



Guy Coxall
seedourfuture@mail.com

Date: 23 January 2024

Dear Mr Coxall,

Freedom of Information Act Request – 2023/05814

Thank you for your e-mail of 23 November in which you asked for confirmation that the use of prescribed Cannabis Based Products for Medicinal Use (CBPMs) via a medical device sits outside of the Section 8D of the Misuse of Drugs Act 1971. The Government is clear that there is a distinction between smoking and vaping, in so far as smoking involves processes of combustion, with Section 8D of the Misuse of Drugs Act 1971 only concerning smoking.

Your email also asked for information on the use of dry herb vapourisers as a medical device to administer lawfully prescribed CBPMs. The Department of Health and Social Care has published resources relating to medicinal cannabis, which you can find here: [Medicinal cannabis: information and resources - GOV.UK \(www.gov.uk\)](http://www.gov.uk) and the Medicines and Healthcare Products Regulatory Agency has published resources relating to the regulation and safety of medical devices, which you can find here: [Medical devices regulation and safety - GOV.UK \(www.gov.uk\)](http://www.gov.uk). The Office for Health Improvement and Disparities has also published policy, regulation and guidance on vaping, which you can find here: [E-cigarettes and vaping: policy, regulation and guidance - GOV.UK \(www.gov.uk\)](http://www.gov.uk), and the NHS has published resources for patients and the public on medical cannabis, which you can find here: [Medical cannabis \(cannabis oil\) - NHS \(www.nhs.uk\)](http://www.nhs.uk).

You also asked for information held by the Home Office regarding the lawfulness of the use of dry herb vaporisers (medical devices) in administering lawfully prescribed (CBPMs) in public and private spaces when following the official guidance provided by the specialist consultant prescriber. Your request has been handled as a request for information under the Freedom of Information Act 2000 (FOIA).

The Home Office does hold information relating to your request, which is attached as annexes to this letter. It is an email chain consisting of five emails:

1. From the Home Office to the Department of Health and Social Care (DHSC) on 21 June 2022 (Annex A);
2. A response from DHSC to the Home Office also on 21 June 2022 (Annex B);
3. A response from the Home Office to DHSC also on 21 June 2022 (Annex C);
4. A response from DHSC to the Home Office on 22 June 2022 (Annex D); and

5. A further response from DHSC to the Home Office on 26 June 2022 (Annex E).

You will see that some information in the emails has been redacted. This is because under the Freedom of Information Act, we are exempt from releasing information if certain criteria apply. The following exemptions have been used:

1. Section 43: the commercial interests exemption. Section 43(2) exempts information whose disclosure would, or would be likely to, prejudice the commercial interests of any legal person (an individual, a company, a public authority or any other legal entity).
2. Section 40: the personal information exemption. Names and personal information of staff members involved in the email chains have been redacted.
3. Section 35 the formulation and development of government policy exemption. We are required to carry out a public interest test before engaging the exemption and have redacted information where we believe that following consideration there is greater public interest in maintaining the exemption than disclosing the information.

Some information has also been redacted from the email chains because it does not relate to your query as to the lawfulness of using dry herb vapourisers to administer lawfully prescribed CBPMs.

If you are dissatisfied with this response, you may request an independent internal review of our handling of your request by submitting a complaint within two months to foirequests@homeoffice.gov.uk, quoting reference 2023/05814. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request would be reassessed by staff who were not involved in providing you with this response. If you were to remain dissatisfied after an internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the FOIA.

A link to the Home Office Information Rights Privacy Notice can be found in the following link. This explains how we process your personal information:

<https://www.gov.uk/government/publications/information-rights-privacy-notice>

Yours sincerely

Drugs Misuse Unit

Annex A

From: [REDACTED] <[REDACTED]@homeoffice.gov.uk>
Sent: 21 June 2022 09:29
To: [REDACTED] <[REDACTED]@dhsc.gov.uk>
Cc: [REDACTED] <[REDACTED]@homeoffice.gov.uk>
Subject: CBPM guidance correspondence

Good morning [REDACTED]

We are currently dealing with the attached correspondence regarding guidance on CBPMs. The correspondent has 4 key points he would like to know:

[REDACTED]

[REDACTED]

2. Guidance for the consumption of medical cannabis prescriptions in indoor public places or venues, as some patients are required to use a Thermal Extraction Device (eg. [REDACTED] which has recently been approved as a medical device by the MHRA). Are patients able to consume their medication indoors and on public transport?
3. Guidance on consuming medical cannabis with a thermal extraction device while operating a vehicle.

[REDACTED]

[REDACTED] On [REDACTED] 3, we are unfamiliar with this thermal Extraction Device. Do you know whether it's use is compatible with the requirement of the MDR 2001 that a CBPM cannot be self-administered by smoking? If it is compatible and it doesn't count as smoking for the MDR 2001, then this isn't a drug policy issue but rather it is about the smoking ban and the relationship with similar activities like vaping – basically, if this isn't 'smoking' for the purposes of our legislation, is it 'smoking' for the purposes of the smoking ban?

Grateful for any information you can offer in regards to this. Our deadline is a week today.

Kind regards,

[REDACTED]
Drugs Legislation Team
[REDACTED]
Drug Misuse Unit
M: [REDACTED]

Annex B

From: [REDACTED] <[REDACTED]@dhsc.gov.uk>
Sent: 21 June 2022 10:39
To: [REDACTED] <[REDACTED]@homeoffice.gov.uk>
Cc: [REDACTED] <[REDACTED]@homeoffice.gov.uk>; [REDACTED] <[REDACTED]@dhsc.gov.uk>; [REDACTED] <[REDACTED]@dhsc.gov.uk>
Subject: FW: CBPM guidance correspondence

Hi [REDACTED],

The advice we had previously received is clear that vaping is distinct from smoking, therefore except from smoke-free laws.

I will need to check with our tobacco team that the lines are still update and will revert by your deadline.

[REDACTED]

Regards

[REDACTED]



Department
of Health &
Social Care

[REDACTED]
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Follow us on Twitter [@DHSCgovuk](https://twitter.com/DHSCgovuk)
My pronouns are [REDACTED]

Annex C

From: [REDACTED] <[REDACTED]@homeoffice.gov.uk>
Sent: 21 June 2022 13:26
To: [REDACTED] <[REDACTED]@dhsc.gov.uk>; [REDACTED] <[REDACTED]@homeoffice.gov.uk>
Cc: [REDACTED] <[REDACTED]@dhsc.gov.uk>; [REDACTED] <[REDACTED]@dhsc.gov.uk>
Subject: RE: CBPM guidance correspondence

Thanks [REDACTED] –

[REDACTED]

Did the previous advice look at vaping specifically in the context of CBPMs?

Are we sure that the “thermal extraction device” is the same, or to be treated the same, as vaping?

The correspondent says that the MHRA have approved the device. Is that right? Did that advice consider CBPMs? I couldn't find the MHRA advice on the website. Would be good to see it, if it exists.

regards

[REDACTED]
[REDACTED]
Drugs Legislative Projects [REDACTED]
Drug Misuse Unit
Crime Reduction Directorate
Public Safety Group
Mobile: [REDACTED]
Web: www.homeoffice.gov.uk

Annex D

From: [REDACTED]
Sent: 22 June 2022 12:44
To: [REDACTED] <[REDACTED]@homeoffice.gov.uk>; [REDACTED] <[REDACTED]@homeoffice.gov.uk>
Cc: [REDACTED] <[REDACTED]@dhsc.gov.uk>; [REDACTED] <[REDACTED]@dhsc.gov.uk>
Subject: RE: CBPM guidance correspondence

Hi [REDACTED],

[REDACTED]

The advice from the tobacco team is below. Vaping devices, whether heating e-cigarette liquid or cannabis, fall outside smoke-free laws as long as they heat the material at temperatures below that necessary for combustion to occur or don't generate smoke.

We don't have any information on the "thermal extraction device – [REDACTED]" and have asked MHRA for any information on this and will pass on. I don't think MHRA approve or authorise medical devices as such, but lets see what they come back with.

[REDACTED] Most public venues and transport have enforced strict bans on vaping. These may be for a range of reasons, including unknown health effects on bystanders, wishes of other customers, fire hazards e.g. interfering with smoke alarms, making enforcement easier e.g. hard to tell whether someone is vaping something legal/illegal etc.

"The Regulations [The Misuse of Drugs (Amendments) (Cannabis and Licence Fees) (England, Wales and Scotland) Regulations 2018] prohibit the administering of a cannabis-based product for medicinal use in humans by the smoking of the product, other than for research purposes. The Government is clear that there is a distinction between smoking and vaping.

Smoking is distinct from vaping, in so far as smoking involves processes of combustion. One would expect manufacturers to provide evidence to support that the inhaling or delivery device operates without combustion and that no combustion processes occur in the cannabis source material when heating the device to produce an aerosol or vapor.

The Health Act 2006 introduced restrictions on smoking in public places and workplaces. As e-cigarettes or vaping devices do not contain tobacco and they emit vapour, not smoke, they are therefore not covered by the smoke-free regulations. Whilst it is not illegal to vape on public transport or indoor places, many businesses/operators will have their own policies in place, which may ban or restrict the use of vaping devices. It is therefore advisable to check with the venue or operator before using your device.

Former Public Health England published advice to support employers development policy for vaping in public and workplace settings. Guidance can be viewed at:
[https://www.gov.uk/government/publications/use-of-e-cigarettes-in-public-places-and-workplaces.](https://www.gov.uk/government/publications/use-of-e-cigarettes-in-public-places-and-workplaces)"

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regards

[REDACTED]



Department
of Health &
Social Care

[REDACTED]

Pharmacy Team
Department of Health and Social Care
39 Victoria Street, London, SW1H 0EU
E: [REDACTED]@dhsc.gov.uk
T: [REDACTED]
Follow us on Twitter [@DHSCgovuk](#)
My pronouns are [REDACTED]

Annex E

[REDACTED],

Following up on the query concerning [REDACTED] we have received the following from the MHRA. The key point they are stressing is that medical devices only have a requirement to register their products before placing them on the UK market and **registration does not represent any form of accreditation, certification or approval by the UK Competent Authority (MHRA).**

Regards

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

As we do not approve such devices ourselves we do not hold much more information on the product than is already in the public domain. The website link they provided already provides information covering intended use and intended users:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



Department
of Health &
Social Care

[REDACTED]

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My pronouns are [REDACTED]