EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS (DESIGNATION) (AMENDMENT) (ENGLAND, WALES AND SCOTLAND) (REVOCATION) ORDER 2012

2012 No. 384

AND

THE MISUSE OF DRUGS (AMENDMENT) (ENGLAND, WALES AND SCOTLAND) (REVOCATION) REGULATIONS 2012

2012 No. 385

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 instruments

2.1 The Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) (Revocation) Order 2012 revokes the Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2012 (S.I. 2012/276) ("the 2012 Designation Order"). The 2012 Designation Order, which was made on 4 February 2012 but not published, and if not revoked would have come into force on 28 March 2012, would have amended the Misuse of Drugs (Designation) Order 2001 by designating desoxypipradrol ("2-DPMP"), diphenylprolinol ("D2PM"), 2-diphenylmethylpyrrolidine and other pipradrol-related compounds under section 7(4) of the Misuse of Drugs Act 1971 (the "1971 Act").

2.2 The Misuse of Drugs (Amendment) (England, Wales and Scotland) (Revocation) Regulations 2012 revokes the Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2012 (S.I. 2012/277) (the "2012 Regulations"). The 2012 Regulations, which were made on 4 February 2012 but not published, and if not revoked would have come into force on 28 March 2012, would have added 2-DPMP, D2PM, 2-diphenylmethylpyrrolidine and other pipradrol-related compounds to Schedule 1, 7-bromo-5-(2-chlorophenyl)-1,3-dihydro-2*H*-1,4-benzodiazepin-2-one ("phenazepam") and any substance which is an ester or ether of pipradrol to Schedule 3 and the two steroids, 7-hydroxy-dehydroepiandrosterone and 7-keto-dehydroepiandrosterone, to Part 2 of Schedule 4 to the Misuse of Drugs Regulations 2001.

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4.1 The Misuse of Drugs Act 1971 (Amendment) Order 2012 was withdrawn on 8 February 2012 prior to its consideration by both Houses. The Order sought to bring a number of substances under the control of the 1971 Act, including two steroids - 7-hydroxy-dehydroepiandrosterone and 7-keto-dehydroepiandrosterone as Class C drugs. The draft Order was withdrawn following further advice the Government received and accepted from the Advisory Council on the Misuse of Drugs in respect of the two steroids. The related amendments to the Misuse of Drugs (Designation) Order 2001 and the Misuse of Drugs

Regulations 2001 set out in the 2012 Designation Order and the 2012 Regulations, due to come into force on the 28 March 2012, need to be revoked. The ACMD has been consulted.

4.2 The Government intends to lay a revised draft Order in Council shortly, amending the 1971 Act to bring under control 2-DPMP and related pipradol compounds as Class B drugs and phenazepam as a Class C drug. These substances were included in the Misuse of Drugs Act 1971 (Amendment) Order 2012. It continues to be the Government's position that they should be brought under the control of the 1971 Act. Related statutory instruments, amending the Misuse of Drugs (Designation) Order 2001 and the Misuse of Drugs Regulations 2001, will be made subsequently.

5. Territorial Extent and Application

5.1 These instruments apply to Great Britain.

6. European Convention on Human Rights

6.1 As the instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

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

7.1 On 8 February 2012, the ACMD provided advice on the two steroids further to its initial advice of 10 November 2011. The ACMD received new evidence which called into question the description of these steroids as anabolic agents. It therefore undertook further research into the evidence base and, after further consultation with the World Anti Doping Agency, the ACMD has concluded that these steroids cannot be described as anabolic agents and therefore their likely harms do not warrant control under the 1971 Act. The Government accepted the AMCD's advice and the Misuse of Drugs Act 1971 (Amendment) Order 2012 was withdrawn. The ACMD's advice can be found at http://www.homeoffice.gov.uk/agencies-public-bodies/acmd/reports-research/.

- ***Consolidation***

7.2 The Government intends to consolidate the Misuse of Drugs Regulations 2001 at the earliest suitable opportunity. Proposals to consolidate the 2001 Regulations have been the subject of a public consultation.

8. Consultation outcome

8.1 None. Actions are being taken in response to the ACMD's further advice on the two steroids.

9. Guidance

9.1 None.

10. Impact

10.1 No impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 None.

12. Monitoring & review

12.1 None.

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.