

**Subject:** Freedom of Information Request – Regulation 16A(3), ACMD Advice and the Home Office’s Correspondence of 14 September 2025

Dear Home Office FOI Team,

Please find attached a request made under the Freedom of Information Act 2000.

This request seeks clarification of statements made in the Home Office’s correspondence dated **14 September 2025**, in which the department wrote that:

“the ACMD has previously recommended that any prescription of cannabis-based products for medicinal use should not include smoking as a route of administration due to the harms associated with smoking.”

I am also attaching recent correspondence received from the Department of Health and Social Care (DHSC), in which DHSC confirms that it holds **observer status only** in relation to the ACMD review and does not direct its scope, content, or structure.

I also note that the Written Ministerial Statement **HCWS994 of 11 October 2018** describes the creation of the new Schedule 2 category of “*cannabis-based products for medicinal use in humans*”, which did not exist prior to SI 2018/1055. The Statement does not identify any ACMD recommendation relating to a statutory smoking prohibition or criminal liability, nor does it link ACMD commentary on the harms of smoking to Regulation 16A(3).

For clarity, Regulation 16A(3) does not create a new criminal offence in itself. Rather, it withdraws the regulatory exemption that would otherwise protect a patient who is lawfully in possession of a prescribed cannabis-based product for medicinal use in humans. The effect is that, if a patient self-administers their prescribed CBPM by smoking, the underlying offences in the Misuse of Drugs Act 1971 re-apply as though the exemption did not exist. No comparable route-specific withdrawal of exemption applies to other prescribed Schedule 2 medicines, and HCWS994 provides no indication that ACMD recommended or supported this approach.

This strongly suggests that the issues addressed in the attached FOI fall wholly within the remit, decision-making authority, and documentary holdings of the Home Office, and require clarification of the evidential and advisory basis for the department’s assertion of 14 September 2025. (*attached for convenience*)

The attached FOI therefore asks the department to identify:

- the specific ACMD passages relied upon for the assertion above,
- the Home Office’s reasoning for creating and maintaining the prohibition under Regulation 16A(3),
- any equality, disability-impact, or human-rights analysis relevant to that prohibition, and
- any comparative analysis explaining why smoked cannabis-based medicinal products attract criminal liability while smoked tobacco does not.

In line with your previous correspondence indicating that the department is no longer engaging substantively outside the FOI process, no further response is required other than the statutory reply

.

Kind regards,  
**Pete Lindsay**

[Pete.lindsay@justicebydesign.org.uk](mailto:Pete.lindsay@justicebydesign.org.uk)

[Justice by Design](#)

---

## FOI REQUEST

### Freedom of Information Request – Regulation 16A(3) and ACMD Advice

Dear Home Office FOI Team,

I am writing to request the following information under the Freedom of Information Act. This request is separate from FOI 2025/14526 and concerns statements made in the Home Office's correspondence of **14 September 2025** regarding the relationship between ACMD advice and the introduction of Regulation 16A(3) in SI 2018/1055.

I would be grateful if you could provide the following:

---

#### 1. Identification of ACMD material relied upon

Please identify the specific passages in ACMD reports, minutes, correspondence, or advice that the Home Office relied upon in stating that ACMD had recommended that prescriptions “should not include smoking as a route of administration due to the harms associated with smoking.”

---

#### 2. Home Office interpretation of ACMD comments

Please provide any documentary material—reports, draft papers, emails, meeting notes, internal summaries, or other records—showing how the Home Office interpreted or applied ACMD commentary on the harms of smoking to the development of Regulation 16A(3).

---

#### 3. DHSC observer-status: Home Office handling

DHSC has confirmed that it held **observer-only status** in relation to the ACMD review and did not direct its scope, content, or structure.

Please provide any Home Office documentation—emails, internal briefings, meeting notes, correspondence, or handling advice—showing:

- how DHSC's observer status was understood internally,
- whether DHSC was asked to confirm, validate, or comment upon any ACMD-related material cited in the 14 September letter, and
- whether the Home Office sought or received any DHSC input on the interpretation of ACMD advice relating to smoking or combustion.

If no such material exists, please state this explicitly.

---

#### 4. ACMD recommendations on smoking prohibition or criminal liability

Please provide any advice, recommendations, or commentary from the ACMD in which the Council proposed, endorsed, or advised the creation or maintenance of a statutory smoking prohibition or any form of criminal liability relating to the route of administration of a prescribed cannabis-based product for medicinal use in humans.

If no such advice exists, please confirm this.

---

### **5. Internal Home Office analysis of Regulation 16A(3)**

Please provide any internal analysis, briefing material, policy papers, or legal assessments (2017–2018) describing:

- the purpose of Regulation 16A(3),
  - its intended effect,
  - its evidential or scientific basis, or
  - the rationale for introducing a route-specific restriction for prescribed CBPMs.
- 

### **6. Explanation of Regulation 16A(3) to ministers and other departments**

Please provide any documentation showing how the statutory purpose or effect of Regulation 16A(3) was explained to:

- Home Office ministers,
- other government departments (including DHSC), or
- Parliament

before SI 2018/1055 was laid.

---

### **7. Comparative analysis**

Please provide any Home Office documentation that compares:

- the treatment of smoked CBPMs under Regulation 16A(3), and
- the treatment of smoked tobacco products,

including any explanation of why the former attracts criminal liability while the latter does not.

---

### **8. Clarification of the legal mechanism and supporting documentation**

For clarity, Regulation 16A(3) does not create a new criminal offence in itself. It withdraws the regulatory exemption that would otherwise protect a patient who is lawfully in possession of a prescribed CBPM. The effect is that smoking a prescribed CBPM causes the underlying offences in the Misuse of Drugs Act 1971 to re-apply.

Please provide any documentation—policy papers, internal correspondence, impact assessments, legal advice, or explanatory material—addressing:

- the decision to withdraw the exemption solely on the basis of route of administration, and
  - the expected legal, clinical, or operational consequences of that decision.
- 

## **9. Equality, disability, and human-rights considerations**

Please provide any Home Office documentation showing whether equality impacts, disability impacts, proportionality assessments, or human-rights implications were considered or documented in relation to Regulation 16A(3).

---

## **10. Exemption schedule (if material withheld)**

Should any material be withheld under FOIA exemptions, please provide:

- a schedule listing each withheld document, and
  - the specific exemptions applied.
- 

## **11. Section 12 (cost-limit) considerations**

If fulfilling this request would exceed the statutory cost limit, please provide:

- the subset of materials disclosable within the limit, and
  - a schedule of any additional documents held, with the specific cost grounds relied upon.
- 

## **12. Information not held**

If the Home Office does not hold any of the information requested in paragraphs 1–11, in whole or in part, please state this explicitly for each item.

---

I would prefer to receive the information electronically.