

Misuse of Drugs Amendment Bill

Government Bill

Explanatory note

General policy statement

The Bill is the Misuse of Drugs Amendment Bill. It amends the Misuse of Drugs Act 1975. The Bill will—

- classify AMB-FUBINACA and 5F-ADB as Class A drugs:
- affirm the existing discretion to prosecute for possession and use (for all drugs) and specify that when considering whether a prosecution would meet the public interest requirements consideration should be given to whether a health-centred or therapeutic approach would be more beneficial:
- enable temporary drug class orders to be issued for emerging and potentially harmful substances.

The use of synthetic drugs is a major public health problem. Since June 2017, there has been a total of 50 to 55 deaths provisionally linked to the use of 2 dangerous synthetic drugs, 5F-ADB, and AMB-FUBINACA.

These measures are introduced to address the harm being caused by synthetic (and other) drugs by ensuring that legislation is focussed on those who import, manufacture, and supply the drugs and not those who use them. Addressing drug-related harm requires a health-based response, rather than a punitive one, so that people can access the health and social support services they need.

Scheduling 5F-ADB and AMB-FUBINACA under the Misuse of Drugs Act 1975 gives Police and Customs greater search and seizure powers thus increasing their ability to disrupt supply and reducing the availability of the drugs to people who use them.

Specifying that when considering whether the public interest requirements are met to prosecute for possession and use (for all drugs) consideration should be given to whether a health-centred or therapeutic approach would be more beneficial supports a

strengthened health-based approach to drug use and is consistent with current Police practice.

Enabling temporary drug class orders to be made by the Minister of Health provides for the immediate classification of substances to be treated as if they were Class C controlled drugs specified in Part 1 of Schedule 3 of the Misuse of Drugs Act 1975. This allows for a quick response to a rapidly adapting synthetic drug market and ensures the continued disruption of the supply of new synthetic drugs.

The Bill is an omnibus Bill introduced in accordance with Standing Order 263, because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy or are of a similar nature.

Departmental disclosure statement

The Ministry of Health is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=119>

Regulatory impact assessment

The Ministry of Health produced a regulatory impact assessment to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that this legislation comes into force on the day after the date on which it receives the Royal assent.

Clause 3 states that the Misuse of Drugs Act 1975 is the principal Act amended by this Bill.

Part 1

Amendments to principal Act

Clause 4 inserts a definition of temporary class drug in section 2 of the principal Act and amends the definitions of Class C controlled drug and controlled drug in that section to include any temporary class drug. A temporary class drug is any substance,

preparation, mixture, or article specified as a temporary class drug by an order made under *new section 4C* (as inserted by *clause 5*).

Clause 5 inserts *new sections 4C to 4G* into the principal Act. The provisions substantially re-enact former sections 4C to 4E of the principal Act, which were repealed by the Psychoactive Substances Act 2013. The former provisions enabled the Minister of Health to issue temporary class drug notices that had effect for up to a year. The new provisions enable the Minister to make orders to the same effect.

New section 4C is in similar terms to former section 4C and enables the Minister to make temporary class drug orders. Like the former temporary class drug notices, an order cannot be made in respect of anything that is already a Class A controlled drug, a Class B controlled drug, a Class C controlled drug (except a controlled drug analogue), or a precursor substance. *New section 4D(2)* treats a temporary class drug as if it were a non-specified controlled drug, which is presumed to be for supply at and over the level of 56 grams (under clause 2 of Schedule 5 of the principal Act).

New section 4D is in similar terms to former section 4D(1), (2), and (5). The new section requires that a temporary class drug be treated as if the drug were a controlled drug that is specified or described in Part 1 of Schedule 3 of the principal Act, which specifies Class C controlled drugs such as cannabis plant. The main difference is that the new section does not carry over the personal possession defence that was in former section 4D(3).

New section 4E is in similar terms to former section 4D(6) and (7). The new section requires the Minister to seek appropriate technical advice in relation to a temporary class drug and requires the Director-General of Health to ensure that an up-to-date copy of the order is publicly available.

New section 4F is in similar terms to former section 4E and relates to the duration of temporary class drug orders. An order expires on the earliest of the following:

- 1 year after the date on which the order came into force;
- the date on which the substance, preparation, mixture, or article is classified as a controlled drug or added to the list of precursor substances under the principal Act;
- the date on which it is revoked.

New section 4G is in similar terms to former section 4D(8) and provides that a temporary class drug order is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012.

Clause 6 amends section 7 of the principal Act, which contains the offences of possession and use of controlled drugs. This clause inserts *new subsections (5) and (6)* into section 7.

New subsection (5) relates to the Police's discretion to prosecute people for offences against section 7. This subsection is based on some elements of section 59(4) of the Crimes Act 1961, which affirms that the Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in

relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution. *New subsection (5)* affirms that there is a discretion to prosecute for an offence against section 7, and that a prosecution should not be brought unless it is required in the public interest.

New subsection (6) provides that, when considering whether a prosecution is required in the public interest, consideration should be given to whether a health-centred or therapeutic approach would be more beneficial. That consideration is expressed to be additional to any other matters that are relevant to whether a prosecution is required in the public interest.

Clause 7 amends Schedule 1 of the principal Act by including the synthetic cannabinoids 5F-ADB and AMB-FUBINACA as Class A controlled drugs.

Part 2

Amendment to Psychoactive Substances Act 2013

Clause 8 amends section 9(3) of the Psychoactive Substances Act 2013 by providing that a substance, preparation, mixture, or article specified by an order made under *new section 4C* is not a psychoactive substance for the purposes of the Psychoactive Substances Act 2013.

Hon Dr David Clark

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Misuse of Drugs Amendment Act **2019**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Misuse of Drugs Act 1975 (the **principal Act**). 5

Part 1**Amendments to principal Act****4 Section 2 amended (Interpretation)**

- (1) In section 2(1), definition of **Class C controlled drug**, after “includes”, insert “any temporary class drug and”. 10
- (2) In section 2(1), definition of **controlled drug**, after “includes”, insert “any temporary class drug and”.
- (3) In section 2(1), insert in its appropriate alphabetical order:

temporary class drug means any substance, preparation, mixture, or article specified as a temporary class drug by an order made under **section 4C** 15

5 New sections 4C to 4G inserted

After section 4B, insert:

4C Temporary class drug order

- (1) The Minister may, by an order published in the *Gazette*, specify any substance, preparation, mixture, or article as a temporary class drug. 20
- (2) The Minister must not make an order if the substance, preparation, mixture, or article is already a Class A controlled drug, a Class B controlled drug, a Class C controlled drug (except a controlled drug analogue), or a precursor substance.
- (3) The Minister must not make an order unless satisfied that the substance, preparation, mixture, or article that is to be specified in the order— 25
 - (a) poses, or may pose, a risk of harm to individuals or to society; and
 - (b) has not been classified under this Act, except as a controlled drug analogue.
- (4) An order may describe the substance, preparation, mixture, or article by 1 or 30
 - (a) its chemical name, or one of its chemical names:
 - (b) its product name:

(c)	a description of the substance, preparation, mixture, or article, in the form that the Minister considers appropriate for the purposes of the order.	
(5)	An order must state the date on which the order comes into force, and that date must not be earlier than the day after the date of the publication of the order in the <i>Gazette</i> .	5
4D Effect of temporary class drug order		
(1)	This section applies to every temporary class drug while it remains subject to a temporary class drug order.	
(2)	The temporary class drug must be treated for all purposes as if the drug were a controlled drug that is specified or described in Part 1 of Schedule 3.	10
(3)	<i>See section 7(5)</i> for a prosecutorial discretion that applies to possession and use offences for all controlled drugs (including temporary class drugs).	
(4)	A substance that has a structure substantially similar to the temporary class drug must not be treated as a controlled drug analogue just because of that similarity.	15
4E Further action relating to temporary class drugs		
(1)	While a temporary class drug order is in place, the Minister must seek advice, as the Minister considers appropriate, under section 5 or 5AA (or both) about the temporary class drug and its appropriate classification (if any, including as a precursor substance) under this Act.	20
(2)	As soon as possible after the publication of a temporary class drug order in the <i>Gazette</i> , the Director-General of Health must ensure that, while the order remains in force, both the order and information about its effects are available—	25
(a)	on the Ministry of Health’s Internet site, in an electronic form that is publicly accessible; and	
(b)	in any other way that the Director-General considers appropriate in the circumstances.	
4F Duration of temporary class drug order		
(1)	A temporary class drug order expires at the earliest of—	30
(a)	the close of the day that is 1 year after the date on which the order came into force; and	
(b)	the date on which the substance, preparation, mixture, or article is—	
(i)	classified as a Class A controlled drug; or	35
(ii)	classified as a Class B controlled drug; or	
(iii)	classified as a Class C controlled drug; or	
(iv)	added to Schedule 4 as a precursor substance; and	

- (c) its revocation by the Minister by order in the *Gazette*.
- (2) A temporary class drug order may be renewed by the Minister—
- (a) before the date of its expiry as calculated under **subsection (1)**; and
- (b) on 1 occasion only; and
- (c) only for the purpose of allowing sufficient time for the Minister to obtain the advice that is to be sought under **section 4E(1)**. 5
- 4G Status of temporary class drug order**
- A temporary class drug order is a disallowable instrument but not a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 10
- 6 Section 7 amended (Possession and use of controlled drugs)**
- After section 7(4), insert:
- (5) To avoid doubt, it is affirmed that there is a discretion to prosecute for an offence against this section, and a prosecution should not be brought unless it is required in the public interest. 15
- (6) When considering whether a prosecution is required in the public interest, in addition to any other relevant matters, consideration should be given to whether a health-centred or therapeutic approach would be more beneficial.
- 7 Schedule 1 amended**
- In Schedule 1, clause 1, insert in their appropriate alphabetical order: 20
- 5F-ADB: Methyl (2S)-2-{{1-(5-fluoropentyl)-1H-indazole-3-carbonyl}amino}-3,3-dimethylbutanoate
- AMB-FUBINACA: Methyl (2S)-2-({1-[(4-fluorophenyl)methyl]-1H-indazole-3-carbonyl}amino)-3-methylbutanoate

Part 2

Amendment to Psychoactive Substances Act 2013

- 8 Psychoactive Substances Act 2013 amended**
- (1) This section amends the Psychoactive Substances Act 2013.
- (2) After section 9(3)(b), insert:
- (ba) a substance, preparation, mixture, or article specified by an order made under **section 4C** of the Misuse of Drugs Act 1975 as a temporary class drug: 30