EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS (DESIGNATION) (AMENDMENT) (ENGLAND, WALES AND SCOTLAND) ORDER 2010

2010 No. 1143

AND

THE MISUSE OF DRUGS (AMENDMENT) (ENGLAND, WALES AND SCOTLAND) REGULATIONS 2010

2010 No. 1144

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 complement the Misuse of Drugs Act 1971 (Amendment) 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 including *4-methylmethcathinone* also known as mephedrone. These substances are classified in Part 2 of the Schedule as Class B drugs (with the exception of cathinone and cathinone derivatives which are already controlled under the Act, and bupropion).

2.2 The Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2010 ("the 2010 Designation Order") designates these drugs as substances which have no recognised medicinal use. The Misuse of Drugs (Amendment) (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 will come into force within 21 days of the date on which they are laid. The instruments could not have been made and laid sooner because the Secretary of State was required to consult the Advisory Council on the Misuse of Drugs ("ACMD") before making the instruments. The ACMD reported to the Secretary of State on the 29th March 2010. The Secretary of State, acting on the ACMD's recommendation, then took the immediate decision to control these drugs as Class B drugs under the 1971 Act and laid the 2010 Order the following day. The

ACMD has advised that there has been a rapid rise in the misuse of mephedrone and other cathinone derivatives in the last few months and mephedrone has also been linked to a number of recent deaths. The risks associated with cathinones derivatives include anxiety and paranoid states, the risk of over-stimulating the heart and nervous system to cause fits and delusions and the risk of dependency. 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 them to come into force is the 16th April 2010. This date has been chosen 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 and for the effects of the statutory instruments to be promulgated to the police, courts and other law enforcement agencies as well as the wider public.

3.2 The concern around mephedrone and other cathinone derivatives has been well publicised in recent weeks and the Secretary of State's decision to lay the 2010 Order has also received significant media attention. Users of these drugs should therefore be aware of these changes and, as there are 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 mephedrone and other cathinone derivatives for control under Schedule 2 to the 1971 Act is due to come into effect on 16 April 2010. Consequential amendments to the 2001 Order and the Misuse of Drugs (Designation) Order 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 mephedrone and other cathinone derivatives as such drugs.

4.3 The 2010 Regulations place mephedrone and other cathinone derivatives 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 mephedrone and other cathinone derivatives reviewing their status through the examination of their use, pharmacology, physical and societal harms. The ACMD's report will be available at http://drugs.homeoffice.gov.uk/drugs-laws/acmd/ 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, mephedrone and other cathinone derivatives 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 making of this Order and these Regulations. In providing its advice, the ACMD consulted a range of experts in this field and concluded that the drugs subject to the 2010 Order have no legitimate use and therefore should be designated as such and placed in Schedule 1 to the 2001 Regulations.

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 campaign.

10. Impact

10.1 These drugs have been assessed as having no legitimate purpose. They are currently marketed in "head shops" and on the internet for misuse purposes though often under the guise of a legitimate product. Businesses currently selling these substances will lose the income from this trade. Given the small numbers of businesses 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 controlled under the 2010 Order.

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 from misuse of these drugs is such that the Home Office expects those businesses currently selling these drugs to comply with the Misuse of Drugs Act 1971 and subordinate legislation made under it, however small the business.

12. Monitoring & review

12.1 The Government will monitor these control measures as part of the ongoing Drug Strategy.

13. Contact

Desmond Niimoi at the Home Office, tel: 020 7035 3533 or e-mail: Desmond.Niimoi@homeoffice.gsi.gov.uk, can answer any queries regarding these instruments.