

ACMD

Advisory Council on the Misuse of Drugs

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Rt. Hon. Theresa May MP

Home Secretary

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17 August 2015

Dear Home Secretary,

Re: Definitions for Psychoactive Substances Bill

I am pleased to enclose the Advisory Council on the Misuse of Drugs' (ACMD) advice concerning the scope of the Psychoactive Substances Bill and the definition of psychoactive substances.

In constructing its definition the ACMD has focused on those substances previously termed 'novel' by the ACMD. The ACMD has also reviewed the current definition in the Psychoactive Substances Bill and proposed a revision.

We have highlighted the benefits and risks of the current and proposed definition.

Yours sincerely,



Professor Les Iversen
Chair of the ACMD

cc Rt. Hon. Jeremy Hunt, MP, Secretary of State for Health

Rt. Hon. Mike Penning MP, Minister for Policing, Crime and Criminal Justice

Rt. Hon. Jane Ellison, MP, Parliamentary Under Secretary of State for Public Health

ACMD ADVICE ON DEFINITIONS OF SCOPE FOR THE “PSYCHOACTIVE SUBSTANCES BILL”

1.0 Introduction

- 1.1 The Home Secretary’s letter to ACMD of 11 July 2015 made clear that the provisions in the Psychoactive Substances Bill (the Bill) “will complement those in the Misuse of Drugs Act 1971 which will remain at the apex of the regulatory framework for the control of harmful substances.”
- 1.2 The ACMD’s proposed definitions are made with this regulatory hierarchy in mind.
- 1.3 The ACMD considers that the focus of the “Psychoactive Substances Bill” should be to prevent the potential harms resulting from the flood of NPS, with no accompanying safety data, into the UK.
- 1.4 The ACMD believe the scope of the Psychoactive Substance Bill needs to be focused on a group of substances, which the Council has referred to as “Novel Psychoactive Substances” (NPS) [*letter to Home Secretary, 2nd July 2015; letter to Home Secretary, July 13th 2015*].

2.0 Recommendations for proposed alternative definitions:

- 2.1 **Recommendation 1:** that the following statement and definitions are incorporated within the Psychoactive Substances Bill:

For the purposes of this Bill the following definitions are used:

- a) psychoactive substance - “Psychoactive substance” means any compound, which is capable of producing a pharmacological response on the central nervous system or which produces a chemical response *in vitro*, identical or pharmacologically similar to substances controlled under the Misuse of Drugs Act 1971.
 - (b) substance - any compound, irrespective of chemical state, produced by synthesis, or metabolites thereof.
 - (c) synthesis - the process of producing a compound by human instigation of at least one chemical reaction.
 - (d) compound - any chemical species that is formed when two or more atoms join together chemically.
- 2.1.1 *Benefits:*
 - o The definition of “substance” includes synthesis. There is no ambiguity of the term “synthetic” as this fits the Oxford English Dictionary definition of synthetic (of a substance):

Synthetic (adjective): (of a substance) made by chemical synthesis, especially to imitate a natural product: e.g. synthetic rubber

- This covers what the ACMD understands to be the intended scope of the legislation, and would cover nitrous oxide and “poppers” (amyl nitrite and congeners), both of which are ‘synthetic’ and psychoactive.

2.1.2 *Risk:*

- This definition would omit the small number of psychoactive natural products.

2.1.3 *Proposed solution to risk:*

- The small number of *problematic* psychoactive natural products could be considered by the ACMD for control under the Misuse of Drugs Act 1971.

2.2 The Home Secretary’s letter to the ACMD (of 11 July 2015) stated that inclusion of the term “novel” was considered to be unworkable. The terms new and novel have been used interchangeably, by act or omission, which has resulted in some confusion. In lieu of this, the ACMD has returned to the scope and intended thrust of the Bill and proposes the following alternative definitions, one or other of which might provide a legally defensible ‘meaning of psychoactive substance’:

i) *“Psychoactive substances which are not prohibited by the United Nations Drug Convention of 1961 and 1971, or by the Misuse of Drugs Act 1971.”*

or

ii) *“Psychoactive substances which are not prohibited by the United Nations Drug Conventions of 1961 and 1971, or by the Misuse of Drugs Act 1971, and which people in the UK are seeking for intoxicant use.”*

or

iii) *“Psychoactive substances which are not prohibited by the United Nations Drug Conventions of 1961 and 1971, or by the Misuse of Drugs Act 1971, but which may pose a public health threat comparable to that posed by substances listed in these conventions.”*

2.2.1 **Recommendation 2:** The ACMD recommends option (iii) above, as this retains the concept of the assessment of harm. This definition is also closest to that used by the Expert Panel (para 3.4 below).

3.0 Background

3.1 Definition of ‘Psychoactive Substance’ in the draft “Psychoactive Substances Bill”

3.1.1 Paragraph 2: *“Meaning of “psychoactive substance” etc.*

(1) In this Act “psychoactive substance” means any substance which -

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

3.1.2 *Benefits:*

- Pre-emptive control, avoiding the delays inherent in reactive regulation.

3.1.3 *Risks:*

- The scope of this definition is unnecessarily broad, with the potential for unintended consequences.
- An impossible list of exemptions will be needed. No matter how carefully a list of “exemptions” is drawn, the possibility that relatively harmless substances may be included is ever present.
- A disproportionate weight to the importance of psychoactive “natural” or “herbal” materials is given in this definition. These materials are relatively few in number by comparison with the hundreds of NPS entering Europe and the UK.
- Psychoactivity cannot be definitively proven.

3.1.4 *Proposed solution to risk:*

- The small number of *problematic* psychoactive natural products could be considered by the ACMD for control under the Misuse of Drugs Act 1971.

3.2 European Definition of NPS

3.2.1 The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) uses the following definition for NPS:

“A new psychoactive substance is defined 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”.

3.2.2 *Benefits:*

- This definition includes the concept of harmfulness, which is also key to the ACMD’s recommended definition.

3.2.3 *Risks:*

- The term “new” is difficult to define.

3.3 ACMD advice on NPS (2011)¹

3.3.1 In 2011, the ACMD's report on Novel Psychoactive Substances (NPS) defined NPS as:

“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.”

3.3.2 This included the major category of substances designed to be similar chemically and/or pharmacologically to known specific controlled drugs. It included substances, which were not new, but for which a novel form of misuse had developed. The definition also included herbal or fungal materials or their extracts.

3.3.3 Since 2010, the ACMD's NPS Committee has recommended many other NPS for control as they have arisen in the UK. For the purposes of control under the Misuse of Drugs Act 1971, the ACMD must provide evidence of the harmfulness, or potential harmfulness, of NPS.

3.4 New Psychoactive Substances Expert Review Panel²

3.4.1 The existing system for the control of NPS involves a constant cycle of advice from ACMD. Delays of 6 - 12 months between identifying an NPS in the UK and its control under the Misuse of Drugs Act 1971 are inevitably incurred in gathering evidence of harm and the requirement for scrutiny by both Houses of Parliament. The introduction of Temporary Class Drug Orders (TCDO) has helped to accelerate this process, and the ACMD has recommended four such Orders since 2010.

3.4.2 In 2013, the then Minister for Crime Prevention, Norman Baker, convened a panel of experts (referred to in this report as “Expert Panel”) to consider changes in drugs policy that might facilitate control of the ever-increasing volume of NPS entering the UK. The EMCDDA provides a regular update and notes the arrival in Europe of more than 100 NPS each year.

3.4.3 The Expert Panel was established to deal with the problem of NPS, as defined above (para 3.2.1.) by the EMCDDA.

3.4.4 The Introduction to the Expert Panel's report, 2014 explained:

“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

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/119139/acmdnps2011.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368583/NPSexpertReviewPanelReport.pdf

pose serious risks to public health and safety and can even be fatal.”

3.4.5 The Expert Panel offered the definition of New Psychoactive Substances (referred to in this report as “NewPS”) as:

‘Psychoactive drugs, newly available in the UK, which are not prohibited by the United Nations Drug Conventions but which may pose a public health threat comparable to that posed by substances listed in these conventions.’

3.4.6 The Expert Panel’s recommendation 2.2 stated:

Recommendation 2.2: A general prohibition on the distribution of NewPS

Taking into account the opportunities and risks of applying the general prohibition on distribution of NPS approach in the UK, the Panel recommends that the Government take forward this approach subject to ensuring that: (i) definitions used in legislation are robust; (ii) required exemptions are addressed (see below); (iii) the approach is focused on tackling the trade or supply rather than personal possession or use; and (iv) potential unintended consequences are explored more fully, building on learning and evidence from countries which have already taken this approach.

In considering the general prohibition on distribution of NewPS approach, the Panel was mindful that the approach would capture a very wide range of current and potential future psychoactive substances and there was potential for unintended consequences. With that in mind, the Panel recommends that the Government puts in place a schedule of exemptions for those substances it wishes to permit when bringing the general prohibition into force (e.g. alcohol, tobacco, caffeine, energy drinks). Furthermore, in designing the legislation the Government should ensure that provision is made for newly emerging substances to secure exemptions (for example, by a power to add new exemptions by statutory instrument) where the risks of health and social harms can be adequately assessed. A regime is already in place for medicines but the Government needs to be mindful of the emergence of new markets.

3.4.7 It is thus clear that in drafting the Bill, the Government included a “total ban on all psychoactive substances” in the definition of scope. The Expert Panel’s recommendation 2.2 talks of a general ban on the distribution of New PS, but then includes a general ban on all psychoactive substances (based on the Irish model).