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Rt Hon Keith Vaz, MP
Chair, Home Affairs Select Committee
Room 158a, 7 Millbank
London
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Dear Keith,

19 AUG 2010

DRUGS: “LEGAL HIGHS” – TEMPORARY BANNING POWER

I write further to the Home Secretary’s letter in July in which she agreed to write with further details of the temporary banning power once she had obtained cabinet committee agreement. This has now been received and I write on her behalf to give you advance notice of our plans. My department intends to place details in the public domain tomorrow (Friday 20 August) and I ask respectfully that you treat this letter as embargoed until that 0001 on 20 August.

The Committee will be aware that the Government set out a commitment in the Coalition Agreement to “...introduce a system of temporary bans on new “legal highs” while health issues are considered by independent experts”.

“Legal highs” or more accurately, new psychoactive substances, are a relatively new phenomenon having risen to prominence over the life of the last Parliament. They present particular challenges, no more so than for our drug legislation to stay responsive to new emerging drugs, the manufacturers and suppliers of which look to subvert our drug laws and sell potentially harmful drugs advertising them on the internet as “legal” and “safe”.

Under the current arrangements for bringing a drug under control of the Misuse of Drugs Act 1971 (the 1971 Act), the Government waits for the Advisory Council on the Misuse of Drugs’ (ACMD) full advice on a drugs harms. The ACMD will conduct a thorough review of all the available evidence, often taking between three and six months. In addition, the current method of parliamentary control - Privy Council order following the affirmative resolution procedure – can take at least 2 months unless expedited.

Our proposals for the new temporary banning power will enable us to legislate fast; be informed by expert advice but giving our experts the time to make a full assessment of harm; be subject to parliamentary scrutiny; target supply and not unnecessarily criminalising young people, particularly when the true nature of the substance is in question.

The Government intends to amend the UK wide Misuse of Drugs Act 1971 to introduce a separate class for those drugs subject to temporary classification; subject orders placing a drug under temporary control to a twelve month time period (or earlier revocation, if for example, the drugs becomes subject to permanent control in that time); apply the "trafficking" offences only to drugs subject to temporary classification including possession with intent to supply, offer to supply, supply, importation, exportation and production; apply Class B current maximum penalties (14 years and/or an unlimited fine on indictment and 6 months and/or £5,000 fine on summary conviction); and subject an order for temporary classification to the negative resolution procedure, retaining the affirmative resolution with Privy Council order for permanent control.

There are two features of the Government's plans that I wish to highlight to the Committee. First, the possession offence ordinarily prescribed to illegal drugs under the 1971 Act will not apply. Whilst a possession offence would send the strongest message, our focus is to target importers and suppliers to curb availability, not criminalise user's especially young people while the full nature of the substance is mostly uncertain. However, we will ensure that law enforcement have the power to seize and retain the drug under temporary classification.

Second, as with drugs brought under permanent control, the role of scientific advice is both integral and necessary to ensure that any temporary ban is invoked on a necessary and proportionate basis. It is proposed that the ACMD discharge this role in line with their current statutory position providing expert independent advice, to include a drug's likely psychoactive properties, an indication of likely harmfulness and the legitimate use (for which we would have to consider the impact of control, as we do for drugs subject to permanent control). We will be working closely with the ACMD to develop a protocol under which we would work under the temporary banning power.

A clear and consistent narrative around the temporary class will be needed to support the proposed new power to ensure that it is not less effective than the current system of control and users do not continue to use the drug subject to temporary classification with impunity. We intend to work with other interested government departments, particularly the Departments of Health and for Education.


These measures sit alongside the development of our new drug strategy to be published in December 2010. The Committee will wish to be aware that a consultation paper which sets out the key objectives and themes of the Government's vision for drugs policy will also be published tomorrow. It will provide an early engagement opportunity for a wide range of partners, from

charities to enforcement partners, drug workers and third sector organisations as well as members of the public.

The Committee will also wish to be aware that we are considering how best we can facilitate the ACMD's working practices and its ability to give advice to tight timescales. We are consulting the ACMD and the wider science community.

The temporary banning power will help us tackle the threat that these new "legal highs" pose to public health, by responding swiftly on a precautionary basis enabling our legislative approach to stop a drug like mephedrone gaining a foothold in the UK. It is the Government's intention to introduce first session legislation to achieve this.

I am arranging for a copy of this letter to be placed in the Library to the House.

Yours ever,


JAMES BROKESHIRE