP identified himself – prompted concern that these interests were going to be excluded from the ‘public’ which the act sought to protect. However, what distinguishes this account is that here – as well as there being little evidence of harm for these substances – is that a form of using drugs is identified both as consistent with the maintenance of an identity and the maintenance of intimate relationships, which was here constructed as a public health good.

However, as the failure of this amendment indicates, broader concerns about drug use may necessarily exclude these perspectives. The emphasis here on the constitutive role of power in determining the scope in which policy can rationally be, in turn, can be read alongside Foucault's observations that 'truth' is constructed through socially and historically contingent practices which distribute social authority. In the context of NPS policy, the drugs *dispositif* can be understood as constituting the scope of reasonable discourse about drugs, which regards these substances as an existential threat to health and wellbeing and therefore necessitating control (Crick 2012). In this context, the concept of competing accounts of the public draws attention to the limits of a drug policy critique *solely* concerned with improving the uptake of evidence in policymaking. As has been emphasised consistently throughout this thesis, when evidence is conceived of as a method for establishing 'what works' in relation to pre-defined problems, it forsakes critical engagement with how these problems have been represented (Bacchi 2009). In this sense, while evidence is clearly necessary, it cannot escape the need to engage with the problem in which it is represented. While it, naturally is the case that policy debates should be informed by 'facts', there is also an important sense in which the question of *for whom* drug policy is developed cannot be determined from empirical data and is, instead, a political question. As Roberts notes:

... many of the key issues for drug policy are not in principle amenable to purely evidential solutions because they have a normative aspect. There is often an implicit assumption that rational governance processes should produce a reasoned consensus on a policy solution (and residual opposition will reflect lack of acquaintance with evidence or a failure of rationality). But many of the key issues in drug policy are inherently contestable. While evidence will rule out a range of options and shape many others it will rarely point unambiguously to one solution or approach... (Roberts 2014, pp. 955–6).

The emphasis here on inherent contestability resonates with the analysis here concerning the importance of emphasising the possibility of multiple problems. Roullet (2015) argues that the designation of certain policy areas as the domain of expert governance can lead to what he describes as 'ideological foreclosure', wherein the issue is characterised as purely a technical matter, which does not invoke political contestation and dissensus. Obscuring the politics of knowledge production here may

obscure the possibility that these substances are subject to multiple interpretations, which cannot be adjudicated in advance.

In this context, however, it may be asked whether articulating a public interest that reflects the interests of drug users is even an appropriate goal here when the premises of policy are grounded in the harmfulness of these substances? In the context of the drugs dispositif, considerable effort has been invested in identifying the harms of drugs and articulating the pathological nature of this consumption. As Duff and Moore (2015) note, distinguishing ‘drug users’ from the broader public for the purposes of administration is an essential aspect of this process. As they write:

Drug policies rely for their effectiveness on instruments and procedures that distinguish normal, healthy conduct from unhealthy or abnormal behaviour. In so doing, drug policies endorse select norms that assume both the force of law and the promise of a therapeutic injunction. (2015, pp. 488)

The sense in which dominant forms of knowledge limit the scope for articulating a public interest is well understood in Warner’s (2002) account. As he argues, what may be at stake in ‘counter-public’ status is precisely this capacity to conduct oneself outside of the accorded forms of rationality insisted on by public debate. As he notes in relation to the potential for mobilizing counter-publics:

This is one of the things that happen when alternative publics are cast as social movements – they acquire agency in relation to the state. They enter the temporality of politics and adapt themselves to the performatives of rational critical discourse for many counter-publics, to do so is to cede the original hope of transforming, not just policy, but the space of public life itself. (2002:89)

From this perspective, the capacity of drug users to define their own interests may be constrained by the ways in which truths about drugs are constituted and the dimensions of use these exclude. In this context, it is unsurprising that critical accounts of drug policy from *within* government often frame drugs policy as problematic because it fails to adequately protect the drug-free majority, rather than its exclusion of drug users from the scope of public interest. This is explicit in the formulation of Nick Clegg MP – the former leader of the Liberal Democrats who has expressed criticism of drug policy –

who states: “Put simply, if you are anti-drugs, you should be pro-reform.” (Clegg 2014). The next section considers this question of the public in terms of the two principal points of distinction noted throughout this thesis, that of drug related pleasures and the engagement with drug-related harm.

### *Plural Objects*

The absence of pleasure in drugs policy rhetoric and its central role in consumption has been observed in numerous contexts – including this one - and cited as a basis upon which drug policy might be contested (Moore 2008; Race 2016; Ritter 2014). As has been consistently observed in qualitative research with drug users has consistently emphasised the pleasure of drug use as the principal factor motivating use (Boys, Marsden, & Strang, 2001; Hunt & Evans, 2008; Mayock, 2005; Pilkington, 2007). Research here has also emphasised that drug use decisions may be made on cost-benefit analysis based on the perceived pleasure of the substances relative to harms, at least insofar as this remained within the bounds of what were thought of as ‘responsible’ (Aldridge, Measham, and Williams 2011; Parker, Aldridge, and Measham 1999).

However, engaging with this ever present yet hard to pin down dimension of drug use for the purposes of constituting a public interest that includes drug users seems both necessary and challenging. It is not clear that the ‘pleasure’ of drug use is regarded non-problematically in a more general sense, so mobilizing it for giving an account of drug use may have mixed effects. There are numerous discursive formations of the pleasurable effects of drug use which negate the possibility of a subject being able to speak for itself other than within pre-existing discourses. In the broader context where governments used pleasure and incentives to strategically govern populations, even harm minimization approaches to drug use have struggled to engage with the pleasures associated with drug use, which are often framed in terms of addiction, craving, and the failure to maintain control of the self (O’Malley and Valverde 2004).

It has been argued elsewhere that discourses of drug addiction and compulsive use have been co-substantive with liberal discourses emphasising the centrality of choice and autonomy (Seddon 2009). In recent decades, critical research has emphasised how ‘addiction’ has been reformulated from its initial concern with physical dependence and withdrawal symptoms to a much broader set of criteria, as this discourse has expanded

to encompass a wider range of problematized behaviours, like gambling, with no directly material component, or which relate to natural activities, like eating (Fraser et al. 2014; Keane 2002). In this context, pleasure may simply be understood as evidence of a pathological attachment to a substance.

Similarly, drug related ‘pleasures’ may also simply be identified as a lack within the subject, insofar as it is accounted for in terms of the trauma or suffering of the consumer. In a scathing account of this approach, Mugford and O’Malley (1991) write:

In all variants, Left and Right, these accounts posit some deficit, with the implications that were individuals socially and/or personally healthy or normal, they would not use drugs. Policy implications centre upon correcting the deficit and returning the individual or social order to the optimum state of health or normality, whereupon, it is assumed, drug use will disappear. (O’Malley and Mugford 1991, pp. 50)

While this thesis does not, of course, dispute the fact that there are highly problematic assemblages of drug use and social suffering, what this singular account misses is the capacity for participants to generate creative and alternative meanings through drug use, rather than having these determined in advance and without their participation.

Here, the question is whether policy can develop more plural accounts of the effects of drugs, which permit a wider range of features to emerge in relation to how these objects and pleasures are engaged with. As has been argued throughout, drug policy is constituted through its claims to knowledge. In this context, in reading the contrasting accounts of NPS in chapters 4 and 5 explicitly in terms of the distinctions they indicate suggests that this problem can also be approached as one of conflicting ontologies. In one account, drugs are constituted by their harmfulness, which both differentiates them from other sorts of objects and necessitates their interdiction. In another, drugs are constituted in terms of what they *make possible*, with risks in some cases taken seriously and engaged with, but both in terms of *practical management* as well as by avoiding certain substances for which risks are considered too high.

The qualitative data emphasises how distinct these objects may be. For instance, consider the accounts of mephedrone offered in the harm assessments relative to the

account offered of this substance that appeared in the qualitative data. In the former case, mephedrone emerges largely in terms of its capacity to cause harm. Its subjective effects are listed sparingly, and here understood as a drug effect rather than a potential source of value and importance to consumers, while often being described alongside side-effects and other harms. Conversely, what emerges in the participants' narratives which explicitly engages with mephedrone suggests a distinct ontology for engaging with it.

Undoubtedly, harm continues to be a feature here, with narratives touching on negative physical responses to the substance for one participant, and its contribution to negative social dynamics and its propensity for compulsive use, noted by other participants. However, here, and particular with regard to the participants who had largely positive experiences with the substance, it is appropriate to suggest that mephedrone is *multiple*, and emerges distinctly depending on the terms with which it is engaged. Indeed this is a familiar finding in drugs literature (e.g. Zinberg 1986). Additionally, participants who disliked mephedrone often compared it to other drugs which they found *more effective* and preferred. In contrast to the problematization framework which accounts for NPS demand in terms of its appearance of safety, they emerge here in a much more ambiguous context. The objects under consideration, then, are constructed in terms of what they can *do*, here, and whether or not they do it effectively, while being understood also to emerge differently depending on the context in question.

These findings accord with the nuanced approaches to drug use which have been observed in recent qualitative literature. Boothroyd and Lewis (2016) for instance, differentiate the discursive strategies identified in online forums with discourses of harm reduction that solely focus on risks. In the former instance, online forum users are concerned principally with the question of 'doing drugs well' and accomplishing something with use. They characterise these discourses as 'phronetic', here concerned with the practice of doing drugs effectively and minimizing risks within this context.

We can identify a similar emphasis on the *uses of drugs* in Duff's discussion of an 'ethics of care' (2015). Here, Duff's central claim is that, between discourses of highly rational pleasure seeking and pathological consumption, it is possible to think about drug use as providing individuals with means of caring for the self, that can be

considered commensurate with good health. This finding emerges from qualitative research with drug users in treatment. As Duff writes:

For these participants, illicit drug use reportedly provides a range of functional benefits that satisfy select needs or interests more effectively than available alternatives. Such needs – including a desire for social contact, intimacy or entertainment, more energy, positive affect, relief from boredom, and the mitigation of suffering – constitute powerful ends for which drugs provide a ready means. In these sorts of circumstances, drug use must be construed as a method of promoting health and of restoring wellbeing rather than threatening to diminish it. (2015, pp.13)

I would argue that both accounts suggest the need for an approach to the effects of drug use that is plural, and does not necessitate foregoing the right to bodily autonomy as a requirement for avoiding risk. An engagement with ‘pleasure’, in this account, can offer a more nuanced and sensitive account of the effects and expressions of drug use (Race 2016).

To speak about a plural approach is to emphasise that the claims about the materiality of drugs emerging in policy are not *complete* or *final*, and that different approaches to reality may, in turn, construct the materiality of these substances in different ways (Law, 2004). Here, it is important to emphasise the sense in which drugs may be *multiple* and subject to numerous interpretations. It may seem counter-intuitive to argue that the subjective impressions are an empirical matter, in the same sense that hard-wrought empirical data about the prevalence of consumption is. In this context however, it’s worth considering Latour’s critique of the hard and fast distinction between objective knowledge and ‘secondary data’ in the production of scientific ‘facts’ (Latour 2004a, 2004b, 2008).

For Latour, this ‘splitting’ of nature into what is amenable to scientific certainty and casting what is available to the senses as *secondary* may constitute ‘bad science’, insofar as it seeks to establish ‘just the facts’ in lieu of opening the inherent disputability of phenomena. Reality, in turn, may be subject to multiple ‘articulations’ (Latour, 2004). This emphasis on differing articulations is important, argues Latour, if we are to open fields up to the maximization of ‘disputability’. From this perspective, the



question of opening NPS – and drugs more generally - to different interpretations grounded in different ontological approaches to what can be known about them is less a departure from empiricism but a basis for extending and improving it.

In Latour’s terminology, this is constituting drugs as a ‘matter of concern’ – wherein multiple accounts of the objects and subjects in question may be engaged in productive discourse – as opposed to a ‘matter of fact’ defined by singular interpretations (Latour 2008). The constitution of the drugs *dispositif*, then, is constituted by an exclusion that simultaneously restricts its scope for empirical articulation. What is at stake in the terms of the public here is therefore what objects may be permitted to appear. No matter how pleasurable and low risk a certain assemblage involving drugs is, the scope for these ‘facts’ to become manifest is restricted by the governing rules of knowledge. The problem with *difference* that is not necessarily resolvable within the dominant framework is also emphasised by Law:

...if we live, instead, in a multiple world of different enactments, if we participate in a fractiverse, then there will be, there can be, no overarching logic or liberal institutions, diplomatic or otherwise, to mediate between the different realities. There is no ‘overarching’. Instead there are contingent, more or less local and practical engagements. (Law 2015, pp.127-8)

In turn, he writes – specifically in his case referring to post-colonial encounters – “we will need to craft ways of doing so that are themselves contingent, modest, practical, and thoroughly down-to-earth; ways of proceeding that acknowledge and respect *difference* as something that cannot be included.” (2015, pp.128).

To make this less abstract, consider the framing of drug policy by the participants discussed in chapter 5. Here, the numerous instances where participants were confused or cynical about why certain substances they perceived as valuable were controlled might productively be read as concrete examples of resistance to the imposition of an ontology onto drugs that ignores their concerns, and dismisses alternative objects. This repositions the question of determining, in the last instance, what pleasure *is* and evaluating its legitimacy, but rather casts the question as of permitting multiple accounts of the body and the effects of drugs therein. As Fraser (1990) notes, it might be better to think of there being multiple publics, which may afford better protection for the

capacities of minorities to offer their own definitions of themselves than a broader, collective public. In this sense, while drugs may not be resolvable within the broader public interest, it may be that a specific, minority interest can be developed here. Indeed, if the question of pleasure can be repositioned here as necessitating a more inclusive and participatory approach to bodies and pleasure, interesting parallels for drug policy may emerge. As Race (et al 2016) observe, in relation to Australian harm reproduction group Unharm:

Informed by histories of sexual community, their activities connect harm to broader questions of access to public space. Their efforts to prevent dangers associated with drug use are characterised by a critique of criminalization, an appreciation of the diversity of bodily experience and openness about the pleasure some associated with drug use. (Race et al 2016, pp. 6)

These authors subsequently note Crispin Blunt's advocacy of poppers as another example of the potential political affinities between sexual minorities and drug use. In the context of ongoing technological developments in the drugs market, the limited frameworks imposed by drug policy on the constitution and definition of 'normal' behaviour, bodies and their appropriate scope for pleasure may increasingly come into question. Here, theoretically informed research that explores how boundaries of corporeal normality are contested and the mobilization of drugs in these processes would be a fruitful direction for future policy critique.

#### *Grievability and Drug-related Harms*

In addition to opening up space for different definitions of drug-related pleasures, it is also crucial to engage with how publics are mobilized in terms of concerns about drug-related harm, specifically in terms of how these are framed. Public representations of drugs problems, as we have seen, typically mobilise claims about drug-related harms to argue for making the market in drugs more dangerous. Traditionally, emphasis on those harms by drugs might be dismissed as exemplified 'moral panic' wherein 'disproportionate' attention is given to deviant behaviours and solutions arise which resolve them using authoritarian means (Cohen 2002), and numerous studies of drug policy have discussed it in terms of the media's framing of harms (Collins 2013; Linnemann 2010; Murji 1998). While there may be legitimate arguments that NPS policy was an 'overreaction' to a relatively marginal problem, the concern here with the

concept of a moral panic is that approaching ‘social problems’ as, effectively, ‘blown out of all proportion’, simply dismisses concerns about harm from an aloof position (Garland 2008). This risks failing to engage seriously with NPS related harms. In this context, I’m curious as to whether there is an alternative way to rethink NPS harms, which is cognizant of the contested, necessarily political nature by which grieving is constituted and the potential power of these harms in demonstrating the necessity of a more inclusive public interest?

While drug policy emphasises harm, it is potentially productive to think about the specific dimensions of the frames through which these harms are identified. Butler’s argument is that, in terms of how precarity is distributed, it is necessary to think about how precariousness is differentially recognised. As she argues, while precariousness is universal, the recognition of this precariousness is a social process that is unevenly distributed: not all lives are constituted as equally precarious and thus made differentially subject to grief (Butler 2006). While Butler has not, to my knowledge, extended her analysis of ‘frames of war’ (2016b) to the ‘war on drugs’. However, there may be interesting parallels in the the sense in which state violence towards certain groups of drug users and distributors is justified in terms of the precariousness of those who are harmed by drugs. While Butler recognises that recognising vulnerability *does not* necessitate care, she regards it as a necessary condition for the extension of protection to marginalised groups and identities (Butler 2016b). Here it seems possible – and may indeed be unavoidable – that the acute precariousness of life that can become apparent in the context of sudden drug deaths can inspire a concern for these victims that may obscure concern for the precariousness of non-conforming drug users.

We can see the effects of how precariousness is recognised in the context of the problematization of NPS. The representation of the problem here emphasised the precariousness of young people who might experiment with drugs or those who consumed these substances because of their *conformity* to drug policy norms – i.e. believing that these substances being unregulated meant they were safe – is emphasised. Indeed, despite the uncertainty regarding the validity of these claims, Mike Penning MP introduced the second reading of the Bill precisely regarding the precariousness of these individuals. It also emphasised the risks of arrest for those who consumed these substances, identifying the vulnerability of certain sorts of drug users in terms of their future life chances as worth protecting. However, viewed alongside the willingness to

increase the precarity of NPS users who will continue to use these substances, we can see how the former emphasis may be silencing the precariousness of more deliberate drug users who do not conform to this account, at least insofar as these harms do not *directly* emanate from the state.

This analysis becomes more pertinent when the broader picture of drug-related harms is considered. Here, the comparatively frenetic policy activity in response to NPS related harms can be productively compared with the marked increase in opiate related deaths that have occurred in a similar period (ACMD 2016). In this case, the range of factors that may have increased risks here, including changes to treatment provision, do not appear to have resulted in urgent policy responses to protect these users. Here, the government's rejection of the ACMD's (2016) proposal for engaging with a range of radical initiatives to reduce deaths, including more engagement with substitute prescribing, heroin assisted recovery, and the provision of drug consumption rooms, is telling. A spokesperson reported in the Guardian, offered the following response:

Drugs can cause untold harm and this government is acting to reduce their devastating impact... Drug misuse among adults and young people has fallen in the last 10 years and we are working to educate young people about the risks, to help those who are dependent through treatment, and to clamp down on the illicit trade. This government has no plans to introduce drug consumption rooms but recovery will remain at the heart of our approach. We are grateful to the Advisory Council on the Misuse of Drugs for their advice and will respond in due course. (Gayle 2016)

While the harms of drugs are specifically mobilised here, the broader public interest characterised in terms of falling overall drug prevalence is cited in the context of rejecting a measure to better protect the health needs of a marginal, but highly at risk population. In this framework, the government does not undertake responsibility for the harms referred to by the ACMD, nor position itself as responsible for the health of these users. 'Recovery' – an emphasis on becoming 'drug free' – extends concern to the drug user conditionally on their engagement with appropriate interventions and designations (Lancaster et al 2015).

Here, the broader social responsibility for drug related deaths and harms is kept at a distance from the state – the lives here are not framed as precariousness in such a way that it imposes obligations on the state – due to the emphasis on keeping society more broadly ‘drug free’. Indeed, it may be that discourses of personal responsibility can contribute to less caring policy, if they result in drug users being held wholly responsible for the risks to which they are subject and therefore undeserving of assistance. It remains to be seen to what extent NPS related deaths will be the subject of much media attention without the newsworthy dimensions that characterised these stories as noted in Chapter 4. Here, it was precisely the fact that the substances in question were allegedly consumed due to their ‘legality’ and therefore ‘safety’. Deaths that cannot be attached to as dramatic a narrative may be, in media and policy terms, a subject of less concern, particularly if the response to other drug-related deaths offers much indication here.

In a sense then, could we invert the critique of those concerned with ‘moral panics’ about drugs, and instead think about the conditions under which those continuing to be harmed by NPS markets can be made more subject to grief, and create corresponding public responsibility for reducing the conditions in which they take place? While the impulse to respond to the harms of drug use, as we have seen, may reduce concern for drug users, are there conditions under which the opposite could be true?

### **Conclusions and Directions for Future Research**

This thesis has sought to examine the limits of how the problem of NPS has been represented and how this problem might be represented differently. In addition to the limited scope for practically reducing the harms of the NPS market, the limits of the way in which this problem has been defined is that the ‘public interest’ defined by policy excludes drugs users from having the capacity to contribute to how drug problems are defined. In turn, policy involves increasing the precarity to which NPS users are exposed, while enacting drugs with a policy framework that offers a limited account of their effects and imposes a restrictive account of their harms.

However, this does not in itself constitute an affirmative policy recommendation or suggestion about the ‘best’ policy approach to NPS. Instead, it argues that drug policy critique can productively be developed in terms of how criminalization and other policies construct the interests of the public, and to engage with the ways in which this

account might be challenged. This can be framed as a question: how, in what ways, and to what extent can policy develop an account of the public which is *inclusive* to drug users and not premised on their potential disposability in favour of protecting a more narrowly defined public interest? In terms of developing a less harmful, more inclusive approach to NPS, it is necessary to contest the limited scope through which the public interest is defined by policy here.

The ongoing development of NPS market and technological changes taking place in the drugs market will remain of interest. However, one important area for future research suggested by the findings here concerns the ways in which drugs policy is *politically* contested, particularly in a time of global policy uncertainty, and the different mobilizations of the public this involves. Here, ongoing critical attention is necessary to attend to the ways in which frames here may operate to exclude or include drug users into the scope of public interest. Here, my concern is both with how actually existing campaigns and mobilizations enact the ‘public interest’ and the terms in which drug users are included in this.

At the same time, an emphasis on how precarity is distributed must remain cognisant of broader social developments. As has been observed more broadly, the development of ‘neoliberalism’ as a broad direction of policy in Western governments has resulted in a curtailed scope for the ‘public’, as more and more areas of life are considered appropriate for markets and competition (Harvey 2007). One result, already noted, has been the development of a commissioning system for drugs and alcohol treatment constructed with a view to, effectively, marketization wherein short-term commissioning cycles, payment-by-results and an emphasis on cost-cutting may compromise concern for drug user health (ACMD 2016). The state’s commitment to reducing social precariousness is neither consistent nor guaranteed, and understanding the implications of its permutations is important for contextualising and understanding drug policy developments. This shifting scope of the public is important in the sense that it provides the scope for alliances between drug users as excluded from public and others for whom access to the public has been withdrawn.

In terms of monitoring the ongoing emergence of NPS and the effects of control, there is also need for research engagement. As noted, these markets are unlikely to disappear and, in a context where prohibitory options are the only ones currently on the table, developing research that can inform the practical development of harm reduction

policies is important. Consistent with the above, it is important for research to engage with the ways in which practices emerge in the context of use that reduce risks, while also being attentive to the situations and contexts in which risk reduction becomes a less meaningful concern for consumers. Linking the conditions of harm with the above dimensions of social precariousness is also important here. Finally, the ongoing formation – if potentially interrupted here – of counter-public health practices in the context of online forums and the creation here of a *hidden* space for ‘public discussion’ of drugs remain an important subject. This is in both a pre-figurative sense – in that drug cultures may involve the production of spaces in which the limitations of drug policy are consciously transcended – and the sense in which drug users may, in the context of new technologies and connections, have the capacity to contest the scope of the public from which they are excluded.

This thesis has applied the concepts of Bacchi, Latour, Laws and Butler to the question of how NPS have been approached by UK drug policy. This is not the first example of Bacchi’s model being applied to drug policy (see Lancaster et al, 2015; Lancaster and Ritter, 2014, Bacchi, 2016). However, it provides a detailed application of Bacchi’s work to an emerging aspect of the contemporary drugs market while analysing the ‘silences’ of policy in detail. STS concepts have, in recent years, been deployed in the drug policy literature with a view to contesting the claims of ‘neutral’ scientific evidence. This thesis reflects this concern (see, e.g. Dwyer and Moore, 2014; Moore and Fraser 2011). In this thesis, STS provides a grounded critique of unreflective faith in ‘evidence’ as the ‘catchcry’ of the drugs policy field (Lancaster 2015) and demonstrates how the production of facts, in practice, involves an act of concealment alongside its production of positive truth. As Laws (2004; 2015) argues, the mobilization of facts involves mobilizing collateral realities, i.e. making claims about how the world is organised and the relevant points at which it is articulated, while silencing others.

The thesis applies Butler’s concepts to illicit drug policy, which is not substantively discussed in her work. It argues that her insights about the social construction of certain groups as highly precarious and grievable – non-drug users misled by the seeming legality of legal highs – may reproduce policy frameworks where other groups – intentional drug users – become less grievable and, in turn, made more precarious. This, in turn, works against the possibility of a more participatory or progressive approach.

Here, engaging with the precariousness of drug users may offer a site for mobilizing political change and contesting the boundaries of the public.



## Appendix A: List of News Reports Analysed

Source	Year	Title	Author (if noted)
BBC News	2009	Viewpoint: Chasing the chemical demons	Dr. John Ramsey
BBC News	2009	'Legal high' drugs banned in UK	
BBC News	2009	School suspends 'legal high' trio	
BBC News	2009	'Legal highs' drug ban criticised	
BBC News	2010	Festival organisers asked to warn against 'legal highs'	
BBC News	2010	A Game of M-cat and Mouse	Denise Winterman and Finlo Rohrer
BBC News	2010	Ban on NRG-1 'legal high' recommended by drug advisers	
BBC News	2010	Legal highs 'easy to find in Northern Ireland towns'	
BBC News	2011	Legal highs 'becoming bigger issue than illegal drugs'	
BBC News	2011	Is there a solution to the UK's 'legal high' drugs problem	
BBC News	2011	Taunton 'legal high' shop is raided by police	
BBC News	2011	Glastonbury Festival 'legal high' test lab set up	
BBC News	2012	'Legal highs': Rapid rise in deaths reported	
BBC News	2012	"Legal highs" mexxy and black mamba banned by government	
BBC News	2012	Glasgow health board reports 358% rise in legal high hospital cases	
BBC News	2012	Annihilation legal high leaves nine in hospital	
BBC News	2013	'Legal highs' review launched	
BBC News	2013	Southampton 'legal high' death deemed 'accidental'	
BBC News	2013	Legal high deaths 'tip of iceberg', says doctor	
BBC News	2013	Criticised Canterbury stores defends 'legal high' trade	
BBC News	2014	UK opts out of EU 'legal highs' plan	
BBC News	2014	'Law change needed' to stop sale of 'legal highs'	
BBC News	2014	Doctors 'powerless' to treat UK users of legal highs	
BBC News	2014	Legal highs 'tried by 12 year olds,' claim drug workers	
BBC News	2015	Legal highs: Seven-year jail terms under 'blanket ban'	
BBC News	2015	Legal highs: Call to investigate link to prison deaths	Abbie Jones
BBC News	2015	Legal highs: Call or tougher laws to be introduced	
BBC News	2015	Lambeth council votes to ban legal highs	

<i>Daily Mail</i>	2009	Sally-D: The 'legal high' that MPS wants to ban over teenage suicide link	Keri Sutherland
<i>Daily Mail</i>	2009	Coma in a bottle: GBL, the 50p party drug which is easier to obtain than heroin...and is legal	Paul Bracchi
<i>Daily Mail</i>	2010	Clubbers snub cocaine in favour of so-called 'legal highs' sparking fresh concerns over addiction rates	
<i>Daily Mail</i>	2010	The bride killed by bath salts – the new 'legal high' Ivory Wave drugs that's sweeping Britain	Rachel Porter
<i>Daily Mail</i>	2011	Revealed: How HALF of new 'legal highs' on sale in Europe are found in UK and Ireland	
<i>Daily Mail</i>	2011	Woman, 21, in critical condition after taking 'legal high tablets' she bought from takeaway'	
<i>Daily Mail</i>	2012	New legal highs are hitting the streets every week as ministers call for another substance to be banned	
<i>Daily Mail</i>	2012	'£10 legal high made me parade naked through Tesco': Teenager went on the rampage and karate-kicked policeman in the face after taking Benzo Fury	Rob Cooper
<i>Daily Mail</i>	2013	Deaths from legal highs soar 80 per cent in just one year with one person every week dying from the party drugs	Hugo Gye and Damien Gayle
<i>Daily Mail</i>	2013	Horrific cost of taking legal highs: Mother releases shocking picture of her son, 20, on his death bed after he suffered fatal heart attack from smoking herbal substance	Martin Robinson
<i>Daily Mail</i>	2014	Legal high deaths rise by 800% in three years: Users warned they are 'dancing in a minefield' after huge increase	Jack Doyle
<i>Daily Mail</i>	2014	Surge in deaths from legal highs: Number who have died after taking drugs up by eight times in three years as toll reaches 97	
<i>Daily Mail</i>	2015	All legal highs to be banned at last: Ministers will close loophole that let lethal drugs flourish	Jason Groves and Jack Doyle
<i>Daily Mail</i>	2015	Businesswoman who lived luxury life with villa in Spain while running £3.5 million 'legal high' empire on 'Amazon-style' website is jailed for nine years	Emma Glanfield
<i>Independent</i>	2009	'Natural high drug should be banned'	
<i>Independent</i>	2009	'Legal highs' crackdown is doomed to failure, say experts	Stina Backer
<i>Independent</i>	2010	Police warn about 'sparkle'; the new legal high	Brian Brady
<i>Independent</i>	2010	The Big Question: Should legal-high drugs such as mephedrone now be made illegal?	Jeremy Laurance

<i>Independent</i>	2011	NHS opens first ever clinic to treat ‘club drug’ addicts	Tom Peck
<i>Huffington Post</i>	2011	Legal High Ivory Wave to Become Class B Drug, Home Office says	
<i>Independent</i>	2012	Health alert over drug sold as ‘safe ketamine’	Nigel Morris
<i>Independent</i>	2012	Matt Bowden: The drugs lord who’s strictly legal	Jeremy Laurance
<i>Independent</i>	2013	EU could be given powers to ban ‘legal highs’ within weeks of them hitting the market	Charlotte McDonald Gibson
<i>Independent</i>	2013	Former legal high NBOME set to become Class A substance	Jamie Grierson
<i>Independent</i>	2014	Deaths from legal highs are overestimated, according to former Government drugs adviser Professor David Nutt	Jonathan Brown
<i>Independent</i>	2014	Drugs Minister Norman Baker sounds the alarm over new legal highs mimicking the effects of heroin	Nigel Morris
<i>Independent</i>	2015	Vertex: Police warn of ‘ticking time bomb’ of potentially lethal cannabis substitute	Jamie Merrill
<i>Independent</i>	2015	Legal High Ivory Wave to Become Class B Drug, Home Office Says	Dina Rickman
<i>Daily Telegraph</i>	2009	Teens in Britain getting legally high on synthetic cannabis banned across Europe.	Stephens Adams
<i>Daily Telegraph</i>	2009	Meow meow: ‘What’s to stop us selling legal highs?’	
<i>Daily Telegraph</i>	2010	Legal high drugs to be banned immediately	Christopher Hope
<i>Daily Telegraph</i>	2010	Police investigate deaths of two teens linked to mephedrone	Nick Britten and Tom Whitehead
<i>Daily Telegraph</i>	2011	Miaow miaow may have killed 100 in past years	
<i>Daily Telegraph</i>	2011	Forty new legal highs made in China are being sold in Britain	Richard Gray
<i>Daily Telegraph</i>	2012	Doctors issue new warning on legal highs	Nick Collins
<i>Daily Telegraph</i>	2012	Chasing legal highs a ‘waste of police time’	
<i>Daily Telegraph</i>	2013	Banning drugs drives a ‘rising tide’ of legal highs, peer warn	Wesley Johnson
<i>Daily Telegraph</i>	2013	‘Legal highs’ pose biggest risk in rural areas, warn MPs	David Barrett
<i>Daily Telegraph</i>	2014	Legal highs ‘deadlier’ than heroin’	
<i>Daily Telegraph</i>	2014	One in five new students admits taking legal highs	Martin Evans
<i>Daily Telegraph</i>	2015	Lincoln bans taking legal highs in public	
<i>Daily Telegraph</i>	2015	Mugger who attacked pensioner Alan Barnes took legal highs	Martin Evans

## Appendix B: Other Sources of Documentary Analysis

### 1. Parliamentary Debates

Source	Date	Title
Hansard	2015	Debate accompanying Psychoactive Substances Bill, Second Reading (19th October).  Columns 731-783
Hansard	2016	Debate accompanying Psychoactive Substances Bill as amended in Committee, Third Reading (20 <sup>th</sup> January)  Column 1437-1508

### 2. Harm Assessments

Source	Date	Title
ACMD	2010	Consideration of the cathinones
ACMD	2012	Methoxetamine report
ACMD	2013	NBOMe compounds
ACMD	2014	Update of the Generic Definition of Tryptamines

### 3. Policy Reports

Source	Date	Title
ACMD	2011	Consideration of the Novel Psychoactive Substances (“legal highs”)
Expert Panel on New Psychoactive Substances	2014	Report of the Expert Panel

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