**EXPLANATORY MEMORANDUM TO**

**THE MISUSE OF DRUGS ACT 1971 (AMENDMENT) ORDER 2012**

**2012 No. 1390**

**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 classifies for control the following drugs under Schedule 2 to the Misuse of Drugs Act 1971 ("the 1971 Act"):

(i) desoxypipradrol ("2-DPMP"), diphenylprolinol (also known as "D2PM"), 2-diphenylmethylpyrrolidine and other pipradrol-related compounds (by use of a generic definition) in Part 2 of Schedule 2 as Class B drugs;
(ii) any substance which is an ester or ether of Class C pipradrol in Part 3 of Schedule 2 as Class C drugs; and
(iii) 7-bromo-5-(2-chlorophenyl)-1,3-dihydro-2*H*-1,4-benzodiazepin-2-one ("phenazepam") in Part 3 of Schedule 2 as a Class C drug.

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

3.1 None.

## 4. Legislative Context

4.1 The Misuse of Drugs Act 1971 ("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 contains 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 causing when misused and the type of illegal activity undertaken in regard to that drug.

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. Recommendations to make such Orders are not made unless a draft has been approved by affirmative resolution of both Houses of Parliament and section 2(5) also provides that the Secretary of State shall not lay such a draft except after consultation with the Advisory Council on the Misuse of Drugs ("ACMD").

4.3 The control and classification of the substances listed at paragraph 2.1 above are predicated on an assessment of harm and in accordance with recommendations made by the ACMD. The ACMD assessed these substances to be harmful drugs sufficient to justify control under the 1971 Act as Class B and Class C drugs respectively. 2-DPMP, D2PM, 2-diphenylmethylpyrrolidine and other pipradrol-related compounds are more harmful derivatives of pipradrol which is already controlled as a Class C drug under the 1971 Act. Phenazepam is part of the family of benzodiazepines drugs which are classified under the

1971 Act as Class C drugs. As appropriate, controls on all these substances are extended to their simple derivatives, such as salts, stereoisomeric forms, esters and ethers. For the purpose of consistency and following ACMD's advice, the esters or ethers of pipradrol are brought under control as Class C drugs under the 1971 Act.

4.4 It is intended to make two further related statutory instruments which will be subject to the negative resolution procedure amending the Misuse of Drugs Regulations 2001 (as amended) to include 2-DPMP, D2PM, 2-diphenylmethylpyrrolidine and other pipradrol-related compounds in Schedule 1 to those Regulations. Phenazepam and the esters or ethers of pipradrol will be listed in Schedule 3 thereby providing for the legitimate medicinal use of these drugs where appropriate. The Misuse of Drugs (Designation) Order 2001 (as amended) will be amended to designate 2-DPMP, D2PM, 2-diphenylmethylpyrrolidine and other pipradrol-related compounds as drugs which have no recognised medicinal use.

## 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 Prevention and Anti-social Behaviour Reduction has made the following statement regarding Human Rights:

> In my view the provisions of the Misuse of Drugs Act 1971 (Amendment) Order 2012 are compatible with the Convention rights.

## 7. Policy background

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

7.1 2-DPMP, D2PM and 2-diphenylmethylpyrrolidine have been sold as so called "legal highs" in the UK, in some cases using the brand name *'Ivory Wave'*. The ACMD conducted an assessment of these substances and other pipradrol-related compounds. It examined their use, pharmacology, physical and societal harms. It found that their effects and risks are commensurate with other Class B drugs under the 1971 Act. Its findings highlighted that the symptoms associated with the use of 2-DPMP include hallucinations, paranoia and severe agitation, which in some cases last several days after ingestion. Structurally related compounds D2PM and 2-diphenylmethylpyrrolidine show similar symptoms. The ACMD recommended the use of a generic definition to capture other pipradrol-related compounds as well as the extension of existing Class C control of pipradrol to its esters and ethers. The ACMD's advice is available at http://www.homeoffice.gov.uk/publications/agencies-public-bodies/acmd1/desoxypipradrol-report.

7.2 Phenazepam, a member of the benzodiazepine family, is also being sold as a so called 'legal high' predominately on the internet, and known under the street names *'Bonsai'* and *'Bonsai Supersleep'*. The ACMD identified that its potency is around five times higher than Class C benzodiazepine, diazepam, with significant risks of overdose. The adverse effects associated with its use and overdose includes retrograde amnesia, loss of coordination, dizziness and drowsiness that can potentially proceed to coma with respiratory depression. Discontinuation after prolonged use can be associated with a

withdrawal syndrome with symptoms including anxiety, insomnia, tremor and potentially convulsions. The ACMD's advice is available at http://www.homeoffice.gov.uk/publications/agencies-public-bodies/acmd1/acmd-advice-phenazepam.

7.3 The Government has accepted the ACMD's assessments that the harms associated with all these substances are commensurate to Class B and Class C of the 1971 Act, as appropriate. On indictment, the maximum penalties for offences relating to a Class B drug and a Class C drug are - for possession, five years' and two years' imprisonment and/or a fine, respectively, and for supply, production or importation/exportation in both classes, fourteen years' imprisonment and/or an unlimited fine. On summary conviction, the maximum penalties for offences relating to a Class B drug are - for possession, three months' imprisonment and/or a fine of £2,500, and for supply, production or importation/exportation, six months' imprisonment and/or a prescribed fine (including, for the latter, one determined by the value of the drugs if greater than the specified amount); for possession of a Class C drug, three months' imprisonment and/or a fine of £1,000, and for supply, production or importation/exportation, three months imprisonment and/or a £2,500 fine (including, for the latter, one determined by the value of the drugs if greater than the specified amount).

- ***Consolidation***

7.4 None

## 8. Consultation outcome

8.1 The Home Office has consulted the Medicines and Healthcare products Regulatory Agency (MHRA) and the Department for Business, Innovation and Skills (BIS), who have liaised with chemical industry partners. Through this consultation, none of the pipradrol-related compounds have been identified as having any legitimate medical or chemical use beyond potential research use; phenazepam is not licensed by the MHRA, nor is it prescribed by the National Health Service or used by the private sector for treatment in the UK.

## 9. Guidance

9.1 The law changes and their consequences will be communicated to key stakeholders and the wider public, especially young people. The Home Office will issue a circular with legislative guidance primarily for the law enforcement, the courts and forensic providers, while information about the changes will be made widely available via FRANK – the Government's national drugs awareness service.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies relates to potential additional administrative costs for the UK pharmaceutical and chemical industry in respect of 2-DPMP and pipradrol-related compounds where there may be research use(s), although costs are likely to be minimal where existing licensing arrangements are suitable. For those businesses selling these substances in the "legal highs" market, the potential harm is such that those trading in this market are expected to comply with the Order or face the risk of prosecution.

10.2 The potential impact on the public sector relates to enforcement and regulatory agencies although they are expected to be small and subsumed into the enforcement and regulatory arrangements for similar and existing controlled drugs, managed within existing resources. In terms of healthcare provision, there is no evidence of the availability of phenazepam in the UK but appropriate provisions in the Misuse of Drugs Regulations 2001 (as amended) will facilitate its availability in the UK if required, in keeping with the existing regulatory framework.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

## 11. Regulating small business

11.1 The legislation applies to small business. The harm that can be done through misuse and diversion of these drugs is such that we will expect all businesses to comply with the Order. However, the impact is minimised for those businesses already likely to be handling controlled drugs, acting under a Home Office licence or the Misuse of Drugs Regulations 2001 and guidance is already widely available in this area.

## 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 review its public health messages to ensure that they are appropriately targeted and informative.

## 13. Contact

13.1 Joseph Ponan at the Home Office, tel: 020 7035 6069 or e-mail: Joseph.Ponan@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.

# HOME OFFICE

# POLICY EQUALITY STATEMENT (PES)

## Name of Policy/Guidance/Operational Activity

To control substances considered "dangerous or otherwise harmful" in accordance with the terms of the 1971 Act as a public health and protection measure.
The intended objectives are to deter use or misuse of these substances amongst the general population and curb their availability through suppliers 'self-regulating' following implementation of control measures as well as enabling law enforcement and regulatory authorities to take appropriate action, in particular activity to tackle unauthorised production, supply and importation/exportation while providing the regulatory framework required to enable the undertaking of legitimate activities relating to one or more of the substances to be controlled.

## Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.

Advisory Council on the Misuse of Drugs' (ACMD) advice to Government on 'novel psychoactive substances' (NPS) (http://www.homeoffice.gov.uk/publications/agencies-public-bodies/acmd1/acmdnps2011). The ACMD highlights in its considerations evidence that 'Users, particularly young people, who are in possession of what they think are "legal highs" may well be in possession of controlled substances and could face the prospect of being subject to prosecution and a potential criminal record if found in possession of them by the Police'. Its advice also points at the increased access to and availability of harmful substances through modern technologies which are appealing to young people.

In relation to harms, the ACMD considered that 'The use of NPS can also result in young people and adults putting themselves in situations where they may be vulnerable or at risk of other harms (e.g. through collapse, intoxication, etc) including accidents and being victims of crime (e.g. sexual or physical assault)'. It also gave due consideration to the impact of legislation in relation to 'Police enforcement and the criminalisation of Young People' outweighed by the need for Government intervention to protect young people from harmful drug use in light of the assessment that they 'have made it clear that the belief that these substances are "legal and therefore safe" is the main driver for trying them'. Early consultation as part of Government considerations on these issues have resulted in the new power to temporarily control a potentially harmful NPS, as enacted by the Police Reform and Social Responsibility Act 2011, not to create a simple possession offence in relation to a temporary class drug.

As part of its advice on NPS, and with reference to such considerations in the 2010 Drug Strategy (http://www.homeoffice.gov.uk/publications/alcohol-drugs/drugs/drug-strategy/), the ACMD has also considered the impact of drug education and considered targeted prevention, treatment and social approaches. On the drugs to be controlled specifically, the ACMD included further considerations in its advice to Government on specific drugs:

- phenazepam at http://www.homeoffice.gov.uk/publications/agencies-public-bodies/acmd1/acmd-advice-phenazepam: evidence of young people being hospitalised in relation to phenazepam use.
- desoxypipradrol (2-DPMP) and related substances at

http://www.homeoffice.gov.uk/publications/agencies-public-bodies/acmd1/desoxypipradrol-report and http://www.homeoffice.gov.uk/publications/agencies-public-bodies/acmd1/acmd-d2pm?view=Binary including the most recent evidence of harms of D2PM toxicity to users admitted in clinical services.

Government research and publications - Data collection and statistical bulletins -

- Home Office: Crime in England & Wales and Drug Misuse Declared (England & Wales) at http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/.
- National Treatment Agency for Substance Misuse: Substance misuse among young people, Equality and diversity in building recovery into treatment at http://www.nta.nhs.uk/publications.aspx.

These statistics provide a breakdown by ethnic and age groups, with the latter specifically identifying trends in harmful substance use amongst school children by successive year groups. The Drug Misuse Declared Survey highlights increasing levels of stimulant use amongst young people and young adults aged 16 to 24, including NPS now subject to 1971 control such as mephedrone and synthetic cannabinoids and trends since their control. This data inform policy approaches including local treatment, education and social interventions directed at specific groups of users (including, also recently, khat among certain migrant communities).

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| **SCS sign off** | *[Considerations are detailed in Part 2]* | **Name/Title** | Gus Jaspert |

**I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.**

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| **Directorate/Unit** | Drugs & Alcohol Unit, Drugs Alcohol & Community Safety Directorate | **Lead contact** | Cyrille Marcel |
| **Date** | 22 February 2012 | **Review Date** | 2013 |