

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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2 July 2015

Dear Home Secretary,

Re: Psychoactive Substances Bill

Thank you for your letter of 26 May 2015 titled 'New Psychoactive Substances'. The Advisory Council on the Misuse of Drugs (ACMD) have now met with Home Office officials, who discussed the clauses in the Psychoactive Substances Bill in detail.

The ACMD would firstly like to stress that it is supportive of a move to reduce and prevent harms and preventable deaths caused by Novel Psychoactive Substances to young people, adults, families and societies. The ACMD uses the term "Novel Psychoactive Substances", commonly referred to as "legal highs", as synthetic chemicals not currently controlled by any UK legislation. The ACMD has considerable expertise on Novel Psychoactive Substances and currently identifies and assesses substances which are or have the potential to cause harms, and makes recommendations to Government for control under the Misuse of Drugs Act 1971.

The ACMD welcomed and supports the recommendations of the New Psychoactive Substances Review Expert Panel (hereafter referred to as "Expert Panel").¹ The Expert Panel recommended a general prohibition on the distribution of New Psychoactive Substances (Annex A). The Bill is intended to control the supply, importation and production of harmful novel psychoactive substances into the UK.

¹ <https://www.gov.uk/government/publications/new-psychoactive-substances-review-report-of-the-expert-panel>

We also note that the Conservative Party's manifesto stated:

"We will create a blanket ban on all new psychoactive substances, protecting young people from exposure to so-called 'legal highs.'"

There are positive aspects of the Bill, which the ACMD supports. The Bill is a pro-active approach to control Novel Psychoactive Substances. The Bill differs from the current approach of reactive assessments under the Misuse of Drugs Act 1971. It attempts to avoid the delays inherent in the current system. The Bill also does not have possession as a criminal offence.

The ACMD also wishes to present its concerns that the Bill, as drafted, may not achieve its aims and may produce serious unintended consequences:

1. The omission of the word "novel" has widened the scope of the Bill beyond that originally intended.

The ACMD would support a "blanket ban" on Novel Psychoactive Substances, but cautions against a blanket ban on *all psychoactive substances*. It is almost impossible to list all possible desirable exemptions under the Bill. As drafted, the Bill may now include substances that are benign or even helpful to people including evidence-based herbal remedies that are not included on the current exemption list.

2. The psychoactivity of a substance cannot be unequivocally proven

The only definitive way of determining psychoactivity is via human experience, which is usually not documented. However, most psychoactive drugs share similar mechanisms of action. The ability of a Novel Psychoactive Substance to target one or other of these mechanisms can be determined by *in vitro* neurochemical tests, however, such proxy measures may not stand up in a court of law.

3. The Bill uncouples the concept of harm from control of supply, importation and production

The Expert Panel recommended the inclusion of the concept of harm and a 'safety clause' whereby substances of low or no harm would be excluded from such a Bill. The Misuse of Drugs Act 1971 is framed to prevent harms from illicit drugs. Without the inclusion of the words 'harmful' or 'potentially harmful', the ACMD can envisage situations whereby the supplier of benign or beneficial substances could be prosecuted under the Bill.

4. The Bill could seriously inhibit medical and scientific research on psychoactive substances.

Although an exemption is mentioned for psychoactive substances in clinical trials, no mention of exemption is made of laboratory research in academia or industry.

5. The Bill has the potential to both criminalise and apply disproportionate penalties to many otherwise law abiding young people and adults.

An example is a young person being prosecuted for 'supply and importation' in a case of 'social supply' where a young adult has bought small quantities of Novel Psychoactive Substances on-line on behalf of a group of friends who have 'clubbed together'. The ACMD believes that criminal justice sanctions would be disproportionate to the harm caused by such acts. The inclusion of social supply in the Bill also has the potential to result in discriminatory impact on members of black and minority ethnic groups, given what is known about the over-representation of members of these groups at each stage of the criminal justice response to drug offences.²

6. The Bill is likely to lead to the closure of many 'headshops', the reduction of the direct sale of Novel Psychoactive Substances to children, and the 'normalisation' of sale of these substances in shops. However, the evidence-base for individual supply reduction interventions on a market is poor and the evidence that there is indicates that disrupting a supply market often leads to displacement of that market.^{3,4}

The ACMD is concerned that 'closing head shops' will result in market displacement to illegal dealing networks and Internet sales, as recognised by the Expert Panel and as has been seen with previously banned NPS.⁵ Evidence suggests that where supply disruption activities are successful in a locality, best practice indicates that targeted 'demand reduction' information, education, brief interventions and treatment may be required to prevent users simply switching to other potentially more harmful substances or incurring problems due to a rapid cessation of use.⁶ This situation could be compounded by the lack of targeted interventions in place for Novel Psychoactive Substance users, particularly in some population groups.¹

7. 'Directors' of many premises and venues may be liable to prosecution for 'supplying and/or importing' Novel Psychoactive Substances

Many of these Novel Psychoactive Substances may be undetectable by supply reduction methods, such as drug dogs and urine tests. This may

² Stevens, A. (2011). *Drugs, Crime and Public Health: The Political Economy of Drug Policy*. Abingdon: Routledge.

³ Babor, T., Caulkins, J., Edwards, G., Fischer, B., Foxcroft, D., Humphreys, K. et al (2010). *Drug Policy and the Public Good*. Oxford: Oxford University Press.

⁴ Costa, A. M. (2008). *Making drug control "fit for purpose": Building on the UNGASS decade. Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly*. Vienna: United Nations Office on Drugs and Crime.

⁵ McElrath, K. & O'Neill, C. (2011). Experiences with mephedrone pre- and post-legislative controls: perceptions of safety and sources of supply. *International Journal on Drug Policy*, 22(2), 120–7.

⁶ Turnbull, P.J. & Hough, M. (2008) *Tackling Drug Markets and Distribution Networks in the UK*, London: UK Drug Policy Commission

include residential units, hostels, prisons, pubs, clubs, festivals and venues essential to the social and night-time economies.

8. The Bill would have a substantial impact on the sale of many herbal medicines

The current exclusion clause applies to a very small number of products which have completed a registration process as 'Registered traditional medicines'. Under the Bill, a large number of currently legal products would need to become registered or sellers could face legal sanction. Purchasing a benign, possibly evidence-based herbal product from a website outside the UK would appear to attract a seven year prison tariff.

Next steps

The ACMD would like to help the Government in refining the Bill by making recommendations, to ensure the Bill is framed using evidence; is enforceable and proportionate; achieves its aims; and minimises the potential for unintended consequences.

The ACMD is willing to suggest detailed amendments:

- helping establish inclusion and exclusion lists of substances,
- establishing a workstream on the minimisation of potential unintended consequences of the Bill,
- helping develop and implementation strategy including information, education, treatment and harm reduction services which may be required for users of Novel Psychoactive Substances.

The ACMD have received reassurance from the Home Office that the Bill will be subsidiary to the Misuse of Drugs Act 1971. The ACMD advises that the Bill should be amended to clarify its relationship with the Misuse of Drugs Act 1971 and the ACMD. In keeping with our role in the Misuse of Drugs Act, there should be a statutory duty to consult ACMD written into the Bill.

Recommendations

The Home Office to amend the Bill to cover *Novel* Psychoactive Substances, with a tight definition of *Novel*. ACMD are willing to offer to assist in clarifying this definition.

The Home Office to redraft Clause 5 of the Bill to exclude social supply in order that the Bill targets commercial suppliers rather than users of Novel Psychoactive Substances.

The Home Office should allocate sufficient resources for thorough, independent evaluation of the impacts of the Bill.

The Government to ensure adequate resources are in place to support education, prevention, acute health interventions, treatment and harm reduction services to prevent and to gather evidence of Novel Psychoactive Substance-related harms.

The Government to consider implementing supply reduction strategies including Internet and postal supply and importation disruption, together with coordinated demand reduction interventions in a locality. The ACMD recommends that isolated supply reduction interventions are discouraged.

The Home Office, with the advice from ACMD, to continue capability developments in the area of chemical standards, analytical capability, toxicosurveillance of acute toxicity/harm and forensic detection of compounds. In addition, for the Home Office to develop a system for the biochemical and pharmacological profiling of new compounds.

The Home Office to amend the Bill to state that there is a statutory duty to consult the ACMD, in keeping with our role in the Misuse of Drugs Act.

We would welcome an opportunity to discuss these recommendations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Les Iversen', written in a cursive style.

**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

Annex A – Recommendation of the Expert Panel, where New Psychoactive Substances are referred to as NPS

“Recommendation 2.2: A general prohibition on the distribution of NPS

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 NPS 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 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.”