EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS ACT 1971 (AMENDMENT) (No. 2) ORDER 2013

2013 No. [ ]

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order in Council (the "Order") controls khat (commonly known as "qat", "chat", "miraa" etc) as a Class C drug under Part 3 of Schedule 2 to the Misuse of Drugs Act 1971 (the "1971 Act"). The Order inserts the definition of khat "the leaves, stems or shoots of the plant of the species *Catha edulis*" in Part 4 of that same Schedule.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 1971 Act controls drugs that are considered "dangerous or otherwise harmful". Schedule 2 to the 1971 Act specifies these drugs and groups them into three categories – Part 1 lists drugs known as Class A drugs, Part 2 lists Class B drugs and Part 3 lists Class C drugs. The three-tier system of classification (A, B and C) provides a framework within which criminal penalties are set with reference to the potential harm that a drug has or is capable of causing when misused and the type of illegal activity undertaken in regard to that drug. Part 4 of Schedule 2 to the 1971 Act lists definitions of some drugs listed in Parts 1 to 3 of the same Schedule to clarify their meaning, as appropriate.

4.2 Section 2 of the 1971 Act enables amendments to be made to the list of drugs controlled under the Act by means of an Order in Council. Such Orders are subject to the affirmative resolution procedure which requires that they are approved by each House of Parliament. This section also provides that the Secretary of State may recommend the making of such an Order after consultation with the Advisory Council on the Misuse of Drugs ("ACMD"). The control and classification of khat are predicated on the assessment of the risks and potential harms associated with khat use and the khat trade following consultation with the ACMD.

4.3 Khat is a plant mainly grown in the Horn of Africa. It is consumed for its stimulant properties. Its leaves, stems and shoots contain naturally occurring active ingredients, cathine and cathinone, which are already subject to Class C control as drugs listed in Part 3 of Schedule 2 to the 1971 Act when isolated from the khat plant. The ACMD advises that there is no robust evidence to show a direct causal link to adverse medical effects, other than a small number of reports of an association between khat use and significant liver toxicity. It also finds some of the adverse outcomes are *associated* with khat use i.e. a complex interaction of khat with other factors to produce the outcome, but that there is no evidence that it is directly caused by khat use. The ACMD further advises that, from the evidence on societal harms, it is often difficult to disentangle whether khat is the source of

community problems or whether, to some extent, its prevalence and use is symptomatic of the problems for some individuals and groups within the community.

4.4 The Secretary of State has considered the ACMD's assessment and, noting the potential harms of khat, has concluded that there is a risk that the actual harm of khat use may be underestimated owing to the limited evidence base. Alongside the ACMD's advice, she considered broader policy factors pertaining to public health and protection, noting continuing community concerns on harms associated with khat and increasing evidence on international khat trafficking activity from the UK to countries where khat is banned which places the UK at risk of becoming a single regional hub for khat smuggling. The Secretary of State finally concluded that the risks and potentials harms associated with khat are sufficient as to warrant control. Class C control of khat means that it will be added alongside its active ingredients and will also align the UK's legal position on khat to that of most Western countries.

4.5 Khat will be defined in Part 4 of Schedule 2 to the 1971 Act as the leaves, stems or shoots of the plant of the species *Catha edulis*. These are the parts of the plant which contain the active ingredients cathine and cathinone. Existing Class C control restrictions on these two drugs remain unchanged. Under paragraph 4 of Part 3 of Schedule 2 to the 1971 Act, control restrictions applying to Class C drugs listed in that same Schedule are extended to the preparations of khat.

4.6 It is intended to make two further related statutory instruments which will be subject to the negative resolution procedure. The Misuse of Drugs Regulations 2001 will be amended to add khat to Schedule 1 to those Regulations. The Misuse of Drugs (Designation) Order 2001 will be amended to designate khat as a drug which has no recognised medicinal or other legitimate uses in the UK beyond research or other special purposes.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Crime and Security has made the following statement regarding Human Rights:

> In my view the provisions of the Misuse of Drugs Act 1971 (Amendment) (No. 2) Order 2013 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 In 2010 the UK Government asked the ACMD to review the available evidence on khat in light of concerns about the use of khat, the harms caused to individuals and the societal harms in the UK's affected Somali, Yemeni and Ethiopian communities. In January 2013 the ACMD published its advice to the UK Government (at www.gov.uk/government/publications/khat-report-2013). Having consulted the ACMD, the Home Secretary considered its advice alongside broader policy factors to inform their

decision, including the available evidence base on harm, community concerns and increasing evidence of international trafficking activity under covert of the khat trade. The UK Government has taken the view that the risks and potentials harms associated with khat are sufficient as to warrant its control as a Class C drug.

7.2 The maximum penalties for offences relating to a Class C drug are - on indictment, for possession, two years' imprisonment and/or an unlimited fine, and, for supply, production (including cultivation) or importation/exportation, fourteen years' imprisonment and/or an unlimited fine; the maximum penalties on summary conviction for Class C drugs on possession are three months' imprisonment and/or a fine of up to £1,000, and for supply, production or importation/exportation, three months' imprisonment and/or a fine of up to £2,500.

7.3 The Government is also amending the Criminal Justice and Police Act 2001 to complement the Order and introduce Penalty Notices for Disorder as part of an escalation framework for the policing of simple possession offences for khat under Class C control. This framework will be similar to the existing framework for cannabis (Class B) possession offences committed by adults in England & Wales, in that 'khat warnings' can be issued for a first simple possession offence and a £60 Penalty Notice for Disorder for a second khat possession offence in the absence of aggravating circumstances to these offences.

- ***Consolidation***

7.4 As this Order makes only a very limited amendment to the 1971 Act, consolidation is not thought appropriate on this occasion.

8. Consultation outcome

8.1 The Home Office has consulted the ACMD, the Medicines and Healthcare products Regulatory Agency (MHRA), who indicate that there is no known medicinal use of khat in the UK. The Department for Business, Innovation & Skills has not indicated that khat has any industrial use.

9. Guidance

9.1 The change in the law made by this Order and its consequences will be communicated to targeted audiences and the wider public, especially local communities including individuals and businesses involved in khat-related activities, local and regional public authorities, as well as UK law enforcement, in the lead up to and beyond the Order coming into effect. The Home Office will issue a circular with legislative guidance primarily for law enforcement, the courts and forensic providers, to accompany national policing guidance for frontline law enforcement.

10. Impact

10.1 The Government considers that the risks, potential harms and negative perceptions associated with khat use and the khat trade pose a threat sufficiently compelling to control khat in order to protect the public and the UK. No evidence of medicinal or other legitimate uses of khat have been indicated. Individuals, businesses and organisations which have previously been legally involved in activities in relation to khat are expected

to comply with the law or face the risk of prosecution, as do others if they are involved in the international khat trafficking trade. The potential impact on organisations including charities or voluntary bodies relates to support services to users or the administrative costs of related activities for research, although these are likely to be minimal.

10.2 The potential impact on the public sector relates to law enforcement, the loss of import VAT at £2.8m per annum and potential loss of revenue from UK businesses ceasing their activities in relation to khat, the Criminal Justice System and regulatory agencies, although any associated costs are expected to be relatively small. Law enforcement costs are expected to be subsumed into arrangements for similarly controlled drugs and managed within existing resources. Benefits are also expected to arise from increased awareness and reduced availability and demand of khat, as well as reduced risks, potential harms and negative perceptions associated with khat in UK society.

10.3 An Impact Assessment including a Policy Equality Statement is attached to this Explanatory Memorandum and will be published alongside it on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small and micro business. The risks, potential harms and negative perceptions associated with khat use and the khat trade, including diversion into the international trafficking trade, in the UK are such that the Government will expect all businesses to comply with the Order.

12. Monitoring & review

12.1 The Government will monitor the control measures as part of its drug strategy. In tandem with this, the Government will continue to review its public health messaging to ensure that it is appropriately targeted and informative.

13. Contact

Cyrille Marcel at the Home Office, tel: 020 7035 0618 or e-mail: Cyrille.Marcel2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.