

ACMD

Advisory Council on the Misuse of Drugs

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Rt. Hon. Theresa May MP

Home Secretary

Home Office

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23 October 2015

Dear Home Secretary,

Re: ACMD's final advice on definitions for Psychoactive Substances Bill

Thank you for meeting with myself and Professor Ray Hill on 21 September 2015. At the meeting we discussed the ACMD's scientific advice on the proposed definition for the Psychoactive Substances Bill (of 17 August 2015). Although ACMD has argued that the Bill should focus on "Novel Psychoactive Substances" (otherwise known as "legal highs") and that there should be reference to harms, you reiterated that it is the Government's intention that the Bill covers all psychoactive substances, including natural psychoactive substances. You explained that the Bill will be supported by and inexorably linked to a separate forensic strategy. In light of this clarification we agreed that it would be helpful to meet again to reconsider the ACMD's view that the definition of 'psychoactive substances' that appears on the draft Bill might be made more legally defensible by being defined in scientific rather than lay terms, and to discuss ACMD input to the forensic strategy .

The meeting between the ACMD Technical Working Group and Home Office policy, legal advisors, and representatives of CAST took place on 7 October 2015. I note below the conclusions from the meeting, including areas of commonality and points on which we were unable to agree, and ACMD's final recommendations concerning the definition of psychoactive substances.

Agreed

- 1. The Working Group supports the need for a detailed forensic strategy and guidance to support the Bill.**

The ACMD stresses that it has significant expertise in areas of science relevant to the implementation and operation of the new legislation, such as pharmacology and neurochemistry. The ACMD's Technical Working Group has provided advice to Home Office CAST when we have met, in particular on *in vitro* testing. We believe this reflects the best available science in this area.

The ACMD's intention is to try to make the Bill easier to apply by providing a definition which is demonstrable by means of *in vitro* testing.

The ACMD is encouraged by the progress CAST has made, which has incorporated ACMD advice to date. This is an area where the ACMD will continue to contribute to ensure the forensic strategy is evidence-based and scientifically robust, and ACMD agreed to continue dialogue with CAST to this end.

2. Comprehensive detail on pharmacology, chemistry or testing methodology is not required on the face of the Bill.

Unable to agree:

The ACMD proposes the following extension, based on the known basic pharmacological activities of existing psychoactive substances, to clause 2:

(2) For the purposes of this Act 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; 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, and references to a substance's psychoactive effects are to be read accordingly and...

["qualitatively identical to" means that the substance interacts with the same target as a known psychoactive drug controlled under the Misuse of Drugs Act 1971.]

The ACMD feel that the current definition on the face of the Bill is too unspecific and does not adequately define a psychoactive substance

To reinforce the legal rigour of the Bill the ACMD further proposes the inclusion of an additional clause:

(4) Examples of classes of substances which come under the provisions of the Bill include, but are not limited to, all stimulants, dissociatives, hallucinogens, substances acting through the endocannabinoid system, the opioid system and the GABAergic system, which are not already covered by the Misuse of Drugs Act 1971.

The ACMD believe these proposed amendments strengthen and importantly focus the current definition by:

- Listing classes of substances, all of which have met the criterion of causing harm, making it very likely that new, related substances will have the same 'capability'.
- Creating a "blanket ban" coverage. This lists examples which are broad enough to immediately capture all of the NPS the ACMD has encountered to date and removes the need for an extensive list of exemptions and its frequent revision.
- Including flexibility for control of future substances.
- Flexing to cover substances the Home Office wishes to control under the Bill such as nitrous oxide and alkyl nitrites.
- Using the Misuse of Drugs Act 1971 as a comparable marker, as it references modes of action already known and is flexible enough to also cover any new modes of action.
- Adding an inclusion list should make the exemptions list more manageable.

Recommendations

- The Home Office to provide the ACMD with an opportunity to review the draft of the forensic strategy and supporting guidance prior to the implementation of the new legislation.
- The Home Office to consider the modification of clause (2) and the addition of proposed clause (4) to strengthen the definition and to make the definition more specific.
- In the event that the amendments being proposed by the ACMD are not agreed, we recommend that the text is added as a permanent feature of the supporting guidance and forensic strategy associated with the Psychoactive Substances Act. It should be explicitly stated that the text was developed in consultation with the ACMD and that it would not be varied without further ACMD advice.
- ACMD to continue to provide independent scrutiny and challenge to ensure that the forensic strategy is founded on and supported by a robust evidence-base.

Yours sincerely,



**Professor Les Iversen
(Chair of 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