



Professor Les Iversen  
Chair, Advisory Council on the Misuse of Drugs  
3<sup>rd</sup> Floor (SW)  
Seacole Building  
2 Marsham Street  
London  
SW1P 4DF

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Dear Professor Iversen,

In February 2011, I wrote to the Advisory Council requesting thematic advice on how we can respond better to the threat to the UK from new psychoactive substances (NPS). I was pleased to receive its insightful and thorough report - *“Consideration of the Novel Psychoactive Substances (“Legal Highs”)”* in October last year on behalf of the Government.

Today, informed by your recommendations, the Government has published its New Psychoactive Substances Action Plan as an annex to our Drug Strategy Annual Review. The Action Plan sets out our ambition and makes clear our determination to take effective action against NPS. This letter should be read together with the Action Plan by way of providing the Government’s response to the ACMD’s report.

As the Council advises in its covering letter to the report, tackling the issues that arise from NPS requires a strategic and co-operative approach from us all. This includes those departments and agencies that have existing drug policy responsibilities and extends a role to others, such as the Department of Business, Innovation and Skills. My officials have consulted these departments in developing our response. In delivering our commitments, we will co-ordinate our efforts across Government and all local partners including law enforcement agencies, the voluntary and community sector, and the health sector.

In my letter to the ACMD last month setting out the Government’s priorities for inclusion in the ACMD’s 2012/13 work programme, I stated that NPS should remain a priority area for the ACMD. In taking forward the Government’s Action Plan there

will be opportunities for the Council to offer further advice and contribute to our commitments.

### Understanding the threat from NPS

First and foremost, we must improve our understanding of the extent to which NPS is causing a diversification and/or expansion of the current UK drug market. With the Serious Organised Crime Agency we are assessing the scale and nature of the threat to the UK from NPS, including the involvement of organised crime groups.

### International action

As the ACMD recognises, NPS, like the harmful drugs that have come before them, are a global issue and one to which the international community needs to respond.

At the UN Commission on Narcotic Drugs in March, the UK (with Australia and Japan) led and secured the adoption of a UN resolution to encourage the international community to tackle the threat from NPS, improving monitoring, research, analysis and forensic capability and sharing this information with each other. This resolution is the first step in drawing wider international attention to the issue, from both producer and consumer countries, and beginning a dialogue on how best to counter the threat it poses. Ministers and officials will now follow this up with bilateral discussions with countries of interest. There will be a progress report on the resolution at the next session of the Commission on Narcotic Drugs in March 2013. At EU level, NPS remain a priority for Member States as we consider the Commission's proposals for revision to the 2005 Council Decision on the information exchange, risk-assessment and control of new psychoactive substances.

Several of the ACMD's recommendations focussed on restricting supply and the legislative framework. With the pace with which we are seeing new substances becoming available in the UK and, in addition to the more traditional routes of supply, with the internet playing a critical role by increasing the ways in which it is possible to buy NPS, the challenges to the Government, law enforcement and the forensic community are considerable.

### Forensic capability

The ACMD referred to the need for continued capability in the forensic arena. The Home Office's national Forensic Early Warning System (FEWS) continues to deliver here. It has provided co-ordinated activity across a number of UK forensic providers, enhancing our ability to detect proactively the availability of NPS in the UK in real time. It will continue to provide forensic chemical standards for NPS already controlled under the Misuse of Drugs Act 1971 as well as for a number of NPS that are not currently controlled which we have seen in the UK. The Home Office has committed funding for FEWS until April 2014. We will also work closely with the UN Office of Drugs and Crime (UNODC) Laboratory and Scientific Section to explore options for collaboration at an international level, between FEWS and the UNODC Global Synthetics Monitoring: Analyses, Reporting and Trends (SMART) Programme, including options for sharing forensic chemical reference standards.

## Legislative and enforcement approach

The Action Plan commits us to keep the effectiveness and impact of the legal framework in relation to NPS under review.

The use of generic definitions in the Misuse of Drugs Act 1971, provided by the ACMD, has helped us to have a good degree of durability in our legislative approach. Indeed, this approach has been recognised worldwide. Nonetheless these definitions need to be maintained. Further to the ACMD's recommendation to expedite the legislative process where minor amendments to existing drug control generic definitions are used in the Misuse of Drugs Act 1971, we should look together for an improved coupling of the advisory process with a fast tracked legislative one under the existing provisions of the 1971 Act.

The ACMD recommended that we explore analogue legislation to respond to NPS. We have undertaken some early work on this option. We need to fully understand the likely effect of analogue legislation on restricting the supply of NPS in the UK. We will look further at the evidence on how analogue legislation has been used in other countries and importantly, whether it has restricted availability.

The ACMD also recommended the full use of existing consumer protection and medicines legislation. The Medicines and Healthcare products Regulatory Agency (MHRA) will undertake regulatory action under Medicines Legislation where NPS are found in products that fall within the definition of a 'medicinal product'. We will also encourage enforcement activity by trading standards wherever offences under the Consumer Protection from Unfair Trading Regulations 2008 and General Product Safety Regulations 2005 are suspected.

Mindful that much current UK consumer protection legislation implements Directives that are harmonised across the EU and which were not intended to deal with substances of misuse, the scope to use consumer legislation to deal with NPS is limited. We will, however, consider whether and how consumer type legislation should have a greater role in dealing with NPS. I wish to be clear that the licensed or facilitated sale of non-controlled NPS - whether with known, inferred or unknown harms - would be unacceptable and will not be countenanced.

The ACMD recommended that the burden of proof should be placed upon the supplier to establish beyond reasonable doubt that the product being sold is not for human consumption and is safe for its intended use. I agree with the sentiment of the ACMD's recommendation. We, of course, work to the approach that products available to the general public should be safe for their intended purpose. Such a move as the ACMD recommended in context of medicines would be a significant and problematic change in focus as current case law clearly places the burden of proof on the regulator. We will however explore options to utilise wider consumer protection and hazardous substances legislation, again looking for evidence on what works in other countries, including the likely effect on the availability of NPS. We will also look for opportunities across Government to encourage considerations at an EU level.

The ACMD recommended that the Advertising Standards Authority should investigate claims made by websites selling NPS and that there should be an official notification process by which suppliers of NPS are warned that the substances they sell *may* contain controlled substances.

We have already acted on the 2011 analysis of internet test purchases under the FEWS programme which confirmed that 19% of all samples advertised for sale as NPS contained drugs already controlled under the 1971 Act. A referral mechanism has been put in place to ensure that appropriate enforcement action is taken in cases where an offence has been committed. Through greater collaboration with industry partners, SOCA has closed down over 120 UK- based websites that continued to advertise controlled NPS for sale after they were controlled under the 1971 Act. We are building on this positive record to promote awareness amongst businesses of the risks of selling NPS over the internet and in 'head shops'. We have worked with ACPO to develop comprehensive guidance on NPS for the police, which includes support materials that the police can issue to 'head shops' warning them of the risks of selling NPS. We face a more significant challenge in dealing with websites marketing NPS from outside the UK or EU. This again underscores the need for international collaboration.

### Reducing demand

On the demand side, the ACMD recommended that demand reduction strategies should be developed including education, prevention and treatment interventions. The report also highlights the need to ensure that NPS are considered in the wider demand reduction initiatives already outlined in the 2010 Drug Strategy. The Government's approach to reducing demand for *all* drugs, especially with regards to young people, is not only to provide the necessary information on the harms but also to support the development of the skills needed to resist involvement in risky behaviours, such as drug taking.

Schools have a clear role to play in preventing drug and alcohol misuse. The initial consultation phase of the review of Personal, Social, Health and Economic education in schools has now been completed. The review aims to identify the core content of PSHE, the outcomes PSHE should achieve, how quality of teaching can be improved and effective ways of disseminating good practice between schools.

The Department for Education's (DfE) new Centre for the Analysis of Youth Transitions will develop a data bank of quality-assured studies that robustly assess the impact of youth services on outcomes for young people, including substance misuse programmes. It will be made available to a range of stakeholders, including those charged with providing or commissioning youth services.

The DfE and the Association of Chief Police Officers have jointly issued revised Drug Advice for Schools (including NPS) to help them prepare for and deal with drug issues on their premises.

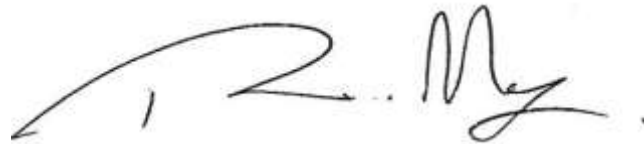
In addition to this overall approach, we are committed to widely publicising information on the significant harms of NPS, through FRANK and other channels, as well as working with our partners to further develop our understanding of specific

groups of users so we can target them directly. We would welcome investment by commissioners and health research bodies which supports the need to share current practice, evaluate new treatment interventions and research “what works” in treating NPS dependence.

### Research

The ACMD recommended that resources are provided for research on the chemistry, pharmacology, acute harm and social harms of NPS. We have already made progress. The Department of Health has committed £200,000 per annum over the current Spending Review period to fund specific cross-government priorities for research on NPS. In respect of the recommendation for Government to encourage the Research Councils to fund research in this area the Home Office’s Chief Scientific Adviser, Professor Silverman will take this forward with the CSA at the Department of Business, Innovation and Skills.

I thank again the Advisory Council for its report and re-iterate that, as we take forward our commitment to tackle NPS, the Council’s further contributions in this priority area will continue to be valuable.

A handwritten signature in black ink, appearing to read 'T. May', with a large, sweeping flourish at the beginning.

**The Rt Hon Theresa May MP**

## ACMD's NPS recommendations

### International

1. The UK should be pro-active in developing EU and international networks to address the issue of NPS.
2. Further, steps should be taken at EU level to encourage source countries to halt the manufacture of such substances.

### Legislation

3. For the Government to consider how to expedite the process of updating the Misuse of Drugs Act 1971 where more minor amendments to generic definitions are required.
4. Explore the possibility of new legislation similar to the Analogue Act (1986) used in the USA and similar laws in other countries, in conjunction with generic definitions of chemical scope.
5. The powers available to the MHRA in the European Pharmaceutical Directive (Medicines Act 1968) should be fully utilised to prosecute the sale of NPS. The burden of proof should be placed upon the supplier to establish beyond reasonable doubt that the product being sold is not for human consumption and is safe for its intended use.
6. The powers available in the Consumer Protection from Unfair Trading Regulations (2008) (CPRs) and General Product Safety Regulations (2005) (GPSRs) should be fully utilised to control the trade in NPS. If the Regulations are considered lacking in this respect, then thought should be given to amendments so that the legislation can be brought to bear.

### Enforcement

7. Request the Advertising Standards Authority (ASA) to investigate claims made by NPS websites.
8. That a national system be implemented (by Trading or Local Authority Licensing) whereby all suppliers and potential suppliers of novel psychoactive substances are warned (by way of an official notice) that substances they sell **may** contain controlled substances. This will then put the onus on them as suppliers to ensure none of their products contain controlled substances.

### Forensic

9. The application of the Act would be aided by continued capability developments in the area of chemical standards, analytical capability and forensic detection of compounds.

### Demand

10. Continue to strengthen public awareness and education of the dangers of using NPS.
11. That there should be investment by commissioners and health research bodies to enable them to collectively build evidence-based practice and disseminate this.
12. The ACMD recommends that demand reduction strategies should be developed including education, prevention and treatment interventions.

### Research

13. Provide resources for research (on the chemistry, pharmacology, acute harm and social harms of NPS) and encourage all research councils to put out calls in these areas.