

EXPLANATORY MEMORANDUM TO
THE MISUSE OF DRUGS ACT 1971 (AMENDMENT No. 2) ORDER 2010
2010 No. 1833

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 classifies for control under Schedule 2 to the Misuse of Drugs Act 1971 cathinone derivatives which contain mono- or fused- polycyclic ring systems (including naphthylpyrovalerone, also known as 'naphyrone') referred to below as “naphthylpyrovalerone analogues”. These substances are classified in Part 2 of the Schedule as Class B drugs.

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

3.1 None.

4. Legislative Context

4.1 The Misuse of Drugs Act 1971 (“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 contains 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 causing when misused and the type of illegal activity undertaken in regard to that drug.

4.2 Section 2 of the 1971 Act enables amendments to be made to the list of drugs controlled under the Act by means of an Order in Council. Such Orders are subject to the affirmative resolution procedure which requires that they be approved by each House of Parliament. Section 2 also provides that the Secretary of State may not recommend the making of such an Order except after consultation with the Advisory Council on the Misuse of Drugs (ACMD).

4.3 Pyrovalerone (Class C) is already controlled under the 1971 Act. The control and classification of naphthylpyrovalerone analogues including naphyrone is predicated on an assessment of harm and in accordance with a recommendation made by the ACMD. The ACMD assessed these substances as harmful drugs, sufficient to justify control under the 1971 Act as Class B drugs. They are structurally similar to cathinones such as mephedrone and methylenedioxy-pyrovalerone (MDPV) which are already classified under the 1971 Act as Class B drugs.

4.4 It is intended to make two further related statutory instruments which will be subject to the negative resolution procedure. The Misuse of Drugs (Designation) (Amendment No.2) Order 2010 will specify naphthylpyrovalerone analogues including naphyrone as drugs which have no statutorily recognised medicinal or other legitimate

use. The Misuse of Drugs (Amendment No.2) Regulations 2010 will amend the Misuse of Drugs Regulations 2001 (as amended) to include these drugs.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for the Home Department, James Brokenshire, has made the following statement regarding Human Rights:

In my view the provisions of the Misuse of Drugs Act 1971 (Amendment No. 2) Order 2010 are compatible with the Convention rights.

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. It found that the harms associated with these substances are consistent with the known or reported harms of cathinones and traditional amphetamines. The predicted harmful effects of naphyrone 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. The ACMD's report is available at <http://www.homeoffice.gov.uk/publications/drugs/acmd1/naphyrone-report>

7.2 The Government has accepted the ACMD's assessment that the harms associated with naphyrone and other naphthylpyrovalerone analogues being controlled are commensurate to Class B of the 1971 Act. The maximum penalties for offences relating to a Class B drug set by the legislative framework are - on indictment, for possession, five years imprisonment and for supply, production or trafficking, fourteen years imprisonment and/or an unlimited fine; the maximum penalties on summary conviction for possession are three months imprisonment and/or a fine of £2,500 and for supply, production or trafficking, are six months imprisonment and/or a £5,000 fine.

7.3 By using the generic definition provided by the ACMD, this Order in Council will capture a range of naphthylpyrovalerone analogues and therefore both current and future foreseeable trends. It is also consistent with the UK's legislative approach to other synthetic drugs.

- *Consolidation*

7.4 None.

8. Consultation outcome

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 website.

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. 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 are attached to this memorandum.

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. In tandem with this, the Government will review its public health messages to ensure that they are appropriately targeted and informative.

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.



EQUALITY IMPACT ASSESSMENT
Group: Crime and Policing Group
Directorate: Drugs, Alcohol and Partnerships Directorate
Unit: Drug Strategy Unit

PRELIMINARY SCREENING

Date of Screening	9/07/2010
Name of Policy Writer	Angela Scrutton
Director General	Stephen Rimmer

Name of Policy		This is a new policy
	x	This is a change to an existing policy
		This is an existing policy

Policy Aims, Objectives & Projected Outcomes
<p>To control additional cathinone derivatives which contain mono- or fused-polycyclic ring systems (including naphthylpyrovalerone, also known as 'naphyrone' (referred to below as "naphthylpyrovalerone analogues"). These are considered "dangerous or otherwise harmful" in accordance with the terms of the Misuse of Drugs Act 1971. They are structurally similar to cathinones such as mephedrone and methylenedioxy-pyrovalerone (MDPV) which are already classified under the 1971 Act as Class B drugs.</p> <p>The intended objectives are to deter use of naphyrone and naphthylpyrovalerone analogues, particularly by young people, and to reduce their availability via supplier "self-regulation" following implementation of control measures as well as enabling law enforcement agencies to undertake appropriate enforcement action, in particular activity to tackle production and supply.</p>

Will the policy have an impact on national or local people/staff?	YES
Are particular communities or groups likely to have different needs, experiences and/or attitudes in relation to the policy	YES
Are there any aspects of the policy that could contribute to equality or inequality?	Unknown
Could the aims of the policy be in conflict with equal opportunity, elimination of discrimination, promotion of good relations?	NO
If this is an amendment of an existing policy, was the original policy impact assessed?	N/A

If your answer to any of these questions is **YES**, go on to the full EIA.

If you have answered **NO** to all of these questions then please attach the following statement to all future submissions and within your regulatory impact assessment and ensure it is signed off by senior management.

“This policy was screened for impact on equalities on [insert date]. The following evidence [Evidence] has been considered. No full equality impact assessment is required. “

Remember that all policies that are likely to have a significant impact on individuals and the public as a whole are likely to require a full EIA.

FULL IMPACT ASSESSMENT

STATISTICS & RESEARCH

What relevant quantitative & qualitative data do you have in relation to this policy?

Equality Target Areas	How does the data identify potential or known positive impacts? How does the data identify any potential or known adverse impacts?
Race (consider e.g. nationalities, Gypsies, Travellers, languages)	None at present. To our knowledge, no data is available on race in relation to the use of these substances. It is not anticipated that the change in policy will have any disproportionate impact on race.
Disability (consider social access and physical access)	None at present. To our knowledge, no data is available on disability in relation to the use of these substances. It is not anticipated that the change in policy will have any disproportionate impact on disability.
Gender	None at present. It is not anticipated that the change in policy will have any disproportionate impact on gender.
Gender Identity	None at present. To our knowledge, no data is available on gender identity in relation to the use of these substances. It is not anticipated that the change in policy will have any disproportionate impact on gender identity.
Religion and Belief	None at present. To our knowledge, no data is available on religion and belief in relation to the use of these substances. It is not anticipated that the change in policy will have any disproportionate impact on religion and belief.
Sexual Orientation	None at present. To our knowledge, no data is available on sexual orientation in relation to the use of these substances. It is not anticipated that the change in policy will have any disproportionate impact on sexual orientation.
Age	The 'legal highs' market appears to be targeted at young people, through sales on the internet, at festivals and in 'head shops'. This would suggest that young people are the largest consumers of these substances.

	<p>The change in policy will protect the young people currently using these substances or intending to do so from the harms caused by these substances.</p> <p>It is not anticipated that the change in policy will have any significant adverse impact on this group of users.</p>
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What research have you considered commissioning to fill any data gaps?

The gathering of quantitative data on use amongst the population is needed to inform this area. The British Crime Survey has responded to the availability of emerging drugs by adding new questions on Spice, BZP, khat, GBL/GHB and mephedrone into the survey. Consideration will be made about the inclusion of further questions into the survey as necessary to inform our understanding of future drug trends.

The Cross-Government Research Programme on drugs will consider options for further social research into naphyrone.

The Drug Strategy Equality Forum leads on delivery of our equality commitments, which includes a review of ongoing equality research needs.

Who are the stakeholders, community groups, staff or customers for this policy area?

- Drug users, their children, their families and all members of communities impacted by illegal drug use.
- Practitioners working in drug treatment services.
- Advisory Council on the Misuse of Drugs (ACMD).
- The National Treatment Agency for Substance Misuse (NTA).
- Primary Care Trusts (PCTs).
- Inter-agency drug action teams and local partnerships, including Drug Action Teams (DATs), Drug and Alcohol Action Teams (DAATs) and Crime and Disorder Reduction Partnerships (CDRPs).
- Enforcement agencies and all parts of the Criminal Justice System.
- Educational institutions.
- Local Authorities.
- The Home Office.
- Department of Health.
- Department for Education.
- Ministry of Justice.
- Department for Work and Pensions.
- Department for Communities and Local Government.
- Other UK governments – Wales, Scotland and Northern Ireland.
- Charity and voluntary groups.

What are the overall trends and patterns in this qualitative & quantitative data?

As this substance is not controlled to date under the Misuse of Drugs Act 1971, there is no robust available evidence to evaluate the overall trends and patterns. Whilst the Advisory Council on the Misuse of Drugs advise that the prevalence of naphyrone use is unknown, findings also suggests that prevalence is currently relatively low and makes up only a small percentage of the total compounds found in marketed "legal highs".

The ACMD advise that Google trends data on 'NRG-1' searches indicates a spike in searches in the latter half of April 2010 (following mephedrone classification on 16 April 2010).

Please list the specific equality issues that may need to be addressed through consultation (and further research)?

The key research issue is prevalence of use; once this has been established through gathering of quantitative data it can be established whether any further research is needed.

GATHERING EVIDENCE THROUGH COMMUNITY ENGAGEMENT

INTERNAL STAKEHOLDER ENGAGEMENT: Consulting & involving Other Government Departments, Staff, Agencies & NDPBs

Does this policy affect the experiences of staff? How? What are their concerns?	
Staff	Bringing these substances under the control of the Misuse of Drugs Act 1971 could affect staff in treatment services, in enforcement agencies, in education and children's services, staff throughout the criminal justice system and those concerned with benefits and needs assessment and provision.
Staff Networks & Associations	-----
Trade Unions	-----

How have you consulted, engaged and involved internal stakeholders in considering the impact of this proposal on other public policies and services?

The control measures to be introduced are in line with ACMD advice, following consultation with them. The ACMD did not raise any concerns about adverse impact on equality.

What positive and adverse impacts were identified by your internal consultees? Did they provide any examples?

No positive or adverse impacts have been identified.

EXTERNAL CONSULTATION & INVOLVEMENT

How did your engagement exercise highlight positive and negative impacts on different communities? – 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.

Voluntary Organisations	•
Race	•
Faith	•
Disability Rights	•
Gender	•
Gender Identity	•
Sexual Orientation	•
Age	•

ASSESSMENT & ANALYSIS

Does the EIA show a potential for differential impact on any group(s) if this proposal is introduced? If Yes, state briefly whether impact is adverse or positive and in what equality areas.

EIA highlights the absence of robust data and refers to the potential for greater positive impact on young people.

What were the main findings of the engagement exercise and what weight should they carry?

N/A

Does this policy have the potential to cause unlawful direct or indirect discrimination? Does this policy have the potential to exclude certain group of people from obtaining services, or limit their participation in any aspect of public life?

Bringing these substances under control of the Misuse of Drugs Act 1971 will not cause unlawful discrimination. The Parliamentary Under-Secretary of State for the Home Department, James Brokenshire, has made the following statement regarding Human Rights: "In my view the provisions of the Misuse of Drugs Act 1971 (Amendment No 2) Order 2010 are compatible with the Convention rights."

How does the policy promote equality of opportunity?

Control will help to deter use, improving an individual's health and should therefore enhance an individual's ability to work, career progression and day to day social activities.

How does your policy promote good relations? How does this policy make it possible for different groups to work together, build bridges between parallel communities, or remove barriers that isolate groups and individuals from engaging in civic society more generally?

The Government's decision to classify these substances under the Misuse of Drugs Act 1971, subject to parliamentary approval, is necessary to help protect the public from these substances.

How can the policy be revised, or additional measures taken, in order for the policy to achieve its aims without risking any adverse impact?

See Action Plan.

Are there any concerns from data gathering, consultation and analysis that have not been taken on board?

No.

ENSURING ACCESS TO INFORMATION

How can you ensure that information used for this EIA is readily available in the future?

(N.B. You will need to include this in your action plan)

- The full report on the equality impact assessment will be made available for those reviewing the policy at different stages.

How will you ensure your stakeholders continue to be involved/ engaged in shaping the development/ delivery of this policy?

(N.B. You will need to include this in your action plan)

- There is continual liaison with both internal and external stakeholders. This engagement will continue.

How will you monitor this policy to ensure that the policy delivers the equality commitments required?

(N.B. You will need to include this in your action plan)

- The Government is considering options for a new evaluation framework and the monitoring of the effectiveness of these controls will form part of that work.
- National survey statistics on 'legal highs' and Criminal Justice statistics will be monitored to evaluate use and enforcement

Now submit your EIA and related evidence for clearance.

ACTION PLAN

Recommendations	Responsibility	Actions required	Success Indicators	Target Date	What progress has been made?
Data Collection	Home Office Scottish Government DHSSPS (Ireland)	Monitor through national survey and Criminal Justice System statistics	Up-to-date data and routine data on drugs usage available	Ongoing	
Publication Arrangements	Home Office Drug Strategy Unit	Publish summary of EIA along with final strategy	EIA on Home Office website	July 2010	
Monitoring & Review Arrangements	Local partnerships, commissioners and service providers	Local providers to establish monitoring systems across diversity strands	Improved baseline and continuing data	Ongoing	
Monitoring & Review Arrangements	Home Office Drug Strategy Unit	Engage with Drug Strategy Equality Forum Panel to raise new drugs controls as an issue for Equality toolkit	New drug controls discussed at both forums and covered within the toolkit	July 2010	
Equality	Home Office Drug Strategy Unit	Engage with the Drug Strategy Forum to raise awareness of new controlled drugs	Drug Strategy Forum raises awareness of new controlled drugs	Winter 2010	

Research	Home Office Drug Strategy Unit	Ensure new drugs controls are considered as part of wider equality research plans of Drug Strategy Equality Forum and Cross-Government Research Programme on Drugs	New drugs controls are considered as part of the forum and programme	July 2010	
Consideration by Cross Government Research Programme on Drugs (CGRPD)	Home Office (RAU)	Consideration of future prevalence data by the CGRPD Strategic Board	Appropriate research issues identified	2011/2012	
Research	ACMD	Continuing consideration of so called "legal highs" with overarching advice on a number of areas including public health issues/messages, analytical challenges and availability.	Improved understanding of drug harms	Ongoing	

THE EQUALITY IMPACT ASSESSMENT REPORT

Background:

On 12 July 2010, the Government announced its intention to control aphenylpyrovalerone analogues including naphyrone – under the Misuse of Drugs Act 1971. This decision reflects the fact that this substance is considered sufficiently harmful, following assessment and advice from the Advisory Council on the Misuse of Drugs, to warrant control measures relating to possession, supply, manufacture and import/exportation with associated criminal sanction. Government intervention is necessary to help protect the public from these substances.

The Government is reducing supply and demand through enforcement action at home and abroad, prevention and early intervention, through directing drug users into treatment and recovery support to overcome their addiction.

Methodology:

The Equality Impact Assessment was informed by the advice from the Advisory Council on the Misuse of Drugs' report on naphthylpyrovalerone analogues and related compounds.

Consultation & Involvement:

None besides ACMD advice – the Government needed to act quickly to control this substance

Assessment & analysis

None at this time.

Recommendations

See Action Plan.