EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS ACT 1971 (AMENDMENT) (NO. 2) ORDER 2017

2017 No. 1114

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 Methiopropamine ('MPA'), a synthetic drug which is similar in structure to Amphetamine, under permanent control as a Class B drug under Part 2 of Schedule 2 to the Misuse of Drugs Act 1971 (the '1971 Act'). MPA was specified under section 2A of the 1971 Act as a drug subject to temporary control by virtue of the Misuse of Drugs Act 1971 (Temporary Class Drug) (No.2) Order 2016 (S.I. 2016/1126). That Order expires on 27th November, at which point this instrument will come into force.

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 MPA is predicated on an assessment of the harms associated with this substance and in accordance with the recommendations made by the Advisory Council on the Misuse of Drugs ('ACMD'). The ACMD have also reported that there are no known medicinal, industrial or commercial benefits of MPA. As such, two further statutory instruments will come into force on the same time as the Order. The two orders will list MPA as a Schedule 1 drug under the Misuse of Drugs Regulations 2001 and, designate MPA under the Misuse of Drugs (Designation) Order 2015 as a drug which has no recognised legitimate use 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 Crime, Safeguarding and Vulnerability has made the following statement regarding Human Rights:

"In my view, the provisions of the Misuse of Drugs Act 1971 (Amendment) (No. 2) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 MPA is being permanently controlled as a Class B drug under the 1971 Act due to its potential harms.

7.2 MPA is a synthetic drug which is similar in structure to amphetamine and often marketed as a 'legal alternative' to cocaine, often in concoction with other stimulant drugs. The National Programme of Substance Abuse Deaths (NPSAD) reported 46 cases where MPA was found in post mortem toxicology, between 2012 and April 2017. In all these occurrences, MPA was found in combination with other substances, mainly new psychoactive substances ('NPS').

7.3 MPA has been subject to two consecutive Temporary Class Drug Orders ('TCDO') since November 2015. The first TCDO was made following the ACMD's report which indicated that MPA had replaced methylphenidate based compounds that were subject to a TCDO earlier in 2015. In light of the proliferation in use and an increased number of associated deaths and harms, as well as its potential intravenous use, the ACMD urgently recommended that MPA be subject to a TCDO.

7.4 The second TCDO was made in November 2016, after the ACMD provided a letter referring to anecdotal evidence which suggested that the first TCDO had been effective in halting the proliferation of MPA. In this letter, the ACMD recommended that the TCDO be remade for another year in order to gather further evidence before making a final substantiated recommendation for permanent control under the 1971 Act.

7.5 In their final report, the ACMD concluded that after reviewing the evidence, MPA is a drug which is being, or likely to be misused and that misuse is having or is capable of having, harmful effects. As such, the ACMD recommended that MPA be permanently controlled as a Class B drug under the 1971 Act. The control of the compounds should extend to include any stereoisomeric forms, any salts of such compounds and any preparation or product containing any such compounds. The ACMD also found no evidence that MPA had any recognised medicinal use.

7.6 The ACMD's full advice on MPA can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/619755/ACMD_s_further_advice_on_methiopropamine_June_2017.pdf

Consolidation

7.7 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. The ACMD has recommended control of the drugs concerned following a review of their harms.

9. Guidance

9.1 The control of MPA 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 substances. However, impact on research organisations is expected to be 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 MPA 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 Sara Soleymani at the Home Office. Telephone: 0207 035 3073 or email: Sara.Soleymani@homeoffice.gsi.gov.uk can answer queries about this instrument.