EXPLANATORY MEMORANDUM TO THE

MISUSE OF DRUGS (AMENDMENT) (NO. 2) REGULATIONS 2005

2005 No. 1653

AND

THE MISUSE OF DRUGS (DESIGNATION) (AMENDMENT) ORDER 2005

2005 No. 1652

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 Section 21 of the Drugs Act 2005 amends the Misuse of Drugs Act 1971 so that any fungus containing the controlled drug psilocin or an ester of psilocin – commonly known as magic mushrooms – is also a controlled drug. It is now an offence to import, export, produce, supply, possess or possess with intent to supply magic mushrooms whatever form they are in, whether prepared or fresh.

2.2 The Misuse of Drugs (Amendment) (No. 2) Regulations 2005 amend the Misuse of Drugs Regulations 2001 and ensure that magic mushrooms are excepted from the offence of possession in four scenarios:

2.3 First, where the magic mushrooms are growing uncultivated. This ensures that persons who have magic mushrooms growing on their land uncultivated will not be acting unlawfully by possessing them in this way. (Should those persons intend to supply those magic mushrooms they will, however, be committing the offence of possession with intent to supply controlled drugs.)

2.4 Second, where the magic mushrooms are picked by a person, who possesses them lawfully, in order to deliver them as soon as is reasonably practicable into the custody of a person lawfully entitled to take custody of them and they remain in that person's possession for and in accordance with that objective. This ensures that landowners can pick magic mushrooms growing on their land for the purpose of delivery and, so long as they hold the mushrooms for and in accordance with that purpose, will not be acting unlawfully.

2.5 Third, where the magic mushrooms are picked in order to either destroy them as soon as is reasonably practicable (purpose of destruction) or deliver them as soon as is reasonably practicable to a person lawfully entitled to take custody of them (purpose of delivery) and then held for the purpose of destruction, whether by the person who picked them or by another person.

2.6 Fourth, where the magic mushrooms are picked in order to destroy them as soon as is reasonably practicable (purpose of destruction) and then held, whether by the person who picked them or by another person, for the purpose of delivering them as soon as is reasonably practicable to a person lawfully entitled to take custody of them (purpose of delivery).

2.7 Scenarios three and four enable any person to (a) pick mushrooms for the purpose of delivery or destruction and to hold them or pass them to another person to hold for and in accordance with the purpose of destruction or (b) pick mushrooms for the purpose of destruction and to hold them or pass them to another person to hold for and in accordance with the purpose of delivery. In this way, there is scope for these persons to change their mind as to whether they are going to destroy or deliver the mushrooms. There is also scope for the person who picked the mushrooms to pass the mushrooms to another person and for such persons to pass the mushrooms on (covering farm workers, for example) so long as the mushrooms are held for and in accordance with the relevant purpose (delivery or destruction).

2.8 These Regulations do not cover a person who takes possession of (i.e. was not already in lawful possession of) mushrooms for the purpose of delivery and who holds the mushrooms for and in accordance with that purpose. This is because a defence in section 5(4)(b) of the 1971 Act already covers such persons. When this existing defence is combined with the exceptions provided for in these Regulations, it means that any person can pick magic mushrooms for either the purpose of delivery or destruction, or acquire magic mushrooms picked for such purposes, so long as he holds them for and in accordance with either of those purposes.

2.9 These Regulations also insert a fungus containing psilocin or an ester of psilocin into Schedule 1 to the 2001 Regulations, enabling the Secretary of State to issue a licence under those Regulations in respect of the production, supply, offer to supply or possession of those fungi (normally for research purposes).

2.10 The Misuse of Drugs (Designation) (Amendment) Order 2005 is necessary as there is no recognised medicinal use for magic mushrooms. It has the effect of preventing section 7(3) of the Misuse of Drugs Act 1971 applying to magic mushrooms and so preventing certain professions which usually work with controlled drugs from prescribing, administering, manufacturing, compounding, supplying and possessing magic mushrooms.

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

3.1 None.

4. Legislative Background

4.1 The Misuse of Drugs Act 1971 controlled the chemicals inside

the mushrooms - psilocin and psilocybin (an ester of psilocin) - as Class A rather than the mushrooms themselves. Magic mushrooms were only classified as a Class A drug under that Act if they constituted a preparation or a product containing psilocin or an ester of psilocin. It is a matter of legal interpretation what constitutes a preparation or a product and this had led to uncertainty. Section 21 of the Drugs Act 2005 amends the 1971 Act to provide that all magic mushrooms, regardless of whether they constitute a preparation or a product, constitute a Class A drug.

4.2 During the Commons Committee stage of the Drugs Bill, the Government undertook to consider bringing in regulations dealing with exceptions from the offence of possession of magic mushrooms in certain circumstances; and agreed that what is now section 21 of the Drugs Act 2005 would not be brought into force until such regulations were also in force (3 February 2005, House of Commons *Official Report*, column 184). Section 5(4)(b) of the Misuse of Drugs Act 1971 already provides a defence to the offence of possession of a controlled drug where a person shows that they took possession of that drug for the purpose of delivering it into the custody of a person lawfully entitled to take custody of it and that as soon as possible after taking possession of it they took all such steps as were reasonably open to them to deliver it into the custody of such a person.

4.3 Controlled drugs which have no recognised medicinal use are designated under section 7(4) of the Misuse of Drugs Act 1971. This has the effect of removing the requirement for the Secretary of State to permit certain professionals to work with those drugs. Magic mushrooms fall within this category and are, accordingly, following consultation with the Advisory Council on the Misuse of Drugs, designated under that provision.

5. Extent

5.1 These instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 The Government has acted to stop the commercial importation and supply of magic mushrooms by clarifying the misuse of drugs legislation and making clear that it will not allow the open sale of fresh magic mushrooms.

7.2 Magic mushrooms are a powerful hallucinogen and can cause real harm – especially to vulnerable people and those with mental health problems. Some suppliers have used an apparent loophole in the law to import fresh magic mushrooms in large amounts and this has attracted media attention. Estimates indicate that over 400 establishments in the U.K. are selling magic mushrooms and they are mostly supplied with imports. HM Revenue and Customs estimate the imports for 2004 to be between 8-16,000 kgs. The

British Crime Survey shows that about 180,000 16-59 year olds took mushrooms in 2002/3. The survey for 2003/4 indicates an increase of over 40% in one year.

7.3 It was already an offence to import, export, supply or possess dried magic mushrooms as these mushrooms constituted a preparation containing psilocin or an ester or psilocin. Section 21 of the Drugs Act 2005 closed the loophole by extending the offence provisions to all magic mushrooms, whatever form the mushrooms are in.

7.4 For the offence provision in respect of possession of magic mushrooms to operate satisfactorily it is necessary to make clear under what circumstances it is not unlawful to possess magic mushrooms. The Regulations fulfil this purpose.

7.5 Designated drugs are those which have no recognised therapeutic use. Nor can they be lawfully be prescribed, administered, produced, compounded or supplied except for the purposes of research or other special purposes or under licence issued by the Secretary of State. Psilocin and psilocybin are hallucinogens which work on the same pharmacological principle as LSD. The United Nations Convention on Psychotropic Substances 1971 places psilocin in Schedule 1, the highest level of control. It has long been designated as having no recognised medicinal use. The Order extends the designation as there is no recognised medicinal use for magic mushrooms.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for these instruments as they have no impact on business, charities or voluntary bodies.

8.2 These instruments have no impact on the public sector as they maintain the status quo where appropriate.

9. Contact

Jeremy Sare at the Home Office, tel: 020 7035 0461 or e-mail: Jeremy.Sare@homeoffice.gsi.gov.uk, can answer any queries regarding these instruments.