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Dear Professor Iversen

PSYCHOACTIVE SUBSTANCES BILL

Thank you for your letter of 2 July further to mine of 26 May inviting the Council to engage with us on the detail of the Bill as we take it through Parliament. I am glad that you welcome the findings of the New Psychoactive Substances Review Expert Panel which informed the Bill, and support our efforts to reduce and prevent harms and preventable deaths caused by psychoactive substances

The Government is committed to establishing a robust legal framework to remove potentially dangerous substances from our communities. We continue to look at ways in which the Bill can be strengthened alongside our plans to support its implementation in April 2016. I would be grateful if the ACMD could work with my officials to support this practically in relation to the Bill and implementation.

Many of the points that you have raised have been ones we have necessarily had to contend with during the development of the Bill and/or were the subject of debate during Lords Committee stage. I am therefore in a position to provide a substantive response to many of your recommendations and concerns now.

In relation to the recommendations:

- 1. 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 Council will be aware that there is no definition universally used to describe new psychoactive substances, whether for the purposes of legislation or otherwise. When

developing the definition used in the Bill, my officials discussed this with counterparts in various countries. The absence of the description “novel” in legislation aimed at tackling the trade in new psychoactive substances is not unique to the UK. Neither Ireland, New Zealand nor Australia (at Federal and State level) have used this term and refer to psychoactive substances more generally.

At a drafting level, the explicit inclusion of “novel” to describe psychoactive substances in legislation with the degree of certainty required was considered unworkable. To make an amendment to the Bill of this kind would also suggest that Parliament intended to narrow the scope of the definition, for example, to exclude psychoactive substances in existence before the enactment of the Bill. On this analysis, the psychoactive substances market that exists just prior to the Bill’s enactment would not be covered. This would not serve the Bill’s purpose and our mutual concerns about the availability of these substances.

We have also considered whether it would be possible to fix a date to the definition. This too was not considered to be a workable approach. To create a definition for instance, around when a substance was first manufactured or first identified in the recreational market, the scale of use of a psychoactive substance, or the time when its pattern of use changed, does not provide the general approach to these substances we are seeking to achieve through the Bill. There are a number of substances that were first produced decades ago, but only recently have come on to the recreational market. There are some substances that come and go from the market. It is our view that this market is sufficiently fluid that a specific date attached to “novel” is impractical, open to misunderstanding and to abuse.

There are also wider policy considerations concerning substances that have long been tolerated in the absence of a more comprehensive legal framework, yet have known harms. The ACMD itself raised concerns about the misuse of alkyl nitrites (“poppers”) as long ago as October 2009, and more recently the misuse of nitrous oxide when you called on government to take action to restrict its diversion for recreational use. There are other established psychoactive substances on the market which we consider should be covered by a legal framework even if their harms do not justify control under the Misuse of Drugs Act 1971.

As Baroness Chisholm indicated in response to an amendment at Committee stage of the Bill on 30 June, we are actively reviewing whether the list of exemptions that are currently set out in Schedule 1, particularly the exemption in relation to medicinal products, is sufficiently comprehensive and robust as it can be. I note that the Council specifically raises concerns about the sale of herbal medicines and amendments to that effect are being actively pursued.

I welcome your offer to discuss this issue with officials and ask that this is done at the earliest opportunity. Notwithstanding the difficulties I have identified in importing into the Bill the term “novel” and also our wider policy considerations, I propose that such discussions might usefully explore options for strengthening the definition of a psychoactive substance, as well as managing the scope of the exemptions.

2. 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 New Psychoactive Substances Review Expert Panel (“Expert Panel”) identified social supply as one of three main sources alongside high street retailers and the online market. In their recommendation to create a general prohibition, they did not suggest excluding social supply, nor has this approach been taken in other jurisdictions. Moreover, the Bill in this respect mirrors the position in respect of substances subject to a temporary class drug order. The Government wishes to tackle all the supply routes to remove these potentially dangerous substances from our communities; to exclude social supply from the scope of the clause 5(1) offence would significantly weaken the framework of the Bill, not least in creating a loophole which could readily be exploited.

To reassure you, the Bill contains both criminal and civil sanctions which will enable law enforcement agencies to adopt a proportionate response to offending behaviour. In addition, the police and Crown Prosecution Service will exercise their professional discretion taking into all the circumstances of the offence and the offender. They also have the option of pursuing an out of court disposal in appropriate cases.

I share the Council’s desire to ensure that the enforcement powers in the Bill do not result in discriminatory impact on members of black and ethnic minority ethnic groups. In relation to stop and search powers, I have consistently made clear that we must reform the way they are used and I am committed to legislate to mandate changes in police practices if stop and search does not become more targeted and stop to arrest ratios do not improve.

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

As Baroness Chisholm confirmed for the Government during the first day of Lords Committee on 23 June, the Home Office is committed to reviewing the operation of the Bill post-implementation. To reinforce this commitment, we have now tabled an amendment for Lords Report Stage which places a duty on the Home Secretary to conduct such a review and publish a report of the review within 30 months of the commencement of clauses 4 to 8 of the Bill. The Home Office is keen to work with the ACMD and would welcome the opportunity to have an early discussion on both the scale and scope of the review having regard to resource constraints, and how to make best use of existing data and evidence.

4. 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 recognises the importance of prevention, treatment and information sharing and we are grateful for the extensive work the ACMD has already done to enhance our response to these issues. We welcome the opportunity to continue

working with you to understand what more can be done to protect individuals from the harms caused by substance misuse.

As you will be aware, the Government is already taking forward a comprehensive action plan on psychoactive substances to further enhance our response to prevention, treatment and information sharing. This follows recommendations from the Expert Panel and builds on the evidence set out in the ACMD report on *Prevention of drug and alcohol dependence*. We have already taken a range of action, for example:

- Public Health England launched a toolkit to help local areas to prevent and respond to the use of psychoactive substances. The toolkit gives a broad overview of the challenges and provides commissioners with resources and advice to inform a suitable local response;
- we published a psychoactive substances resource pack, written in partnership with frontline practitioners, for informal educators and frontline practitioners to use to prevent drug taking amongst young people;
- we published Home Office guidance to local authorities on taking action against head shops selling psychoactive substances. It now includes significant new case studies showing the effective use by local authorities of the new powers under the Anti-Social Behaviour, Crime and Policing Act 2014; and
- we circulated an annual Ministerial letter to festival organisers to ensure that drug misuse issues, including in relation to psychoactive substances, remain at the forefront of their consideration.

In addition, we have recently refreshed our over-arching approach to reducing the demand for drugs, in line with the evidence-base set out by the ACMD, enabling us to take a broad approach to prevention. This approach combines universal action with targeted action for those most at risk or already misusing drugs. This includes investing in a range of evidence-based programmes, which have a positive impact on young people and adults, giving them the confidence, resilience and risk management skills to resist drug use. Examples include:

- a new online resilience building resource, 'Rise Above', aimed at 11- to 16-year-olds, which provides resources to help develop skills to make positive choices for their health, including avoiding drug use;
- FRANK, the Government's drugs information and advice service, continues to be updated to reflect new and emerging patterns of drug use and evolves to remain in line with young people's media habits and strengthen situational advice and support;
- Public Health England has developed its role in supporting local areas: sharing evidence to support commissioning and the delivery of effective public health prevention activities.

5. 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 Bill will provide vital powers to law enforcement agencies to tackle the supply of psychoactive substances in the UK and we have tabled an amendment to the Bill for Lords Report to ensure that Border Force can access the powers in the Customs and Excise Management Act 1979 so that they can effectively tackle the importation of psychoactive substances through the post. It is not for me to issue operational instructions to law enforcement agencies on how they exercise these powers, but we accept that any action to disrupt supply whether at a national or local level needs to be matched by interventions to reduce demand.

The Government and law enforcement agencies take the issue of unlawful advertising and sales of drugs on the internet very seriously, and we continue to work with internet providers to ensure that they comply with the law. This can include closure of UK-based websites where they are found to be committing offences under the Misuse of Drugs Act 1971. Online purchasing remains a small overall element of drug supply: the 2013/14 Crime Survey for England and Wales shows that just 1% of adults who used drugs in the last 12 months sourced them from the internet. We do however recognise this figure may not fully represent those obtaining drugs through social supply originally sourced from the internet.

Considerable illegal activity takes place on the internet outside of UK jurisdiction. The UK continues to work with international partners to develop an effective response to the supply of controlled drugs and to react swiftly to emerging threats. In order to tackle illegally trading websites identified overseas, we are building strong partnerships with international partners. There is also ongoing work with the EU and other international regulatory agencies to ensure that, wherever possible, offending websites are amended to comply with the law.

Border Force officers are on constant alert to keep controlled drugs from entering the country. The associated enforcement response includes intelligence-led examination of packages and letters sent by post to intercept the importation of controlled substances. Working together with law enforcement partners, this activity is co-ordinated by the National Crime Agency who are continuing to enhance the security of our borders and lead the fight against serious, organised and complex crime.

In relation to the Council's concerns about market displacement, stopping the open supply of these potentially harmful substances from head shops is a key objective of the Bill. Given what we know about the manufacture of and trade in these substances, it is far from the case that their sale in head shops is intrinsically any safer for users than the sale through other sources of supply. That is why the offences and civil sanctions in the Bill are not confined to tackling this open source of supply on the high street. As I have stated above, the National Crime Agency and the police routinely monitor controlled drugs being offered for sale on the internet and take action with industry partners to close websites trading illegally in these substances – I would expect this activity to shift to also cover the trade of psychoactive substances once the provisions of the Bill are brought into force.

The national policing lead on psychoactive substances has advised that the enactment of this legislation would bring about an initial coordinated policing

response, in close liaison with other law enforcement agencies, to address the presence of retailers and other existing suppliers. Thereafter, priority would be given to those sources of supply which caused the most harm to communities in terms of crime and disorder or where connected with organised crime. Police forces have long worked with the National Crime Agency and Border Force in relation to disrupting internet and postal supply.

Enforcement guidelines for police forces will be developed by the national policing lead and the College of Policing to accompany the legislation. The emphasis for police forces will be on the more serious incidences, where organised crime, acquisitive crime, disorder or harm to others are involved. Police officers are able to use their discretion and are mindful of Crown Prosecution Service guidelines and alternative methods of disposal.

6. 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's Centre for Applied Science and Technology continues to identify and build capability in the UK to meet the demand for this new forensic requirement to determine psychoactivity, working with the Forensic Regulator's office to ensure that the quality of forensic evidence is maintained to satisfy the evidential standards in court proceedings. As we have previously discussed, I welcome the ACMD's scientific input on how we put in place the comprehensive scientific approach to determining psychoactivity needed. We recognise the need for a responsive testing regime that supports current forensic practices and timescales and we will address this as a priority. Data sharing within the police and forensic community will be a key factor in the success of the forensic response so we will drive for the mechanisms to underpin this from the outset. The Forensic Early Warning System will clearly play a vital role continuing to enable forensic providers to more easily identify psychoactive substances coming onto the UK market by provision of chemical reference standards.

7. 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 have now tabled amendments to the Bill to place a duty on the Home Secretary to consult the ACMD (and other persons she considers appropriate) before exercising the regulation-making powers in clauses 3 and 10 of the Bill. The provisions in the Bill will complement those in the Misuse of Drugs Act 1971 which will remain at the apex of the regulatory framework for the control of harmful substances. We will continue to look to the ACMD to provide expert advice on the harms posed by particular psychoactive substances and, where appropriate, to recommend that they be made the subject to control under the 1971 Act.

I also wanted to address some of the concerns you and your members raised in your letter.

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

Any research which does not involve the human consumption of a psychoactive substance will be unaffected by the Bill. As for research involving human trials, paragraph 3 of Schedule 1 already exempts investigational medicinal products (as defined by the Medicines for Human Use (Clinical Trials) Regulations 2004), but we acknowledge that this may not cover all circumstances where psychoactive substances are consumed in human trials. Baroness Chisholm confirmed during the Committee stage debate on 30 June that the Government's intention is for all *bona fide* medical and other scientific research to be untouched by the provisions of this Bill. The Home Office, along with the Department for Health and the Medicines Healthcare Products Regulatory Agency and others, is actively considering this point with the intention of bringing forward an amendment at Commons Committee stage to strengthen the exemption for medical and scientific research. Again, I would welcome ACMD input into this work.

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

The Bill includes offences relating to directors of bodies corporate, but these only apply where an offence has been committed as a result of the consent or connivance of a director, or attributable to any neglect. So whilst they may be liable to prosecution, there are significant conduct and mental elements to overcome to prove an offence. I can assure the Council that the current formulation of clause 5 and, for that matter, clause 7, does not bring, for example, the licensee of a pub or club within the scope of the offences in those clauses where they have no hand in the supply or offer to supply of psychoactive substances. The situation would be different if the proprietor, manager or other member of staff encouraged or assisted the supply of psychoactive substances on the premises as they could be guilty of an associated secondary offence.

We would also expect that persons who own, lease, occupy, control or operate premises where offences under the Bill are taking place take reasonable action to stop the premises being misused in this way. The premises notice and premises order, as provided for in the Bill, are designed with such situations in mind. Where a premises owner fails to take such reasonable steps the premises notice will, in effect, act as a final warning. If this is not complied with, the relevant enforcement agency can apply to the appropriate court for a premises order which requires the owner etc to take all reasonable steps to prevent any prohibited activity, or a prohibited activity of a specified description, from being carried on at premises specified in the order; a failure to comply with a premises order is a criminal offence. The Bill provides for a right of appeal against the making of an order.

I believe this is a balanced and proportionate approach which places criminal liability for the offences in clauses 4 to 8 of the Bill where it properly belongs, but ensuring that owners etc of premises where criminal conduct is taking place cannot absolve themselves of all responsibility for what goes on at their premises.

I welcome the continued input from you and other Council members to strengthen this important Bill.

RT HON THERESA MAY MP