

# **WORKING PROTOCOL**

## **between the Home Secretary and the Advisory Council on the Misuse of Drugs**

### **Background and scope**

High quality advice in the complex field of drugs and their misuse is of the utmost importance to an evidence-based approach to policy making. For this reason, the Government values the work and independent advice of the Advisory Council on the Misuse of Drugs (ACMD).

This working protocol looks to support the respective roles and responsibilities of the Government and the ACMD. It provides a framework under which the Government and the ACMD will continue to engage through the provision and receipt of advice on matters relating to drug misuse as well as associated matters.

The working protocol supports the ACMD in discharging its duty under the Misuse of Drugs Act 1971 (the “1971 Act”) both to provide advice on matters referred to it by Ministers, and also to consider drug misuse issues of its own volition.

The working protocol provides a point of reference for those areas of expertise most likely to be relevant to the ACMD. It also outlines the process by which the Government and the ACMD will work under the power that enables the Home Secretary to place a drug under temporary control under the 1971 Act.

The Home Secretary has entered into this protocol with the ACMD, as the Secretary of State who sponsors the ACMD as an advisory non departmental public body and discharges the responsibility for making appointments to the body. Whilst the Home Secretary (together with the Home Office Minister responsible for drug policy, jointly referred to as ‘Ministers’) also has responsibility for maintaining an effective statutory framework under the 1971 Act and the co-ordination of the government’s drug strategy, advice requested by Ministers and/or provided by the ACMD of its volition will often cover other government departments’ area of responsibility or interests.

This document will be reviewed as appropriate.

### **Engagement**

The key principles set out below intend to support effective engagement between the ACMD and the Government.

1. The ACMD and Ministers are committed to ensuring that the best evidence-based advice is available to Government on drug misuse, working together with the common purpose of reducing drug-related harms in the UK. In doing so, Ministers acknowledge the independence of the ACMD and its statutory duties as detailed in the 1971 Act.

2. In discharging their respective responsibilities:

- (i) The ACMD and its members will continue to work under the Code of Practice for Scientific Advisory Committees<sup>1</sup>, incorporating the Seven Principles of Public Life (the Nolan Principles) and the ACMD's own Code of Practice. In particular, the ACMD Chair and its members will act in the public interest and observe the highest standards of public office – including impartiality, integrity and objectivity whilst being accountable through Ministers to Parliament and the public; and,
- (ii) Ministers will continue to work under the Guidelines on Scientific Analysis in Policy Making<sup>2</sup> and the Ministerial Code<sup>3</sup>. The Ministerial Code, updated in May 2010, states that Ministers “should have regard to the *Principles of Scientific Advice to Government*”.

3. In continuing to provide its advice on the available evidence to Ministers:

- (i) The ACMD will work with best endeavours to the Government's priorities for the ACMD that will be communicated by Ministers, in writing at appropriate intervals (following consultation with other relevant government departments, in particular the Department of Health), as well as specific ‘in year’ requests for advice including any such requests relating to the temporary class drug orders. The ACMD will also consider and take forward work it considers appropriate within available resources.
- (ii) The ACMD will be guided by the relative priority given by Ministers to each of the specific commissioned areas of work to inform a 3 year programme of work, taking into account work that it may wish to undertake of its own volition in this period.
- (iii) The ACMD will inform Ministers how it intends to take forward the commissioned work and will set out putative timelines. With due regard to the ACMD's statutory duty to consider any matter referred to it by Ministers<sup>4</sup>, and matters of its own volition, in the event that the ACMD foresees or encounters difficulties in providing advice or prioritising that advice in the manner requested by the Ministers, the Chair of the ACMD will discuss the ACMD's reasons with Ministers.
- (iv) The ACMD will publish its advice concurrent with its presentation to Ministers, unless there are pressing public or health protection reasons, or other reasons, for not doing so. (Such reasons might include, for example, issues of national security, prevention of crime or protection of the rights of others, as well as for the protection of health or morals; this is a non-exhaustive list.)

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<sup>1</sup><http://www.bis.gov.uk/assets/bispartners/goscience/docs/c/cop-scientific-advisory-committees.pdf>

<sup>2</sup><http://webarchive.nationalarchives.gov.uk/tna/+http://www.dti.gov.uk/files/file9767.pdf/>

<sup>3</sup><http://www.cabinetoffice.gov.uk/sites/default/files/resources/ministerial-code-may-2010.pdf>. The Ministerial Code, updated in May 2010, states that Ministers “should have regard to the *Principles of Scientific Advice to Government*”

<sup>4</sup> Section 1(3) Misuse of Drugs Act 1971

- (v) The Chair of the ACMD will report to Ministers on progress against each of the priorities on an annual basis when they meet. It is expected that the ACMD's annual report will reflect the ACMD's on-going commitments and priorities as above.
  - (vi) It shall be the duty of the ACMD Chair to bring to the attention of Ministers any substantive matter pertaining to drugs policy, considered by him/her or the ACMD, before making public statements thereof; this is exclusive of those matters under formal consideration by the ACMD, whether requested by the Government or of its own volition, where there is an expected publication procedure.
4. In commissioning work of the ACMD, Ministers will take account of the ACMD's current work programme, including any work that it is undertaking of its own volition. In continuing to give careful consideration to all of the ACMD's advice:
- (i) Ministers will not pre-judge the ACMD's advice in advance of receiving advice;
  - (ii) The Home Office Minister responsible for drug policy should meet with the ACMD Chair on a regular scheduled basis. The Home Secretary should also meet with the full Council or Chair annually. The ACMD Chair may meet with Ministers in other government departments and/or invite them to meet with the full Council;
  - (iii) Before issuing a response, Ministers will give appropriate consideration to the ACMD's advice;
  - (iv) If Ministers are minded not to accept the ACMD's advice, they will, before making a final decision, discuss with the Chair of the ACMD, or nominated representative;
  - (v) If key recommendations are not to be accepted, Ministers will write to the ACMD setting out the reasons for rejection in advance of any public comment by the Home Office on the matter;
  - (vi) Ministers will look to provide a decision on all ACMD recommendations, and to publish a response within 3 months of receipt. This timeframe may need to be adjusted depending on the nature of the advice and the need to consult with other government departments to provide a Government response. If a response is unlikely to be published within 3 months, the ACMD will be informed of the reasons and a prospective date given; and,
  - (vii) The Home Office will continue to provide the ACMD with resource concerning professional government information services, including press office media handling, advice and support. The provision of services will preserve the independence of the ACMD – for example, where Press Officers are allocated to the ACMD for this purpose, operational direction will only be given by the ACMD Chair or their nominated representative (which may include the Secretary to the ACMD acting on behalf of the Chair).

## Expertise and the membership

The ACMD continues to need to draw on a diverse range of expertise, from within its membership – both scientific and expert ‘practitioner’ based - in order to fulfil its duties under section 1(2) of the 1971 Act – duty is to provide advice on measures for preventing harms and social problems arising from drug misuse, including advice on the control of drugs (whether for permanent or temporary control under the 1971 Act).

The relevant areas of expertise will vary according to issues under consideration at any point in time. The list below sets out what these are likely to include. This is not, nor is it intended to be, an exclusive or exhaustive list of likely relevant areas of expertise, but will be given due regard when the Home Secretary makes appointments to the ACMD.

The ACMD should inform the Home Office of desired expertise based upon fulfilling Ministers’ and its own work objectives. The Home Office will seek the views of the ACMD to inform any recruitment campaign for ACMD members before any recruitment process is undertaken. The Home Office Chief Scientific Adviser will advise the Home Secretary on the balance of membership requirements appropriate to the available resource and the need for effective functioning.

For recruitment panels for new members (excluding the Chair), the ACMD Chair, or nominated representative chosen from among the membership of the ACMD, should sit on the panel. The panel, which will also include representatives from the Office of the Commissioner for Public Appointments and from the Home Office, will make recommendations to the Home Secretary. The appointment panel makes recommendations, but the final decision on appointments remains with the Home Secretary under the terms of the 1971 Act. The Code of Practice for Ministerial Appointments to Public Bodies, including the Seven Principles of Public Life, applies to all appointments to the ACMD.

Whilst it is anticipated that most of the expertise that the ACMD requires will be available from within its membership, it remains the understanding between the ACMD and the Government, that the ACMD is always able to consult, or co-opt, outside experts if for any reason it needs to draw on expertise not covered by current Council members. This approach was commended by the House of Commons Science and Technology Committee in its 2006 Report<sup>5</sup>. When advising Government, it will make clear to the Home Secretary (and the public), the names of outside experts that have contributed to the evidence base. However, recommendations and final advice remain the responsibility of a quorum of ACMD members – decisions on such would not be relinquished to outside experts.

The relevant areas of expertise are likely to include:

- Chemistry: such as, synthetic chemistry, natural product chemistry, toxicology, and forensic analysis of psychoactive substances.
- Education and information: such as, the provision of education, advice and the communication of drug harms, in particular to young people.
- Enforcement: such as, the criminal aspects of drug misuse, the illegal drugs trade, policing and borders issues including serious organised crime and anti-social behaviour.
- Law: such as, criminal law and drug law.

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<sup>5</sup> <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmsctech/1031/1031.pdf>

- Medicine and related disciplines: such as primary care, acute medicine, clinical toxicology, dentistry, veterinary medicine, and public health.
- Pharmacology: such as, aspects relating to psychoactive drugs, the underlying causes of addiction, and the pharmaceutical industry.
- Pharmacy and those areas of expertise that involve the legitimate use and handling of controlled drugs for patient care.
- Social sciences: such as, aspects relevant to understanding of current patterns of psychoactive drug misuse, criminology, psychology, epidemiology, and social statistics.
- Treatment of addiction and other drug related issues: such as in secure settings, treatment for young people, public, voluntary and private sectors.

It is anticipated that the ACMD membership will be drawn predominantly from those with expertise as listed above. The list of likely relevant expertise will be kept under periodic review by the ACMD and the Government, acting in concert.

### **Consultation and advice for invoking temporary class drug orders**

The Government's preferred approach to drug control under the 1971 Act remains that originally contemplated by the Act – namely a full assessment of the harms of a drug by the ACMD, including harm to the users and related societal harm, with advice from the ACMD considered before a drug is brought under 'permanent' control by Parliament. However, as part of the Government's response to protecting the public from the harms posed by emerging new psychoactive substances and the need to take a faster legislative response, with the purpose of preventing harm (and enabling the police and other law enforcement agencies to take action), the new power in the 1971 Act enables the Home Secretary, with the agreement of Parliament, to subject a drug (or drugs) to a temporary class drug order for a 12 month period.

#### Statutory requirements

Pursuant to section 2A of the 1971 Act the Secretary of State is required to consult the Advisory Council or to receive a recommendation from the Advisory Council before laying a temporary class drug order. It is important to note that the ACMD may provide advice of its volition for the purposes of a temporary class drug order. In circumstances where Ministers consult the ACMD under section 2A of the 1971 Act, the duty of the Advisory Council is to give the Secretary of State advice as to whether a temporary class drug order should be made. It can also provide any other recommendation commensurate with its wider duties.

The Secretary of State may make a temporary class drug order only if it appears that the drug is one that is being, or is likely to be, misused, and that misuse is having, or is capable of having, harmful effects. A recommendation to the Secretary of State by the Advisory Council may be made only if it appears to the Council that the drug is one that is being, or is likely to be, misused, and that misuse is having, or is capable of having harmful effects.

If it appears to the Secretary of State that the misuse or likelihood of its misuse "poses an urgent and significant threat to public safety or health", consultation with the Chair of the Advisory Council, or a member delegated the function of responding to consultation in these circumstances, will suffice.

## Process

1. As with drugs that come under consideration for permanent control, concern and a level of evidence sufficient to justify this consideration can come from a number of sources. The process, as set out below, should be considered indicative and reflect an on-going commitment by the ACMD and Government through which engagement with the ACMD will be conducted.
2. Advice to inform a decision in invoking a Temporary Class Drug Order
  - (i) When a substance of concern is brought to the Home Office's attention, by the ACMD or through other routes, the ACMD and the Home Office will first consider whether the compound is already controlled, then whether further investigation is needed or whether to proceed as indicated in the following paragraphs.
  - (ii) Subject to obtaining a level of forensic confirmation that positively identifies a substance or product considered to be a new and emerging substance that is not controlled (as a Class A, Class B or Class C drug) by the 1971 Act, Ministers will consult with the ACMD Chair to agree a timeframe within which the ACMD will seek to provide advice to inform the government's decision whether to invoke a temporary class drug order.
  - (iii) The timeline will seek to balance the Government's responsibilities to protect the public from drug harms with the need to gather the available evidence and for the ACMD to have appropriate time to provide best advice on that evidence - ordinarily not longer than 20 working days. The ACMD will use its best endeavours to provide advice within the shortest time frame possible, given the specific nature of the substance in question. In the event that the ACMD believes at a further point they need more time, the ACMD Chair will discuss this with the Home Secretary or Minister responsible for drug policy in the Home Office.
  - (iv) After (i) – (iii), and agreeing a timeline with the ACMD Chair, unless there are justifiable reasons, this referral will be made public and the letter published by the Home Office.
  - (v) Officials from the relevant government departments will endeavour to make available to the ACMD all evidence pertaining to the substance under consideration at the earliest opportunity. To help inform the ACMD's consideration of legitimate use and the Home Secretary's decision, Home Office officials will seek parallel advice from the Department for Business, Innovation and Skills to identify any legitimate commercial or industrial use and the Department of Health to identify any legitimate medicinal use, of the substance under consideration.
  - (vi) At the end of the agreed time period the ACMD shall produce a written report. The report may:
    - (a) Make a recommendation to the Secretary of State that a

temporary class drug order (including, as appropriate, a recommendation for scheduling purposes under the Misuse of Drugs Regulations 2001 (as amended)) should be made only if it appears to the Council that-

- (i) the substance or product is a drug that is being, or is likely to be misused, and
  - (ii) that misuse is having, or is capable of having, harmful effects.
- (b) Make a recommendation to the Secretary of State in relation to any provision of a kind that could be made in regulations under the 1971 Act if the substance or product were a Class A drug, a Class B drug or a Class C drug;
- (c) Any other recommendation commensurate with its wider duties of the ACMD under section 1(2) of the Misuse of Drugs Act 1971; or,
- (d) Provide an assessment of the drug against the condition set out at (vii) (a) above, a reason why the ACMD are not satisfied that these conditions have been met at that time, an indication of any additional period of time required to provide a conclusion or recommendation and the required research to be undertaken to facilitate the production of a full report.
- (vii) On receipt of advice, the foregoing commitments under the section entitled Engagement, specifically those at paragraph 4 (iii) and (iv) will be adhered to, though will likely be discharged in a timeframe commensurate with the purpose for which the advice has been requested and/or given. The ACMD will publish its advice pursuant to paragraph 3 (iv) of the Engagement section, taking also into account whether the government has put any referral for advice from the ACMD into the public domain.

### 3. Advice to inform a decision in relation to permanent control

- (i) In circumstances where a temporary class drug order is laid by the Home Secretary, the Home Secretary will make a formal referral to the ACMD to undertake with immediate effect, a full assessment pursuant to its duty under section 1(2) of the 1971 Act. The ACMD Chair and Ministers will agree a further timeline which should be aimed to be commensurate with enabling the Home Secretary to make a decision and, should it be considered appropriate, lay a draft Order before Parliament to make a recommendation (for permanent and “full control”) under section 2(5) of the 1971 Act (via the affirmative resolution procedure within 12 months of the temporary class drug order coming into effect). The ACMD will endeavour to provide its advice on permanent and “full control” within sufficient time to enable an Order in Council to be introduced (should it be considered appropriate) for Parliament’s consideration.
- (ii) In order to meet its obligations under the 1971 Act, the ACMD may provide additional advice and make recommendations on other measures for preventing harms and social problems arising from the use of the substance or

compound subject to a temporary class drug order. The ACMD will endeavour, if appropriate, to include any additional advice or recommendations at the same time as its advice on the issue of permanent and “full control”, but may provide such advice separately at a later date.

- (iii) For the purposes of full advice, it is envisaged that the ACMD would discuss research requirements at the earliest opportunity to help inform its full assessment on permanent control, and other matters to prevent harms and social problems. The Home Secretary or Minister responsible for drug policy will give due and proper consideration to any reasonable requests, in terms of both cost and time. A decision will then be made in consultation with other government departments, in line with their policy area responsibilities. Specific requests for research to inform the advice may include chemical and pharmacological analysis to assess the identity, effects and harms of the drug, for example, in terms of psychoactive or addictive capabilities. In addition, research may be required concerning assessment of the prevalence of use of the drug.
- (iv) Although the ACMD itself will not have control over the budget for such research, it may make recommendations of research requirements.

### **Agreement**

This working protocol was agreed between the Home Secretary and the Chair of the ACMD, on behalf of the ACMD, on 14 November 2011 and is to be placed in House Libraries.