EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS ACT 1971 (TEMPORARY CLASS DRUG) ORDER 2016

2016 No. 650

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 subjects the following substances and products to temporary control under the Misuse of Drugs Act 1971:

- 3,4-Dichloromethylphenidate (3,4-DCMP)
- 4-Methylmethylphenidate
- Ethylnaphthidate
- Ethylphenidate
- Isopropylphenidate (IPP or IPPD)
- Methylnaphthidate (HDMP-28)
- Propylphenidate
- Any stereoisomeric form of a substance specified above.
- Any salt of a substance specified above
- Any preparation or other product containing a substance specified above.

3. Matters of special interest to Parliament

3.1 This instrument renews controls for substances and products which were previously the subject of temporary control by the Misuse of Drugs Act 1971 (Temporary Class Drug) (No. 2) Order 2015. That Order expires on the 26 June 2016.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument varies between provisions.

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.

4.2 Sections 2A and 2B of the 1971 Act, which were inserted by paragraph 3 of Schedule 17 to the Police Reform and Social Responsibility Act 2011, provide that the Secretary of State may make an order (a "temporary class drug order") if two conditions are met. The first condition is that the substance is not a Class A, B or C drug. The second condition is that the Secretary of State has either consulted with the Advisory Council on the Misuse of Drugs ("the ACMD") and has determined that the temporary class drug order should be made, or otherwise has received a

recommendation to that effect from the ACMD. After carrying out such consultation the Secretary of State can only proceed to make the order if it appears that the drug is one that is being, or is likely to be, misused, and that misuse is having, or is capable of having, harmful effects. Under section 7A of the 1971 Act, which was inserted by paragraph 8 of Schedule 17 to the Police Reform and Social Responsibility Act 2011, the Secretary of State may also make provision (which may take the form of applying any provision made under sections 7(1), 10 or 22 of the 1971 Act) so as to allow for the lawful production and supply of a temporary class drug and provision for preventing misuse, including provision as to safe custody.

4.3 A temporary class drug order expires at the end of twelve months unless before that time has expired the substance is brought under the permanent control of the 1971Act by virtue of an Order in Council under section 2(2) of the 1971 Act; or the temporary class drug order is varied or revoked. A temporary class drug order is a "made affirmative" order, which must be laid before Parliament after being made and which requires a resolution of both Houses within 40 sitting days if it is to remain in force.

4.4 The Secretary of State has met the two conditions for the substances specified in paragraph 2.1 to be subject to a temporary class drug order. These substances are not a Class A, B or C drugs. The Secretary of State has received a recommendation from the ACMD that an order should be made on the basis that these substances are drugs that are being misused and that the misuse is having harmful effects. Controls for these substances are extended to all of their stereoisomeric forms - as well as salts and preparations and products.

4.5 As these substances have no recognised medicinal use, the Order also applies the Misuse of Drugs Regulations 2001 ("the 2001 Regulations") and the Misuse of Drugs Regulations (Northern Ireland) 2002 ("the 2002 Regulations") as if those substances were specified in Schedule 1 to the 2001 Regulations and the 2002 Regulations. The Order also applies the Misuse of Drugs (Safe Custody) Regulations 1973 and the Misuse of Drugs (Safe Custody) (Northern Ireland) Regulations 1973 to the substances.

5. Extent and Territorial Application

5.1 The instrument extends to the United Kingdom.

5.2 The territorial application of this instrument varies as between provisions. Most of the provisions in the instrument apply to the United Kingdom. Regulation 3(2) applies to the England and Scotland and regulation 3(3) applies to Northern Ireland.

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 (Temporary Class Drug) Order 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 A temporary class drug order enables drug control legislation to be made (and associated enforcement action taken) to protect the public from the harms of a new

psychoactive substance whilst the ACMD make a full assessment of its harms for consideration for permanent control as a Class A, B or C drug under the 1971 Act.

7.2 The seven listed compounds are substances related to Methylphenidate, which is currently controlled as Class B drug under the 1971 Act. The ACMD's initial 2015 assessment indicated that these substances are stimulants and are probably regarded as alternatives to methylphenidate. As might be expected from a stimulant material which boosts dopamine levels, users report a strong urge to re-dose. One branded formulation, 'Burst', has been reported as causing particular problems in the Edinburgh area, including among injecting drug users, who report re-injecting repeatedly. At the time of the original Order, the ACMD received a report of an outbreak of Staphylococcus aureus and Streptococcus pyogenes infections in this area associated with NPS injecting, which is believed to involve ethylphenidate. These practices are likely to lead to a high risk of bacterial infection and local tissue damage.

7.3 As part of its recommendation to re-make this Order, the ACMD has noted a positive impact in the Edinburgh area since the commencement of the previous order in June 2015, including a reduction in the rate of infections (Staphylococcus, Streptococcus and Hepatitis C); fewer admissions to accident and emergency / toxicology for intravenous users; fewer admissions to rehabilitation services for acute mental health issues; and needle discards in public spaces.

7.4 However the ACMD is not able to provide advice for full control at this time. It recommends re-making the Order whilst it gathers further evidence. The high risk of harms noted above means that the action to maintain temporary control with the associated powers and offences is proportionate pending this evidence gathering.

7.5 The ACMD therefore recommended that the seven listed substances, as well as their stereoisomeric forms, salts and preparations and products should be subject to a temporary class drug order under the 1971 Act. The ACMD's updated advice is available at: https://www.gov.uk/government/publications/methylphenidate-based-novel-psychoactive-substances-temporary-class-drug-order-report.

7.6 The ACMD will continue to consider the case for permanent control under the 1971 Act.

7.7 The maximum penalties for supply, production or importation/exportation of temporary class drugs are, on indictment, fourteen years' imprisonment and/or an unlimited fine, and on summary conviction, six months' imprisonment and/or a prescribed fine (including, for the latter offences, a fine determined by the value of the drugs if greater than the prescribed amount).

Consolidation

7.8 The Order does not amend any existing instrument so the question of consolidation does not arise.

8. Consultation outcome

8.1 The Home Office has consulted the Medicines and Healthcare products Regulatory Agency, the Department for Business, Innovation and Skills and chemical and pharmaceutical partners. Through this consultation, these listed substances have not been identified as having any legitimate medical or chemical use beyond potential research use.

9. Guidance

9.1 The provisions of this Order and its 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 of this Order (which expires at the end of twelve months if not earlier) relates to potential additional administrative costs for the UK pharmaceutical and chemical industry in respect of these substances 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 and managed within existing resources.

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

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses. 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.

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