EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS ACT 1971 (TEMPORARY CLASS DRUG) ORDER 2026

2026 No. 613

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Sarah Jones MP, Minister for Policing and Crime at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Marcus Starling, Deputy Director for the Drugs and Alcohol Unit at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Edward Woudhuysen at the Home Office can be contacted by email at the following address with any queries regarding the instrument: Edward.woudhuysen@homeoffice.gov.uk

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order applies temporary controls to seven named orphines, a class of synthetic opioid, owing to their potential to cause severe harm when misused. A substance specified in this Order will cease to be a controlled drug at the end of one year beginning on the date on which the Order comes into force, or until the substance is controlled as a Class A, Class B or Class C drug under the Misuse of Drugs Act 1971 ("the 1971 Act"), whichever is earlier.

4.2 The Order will make it an offence to supply, offer to supply, produce, import, export or (if done for the purpose of supply) possess these substances. Penalties are the same as for Class B drugs under the 1971 Act.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom. Regulation 3(2) applies to England and Wales and Scotland and regulation 3(3) applies to Northern Ireland.

5. Policy Context

What is being done and why?

5.1 On 30 April 2026, the Advisory Council on the Misuse of Drugs (ACMD) published a report about orphines, an emergent type of opioid drug.[1] The ACMD is a statutory, independent advisory body established under the 1971 Act, which makes recommendations to the government on the control of 'dangerous or otherwise harmful' drugs.

5.2 The report noted that the National Crime Agency (NCA) and the Office for Health Improvement and Disparities (OHID, which is a part of the Department for Health and Social Care), had reported that in England there had been more than 15 confirmed deaths in which orphines were involved since the spring of 2025. OHID's National Drug Treatment Monitoring System data shows that 12 of these were in the period September-December 2025, including five in December.[2] The ACMD report also noted that since 2024, the United Nations Office on Drugs and Crime had received 206 reports from multiple countries of drug samples containing orphine compounds. The report confirmed that the orphines detected in recent deaths are not controlled under the 1971 Act and recommended that seven named orphines and two generic definitions of types of orphines should be urgently controlled as Class A drugs.

5.3 On 18 May 2026 the Minister for Policing and Crime replied to the ACMD to confirm that she agreed with those recommendations.[3]

5.4 The report recommended that, if controls under the 1971 Act cannot be expedited due to parliamentary constraints, a Temporary Class Drug Order (TCDO) should be used before those controls come into force. As controlling new substances in Schedule 2 to the 1971 Act requires a draft affirmative instrument which must be approved by both Houses of Parliament and cannot be fast-tracked, the Minister confirmed in her reply to the ACMD that she would make a TCDO to enable swift classification of the substances pending their full control under the 1971 Act.

5.5 A TCDO enables substances to be controlled (and associated enforcement action taken) to protect the public from the effects of harmful substances, pending their permanent control as Class A, B or C drugs under the 1971 Act. Substances controlled under a TCDO remain controlled for one year, or until the substance is controlled as a Class A, B or C drug, whichever is earlier. The ACMD recommends that the TCDO covers only the seven named orphines, rather than the two generic definitions of orphines as well, because the evidence is strongest that they pose the most immediate risk. This is because three of the seven substances have been identified as being involved in deaths in the UK. The other four were notified by the EU Drugs Agency as being present in EU drugs markets.

5.6 The seven substances to be controlled by the TCDO are:

5.6.1 Chlorphine

5.6.2 Cychlorphine (N-propionitrile chlorphine)

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[1] https://assets.publishing.service.gov.uk/media/69f3343fab602a88957eef2b/Seventh_addendum_to_the_ACMD_report_on_the_use_and_harms_of_2-benzyl-benzimidazole__nitazene__and_piperidine_benzimidazolone__brorphine-like__opioids_FINAL.pdf

[2] https://www.ndtms.net/DrugsEarlyWarningSystem - deaths, trends, filter for orphines

[3] https://www.gov.uk/government/publications/acmd-advice-on-2-benzyl-benzimidazole-and-piperidine-benzimidazolone-opioids/government-response-to-the-acmds-seventh-addendum-on-orphines-accessible

5.6.3 Spirochlorphine (R-6890)

5.6.4 5,6-Dichloro desmethylchlorphine (SR-17018)

5.6.5 Etodezitramide

5.6.6 Spirobrorphine

5.6.7 5,6-dichlorobrorphine (SR 14968)

5.7 The Minister also accepted the ACMD recommendation that when the seven named orphines and two generic definitions come to be controlled as Class A drugs under the 1971 Act, they should also be placed in Schedule 1 to the Misuse of Drugs Regulations 2001 ("the 2001 Regulations"). The schedule of the 2001 Regulations in which a substance is placed determines the circumstances in which it may be used lawfully and the procedures which must be followed when it is so used. Substances in Schedule 1 have no legitimate medical or veterinary medical uses. Based on discussions it had with key stakeholders, the ACMD considered that these substances have no legitimate medical or veterinary medical uses.

5.8 The TCDO therefore makes provision that the 2001 Regulations, and the equivalent regulations in Northern Ireland (The Misuse of Drugs Regulations (Northern Ireland) 2002 – "the 2002 Regulations"), apply to the seven substances as if they were specified in Schedule 1 to both sets of regulations, before they are actually placed in Schedule 1 when they come to be specified as Class A substances under the 1971 Act. The practical effect of this is that the substances controlled by the TCDO will be subject to the same controls as those substances listed in Schedule 1. Anyone wishing to make legitimate use of these substances, for example for research, would need to obtain a licence to do so from the Home Office.

5.9 The TCDO also provides that the Misuse of Drugs (Safe Custody) Regulations 1973, and the equivalent regulations in Northern Ireland (the Misuse of Drugs (Safe Custody) (Northern Ireland) Regulations 1973 – "the Northern Ireland 1973 Regulations"), apply to the seven substances. These Regulations set minimum standards for how controlled drugs must be stored, in order to prevent their theft, diversion, or misuse.

5.10 The effect of the legislation is to give clear powers to law enforcement bodies to take action when a person supplies, offers to supply, produces, imports or exports one of these substances, or possesses it with intent to supply it. Penalties are the same as for Class B drugs under the 1971 Act, for example a maximum sentence of 14 years' imprisonment for production or supply. The policy aim is to deter people from doing those things, and hence to reduce the level of health harms, including fatal ones, arising from these drugs.

What was the previous policy, how is this different?

5.11 The Psychoactive Substances Act 2016 ("the 2016 Act") makes it an offence to produce, supply, offer to supply, possess with intent to supply, possess in a custodial institution, import or export psychoactive substances. The person must know or suspect (or should have known or suspected) that the substance is psychoactive, and they must know or be reckless as to whether it will be consumed for its psychoactive effects. The maximum sentence for these offences is seven years' imprisonment, except possession in a custodial institution, where it is two years. It is very likely that the 2016 Act would apply to these seven substances.

5.12 While the substances are controlled by the TCDO, the 2016 Act will not apply to them. A person who produced, supplied, offered to supply, possessed with intent to

supply, imported or exported one of these substances would instead be prosecuted under the provisions in the 1971 Act relating to TCDOs, with maximum sentences of 14 years' imprisonment. Prosecution will likely be easier than under the 2016 Act because it is not necessary for the prosecution to prove that these are psychoactive substances. We are not aware of there having been prosecutions under the 2016 Act to date in relation to these seven substances.

5.13 Possession of a substance covered by the 2016 Act in a custodial institution is illegal, as it is for substances controlled as Class A, Class B or Class C drugs under the 1971 Act. It is not illegal for a substance controlled as a temporary class drug, unless the possession is with an intent to supply. Prison authorities have the powers to confiscate drugs which are the subject of a temporary class drug order.

6. Legislative and Legal Context

How has the law changed?

6.1 The TCDO will control the seven named substances, with the maximum penalties for their supply being the same as for Class B drugs. It is made under section 2A of the 1971 Act. Under section 2A, a TCDO may not be made in relation to a substance which is a Class A, Class B or Class C drug. None of these substances is such a drug. A TCDO can also be made only when the Secretary of State has either consulted the ACMD and determined that a TCDO should be made, or has received a recommendation from the ACMD under section 2B of the 1971 Act that the TCDO should be made. In this case, she has received a recommendation.

6.2 While the substances are controlled under the TCDO the provisions of the 2016 Act do not apply to the substances.

6.3 Ministers will in due course lay before Parliament a draft Order in Council under section 2 of the 1971 Act which would place these seven substances in Class A of the 1971 Act and Schedule 1 to the 2001 Regulations. Once that Order in Council has been made and has come into force, the substances will cease to be controlled by the TCDO. It is intended that the Order in Council should come into force no later than 12 months after the TCDO comes into force, at which point the substances controlled under the TCDO would cease to be controlled drugs.

Why was this approach taken to change the law?

6.4 Law enforcement bodies consider that the provisions of the 2016 Act are not sufficient for them to respond effectively to the use of orphines. This can be rectified only by legislative means. Under the procedure specified in section 2 of the 1971 Act, it would take many months to control these substances under that Act, in which time it is likely that there will be more deaths involving orphines.

7. Consultation

Summary of consultation outcome and methodology

7.1 It is not normal practice for the Government to consult when adding named substances to the 1971 Act or a TCDO. This is because the ACMD will have made a full assessment of the effects of its recommendations, having consulted, for example, the Medicines and Healthcare products Regulatory Agency. In this case there is a particular pressing need to bring the substances under swift control, as they have been involved in several deaths.

7.2 The Government has informed Ministers in Northern Ireland of its intention to provide that the 2002 Regulations apply to the seven substances as if they were listed in Schedule 1 to those Regulations, and that the Northern Ireland 1973 Regulations apply to those substances. When a substance is made a Class A, B or C drug under the 1971 Act, the power to control it under the 2002 Regulations and make provision preventing the misuse of controlled drugs is a power given to Northern Ireland Ministers. When making equivalent provision in relation to substances controlled under a TCDO these powers remain with the Secretary of State.

8. Applicable Guidance

8.1 Changes to the law as a result of this Order will be communicated to key stakeholders and the wider public by the Home Office. The Home Office will issue a circular with legislative guidance primarily for the police and the courts, when this Order is laid.

8.2 The Government will continue to update its messaging on the harms of these substances, including through its FRANK information and advisory service, which is aimed at young people and adults to inform them of drug-related risks and harms.[4] Welsh Government will also update the Wales Drug and Alcohol Helpline (also known as DAN 24/7).[5]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An Economic Note (EN) assesses the economic impact of the TCDO and is published alongside this Explanatory Memorandum. The EN includes one estimated cost of the proposed TCDO relative to a 'do nothing' option. This is the familiarisation cost to enforcement agencies which is an economic (opportunity) cost estimated to range between £0.00 million and £0.02 million with a central estimate of £0.01 million. No benefits have been monetised, however the value of non-monetised benefits – which include reduced harms, including reduced hospitalisations and drug deaths, improved public awareness, law enforcement efficiencies, and disruption of an emerging market – are expected to exceed the costs and provide value for money.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because there is no evidence of a legitimate commercial market for the seven named orphines in the UK, and no recognised medicinal use has been identified.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because of existing coverage under the 2016 Act, and enforcement activity is expected to be subsumed within existing enforcement against similar controlled drugs.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This TCDO will have effect for no more than one year. The Government will continue to monitor the control measures through the regulatory framework governing controlled drugs. It will also maintain oversight through the healthcare regulatory

[4] https://www.talktofrank.com/
[5] https://dan247.org.uk/

bodies in England and through engagement with the Devolved Governments. This will include national data collection and surveys on crime and drug misuse.

10.2 This instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument comes into force the day after it is made. As orphines have been involved in at least 15 deaths in England in the past year, it is critical to provide law enforcement bodies with the power to respond to them as soon as possible. As there are no known legitimate uses of orphines, it is not considered that anyone will suffer disadvantage as a result of this.

11.2 The territorial application of this instrument varies between provisions.

12. European Convention on Human Rights

12.1 The Minister of State for Policing 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 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").