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16th June 2023

Dear Professor Bowden-Jones and Professor Knaggs

The Government's response to recommendations 2 to 7 in the Advisory Council on the Misuse of Drugs' Updated Nitrous Oxide Harms Assessment of March 2023.

This letter follows the Government's response to the ACMD's nitrous oxide harms review, published on 27 March, which addressed the ACMD's first recommendation relating to the legislative status of nitrous oxide. This letter responds to the remaining six recommendations in the ACMD's review. Once again, I should like to thank the Council for their carefully considered report on the issue of nitrous oxide misuse and associated harms which the Government is determined to reduce.

I have set out each recommendation and the Government's response below and in doing so I acknowledge the contributions of a number of departments and agencies to whom recommendations or aspects of recommendations fall. In addition, I note that devolved administrations were also invited to respond to the ACMD report and their responses are included in full in an annex to this letter.

Recommendation 2

The Home Office should work with other Government departments (and agencies) to understand and adopt successful approaches to tackling non-legitimate routes of supply, for example, in the regulation of food and medicines. Approaches should include:

- *Restrictions on direct-to-consumer sale*
- *Restrictions on canister sizes that are not found to have legitimate uses*
- *Restrictions on the volume of sales that customers can purchase*
- *Restrictions on online sales including associated paraphernalia (for example ‘crackers’)*
- *Increased health warning information on packaging*
- *Closing down of websites selling nitrous oxide for non-legitimate uses*

Government response

The Government accepts this recommendation in principle.

The decision to control nitrous oxide under Class C of the Misuse of Drugs Act 1971 (“1971 Act”) will impose more stringent legal restrictions than those recommended in the ACMD’s report, as it will make possession, supply, production, import, and export for illegitimate use unlawful. Canisters that have no legitimate use will become unlawful under the new regime. Specific restrictions on sale or purchase will be considered following analysis of the ongoing consultation on legitimate uses. The Government launched a consultation on 2 May 2023 seeking views from industry and users of nitrous oxide to identify legitimate uses of nitrous oxide to inform the design of exemptions under the 1971 Act that will allow legitimate use.

The decision by the Government to control nitrous oxide under the 1971 Act will also make it an offence to supply, or offer to supply, paraphernalia, including crackers, in circumstances where the administration of nitrous oxide is unlawful.

The Government recognises the importance of health warnings on medicinal products. The labels of products containing medicinal gases must comply with legal requirements under the Human Medicines Regulations 2012 and already include storage instructions to store in well-ventilated places and warnings that high concentrations may cause asphyxiation. The Department for Health and Social Care (DHSC) and the Medicine Healthcare Products Regulatory Agency (MHRA) will consider whether there is a need for increased health warning information on nitrous oxide packaging. The Home Office will continue to explore with relevant departments and agencies whether there are other health warnings on packaging which should be applied to nitrous oxide canisters.

It is already an offence to supply nitrous oxide online and in the real world knowingly, or if you are reckless as to whether it will be misused for

psychoactive effect. Online retailers who have not yet taken action to prevent these sales are in breach of the law.

The action which the Government is taking to control nitrous oxide under the 1971 Act will put tighter controls on retailers to prevent its sale for non-legitimate purposes, and give greater powers to the police and law enforcement to take action against those in breach. Measures in the Online Safety Bill will place a legal obligation on online companies to remove illegal content that is posted on their platforms, including the sale of controlled drugs, and they will be held to account for this by an independent regulator, Ofcom. As a result, platforms will need to consider how they design their sites to reduce the likelihood of them being used for criminal activity.

Recommendation 3

a. Universal prevention activity focused on nitrous oxide. This should include education and harm reduction interventions aimed at the public, including young people and schools, around the immediate and long-term health effects associated with repeated and heavy nitrous oxide use. For example, there could be a national campaign which could utilise appropriate platforms such as social media.

b. Information and advice should be made available to the public and in places where nitrous oxide use is more common (for example festivals). Organisations that already provide advice to the public should review this information to ensure it takes into account the most recently published information.

c. Local authority public health teams should ensure they are connected to local policing, community safety and wider community concerns about the availability, prevalence and use of nitrous oxide in their areas, and ensure commissioned treatment services have the necessary information and resources to support individuals to reduce the risks and harms of nitrous oxide use.

d. Dissemination of information and guidance to healthcare staff to increase awareness of harmful nitrous oxide use, its clinical consequences and appropriate treatment protocols. Organisations that already provide advice to health professionals should review this information to ensure it takes into account the most recently published information.

Government response

The Government accepts this recommendation.

3 a. Drug use, legal and illegal, is already included in the curriculum for schools. Schools play a key role in enabling young people to make positive choices about their wellbeing, including resisting drug use. Relationships, Sex and Health Education (RSHE) became a compulsory subject in schools from September 2020 and schools have the freedom to ensure that the curriculum

meets the needs of their pupils. This flexibility allows schools to respond to local public health and community problems such as nitrous oxide misuse and adapt material and programmes to suit the needs of pupils. The Department for Education has also worked with the Office for Health Improvement and Disparities (OHID) to make sure that good quality teaching resources are available for teachers providing drug, alcohol and tobacco education. Lesson plans on drugs, including nitrous oxide, alcohol and tobacco are now available on the PSHE Association's website: <https://www.pshe-association.org.uk/curriculum-and-resources/resources/drug-and-alcohol-education-%E2%80%94-lesson-plans>. The Government will keep the proposal for additional prevention messaging under review subject to changed or emerging trends.

b. The Talk to FRANK website managed by OHID already provides information for the public on nitrous oxide and the dangers of misuse. FRANK is a trusted source of honest and impartial information on drugs, and it receives around 900,000 visits a month. It is regularly updated in response to emerging patterns of use and trends. For example, the nitrous oxide page was recently updated in response to concerns about increasing harm associated with use of large cannisters. OHID will keep this under review as further evidence emerges and will update content in line with legislative changes around the classification of nitrous oxide. In addition to FRANK, OHID will work with NHSE to ensure the Live Well addiction pages are updated with sufficient information on nitrous oxide harms and how to seek help.

c. OHID will work with its regional networks and service provider leads to disseminate information on the dangers of nitrous oxide in line with any further controls being introduced and ensure services have the resources available to support those who present with nitrous oxide misuse issues. Local areas will be asked to tailor this information to their populations, services and pathways as appropriate. This information will be phased and updated, with brief facts in the short term and more detailed advice and guidance as any legislative change comes into force. OHID will also cascade information to Directors of Public Health via official channels to inform them of the pending changes in legislation around nitrous oxide.

d. The National Poisons Information Service has reviewed the information it provides to healthcare staff on nitrous oxide on TOXBASE in December 2022. NPIS will review the report and make any necessary changes to in response to this recommendation.

Recommendation 4

The ACMD recommends:

a. Government, police, Trading Standards and local authorities should explore further partnership working and use of existing powers under legislation other than the Psychoactive Substances Act 2016. These include, for example, Public Space Protection Orders (in England and Wales), Dispersal Notices and Community Protection Notices.

b. Government undertake a review of local authorities that have introduced Public Space Protection Orders to take lessons from evaluations of different local approaches.

c. Home Office and other Government departments to consider (including unintended consequences of) providing additional powers for Police to remove, confiscate and dispose of nitrous oxide canisters and paraphernalia from people using, or are intending to use nitrous oxide for non-legitimate purposes, including in a vehicle.

d. Home Office and Department for Transport to explore how nitrous oxide could be added to existing drug/driving protocols, noting difficulties with roadside and forensic testing.

Government response

4. The Government accepts this recommendation in principle. While we accept the intention of the recommendations 4(a), 4(b) and 4(c), the Government's decision to control nitrous oxide under the 1971 Act will give the police and law enforcement partners greater powers to tackle nitrous oxide misuse than under existing legislation. Once controlled under Class C of the 1971 Act, possession will become an offence with a maximum penalty of two years' imprisonment, an unlimited fine, or both, while the maximum penalty for supply and production is 14 years' imprisonment, an unlimited fine, or both. Search, seizure and detaining powers under section 23 (2) of the 1971 Act allow for the search of a person, the detention of that person in order to search them and the search of any vehicle where a police officer suspects that the drug may be found. The Government will work with the police and law enforcement partners to ensure that these powers are deployed effectively.

The ACMD also recommends that the Home Office and DfT to explore how nitrous oxide could be added to existing drug/driving protocols. We accept this in principle. DfT chairs a nitrous oxide sub-group of the drink and drug driving practitioners' group. This meets periodically to discuss matters including whether to add substances to the existing drug/driving protocols and what action could be taken to improve enforcement. At present the group is sharing experiences and exploring best practice to maximise successful enforcement of nitrous oxide.

Recommendation 5

The ACMD recommends there should be enhanced long term data collection to better understand the health and social harms of nitrous oxide. This includes additional UK monitoring of:

a. Type, prevalence and severity of neurological, neuropsychiatric, and psychological harms attributable to nitrous oxide.

b. Number and type of anti-social behaviour incidents associated with nitrous oxide.

- c. *Number of road traffic accidents associated with nitrous oxide use.*
- d. *Number of deaths in the UK associated with nitrous oxide use*
- e. *Mechanism to monitor the environmental impact of littering associated with nitrous oxide use.*

Government response

The Government accepts this recommendation in part.

5 a. OHID monitors trends in hospital admissions for drug poisonings including those relating to solvents and inhaled anaesthetics and in those seeking help for issues with nitrous oxide from substance misuse services via the National Drug Treatment Monitoring system (NDTMS). OHID will continue to monitor trends on nitrous oxide, following its control under the 1971 Act, through the data available and, in collaboration with NHS England, will keep under consideration if further data collection is required in future based on future change in trends.

b. The decision to control nitrous oxide under Class C of the 1971 Act means that offences involving nitrous oxide would be recorded under statistics related to prosecutions and action taken against Class C drugs. The Drug Misuse Module of the *Crime Survey for England and Wales*, which is annual, and the *Smoking, Drinking and Drug Use among young people in England* survey will provide us with specific data on nitrous oxide use.

c. DfT will work with the Home Office, Police, and other agencies to consider an analytical product on the prevalence of nitrous oxide use.

d. Deaths in England and Wales associated with nitrous oxide are reported in statistics published by the Office for National Statistics which is sufficient to enable monitoring of these deaths.

e. Defra's latest litter composition survey data (from 2019) shows that nitrous oxide canisters are not a commonly littered item at the national level. Defra has no plans to conduct another litter survey at this time. However, Defra will consider including a category for nitrous oxide canisters in any future litter survey that may be commissioned in future. Defra will continue to monitor the available data from external sources such as environmental charities Keep Britain Tidy and the Marine Conservation Society and will share this with the Home Office for the purposes of monitoring, where appropriate.

Recommendation 6

The Home Office should work with other Government departments (and agencies) and stakeholders to undertake a comprehensive consultation to develop an evidence base to fully understand the scope of legitimate uses for nitrous oxide. This consultation will also enable Government to identify non-legitimate routes of supply.

Such a consultation should fully determine:

the potential impact(s) of any proposed legislative changes

the full range of Government departments that could support action on other recommendations in this report

legitimate supply routes, which would then identify non-legitimate routes of supply.

Government response

The Government accepts this recommendation and launched a consultation on nitrous oxide entitled *Legitimate use and appropriate controls*, on 2 May 2023. This seeks information to help better understand the full range of legitimate uses of nitrous oxide. It proposes three options for a regime of control. This will help the Government ensure that we reduce as far as possible the burdens on those who seek to use and handle nitrous oxide for legitimate purposes. Non-legitimate use and supply will be addressed by the control of nitrous oxide as a Class C drug.

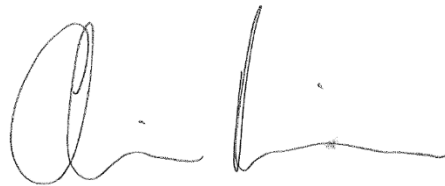
Recommendation 7

The Home Office should design a framework for the assessment of the impact of any changes and undertake a formal evaluation of actions further to this advice and from the ACMD's 2015 advice to reduce the health and social harms associated with nitrous oxide use. This review should take place no sooner than three years after any actions are implemented.

Government response

The Government accepts this recommendation to evaluate both these reports. This must be seen in the context of the control of nitrous oxide under the 1971 Act as some of the measures, such as the evaluation of PSPOs and powers under the Anti-social Behaviour Act 2014 including the use of Dispersal Notices and Community Protection Notices, will not be pursued fully given that new powers will be available to tackle the misuse of nitrous oxide. We note that the review should take place no sooner than three years after any actions from this report are implemented.

Yours sincerely,



Rt Hon Chris Philp MP
Minister of State for Crime, Policing and Fire