EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS ACT 1971 (AMENDMENT) ORDER 2016

2016 No. [XXXX]

1. Introduction

1.1 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 The Order in Council (the "Order") brings a further range of synthetic cannabinoids under permanent control as Class B drugs under Part 2 of Schedule 2 to the Misuse of Drugs Act 1971 (the "1971 Act"). This excludes those synthetic cannabinoids which are already controlled as Class B drugs, two other compounds which are already controlled as Class A drugs, and several other compounds that have legitimate medical uses.

2.2 The Order also brings the anabolic steroid dienedione under control as a Class C drug under Part 3 of Schedule 2 to the 1971 Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 The 1971 Act controls drugs that are "dangerous or otherwise harmful". Schedule 2 to the 1971 Act specifies these drugs and groups them in 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 harm a drug has or is capable of having when misused and the type of illegal activity undertaken in regard to that drug.

4.2 The classification of the drugs listed in paragraphs 2.1 and 2.2 above is predicated on an assessment of their respective harms and in accordance with recommendations made by the ACMD.

4.3 The psychoactive effects and harms of the 'third generation' synthetic cannabinoids controlled by the Order are reported to be similar to cannabis and other synthetic cannabinoids already controlled under the 1971 Act. There are no known legitimate or recognised uses of these compounds beyond potential research. The ACMD considers that these drugs are being, or are likely to be, misused, and that misuse is having, or is capable of having, harmful effects. The ACMD recommends that this further range

of synthetic cannabinoids is captured by an additional generic definition inserted into Part 2 of Schedule 2 to the 1971 Act.

4.4 Dienedione is an anabolic steroid which has a number of physiological effects similar to those anabolic steroids already controlled as Class C drugs under the 1971 Act. These include anabolic effects (such as growth of skeletal muscle and bone) and androgenic effects (the differentiation, growth and maintenance of the reproductive system and sexual characteristics in males). The ACMD considers that dienedione is being, or is likely to be, misused, and that misuse is having, or is capable of having, harmful effects.

4.5 As appropriate, controls on these substances are extended to their simple derivatives - salts, stereoisomeric forms. Dienedione does not form esters or ethers.

4.6 In due course it is intended to make two further related statutory instruments to come into force at the same time as the Order. This will add dienedone and the further range of synthetic cannabinoids controlled by the Order to the appropriate Schedules to the Misuse of Drugs Regulations 2001. The Misuse of Drugs (Designation) Order 2001 will also be amended to designate these synthetic cannabinoids, as they have no recognised legitimate uses outside of research.

5. Extent and Territorial Application

5.1 The extent of this instrument is all of the United Kingdom.

5.2 The territorial application of this instrument is all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister for Preventing Abuse, Exploitation and Crime has made the following statement regarding Human Rights:

"In my view, the provisions of the Misuse of Drugs Act 1971 (Amendment) Order 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 A further range of synthetic cannabinoids are being permanently controlled as Class B drugs under the 1971 Act due to their potential harms, excluding those synthetic cannabinoids which are already controlled under the Act as Class B drugs, two other compounds which are already controlled as Class A drugs, and several other compounds that have legitimate medical uses in either the UK or EU.

7.2 The ACMD reported that these "third generation" synthetic cannabinoids affect the CB1 cannabinoid receptors in the brain and produce psychoactive effects similar to those produced by cannabis. Following the identification of such materials in smoking products, the Government subjected them to two tranches of controls under the 1971 Act. The first, which came into force at the end of 2009, was based around materials then known to be available as new psychoactive substances (NPS) and included a number of named compounds together with generic controls covering groups of materials related to those known to be in circulation in order to try to avoid simple 'designer' variants. A further generic definition came into effect in early 2013 and expanded control to include a broader range of 'second generation' materials, which had appeared between 2009 and 2012.

7.3 A "third generation" of synthetic cannabinoids, which are outside the scope of the 2012 controls, subsequently entered the market and became widely available. As such, the ACMD issued advice on an additional generic definition to classify this further range of synthetic cannabinoids as Class B drugs under the 1971 Act. The ACMD's advice in respect of these substances, along with a number of addendums (latest July 2016) which amend the generic definition, can be found here:

https://www.gov.uk/government/publications/third-generation-synthetic-cannabinoids

7.4 Dienedione (estra-4,9-diene-3,17-dione) is also being permanently controlled as a Class C drug. The ACMD has carefully considered the potential physical and social harms of dienedione and advises that these would be commensurate with other anabolic steroids. The ACMD's advice in respect to dienedione is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491846/ACMD_advice_-_Estra-4_9-diene-317-dione___dienedione_.pdf.

Consolidation

7.5 The issue of consolidation is not relevant to this order.

8. Consultation outcome

8.1 The Government has consulted its independent experts, the Advisory Council on the Misuse of Drugs, along with the MHRA and the Department for Business, Innovation and Skills which found no legitimate uses of the substances being controlled. The ACMD has recommended control of the drugs concerned following a review of their harms.

9. Guidance

9.1 The control of these drugs and its consequences will be communicated to key stakeholders and the wider public. The Home Office will issue a Circular with legislative guidance primarily for the police and the courts. The Government will continue to update its messaging on the harms of these substances, including through its FRANK information and advisory service online.

10. Impact

10.1 There is no impact on legitimate business, charities or voluntary bodies, except for organisations undertaking research using these compounds. However, impact is minimal as these organisations are already likely to be handling controlled drugs acting under a Home Office licence, or in accordance with the Misuse of Drugs Regulations 2001, and guidance is already widely available in this area.

10.2 The impact on the public sector is expected to be minimal. Enforcement of offences in relation to the drugs controlled by the Order will be subsumed into the overall enforcement response to controlled drugs. There may be a benefit to health services and treatment providers where the supply of these substances is restricted.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 This legislation applies to activities that are undertaken by small business.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 The harm that can result from misuse and diversion of the drugs controlled by the Order is such that we would expect compliance with the 1971 Act and subordinate legislation made under it, however small the business. Impact on small businesses conducting legitimate research is minimised as these businesses are already likely to be acting under a Home Office licence.

12. Monitoring & review

12.1 The Government will monitor the control measures through the regulatory framework governing controlled drugs, and also through national data collection and surveys on drug misuse.

13. Contact

13.1 James Mclellan at the Home Office. Telephone: 0207 035 1885 or email: james.mclellan@homeoffice.gsi.gov.uk can answer queries regarding this instrument.