

**EXPLANATORY MEMORANDUM TO**  
**THE MISUSE OF DRUGS ACT 1971 (AMENDMENT) ORDER 2017**

**2017 No. [XXXX]**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 The Order in Council (the “Order”) brings U47,700, a synthetic opioid, under permanent control as a Class A drug under Part 1 of Schedule 2 to the Misuse of Drugs Act 1971 (the “1971 Act”).
- 2.2 The Order also brings twelve substances closely related to methylphenidate under control as Class B drugs under Part 2 of Schedule 2 to the 1971 Act. A number of these methylphenidate related materials were specified under section 2A of the Act as drugs subject to temporary control by virtue of the Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2016 (S.I. 2016/650) and cease to be subject to such temporary control on the coming into force of the Order in accordance with section 2A(6)(b) of the Act.
- 2.3 Finally, the Order brings sixteen ‘designer’ benzodiazepines under control as Class C drugs under Part 3 of Schedule 2 to the 1971 Act.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

**4. Legislative Context**

- 4.1 The 1971 Act controls drugs that are “dangerous or otherwise harmful”. Schedule 2 to the 1971 Act specifies these drugs and groups them in three categories – Part 1 lists drugs known as Class A drugs, Part 2 lists Class B drugs, and Part 3 lists Class C drugs. The three-tier system of classification (A, B and C) provides a framework within which criminal penalties are set with reference to the harm a drug has or is capable of having when misused and the type of illegal activity undertaken in regard to that drug.
- 4.2 The classification of the drugs listed in paragraphs 2.1 to 2.3 above is predicated on an assessment of their respective harms and in accordance with recommendations made by the ACMD.
- 4.3 In due course it is intended to make a further related statutory instrument (or instruments) to come into force at the same time as the Order. This will add the

substances controlled by the Order to the appropriate Schedules to the Misuse of Drugs Regulations 2001 and, depending on ACMD advice, may also amend the Misuse of Drugs (Designation) Order 2011 to designate any of these substances which have no recognised legitimate use outside of research.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is all of the United Kingdom.
- 5.2 The territorial application of this instrument is all of the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 The Minister for Preventing Abuse, Exploitation and Crime has made the following statement regarding Human Rights:

“In my view, the provisions of the Misuse of Drugs Act 1971 (Amendment) Order 2016 are compatible with the Convention rights.”

## **7. Policy background**

### *What is being done and why*

- 7.1 U-47,700 is being permanently controlled as a Class A drug under the 1971 Act due to its potential harms.
- 7.2 U-47,700 is a synthetic opioid, originally developed as a research chemical but with no legitimate use. Reportedly 7.5 times more potent than morphine it is a structural analogue of AH-7921. AH-7921 was controlled as a Class A drug under the 1971 Act in January 2015 following ACMD advice, particularly regarding its high addiction potential. The ACMD is concerned that abuse of U-47,700 has the potential for severe harm, particularly following reports from the USA of more than 80 deaths attributed to this substance and that the patterns of abuse are mirroring those of heroin. The US Drug Enforcement Administration has consequently subjected U-47,700 to temporary emergency scheduling under the Controlled Substances Act. U-47,700 is being obtained as a ‘research substance’ from unregulated sources, particularly on-line and the purity, identity and quality are inconsistent. The ACMD’s advice in respect of U-47700 and the benzodiazepines, along with a number of addendums (latest March 2017), can be found here:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/579352/ACMD\\_TCDO\\_Report\\_U47700\\_and\\_Etizolam\\_and\\_designer\\_benzodiazepines.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/579352/ACMD_TCDO_Report_U47700_and_Etizolam_and_designer_benzodiazepines.pdf)
- 7.3 The Order also controls 12 compounds related to the substance methylphenidate (also known as Ritalin) as class B drugs because of their potential harms.. Methylphenidate is currently controlled as a Class B drug under the 1971 Act and as a Schedule 2 substance under the Misuse of Drugs Regulations 2001. One of these methylphenidate-related substances in particular, ethylphenidate, has been cited as an example of a common recently emerged psychoactive drug associated with short rushes and frequent injecting episodes. The National Programme of Substance Abuse Deaths (NPSAD) reported that up to November 2016, ethylphenidate had been found in 28 cases of post mortem toxicology. There have been 17 cases where ethylphenidate was implicated in the cause of death. In the majority of these cases other drugs including NPS were present. The ACMD’s advice in respect of the methylphenidates is available at: <https://www.gov.uk/government/publications/methylphenidate-based-novel-psychoactive-substances-temporary-class-drug-order-report>

- 7.4 Police Scotland has reported particular issues around this group of drugs and notes that related practices include: communal injecting, users injecting each other due to rapid onset of effects and loss of fine motor control, needle sharing, injecting in unsanitary environments, high-risk injecting (in the neck and groin), and preparation with citric acid to improve water solubility, which additionally increases the corrosive nature of the substance within in the body. These practices are likely to lead to a high risk of bacterial infection and local tissue damage. The injected contents are sometimes not fully solubilised and users will inject without filtering. Police Scotland has seen reports of the solution partially solidifying on injection. Intravenous drug users in Edinburgh and Lothian were experiencing injuries related to injecting as a consequence of injecting with ethylphenidate.
- 7.5 Finally, the Order controls sixteen ‘designer’ benzodiazepines as Class C drugs under the 1971 because of their potential harms. The harms of these substance - Etizolam, Diclazepam, Flubromazepam, Pyrazolam, Deschloroetizolam, Flubromazolam, Nitrazolam, Nifoxipam, Clonazolam, 4’-Chlorodiazepam, Bromazolam, Meclonazepam, Adinazolam, Metizolam, 3-Hydroxyphenazepam, and Fonazepam - are commensurate with benzodiazepines that are already controlled as Class C drugs under the 1971 Act. Benzodiazepines can be misused in a variety of ways and their effects are similar to alcohol. They are often used with alcohol and are also used as a sleeping aid by those who have been to night-clubs. During the first six months of 2016 there were 46 registered deaths in Scotland implicating Etizolam and 22 deaths involving Diclazepam. Prolonged use of benzodiazepines can lead to tolerance and dependence which can be difficult to resolve. The misuse of benzodiazepines by high-risk opioid users is high and associated with morbidity and mortality among such people. The Medicines and Healthcare products Regulatory Agency (MHRA) has confirmed that these substances do not hold marketing authorizations in the UK. The Government has asked the ACMD to keep the scheduling of these designer benzodiazepines under close review given that Etizolam has been identified by some countries, including Italy, as having some therapeutic benefits.

### *Consolidation*

- 7.6 The issue of consolidation is not relevant to this order.

## **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 drugs concerned following a review of their harms.

## **9. Guidance**

- 9.1 The control of these drugs 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 the police and the courts. The Government will continue to update its messaging on the harms of these substances, including through its FRANK information and advisory service online.

## **10. Impact**

- 10.1 There is no impact on legitimate business, charities or voluntary bodies, except for organisations undertaking research using these substances. 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 licence, 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 the drugs controlled by the Order 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 these substances 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](http://legislation.gov.uk) website.

## **11. Regulating small business**

- 11.1 This legislation applies to activities that are undertaken by small business.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 The harm that can result from misuse and diversion of the drugs controlled by the Order is such that we would expect compliance with the 1971 Act and subordinate legislation made under it, however small the business. Impact on small businesses conducting legitimate research is minimised as these businesses are already likely to be acting under a Home Office licence.

## **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 James Mclellan at the Home Office. Telephone: 0207 035 1885 or email: [james.mclellan@homeoffice.gsi.gov.uk](mailto:james.mclellan@homeoffice.gsi.gov.uk) can answer queries about this instrument.