

ACMD

Advisory Council on the Misuse of Drugs

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Rt. Hon. Theresa May MP
Home Secretary
Home Office
2 Marsham Street
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13 July 2015

Dear Home Secretary,

Re: Psychoactive Substances Bill

Thank you for your letter received this afternoon about the Psychoactive Substances Bill, which addresses some of the Advisory Council on the Misuse of Drugs' (ACMD) recommendations and concerns about the Bill.

I would like to thank you for accepting the Council's recommendation to include a statutory duty to consult the ACMD under the Bill. My letter of 2 July was the Advisory Council's first overarching advice on the Bill and in moving forward we can now cover some issues in more detail.

Novel Psychoactive Substances

I would like to take this opportunity to further clarify what the Council meant by the inclusion of "Novel" in its first recommendation. Neither terms "Novel Psychoactive Substances" nor "Psychoactive Substances" have universally agreed definitions but the Advisory Council can assist the Home Office in the construction of a workable definition which fulfils the intention of the legislation.

The ACMD has used the collective term "Novel Psychoactive Substances" since its first report on this topic in 2011. In that report, the ACMD defined Novel Psychoactive Substances 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".¹ These substances, sometimes known as "legal highs", mimic existing psychoactive drugs but are not prohibited under the Misuse of Drugs Act 1971.

In this way, the ACMD has used the word "novel", not to only mean a newly discovered/synthesised drug designed to evade the Misuse of Drugs Act 1971, but also the new use of an existing drug, which is not covered by the Misuse of Drugs Act 1971, and is being sought for intoxicant use (e.g. ACMD advice on AH-7921).²

Using the term "Novel Psychoactive Substances" would not exclude substances in existence before the enactment of the Bill. The ACMD's definition of Novel Psychoactive Substances also does not feature a concept of timing (such as a first identified or manufactured date).

The Council's view is that if used in isolation, the term "Psychoactive Substances" would have a disproportionately broad scope. Further, the Bill's impact assessment is now inappropriate given that it was constructed as an assessment of the impact of *new psychoactive substances*, rather than *all psychoactive substances* as laid out in the Bill. The ACMD believes that it would be almost impossible to list all possible desirable exemptions under the Bill, as drafted.

Determining Psychoactivity

I would like to re-iterate that psychoactivity in humans cannot be *definitively* established in many cases in a way that would definitely stand up in a court of law where a high threshold of evidence is required. There is currently no way to define psychoactivity through a biochemical test, therefore there is no guarantee of *proving* psychoactivity in a court of law. The only definitive way of determining psychoactivity is via human experience, which is usually not documented.

Nevertheless, the ACMD is happy to help by formulating advice on how to predict that a substance is *likely to be* psychoactive. We have extensive neurochemical data on substances that have recently been the subject of TCDOs or which have been subject to the provisions of the Misuse of Drugs Act 1971 and which can serve as a template. Most new substances appearing on the market appear to mimic the pharmacology of substances that we already know about albeit with chemical structures that are outside current legal controls.


It is clear that the ACMD has only a narrow window of opportunity to make recommendations for amendments. To expedite this, the Council has now established two new Working Groups which will provide advice: (i) to the Centre for Applied Science and Technology (CAST) on its work on technical

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/320476/RecommendationSynthetic_OplateAH-7921.pdf

aspects of the Bill, and (ii) to the Home Office on the societal impact of this legislation. The ACMD invites questions from Home Office and CAST officials, which will enable us to begin formulating this important advice.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Les Iversen'. The signature is written in a cursive style with a large initial 'L'.

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