EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS (AMENDMENT) (No. 2) (ENGLAND, WALES AND SCOTLAND) REGULATIONS 2017

2017 No. 1117

AND

THE MISUSE OF DRUGS (DESIGNATION) (AMENDMENT) (No. 2) (ENGLAND, WALES AND SCOTLAND) ORDER 2017

2017 No. 1118

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments ('JCSI').

2. Purpose of these instruments

2.1 These instruments complement the Misuse of Drugs Act 1971 (Amendment) (No.2) Order 2017 ('the 2017 Order') (S.I. 2017/1114) which controlled Methiopropamine ('MPA'), a synthetic drug which is similar in structure to amphetamine, as a Class B drug under the Misuse of Drugs Act 1971 ('the 1971 Act').

2.2 The Misuse of Drugs (Amendment) (No.2) (England, Wales and Scotland) Regulations 2017 ('the 2017 Regulations') add MPA to Schedule 1 to the Misuse of Drugs Regulations 2001 ('the 2001 Regulations').

2.3 The Misuse of Drugs (Designation) (Amendment) (No.2) (England, Wales and Scotland) Order 2017 ('the 2017 Designation Order') also adds MPA to Part 1 of Schedule 1 to the Misuse of Drugs (Designation) Order 2015 ('the 2015 Designation Order').

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These instruments were made on 16th November 2017, laid before Parliament on 20th November 2017 and come into force on 27th November. They therefore breach the 21-day rule.

3.2 These instruments are entirely consequential on the making of the 2017 Order, which was made by Her Majesty in Council on 15th November 2017. The 2017 Order was made following advice from the Advisory Council on the Misuse of Drugs ('ACMD') which recommended that MPA be controlled due to its risk to public health and safety. It was imperative for it to be made to come into force on 27th November 2017 as MPA is currently subject to a temporary class drugs order ('the TCDO') which expires on that date. If this was not done by that date the substance would lapse into

coverage under the Psychocative Substances Act 2016, meaning it would be legal to possess it. This would give rise to a significant risk to health in light of the substance's potential harms.

3.3 The draft of the 2017 Order was laid in Parliament on 19 July 2017. The earliest the debates in both Houses could take place was 23rd and 24th October and in the House of Lords a motion was necessary to suspend the standing order requiring prior JCSI consideration so as to enable that debate to take place. This was so that the 2017 Order could be made at the meeting of the Privy Council on 15th November (the last meeting at which it could be made so as to come into force on 27th November).

3.4 The 2017 Regulations and the 2017 Designation Order need to come into force at the same time as the 2017 Order to ensure that the proper regulatory framework is in place when these drugs become controlled. Without this, there would be a serious risk of misuse and diversion as well as considerable operational confusion. Accordingly, it is necessary for the instruments to come into force less than 21 days after they are laid.

3.5 The Government believes the practical consequences of breach will be minimal. MPA is presently subject to control by the TCDO and key stakeholders, including law enforcement, have been notified of the intended date for bringing the instruments into force.

3.6 The JCSI recognised that a breach may be necessary in these circumstances in its 22nd report of session 2012-13 (in respect of SI 2013/176 and 2013/177).

Other matters of interest to the House of Commons

3.7 As these instruments are subject to the negative resolution procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 As required by the 1971 Act, these instruments are made following consultation with the Advisory Council on the Misuse of Drugs. They are consequential on the making of the 2017 Order, which controlled MPA as a Class B drug under the 1971 Act. MPA was specified under section 2A of the 1971 Act as a drug subject to temporary control by virtue of the Misuse of Drugs Act 1971 (Temporary Class Drug) (No.2) Order 2016 (S.I.2016/1126) and ceases to be subject to such temporary control on the coming into force of the 2017 Order in accordance with section 2A(6)(b) of the 1971 Act.

4.2 The 1971 Act controls drugs that are "dangerous or otherwise harmful". 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) of the 1971 Act does not apply to any drug designated by order under section 7(4), essentially as a drug with no recognised medicinal use, and these designated drugs are listed in Schedule 1 to the 2015 Designation Order. The ACMD reported that MPA had no recognised medicinal use and thus it is added to Schedule 1 by the 2017 Designation Order.

4.3 The 2001 Regulations regulate the legitimate access to drugs controlled under the 1971 Act. Such drugs are placed in one of five Schedules to the 2001 Regulations. The Schedule into which a drug is placed is based on an assessment of its medicinal

or therapeutic usefulness, the need for legitimate access and the potential harm when misused. Scheduling primarily dictates the extent to which it is lawful to import, export, produce, possess, supply, administer the drugs concerned and imposes requirements around prescribing, record-keeping, labelling, destruction, disposal and safe custody. Given that MPA has no legitimate medicinal use, the ACMD recommended adding MPA to Schedule 1 to the 2001 Regulations, thus subjecting it to the strictest level of control.

5. Extent and Territorial Application

5.1 The extent of these instruments is England, Wales and Scotland.

5.2 The territorial application of these instruments is England, Wales and Scotland.

5.3 The Government expects the Department of Health in Northern Ireland to make statutory rules that mirror these changes in due course.

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 The explanatory memorandum to the 2017 Order, which is published alongside the order on www.legislation.gov.uk, sets out the full policy background to the 2017 Order. In summary, MPA is sufficiently "dangerous or otherwise harmful" to warrant control under the 1971 Act.

7.2 Following consultation with the ACMD, MPA is being added to Schedule 1 to the 2001 Regulations and Schedule 1 to the 2015 Designation Order.

7.3 The 1971 Act and its associated regulations enable the lawful possession and supply of controlled drugs for medicinal purposes or other special purposes. MPA is a synthetic drug which is similar in structure to amphetamine and often marketed as a 'legal alternative' to cocaine. The ACMD reported that MPA has no known legitimate use. As a result, MPA will be added to Schedule 1 to the 2001 Regulations and designated by the 2017 Designation Order as a drug to which section 7(4) of the 1971 Act applies.

7.4 The ACMD's advice on MPA can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/619755/ACMD_s_further_advice_on_methiopropamine_June_2017.pdf

Consolidation

7.5 The Government intends to consolidate the 2001 Regulations in due course.

8. Consultation outcome

8.1 The Government has consulted its independent experts, the Advisory Council on the Misuse of Drugs. The ACMD has recommended control of the drug concerned following a review of the evidence of use and harm of MPA.

9. Guidance

9.1 The control of MPA and its consequences will be communicated to key stakeholders and the wider public. The Home Office will issue a Circular with legislative guidance primarily for law enforcement and the Courts. The Government will continue to update its messaging on the harms of MPA, including through its FRANK information and advisory service online (the Government's national drugs awareness service).

10. Impact

10.1 There is no impact on business, charities or voluntary bodies except for organisations undertaking research using MPA. However, impact on research organisations is expected to be minimal as these organisations are already likely to be handling controlled drugs acting under a Home Office license, or in accordance with the Misuse of Drugs Regulations 2001, and guidance is already widely available in this area.

10.2 The impact on the public sector is expected to be minimal. Enforcement of offences in relation to MPA will be subsumed into the overall enforcement response to controlled drugs. There may be a benefit to health services and treatment providers where the supply of MPA is restricted.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. This assessment was also submitted with the 2017 Order and remains up to date.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 The harm that can result from the misuse and diversion of MPA is such that we would expect compliance with the 1971 Act and subordinate legislation made under it, however small the business. However, the impact is minimised for those businesses already likely to be handling controlled drugs, acting in accordance with a Home Office licence or within the 2001 Regulations where guidance is already widely available.

12. Monitoring & review

12.1 The Government will monitor the control measures through the regulatory framework governing controlled drugs, and also through national data collection and surveys on drug misuse.

13. Contact

13.1 Sara Anderson at the Home Office. Telephone: 0207 035 3073 or email: Sara.Anderson@homeoffice.gsi.gov.uk can answer any queries regarding these instruments.