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Submission to Home Affairs Select Committee Drugs Inquiry 2012

1. Executive Summary:

Parliament charged the Secretary of State for the Home Department ("SSHD") with administering the Misuse of Drugs Act 1971 ("the Act"). Section 1(2) of the Act charged the Advisory Council on the Misuse of Drugs ("ACMD") with a "*duty ... to keep under review the situation in the United Kingdom with respect to drugs which are being or appear … likely to be misused and of which the misuse is having or appears … capable of having harmful effects sufficient to constitute a social problem, and to give to any one or more of the Ministers [...] advice on measures (whether or not involving alteration of the law) which … ought to be taken for preventing the misuse of such drugs or dealing with social problems connected with their misuse*". A plethora of evidence shows that the SSHD and the ACMD do not understand their respective duties under the Act and have therefore not given proper effect to them. Nowhere is this clearer than in their respective abdication of power regarding the detrimental effects of alcohol and tobacco misuse.

The SSHD and the ACMD appear to believe that the only regulatory option under the Act is the SSHD's "policy of prohibition".[1] This narrow policy holds that inclusion of a drug in the schedule of controlled drugs, via section 2 of the Act, necessitates that property activities with that drug be restricted to medical or scientific uses only. This policy, applied to alcohol and tobacco, would obviously "be unacceptable to the vast majority of people who use, [alcohol and tobacco], responsibly and would conflict with deeply embedded historical tradition and tolerance of consumption of a number of substances that alter mental functioning".[2] Regrettably, this "policy of prohibition" ignores the beautiful, flexible and evolutive nature of the regulatory discretions found within sections 7, 22, and 31, particularly s31(1)(a), and fails to extend this alleged "deeply embedded historical tradition and tolerance" to others who would appreciate the *Cognitive Liberty* to "alter mental functioning" with currently "controlled" drugs without fear of prosecution.

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[1] Home Office (2007) *Response to Better Regulation Executive re MDAct*, 27 September 2007 (1)

[2] Cm 6941 (2006) page 24, 13 October 2006 (2)

Section 31(1)(a) of the Act states: "*31. General provisions as to regulations. (1) Regulations made by the Secretary of State under any provision of this Act – (a) may make different provision in relation to different controlled drugs, different classes of persons, different provisions of this Act or other different cases or circumstances*". (Emphasis added)

When the five "different" of section 31(1)(a) are coupled with sections 7(1)-(2) – allowing the SSHD to authorise activities otherwise unlawful – and section 22(a)(i) – allowing the SSHD to exempt entire classes of offence from operation – a very flexible regulatory regime emerges suitable "for any drug, new or old, according to its legitimate use, its dangers and its social effects",[3] as Parliament intended. **Said another way, by Statutory Instrument, the SSHD could immediately implement the proposals in Transform Drug Policy Foundation's *After the War on Drugs: Blueprint for Regulation*[4] for a fully regulated commerce in controlled drugs for peaceful, 'recreational' use, i.e. to "alter mental functioning".**

Thus we ask, since the Act provides mechanisms to fully regulate commerce in any controlled drug for so-called 'recreational' use, why have alcohol and tobacco yet to be declared "controlled drugs", (s2), under the Act? There can be but one answer; the SSHD and the ACMD have misconstrued the Act by fettering themselves to a "policy of prohibition". The SSHD and ACMD believe that to deem alcohol and tobacco "controlled drugs" under the Act would require prohibiting their use and commerce. This esteemed committee must fix this crucial misunderstanding and make clear in an authoritative manner that the Act makes available a plethora of regulatory options suitable "for any drug, new or old, according to its legitimate use, its dangers and its social effects".

2. The comparative harm and cost of legal and illegal drugs.

2.1. It is paramount that this Committee, the SSHD, the ACMD and the public understand that "illegal drugs" do not exist. Nor, for that matter, do "legal drugs". These terms are both legal misnomers indicating the speaker does not understand the Act. These misleading terms flip the subject and object of regulation and thus create a false dichotomy in the minds of lawmakers, their advisors and the public.

2.2. **The Misuse of Drugs Act 1971 regulates people not drugs.** The Act makes the actions: importation, exportation, production, cultivation, supply and possession, of "controlled drugs", unlawful and an offence, except for medical or scientific purposes, unless the SSHD authorises otherwise and the Parliament approves by positive or negative resolution.

2.3. **We therefore request that the Committee cease using the terms "legal drugs" and "illegal drugs" to distinguish between "controlled drugs" and those not controlled under the Act.** Until this is done, any discussion of the comparative harm of these drugs will fail to acknowledge the harms resulting to people from the chosen regulatory options and the Committee will therefore fail in its task.

[3] First Day Debate on the Address, *Hansard*, HC Deb, 28 Oct 1969, Vol. 790 Col. 37 (3)

3. **Differentiations based on outcome must lead drugs policy**.

3.1. Recognising that the exercise of the enumerated activities re "dangerous or otherwise harmful drugs", (the Act's preamble), may result in a variable likelihood of risks and benefits to public welfare and individual autonomy and that these must be consciously balanced, Parliamentarians embodied four principles of law in the Misuse of Drugs Act 1971:

3.1.1. A determination, read from the Act's preamble, s1(2) and the offences stated in the Act, to employ education, health and police power measures to prevent, minimise or eliminate the "harmful effects sufficient to constitute a social problem" that may arise via any self-administration of "dangerous or otherwise harmful drugs".

3.1.2. A determination, read from ss1, 2(5), 7(7) & 31(3) of the Act, to employ an independent advisory body to help the Secretary of State exercise the Act's discretionary powers in a rational and objective manner, particularly when making contingent subordinate legislation and interstitial administrative rules and when considering regulatory options.

3.1.3. A determination, read from s1(3), to employ an independent advisory body to consider any matter relating to drug dependence or the misuse of drugs that may be referred to them by any Minister and to advise them as required or requested.

3.1.4. A determination, read from ss1(2)(a)-(e), to enable persons affected by drugs misuse to obtain advice and secure health services; to promote stakeholder co-operation in dealing with the social problems connected with drugs misuse; to educate the public in the dangers of misusing drugs, and to give publicity to those dangers; and to promote research into any matter which is relevant to prevent drugs misuse or deal with any connected social problem.

3.2. Crucially, this first principle of law is neutral and generally applicable, coherent with s31(1)(a) of the Act, and based on outcome, irrespective of the drug, the agent's status, class, or intent, or the circumstances in which the drug-related activities occur.

3.3. The second principle of law facilitates Due Process and seeks to ensure that the Act's police power measures are proportionate to available objective evidence of the potential risk each drug presents when used and are suitably targeted to achieve the Act's public health objective.

3.4. The third and fourth principles facilitate a coherent social conversation for minimising harm through the intelligent use of education, health and ministerial services.

3.5. The Act does not concern itself with absolute safety. Rather the Act seeks to prevent, minimise or eliminate the "harmful effects sufficient to constitute a social problem" that may arise via any self-administration of "dangerous or otherwise harmful drugs". The Act targets these "harmful effects" indirectly through "restrictions" ss3-6, "prohibitions" ss8-9 and/or "regulations" ss7, 10 & 22, on the exercise of enumerated activities re controlled drugs whilst intending to generate a harm minimisation conversation at all levels of society via education, research and the provision of specific health services.

3.6. And whilst the difference between the activities enumerated in the Act: import, export, production, supply, possession, and drug use might seem insignificant, the legal line is drawn here. Crucially, s37(2) of the Misuse of Drugs Act 1971 states:

> "References in this Act to misusing a drug are references to misusing it by taking it; and the reference in the foregoing provision to the taking of a drug is a reference to the taking of it by a human being by way of any form of self-administration, whether or not involving assistance by another". (Emphasis added)

3.7. Therefore, in ensuring consistency with the Act's object of preventing, minimising or eliminating the "harmful effects sufficient to constitute a social problem" that may arise via "the taking of a drug" **differentiations should distinguish drug use from drug misuse.**

3.8. With respect to drug use, i.e. self-administration, the Act's principles of law afford **three reasonable differentiations** fairly related to the object of regulation:

1) A primary differentiation between drug use that is reasonably safe to the agent and does not result in harm to others and drug use that is reasonably safe to the agent and results in harm to others;

2) A secondary differentiation between drug use that is reasonably risky to the agent and does not result in harm to others and drug use that is reasonably risky to the agent and results in harm to others;

3) A tertiary differentiation between drug use harmful only to the agent following competent informed choice and drug use harmful only to the agent not following competent informed choice.

3.9. These reasonable differentiations, based on the outcome of drug use, are neutral with respect to the drug, the agent's intent, and the setting in which drug use occurs, and consistent with s31(1)(a) of the Act. Only in this way are autonomous individuals separable from the public interest and education and health measures separable from the need for police power.

4. **There is no distinction between drug and alcohol misuse. Alcohol and tobacco are drugs that should be included in the Misuse of Drugs Act 1971 and regulations with respect to their use and commerce made under sections 7, 22 and 31 "according to [their] legitimate use, [their] dangers and [their] social effects".**

4.1. On 22 May 2002, in concluding a wide-ranging inquiry into HM Government's drug policy, the *Third Report from the House of Commons Home Affairs Committee Session 2001- 2002 HC-318 The Government's Drug Policy: is it working?* declared:

> "tobacco and alcohol are responsible for far greater damage both to individual health and to the social fabric in general than [controlled drugs]" ... "Substance misuse is a continuum perhaps artificially divided into legal and illegal activity". (Paragraphs 8 & 9, emphasis added).[5]

4.2. The July 2002 *Government Reply to the Third Report From the Home Affairs Committee Session 2001-2002 HC 318* stated the obvious but failed to notice the elephant in the clause:

> "Drug misuse does not occur in isolation. It is associated with the misuse of other substances (e.g., alcohol and tobacco)."[6]

4.3. On 19 January 2006, the Secretary of State for the Home Department promised a public consultation suggesting a review of the Act's drug classification system seemingly admitting the appearance of a problem:

> "The more I have considered these matters, the more concerned I have become about the limitations of our current system. Decisions on classification often address different or conflicting purposes and too often send strong but confused signals to users and others about the harms and consequences of using a particular drug and there is often disagreement over the meaning of different classifications. […] I will in the next few weeks publish a consultation paper with suggestions for a review of the drug classification system". (*Hansard*, HC Deb, 19 Jan 2006, Col 983, emphasis added)

4.4. Though ultimately shelved and not released until 2010 when forced to do so after a three-year Freedom of Information Act battle, the SSHD's May 2006 draft consultation document *Review of the UK's Drugs Classification System – A Public Consultation*[7] stated:

> "6.3 To many young people the regulation of tobacco and alcohol and the prohibition of drugs presents a dichotomy in terms of harm. They question why substances of considerable harm such as cigarettes and alcohol are able to be consumed relatively easily when possessing a drug like cannabis can lead to prosecution". (Emphasis added)

After laying out the health effects of alcohol and tobacco, it continues:

> "6.8 There has not, in the UK, been any attempt to impose controls comparable to illicit drugs where it would be an offence to possess and supply alcohol and tobacco. The social acceptability of, for example, alcohol would make such controls unacceptable to the majority who use alcohol responsibly and therefore impractical. But alcohol and tobacco account for more health problems and deaths than illicit drugs. To many young people this presents problems in understanding the rational behind controlling drugs such as cannabis and ecstasy when their misuse contributes less overall harm to society than the widely available drugs such as alcohol and tobacco. 6.9 **In terms of death, [controlled] drugs amounted to 1,388 in 2003 compared to about 20,000 for alcohol and 100,000 for tobacco.** 6.10 **In view of the harms presented by these substances a classification system could recognise [alcohol and tobacco]** in a way which would stop short of imposing comparable controls. The creation of a system to assess the harmfulness of drugs on a more structured and transparent basis, as presented earlier in this paper could be extended to cover alcohol and tobacco but for comparative and messaging rather than control purposes. […] 6.11 This approach would allow for a more logically consistent approach to substance misuse. […]" (Emphasis added)

4.5. On 31 July 2006, after rigorously investigating the production and use of scientific advice and evidence in making drug control and classification decisions under s2(5) of the Act, *the Fifth Report of the House of Commons Science and Technology Committee Session 2005-06 HC 1031 Drug classification: making a hash of it?*[8] declared:

> "With respect to the ABC classification system, we have identified significant anomalies in the classification of individual drugs and a regrettable lack of consistency in the rationale used to make classification decisions. […] We have found no convincing evidence for the deterrent effect, which is widely seen as underpinning the Government's classification policy. […W]e have concluded that the current classification system is not fit for purpose and should be replaced with a more scientifically based scale of harm. […] In light of the serious failings of the ABC classification system that we have identified, we urge the Home Secretary to honour his predecessor's commitment to review the current system". (Summary).

The 2006 Science and Technology Committee report HC 1031 finished with this flourish:

> "We conclude that, in respect of this case study, the Government has largely failed to meet its commitment to evidence based policy making".

4.6. *Appendix 14* to *the Fifth Report of the House of Commons Science and Technology Committee Session 2005-06 HC 1031* described the first scientific ranking of the relative harmfulness of the 20 most commonly used drugs. Conducted by the ACMD Technical Sub-Committee, their research suggested that:

> "Our findings raise questions about the validity of the current Misuse of Drugs Act classification, despite the fact that it is nominally based on an assessment of risk to users and society. […] **Our results also emphasise that the exclusion of alcohol and tobacco from the Misuse of Drugs Act is, from a scientific perspective, arbitrary.** We saw no clear distinction between socially acceptable and [controlled] substances. The fact that the two most widely used legal drugs lie in the upper half of the ranking of harm is surely important information that should be taken into account in public debate on [controlled] drug use. Discussions based on a formal assessment of harm rather than on prejudice and assumptions might help society to engage in a more rational debate about the relative risks and harms of drugs". (Emphasis added)

4.7. On 14 September 2006, the Advisory Council on the Misuse of Drugs published *Pathways to Problems: hazardous use of tobacco, alcohol and other drugs by young people in the UK and its implications for policy*,[9] in which the ACMD declared publicly drugs policy lacks rationality and therefore credibility:

> "At present, the legal framework for the regulation and control of drugs clearly distinguishes between drugs such as tobacco and alcohol and various other drugs which can be bought and sold legally (subject to various regulations), drugs which are covered by the Misuse of Drugs Act (1971) and drugs which are classed as medicines, some of which are also covered by the Act. The insights summarised [here] indicate that <u>these distinctions are based on historical and cultural factors and lack a consistent and objective basis</u>" (Paragraph 1.13, p22, emphasis added).

A few pages earlier in *Pathways to Problems* the ACMD finally admitted "neglect[ing]" their duty under the Act by discriminating between "harmful psychoactive drugs" on the ground of "legal status". They said:

> "The scientific evidence is now clear that nicotine and alcohol have pharmacological actions similar to other psychoactive drugs. Both cause serious health and social problems and there is growing evidence of very strong links between the use of tobacco, alcohol and other drugs. For the ACMD to neglect two of the most harmful psychoactive drugs simply because they have a different legal status no longer seems appropriate" (Introduction, p14).

The first recommendation in *Pathways to Problems* reads:

> "As their actions are similar and their harmfulness to individuals and society is no less than that of other psychoactive drugs, tobacco and alcohol should be explicitly included within the terms of reference of the Advisory Council on the Misuse of Drugs".

4.8. The SSHD did not respond publicly to this but we would later read in the ACMD's July 2009 document, (oddly not made public until 29 March 2010 in the midst of the mephedrone panic), *Pathways to Problems: A follow-up report on the implementation of recommendations from Pathways to Problems*[10] that:

> "the Home Office considered alcohol and tobacco to be implicit in the ACMD's terms of reference, as these are substances that can be misused".

This is the first time the SSHD has publicly admitted: "alcohol and tobacco … are substances that can be misused" placing them squarely within the jurisdiction of s2(5) of the Act.

4.9. On page 18 of *Pathways the Problems*, the ACMD explained the reasons why we use psychoactive drugs, including alcohol and tobacco:

> "Psychoactive drugs are used worldwide in the pursuit of pleasure, solace and acceptance. […]Psychoactive drugs all act on certain parts of the brain, altering normal neuro-chemical functions and hence the user's experience. The precise nature of the experience and other consequences will reflect the interaction of the particular drug with the individual's physiology, psychology and current circumstances."

4.10. On 13 October 2006, the SSHD issued Command Paper Cm 6941, *The Government Reply to the Fifth Report from the House of Commons Science and Technology Committee Session 2005-06* HC 1031 *Drug classification: making a hash of it?* In reply to Recommendation 50 of HC 1031, the SSHD said:

> "Government [believes] the classification system under the Misuse of Drugs Act 1971 is not a suitable mechanism for regulating … substances such as alcohol and tobacco. The distinction between [alcohol, tobacco and controlled] substances is not unequivocally based on pharmacology, economic or risk benefit analysis. It is also based in large part on historical and cultural precedents. A classification system that applies to [alcohol and tobacco] as well as [controlled] substances would be unacceptable to the vast majority of people who use, for example alcohol, responsibly and would conflict with deeply embedded historical tradition and tolerance of consumption of a number of substances that alter mental functioning […]. [Alcohol and tobacco commerce is] therefore regulated through other means. […] However, the Government acknowledges that alcohol and tobacco account for more health problems and deaths than [controlled] drugs".

4.11. We hope that the Committee sees the fundamental interconnection between the misuse of alcohol, tobacco and other drugs. Any attempt to separate these drugs based on legal status is both arbitrary and irrational. In Cm 6941 the SSHD is at great pains to justify the specious distinction between alcohol, tobacco and "controlled drugs" on the most arbitrary of grounds possible "historical and cultural precedent". The SSHD then repeats: "alcohol and tobacco account for more health problems and deaths than [controlled] drugs". So why are they not "controlled drugs"?

4.12. As alcohol and tobacco are drugs *"which are being … misused and …[their] misuse is having … harmful effects sufficient to constitute a social problem"* logic and the law dictates that they should be "controlled" under section 2(5) of the Act and regulations with respect to their use and commerce made under sections 7, 22 and 31 "according to [their] legitimate use, [their] dangers and [their] social effects".[3]

5. **The ACMD's decision-making and policy is not sufficiently independent of the SSHD**.

5.1. The Advisory Council on the Misuse of Drugs ("ACMD") is a statutory and non-executive, non-departmental public body ("NDPB"), created under section 1 of the Misuse of Drugs Act 1971, an Act designed to employ education, health and police power measures to prevent, minimise or eliminate the *"harmful effects sufficient to constitute a social problem"* that may arise via any self-administration of *"dangerous or otherwise harmful drugs"*.

5.2. It is the ACMD's *"duty"*: 1) to keep the drugs *"situation"* and relevant law *"under review"*; (2) to give ministers advice on exercising the Act's powers; and (3) to give ministers advice on any measure or measures, *"whether or not involving alteration of the law"*, thought necessary to achieve the Act's purpose. And as the Act's purpose is the protection of public health, it is vital that the ACMD discharges their duties independent of political pressure.

5.3. Cabinet Office guidance on NDPBs confirms that an NDPB is:

> "A body which has a role in national government, but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arm's length from ministers […] Ministers are however ultimately responsible for a NDPB's independence, its effectiveness and efficiency".

5.4. The minister ultimately responsible for the independence, effectiveness and efficiency of the ACMD is also the primary advisee, the Secretary of State for the Home Department. The SSHD may well, and often does, come under intense public and political pressure in relation to that advice. In the last few years, this public and political pressure has spilled over onto the ACMD and resulted in the sacking of their Chair.

5.5. On 30 October 2010, the former SSHD, the Rt Hon Alan Johnson MP, sacked the ACMD's former Chair, Dr David Nutt, for publicly repeating what evidence and logic had shown, that "ecstasy and LSD are less harmful than alcohol and tobacco". In doing so the SSHD made clear:

> "I cannot have public confusion between scientific advice and policy".[4]

5.6. Policy trumped evidence and, over the next ten days, five of the ACMD's esteemed experts, each unpaid volunteers, resigned in protest. On 1 November 2009, Dr Les King, the ACMD's then senior chemist, resigned in protest at Dr Nutt's dismissal, saying:

> "I'm not going to say just how many will resign but there is an extremely angry feeling among most council members. Amongst the scientists, I think a number will resign […] the classification of drugs is about harm. It doesn't need to be politicised in the way that it is". [5]

5.7. On 2 November 2010, Marion Walker, the ACMD's Royal Pharmaceutical Society representative resigned in protest. And, on 10 November 2009, after a meeting between the SSHD and the ACMD, three more members resigned: Dr John Marsden, Dr Ian Ragan, and Dr Simon Campbell.[6]

5.8. On 13 January 2010, the SSHD appointed Professor Les Iversen as interim Chair.

5.9. On 29 March 2010, Dr Polly Taylor resigned in the midst of a moral-panic about the drug mephedrone:

> "I feel that there is little more we can do to describe the importance of ensuring that advice is not subjected to a desire to please ministers or the mood of the day's press".[7]

5.10. On 1 April 2010, after the announcement that the SSHD will seek the "control" of mephedrone under the Act, Mr Eric Carlin resigned. He said:

> "Our decision was unduly based on media and political pressure".[8]

5.11. According to a 17 April 2010 editorial in *The Lancet*,[9] the Council was still discussing the draft of the ACMD's mephedrone report when the Chair, Les Iversen, rushed out of the meeting to brief the SSHD on their advice in time for the SSHD's scheduled press briefing.

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[4] SSHD (2009) Alan Johnson MP's letter to Professor David Nutt, 30 October 2009
[5] *BBC News* (2009) *Second drugs adviser quits post*, 1 November 2009
[6] *The Times* (2009) *Three more members of drugs advisory panel resign after sacking of David Nutt*, 11 November 2010; *Cf.* SSHD/*ACMD* (2009) *Joint Statement from the Home Secretary and the Advisory Council on the Misuse of Drugs*, 10 November 2009
[7] *BBC News* (2010) *Drug advisers resignation letter*, 29 March 2010
[8] *BBC News* (2010) *Adviser resigns over mephedrone*, 2 April 2010
[9] *The Lancet* (2010) *A collapse in integrity of scientific advice in the UK*, Vol. 375, Issue 9723, page 1319, 17 April 2010

5.12. Consequent of the political tempest over Dr Nutt, the trust between ministers and expert scientific advisers has evaporated. **If ACMD members cannot discharge their duty effectively for fear of being terminated or unduly influenced by public or political pressure, then ultimately, their independence is compromised and with it the nation's health.**

5.13. Hence, when we asked the ACMD to advise the SSHD on the possibility of controlling alcohol and tobacco under the Act, the ACMD chair marched in the SSHD's tracks without even considering the merits of the our request:

> "the ACMD interprets the legislation as including alcohol and tobacco issues whilst retaining a focus on illicit drugs. […] I understand … that the Coalition Government has no intention of seeking the classification of alcohol and tobacco under the Misuse of Drugs Act (the 1971 Act) for the purposes of controlling these substances under the Act. It is important that I make clear from the outset that the ACMD does not intend to provide advice to ministers on alcohol and tobacco that is concerned with classification under the [Act]".[10]

5.14. The statement above by the ACMD Chair gives every appearance that the ACMD is not acting as a statutorily independent non-executive body advising their departmental sponsor on the exercise of statutory discretion: for **in discharging their *"duty"* under the Act, the SSHD's intentions are of no consequence**.

5.15. The SSHD's 2006 *Draft response to Recommendation 1 of the ACMD's Pathways to Problems Report*, FOI 14725, evidences another attempt at interfering in the ACMD's process with regards to alcohol and tobacco:

> "There may be practical problems for ACMD in its current form to take a greater interest and responsibility in alcohol and tobacco. For instance its current membership may need to be revised significantly to provide the necessary expertise. The Government may welcome the ACMD's advice […] though it must be confident that the ACMD is equipped to give that advice and also, that ACMD is not distracted by what is considered to be its main function – advice on illegal drugs or those that can (realistically) be brought under the control of the 1971 Act".[11] (Emphasis added)

5.16. Here, the SSHD is advising the ACMD on "its main function" and the drugs that can "realistically" be controlled under the Act. It should be noted that in *Pathways to Problems: a follow-up report*,[10] at page 5, the ACMD said that rather than take independent legal advice, they "approached the [SSHD] for clarification of the current terminology in the MDA".

[10] ACMD (2010) letter to DEA Co-Founder Casey William Hardison, 16 August 2010
[11] Home Office (2006) *Draft response to Recommendation 1 of the ACMD's Pathways to Problems Report*, FOI 14725

5.17. Unfortunately, the SSHD had already misconstrued the Act:

> "the Misuse of Drugs Act 1971 is not a suitable mechanism for regulating … alcohol and tobacco".[2] (Emphasis added)

5.18. Remember, in 2007, the SSHD had already declared that:

> "our policy of prohibition [is]reflected in the terms of the Misuse of Drugs Act 1971".[1]

5.19. But, equating a "policy of prohibition" with the Act's policy, expressed so unmistakably in sections 7(1)-(2), 22(a)(i)-(ii) & 31(1)(a)-(b), is manifestly absurd; yet the ACMD constrains their advice to the policy choice of "prohibition" as the following statements evidence:

> "wherever controlled drugs are used outside of those legitimate activities i.e. medical, scientific or industrial use, they are regarded as 'dangerous or otherwise harmful drugs' for which there are prohibitive controls".[12]

> "Wherever drugs are used outside of medical and scientific use, and may have or appear capable of having harmful effects sufficient to constitute a social problem, they are regarded as dangerous or otherwise harmful drugs for which prohibitive controls are and will remain in place … There is no prospect of change".[13] (Emphasis added)

5.20. Both of the above statements adhere to the SSHD's "policy of prohibition", designed to limit controlled drug use purposes to medicine, science and industry. This policy prevents the "control" of alcohol and tobacco under section 2(5) of the Act without the unwanted effect of imposing "prohibitive controls"; as a result, the policy precludes the ACMD from properly considering the possibility of controlling alcohol and tobacco under the Act.

5.21. In *R(S) v Secretary of State for the Home Department* [2007] EWCA Civ 546 at 50 it was said that:

> "A public authority may not adopt a policy which precludes it from considering individual [requests] on their merits, nor may it allow its treatment of [requests] to be dictated by agreement with another government body". (*Mutatis mutandis*)

5.22. Together, influenced by public and political pressure, the ACMD and the SSHD have created an impenetrable wall not susceptible to logic or persuasion whereby the ACMD will not advise the SSHD on the possibility of controlling alcohol and tobacco under the Act and the SSHD will not request that advice.

[12] ACMD (2010) FoI Act 2000 response to Casey William Hardison, 22 October 2010
[13] ACMD (2007) FoI Act 2000 response to Casey William Hardison, 14 August 2007;

5.23. Together, the ACMD and the SSHD have closed ranks and shut their minds: "from the outset". This gives every impression that the ACMD is insufficiently independent of their sponsor/advisee, the SSHD: *Cf. R(Brookes & Others) v Parole Board* [2008] 1 WLR 1950.

5.24. Finally, in paragraph 10 of the ACMD's *Summary Grounds of Resistance* to Judicial Review CO/12291/2010 the ACMD stated that:

> "the [ACMD] is clear that its remit under s1(2) includes alcohol and tobacco".

5.25. Yet we received a Freedom of Information Act 2000 response[14] from the ACMD, dated 5 May 2011, relevant to their "duty" or remit to include alcohol and tobacco:

1) When asked for "the current ACMD file on the risk and harms of alcohol misuse", the ACMD replied, **"the ACMD does not maintain a file on the risks and harms of alcohol misuse"**.

2) When asked for "the current ACMD file on the risk and harms of tobacco misuse". The ACMD replied, **"the ACMD does not maintain a file on the risks and harms of tobacco misuse".**

5.26. Regarding the two drugs that cause the most harm to our society, alcohol and tobacco, the ACMD is not independent of the SSHD.

6. The Drug Equality Alliance believes that detailed consideration ought to be given to alternative ways of tackling the drugs dilemma

6.1. Whilst the term legalisation is itself a legal misnomer, we believe that the inevitable end of the 'War on some people who use some Drugs' will necessitate the implementation of a regulatory structure allowing for a lawful commerce of at least a few dozen of the safest psychoactive drugs for peaceful use purposes, i.e. "to alter mental functioning".

6.2. The proposals in Transform Drug Policy Foundation's *After the War on Drugs: Blueprint for Regulation*[4] conjunct our three reasonable differentiations, found in paragraph 3.8 above, and the discretions already present in the Act would allow this regulatory model without new primary legislation.

6.3. We at the Drug Equality Alliance believe that the use of substances to "alter mental functioning" is a basic human drive that should be protected and respected in terms of "freedom of thought", i.e. *Cognitive Liberty*. Our entire constitutional heritage rebels at the thought of giving Government the power to control minds; yet drug policy has accomplished this.

[14] ACMD (2007) FoI Act 2000 response to Casey William Hardison, 5 May 2011

6.4. As paragraph 6.1 of the SSHD's shelved consultation document *Review of the UK's Drugs Classification System – A Public Consultation*[7] stated:

> "People have used substances that alter mental functioning almost since the beginning of time".

6.5. Consider this allegory:[15] as you read this sentence, you are receiving information. Words are carriers of thoughts, whether spoken from mouth to ear, digitized and passed electronically, or downloaded into ink and passed on paper across time and space. Because words are vehicles for thoughts, words can change your opinion, give you new ideas, reform your worldview, or foment a revolution.

6.6. Attempts to control the written word date from at least AD 325 when the Council of Nicaea ruled that Christ was 100 percent divine and forbade the dissemination of contrary beliefs. Since the invention of the printing press in 1452, governments have struggled to control the printed word. Presses were initially licensed and registered; only certain people were permitted to own or control a printing press and only certain things could be printed or copied. Works printed without prior authorization were gathered up and destroyed, the authors and printers imprisoned.

6.7. Scholars disagree as to the exact date, but some time around 1560, Pope Paul IV published the *Index Librorum Prohibitorum* a list of forbidden books (i.e., controlled substances) enforced by the Roman government. When the *Index* was (finally) abandoned in 1966, it listed over 4,000 forbidden books, including works by such people as Galileo, Kant, Pascal, Spinoza and Locke. Our point is simply the obvious one: efforts to prohibit heterodox texts and to make criminals out of those who "manufactured" such texts, were not so much interested in controlling ink patterns on paper, as in controlling the *ideas* encoded in printed words.

6.8. We submit that in the same way, the so-called "war on drugs" is not a war on pills, powder, plants, and potions, it is war on mental states — a war on consciousness itself — how much, what sort we are permitted to experience, and who gets to control it. More than an unintentional misnomer, the government-termed "war on drugs" is a strategic decoy label; a slight-of-hand move by government to redirect attention away from what lies at ground zero of the war — each individual's fundamental right to control his or her own consciousness.

Fiat lux!

Drug Equality Alliance

[15] Boire RG (2000) *On Cognitive Liberty pt II*, Journal of Cognitive Liberties, 2000, Vol 2, No 1, pages 7-20