EXPLANATORY MEMORANDUM

The Misuse of Drugs (Amendment No. 2) Regulations (Northern Ireland) 2021

S.R. 2021 No. 342

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Health to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under section sections 7, 10, 22 and 31 of the Misuse of Drugs Act 1971 (the 1971 Act) as adapted by sections 7(9), 31(4) and 38 of that Act and now vested in it and after consultation with the Advisory Council on the Misuse of Drugs in accordance with section 31(3) of that Act.

1.3 This Statutory Rule is subject to negative resolution before the Northern Ireland Assembly.

2. Purpose of the Regulations

2.1 The purpose of the Statutory Rule is to schedule Gamma-Butyrolactone (GBL) and 1,4-Butanediol (1,4-BD) under Schedule 1 to the Misuse of Drugs Regulations (Northern Ireland) 2002 ("the 2002 Regulations"), and to remove an exemption from the 2002 Regulations that made certain activities in relation to GBL and 1,4-BD lawful, effectively closing the current legal loophole whereby individuals can freely purchase these substances online. Under this amendment, businesses in Northern Ireland seeking to import/export, possess, supply or produce GBL and 1,4-BD will need to apply for a controlled drug licence to do so. GBL and 1,4-BD will have the same status as other Schedule 1 drugs.

3. Background and Legislative Context

3.1 The UK wide 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 lists Class B drugs and Part 3 lists Class C drugs. This classification provides a framework within which criminal penalties are set with reference to the harm that a drug has, or is capable of having when misused, and the type of illegal activity undertaken with regards to that drug.

3.2 The medical use of controlled drugs is permitted through the Misuse of Drugs Regulations 2001 ("the 2001 Regulations") in GB and the equivalent 2002 Regulations in NI. Both sets of regulations define the classes of person who are authorised to possess and supply controlled drugs while acting in their professional capacity.

3.3 GBL and 1,4-BD are not currently placed in a schedule to the 2001 Regulations or 2002 Regulations. The Schedule of the Regulations in which a controlled drug is placed affects the extent to which the drug can be lawfully imported, exported, produced, supplied or possessed. The controlled drugs

placed in Schedule 1 to the Regulations are those subject to the tightest controls, requiring a licence in order to access such drugs.

3.4 In relation to Northern Ireland Section 7(3) of the 1971 Act requires the Department of Health to make regulations to allow drugs controlled under the 1971 Act to be used for medicinal purposes. This applies to GHB, which has medicinal uses. The ACMD has recommended that it remain in Schedule 2 to the 2002 Regulations and therefore no changes will be made in this regard. Section 7(3) does not apply to any drug which is "designated" by order under section 7(4) of the 1971 Act. Controlled drugs are designated where the Department for Health is of the opinion that it is in the public interest for the production, supply and possession of that drug to be either wholly unlawful or unlawful except for research or other special purposes under licence. Designated drugs are listed in Schedule 1 to the Misuse of Drugs (Designation) Order (Northern Ireland) 2001 (The 2001 Designation Order). GBL and 1,4-BD are designated under the 2001 Designation Order.

3.5 The 2002 Regulations provide access to controlled drugs for legitimate medicinal purposes (and exceptionally for industrial purposes) under the 1971 Act. Drugs are ordinarily placed into one of five Schedules to the 2002 Regulations. The Schedule into which a drug is placed is based on an assessment of its medicinal or therapeutic usefulness, the need for legitimate access as well as its potential for harm when used. The Schedule primarily dictates the circumstances under which it is lawful to import, export, produce, possess, supply and administer the drug. It may impose requirements in relation to prescribing, record keeping, labelling, destruction, disposal and safe custody. Schedule 1 drugs are considered to have no known medicinal use in the UK and are subject to the greatest restrictions.

3.6 Designated drugs are ordinarily placed in Schedule 1. However, following previous ACMD advice in 2008 that GBL and 1,4-BD be controlled under the 1971 Act, they were designated in 2009 by The Misuse of Drugs (Designation)(Amendment) Order (NI) 2009 (S.R. 2009/389), but not placed in a schedule. Due to their legitimate industrial use, they were instead subject to a bespoke provision in regulation 4B of the 2002 Regulations, (inserted by the Misuse of Drugs (Amendment No.2) Regulations (Northern Ireland) 2009 (S.R. 2009/397) and substituted by The Misuse of Drugs (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011 No. 153)), that it was lawful to import, export, produce, supply or possess them in circumstances where they were not intended to be used for the purposes of human ingestion (other than as a flavouring in food).

3.7 The control of GBL and 1,4-BD is predicated on an assessment of their respective harms, and in accordance with recommendations made by the Advisory Council on the Misuse of Drugs (ACMD).

3.8 In 2020 the Home Office requested that the ACMD reconsider the reclassification of Gamma-Hydroxybutyric Acid (GHB), GBL, and 1,4-BD under the 1971 Act, and the scheduling of GBL and 1,4 BD under the Regulations to ensure that the potential harms are fully reflected in the way that these drugs are controlled and scheduled.

3.9 The ACMD provided new evidence relating to the significant harms from criminal misuse of GHB Related Substances (GHBRS), which have been used to facilitate serious crimes, including rape, sexual assault, robbery and murder. Survivors of drug-facilitated sexual assault require support from a variety of services for complex and wide-ranging harms. The illicit use of GHBRS imposes uncompensated costs on wider society, including the physical and emotional trauma caused by the crime; the costs incurred by the healthcare services used by the victims, and the costs incurred by the criminal justice system to bring the criminals and drug users to justice.

3.10 On 20 November 2020, the ACMD recommended that three drugs - GHB, GBL and 1,4-BD be moved from Class C to Class B of the 1971 Act. The ACMD also recommended that GBL and 1,4-BD should be placed in Schedule 1 to the 2001 Regulations, as they have no known legitimate medicinal use in the UK and the exemption under Regulation 4B will be removed.

3.11 The amendments to the 1971 Act will be implemented by The Misuse of Drugs Act 1971 (Amendment) Order 2021 which will control GHB, GBL and 1,4BD as Class B drugs under the Misuse of Drugs Act ('the 1971 Act') and comes into force on 15 June 2022.

3.12 Amendments to the 2002 Regulations are necessary to complement the 2021 Order and the provisions of this Statutory Rule maintains parity with England, Wales and Scotland, by mirroring similar amendments to Schedule 1 and to Regulation 4B of the 2001 Regulations.

3.13 This Statutory Rule will come into operation 6 months after it is laid to enable businesses to prepare for the introduction of the licencing requirements.

4. Consultation

4.1 This Statutory Rule implements recommendations of the ACMD, the effect of which will reduce the ease with which criminals and drug users can access GHBRS on the open market. The Home Office liaised with representatives of the chemical industry prior to making amendments to legislation.

5. Equality impact

5.1 The Department of Health has concluded that the proposed amendments will not have a significant impact on equality of opportunity for any group referred to in section 75 of the Northern Ireland Act 1998 and a full Equality Impact Assessment has not been considered necessary.

6. Regulatory impact

6.1 Once the provisions of this Statutory Rule commence, companies that import/export, possess, supply or produce GBL or 1,4-BD, will be required to

apply for an appropriate licence and to maintain standards such as record keeping and secure storage facilities.

7. Financial implications

7.1 As highlighted above, for those who do not already import/export, possess, supply or produce controlled drugs there may be costs associated with new processes related to record keeping and putting in place secure storage facilities.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department of Health has considered section 24 of the Northern Ireland Act 1998 and is satisfied that this Statutory Rule is not incompatible with any of the Convention rights; is not incompatible with Community law; does not discriminate against a person or class of person on the grounds of religious belief or political opinion; and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU implications

9.1 There are no anticipated EU implications as a result of these amendments.

10. Parity or Replicatory Measure

10.1 The provisions included in the Statutory Rule seek to replicate amendments to Schedule 1 of the 2001 Regulations which are being taken forward by the Home Office, and will ensure that the legislative arrangements in the equivalent NI legislation will be in line with GB.

11. Additional information

11.1 Not applicable