EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS (DESIGNATION) (AMENDMENT No. 2) (ENGLAND, WALES AND SCOTLAND) ORDER 2010

2010 No. 1800

AND

THE MISUSE OF DRUGS (AMENDMENT No. 2) (ENGLAND, WALES AND SCOTLAND) REGULATIONS 2010

2010 No. 1799

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instruments

2.1 These instruments will complement the Misuse of Drugs Act 1971 (Amendment No. 2) Order 2010 ("the 2010 Order"). The 2010 Order classifies for control under Schedule 2 to the Misuse of Drugs Act 1971 ("the 1971 Act") cathinone derivatives which contain mono- or fused- polycyclic ring systems (including naphthylpyrovalerone, also known as 'naphyrone') and referred to in this memorandum as "naphyrone and naphthylpyrovalerone analogues". These substances are classified in Part 2 of the Schedule as Class B drugs.

2.2 The Misuse of Drugs (Designation) (Amendment No. 2) (England, Wales and Scotland) Order 2010 ("the 2010 Designation Order") designates these drugs as substances which have no recognised medicinal use by amendment to the Misuse of Drugs (Designation) Order 2001 ("the 2001 Designation Order"). The Misuse of Drugs (Amendment No. 2) (England, Wales and Scotland) Regulations 2010 (the "2010 Regulations") place these drugs in Schedule 1 to the Misuse of Drugs Regulations 2001 ("the 2001 Regulations") which means that it will be unlawful to possess, supply, produce, import or export the drugs except under licence.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These negative instruments which are subject to the negative resolution procedure will come into force less than 21 days after the date on which they are laid. These instruments are being laid as a matter of urgency in response to the urgent need to protect public health. The Advisory Council on the Misuse of Drugs ("ACMD") reported to the Secretary of State on 7 July. The Secretary of State, acting on the ACMD's recommendation, took the decision to control these drugs as Class B drugs under the 1971 Act and laid the 2010 Order on 12 July. Whilst the prevalence of naphyrone and other naphthylpyrovalerone analogues is considered to be low, the

harms associated with naphryone are similar to those of other cathinone derivatives including mephedrone. These are both physical and psychological and include adverse effects on the heart and blood vessels, hyperthermia, dependence liability, and psychiatric effects including psychosis and anxiety. In extreme cases amphetamine-like drugs can cause death due to cardiovascular collapse or heat shock. Most concerning is the advice that naphyrone is found in much higher potency than mephedrone, suggesting that its use is likely to be associated with a higher risk of accidental overdose. As a result, the Secretary of State considers it is necessary to bring the 2010 Order and these two consequential statutory instruments into force as a matter of urgency to protect public health. The date for the 2010 Designation Order and the 2010 Regulations to come into force is 23 July 2010. The Secretary of State considers it necessary for the 2010 Order to be made, and to make these two related statutory instruments as a matter of urgency in response to the urgent need to protect public health as soon as possible, whilst allowing sufficient time for the 2010 Order to be approved by both Houses of Parliament and made by the Privy Council.

3.2 The concern around new psychoactive substances including naphyrone has received a reasonable amount of media attention. As prevalence is considered to be low and with no legitimate uses for the drugs, we do not consider that a significant amount of time is required to comply with the instruments.

4. Legislative Context

4.1 Following consultation with the ACMD, the 2010 Order classifying naphyrone and other naphthylpyrovalerone analogues for control under Schedule 2 to the 1971 Act is expected to come into effect on 23 July 2010, after consideration by the Privy Council on 21 July. Related amendments to the 2001 Designation Order and to the 2001 Regulations are necessary as a result. As required by the 1971 Act, the ACMD has been consulted in respect of both instruments.

4.2. Section 7(3) of the 1971 Act requires the Secretary of State to make regulations to allow drugs controlled under the 1971 Act to be used for medicinal purposes. Section 7(3) does not apply to any drug designated by order under section 7(4) of the 1971 Act, essentially as a drug with no recognised medicinal use. The 2010 Designation Order designates naphyrone and other naphthylpyrovalerone analogues as such drugs.

4.3 The 2010 Regulations place naphyrone and other naphthylpyrovalerone analogues in Schedule 1 to the 2001 Regulations. This is because they do not have any recognised medicinal uses and are therefore subject to the strictest level of controls. The Schedule into which a drug is placed primarily dictates the extent to which it is lawful to import, export, produce, supply, administer and possess the drug and also imposes requirements around prescription writing, record keeping, labelling, destruction and safe custody. In short, it is unlawful to possess, supply, produce, import or export the drugs specified in Schedule 1 to the 2001 Regulations except under licence.

5. Territorial Extent and Application

5.1 These instruments apply to Great Britain.

5.2 Separate instruments will be made by the devolved administration in Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

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

7.1 The ACMD undertook a full assessment of naphyrone which also considered naphthylpyrovalerone analogues. The review considered their status through the examination of their use, pharmacology, physical and societal harms. The ACMD's report is available at www.homeoffice.gov.uk/publications/drugs/acmd1/naphyrone-report. The ACMD has advised that the drugs subject to the 2010 Order are sufficiently "dangerous or otherwise harmful" to warrant control as Class B drugs under the 1971 Act.

7.2 Designation under the 2001 Order and scheduling under the 2001 Regulations have been informed by the ACMD's recommendations.

7.3 As discussed above, naphyrone and other naphthylpyrovalerone analogues which have been designated under the 2010 Designation Order have no recognised legitimate use. The 2010 Regulations places these drugs in Schedule 1 to the 2001 Regulations which means that they cannot be lawfully imported, exported, produced, supplied or possessed without a licence issued by the Secretary of State.

- ***Consolidation***

7.4 It is intended that the 2001 Regulations will be consolidated when the final tranche of the regulatory changes related to The Shipman Inquiry are made.

8. Consultation

8.1 In light of the urgent need to act to protect public health, no public consultation has been carried out prior to the laying of this Order. In providing its advice, the ACMD consulted a range of experts in this field and concluded that the drugs subject to this Order have no legitimate use.

9. Guidance

9.1 The law changes and their consequences will be communicated to key stakeholders and the wider public, especially young people, in two main ways. The Home Office will issue a Circular with legislative guidance primarily for the police and the courts, while information about the changes will be made widely available via FRANK – the Government's national drugs awareness service.

10. Impact

10.1 Naphyrone and other naphthylpyrovalerone analogues subject to this Order are assessed not to have any legitimate purpose. The current prevalence of these drugs is unknown but considered to be low. However, the ACMD highlighted research that the internet businesses that purport to be selling naphyrone, in some cases through the brand name "NRG1" were in fact selling a range of drugs already controlled under the Misuse of Drugs Act 1971. These businesses also employ marketing techniques intended to circumvent medicines and consumer protection legislation. Given these findings and the relative small numbers of businesses considered to be involved, the impact would be negligible.

10.2 The impact on the public sector relates to certain healthcare sectors, the police and criminal justice system. It is expected that there will be some prosecutions in respect of the drugs to be controlled under this Order but also importers and suppliers will self-regulate before the Order comes into effect.

10.3 An Impact Assessment and Equality Impact Assessment relevant to the 2010 Regulations and 2010 Designation Order was attached to the explanatory memorandum to the 2010 Order and no separate assessments have been prepared for these instruments.

11. Regulating small business

11.1 The legislation applies to small business. 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.

13. Contact

Angela Scrutton at the Home Office, tel: 020 7035 0458 or e-mail: Angela.Scrutton@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.