EXPLANATORY MEMORANDUM

The Misuse of Drugs (Amendment) Regulations (Northern Ireland) 2024

S.R. 2024 No. 36

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 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 These Regulations are subject to negative resolution before the Northern Ireland Assembly.

2. Purpose of the Regulations

2.1 The purpose this Statutory Rule is to place twenty-one substances (including seventeen synthetic opioids, sixteen of which are nitazenes) to Schedule 1 to Misuse of Drugs Regulations 2002 ("the principle Regulations"), the removal of two synthetic opioids, both of which are nitazenes (clonitazene and etonitazene), from Schedule 2 to the principle Regulations following their insertion into Schedule 1 and the placing of a substance to Part 1 of Schedule 4 to the principle Regulations.

2.2 The Schedule in which a controlled drug is placed affects the extent to which the drug can be lawfully imported, exported, produced, supplied or possessed and dictates the controls that the drug is subject to, such as the record-keeping, labelling and destruction requirements in relation to that drug.

2.3 The controlled drugs placed in Schedule 1 to the principle Regulations are those subject to the tightest controls, requiring a licence from the Department of Health in order to access such drugs. The controlled drugs placed in Part 1 of Schedule 4 to the principle Regulations are also subject to controls (albeit less strict than those for controlled drugs placed in Schedule 1 to the principle Regulations), such as record-keeping, furnishing of information and destruction of drugs.

3. Background and Legislative Context

3.1 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 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 Advisory Council on the Misuse of Drugs (ACMD) makes recommendations to Government on the control of dangerous or otherwise harmful drugs, including

classification and scheduling under the 1971 Act and its subsequent Misuse of Drugs Regulations. The control of these substances is predicated on an assessment of their respective harms, and in accordance with recommendations made by the ACMD.

3.3 The UK Government recently introduced an amending Order entitled the Misuse of Drugs Act 1971(Amendment) Order 2024 which amends the 1971 Act to control 15 substances as Class A drugs, four substances as Class B drugs and one substance as a Class C drug, owing to evidence of harm and of the prevalence of these substances in the UK. The amending 2024 Order specifies that these substances will now instead be controlled as drugs which are "dangerous or otherwise harmful" under the 1971 Act.

4. Consultation

4.1 Following consultation with the ACMD, the affirmative Order, the Misuse of Drugs Act 1971 (Amendment) Order 2024, was made in UK Parliament on 21st February 2024 and will come into operation on 20th March 2024, bringing 15 substances as Class A drugs, four substances as Class B drugs and one substance as a Class C drug, owing to evidence of harm and of the prevalence of these substances in the UK. The explanatory memorandum to the 2024 Order, which is published alongside it on www.legislation.gov.uk[1], sets out the full policy background including links to the ACMD reports with their full advice.

4.2 These regulations complement the 2024 Order by scheduling the substances controlled by that Order and implement recommendations made by the ACMD, by adding twenty-one substances in total (including seventeen synthetic opioids, sixteen of which are nitazenes) to Schedule 1 and one substance to Schedule 4 (Part 1) of the principle Regulations in order to control and define the classes of person who are authorised to supply and possess those substances while acting in their professional capacity whilst also laying down the conditions under which these activities may be carried out in Northern Ireland.

4.3 The ACMD reports on these substances are available on GOV.UK at the following links:

- ACMD advice on 2-benzyl benzimidazole and piperidine benzimidazolone opioids published on 18th July 2022, and subsequent addendums published on 19th December 2022 and 6th October 2023.
- ACMD advice on the classification and schedule of Remimazolam - published on 2nd December 2022.
- ACMD review of the evidence on the use and harms of diphenidine - published on 25th May 2023.
- ACMD review of the evidence on the use and harms of Cumyl-PeGaClone - published on 25th May 2023.

[1] Explanatory Memorandum to the Misuse of Drugs Act 1971 (Amendment) Order 2024

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 It is not anticipated that these Regulations will have any adverse impact on business, charities, social economy or voluntary bodies.

7. Financial implications

7.1 None anticipated.

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 these Regulations are not incompatible with any of the Convention rights; are not incompatible with Community law; do not discriminate against a person or class of person on the grounds of religious belief or political opinion; and do 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 similar amendments to the Misuse of Drugs Regulations 2001 which are being taken forward by the Home Office and will ensure that the legislative arrangements in Northern Ireland will be in line with GB.

11. Additional information

11.1 Not applicable