EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS ACT 1971 (AMENDMENT) ORDER 2019

2019 No. 1323

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 amendment reduces the scope of the generic definition for a range of synthetic cannabinoids controlled as Class B drugs under the Misuse of Drugs Act 1971 ('the 1971 Act') and continues to exclude compounds otherwise controlled and compounds with legitimate medical uses.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (section 40(2) of the 1971 Act) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Misuse of Drugs Act 1971 (Amendment) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The Misuse of Drugs Act 1971 controls drugs that are 'dangerous or otherwise harmful'. The 1971 Act lists all controlled drugs in the United Kingdom and divides them into three 'classes'. 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 unlawful activity undertaken in regard to that drug.

6.2 On 14 December 2016, the Misuse of Drugs Act 1971 (Amendment) Order 2016 (S.I. 2016/1109) ("the 2016 Order") came into force. The 2016 Order brought a further range of synthetic cannabinoids under permanent control as Class B drugs under Part 2 of Schedule 2 to the 1971 Act. These compounds were controlled by a generic definition, inserted into paragraph 1(ca) of Part 2 of Schedule 2 to the 1971 Act.

6.3 In accordance with the recommendations of the Advisory Council on the Misuse of Drugs ('the ACMD'), this Order (the Misuse of Drugs Act 1971 (Amendment) Order 2019) amends that generic definition in the 1971 Act in order to reduce its scope. The purpose of the amendment is to remove compounds which were not intended for control whilst retaining those which are known to be, or likely to be, misused, and where the misuse is having, or is capable of having, harmful effects.

6.4 It is intended that a further related statutory instrument will come into force at the same time as this Order. This will make corresponding amendments to the definition of this range of synthetic cannabinoids in the Schedule to the Misuse of Drugs Regulations 2001 and the Misuse of Drugs (Designation) (England, Wales and Scotland) Order 2015.

7. Policy background

What is being done and why?

7.1 The Government is amending the generic definition of a range of synthetic cannabinoids permanently controlled as Class B drugs under the 1971 Act. Synthetic cannabinoids are compounds which affect the CB1 cannabinoid receptors in the brain and produce a psychoactive effect similar to those produced in cannabis.

7.2 Following the identification of synthetic cannabinoids in smoking products, the Government subjected them to three tranches of controls under the 1971 Act. The first, which came into force at the end of 2009, was based around materials then known to be available as new psychoactive substances (NPS) and included a number of named compounds together with generic controls covering groups of materials related to those known to be in circulation in order to try to avoid simple 'designer' variants. A further generic definition came into effect in early 2013 and expanded control to include a broader range of 'second generation' materials, which had appeared between 2009 and 2012.

7.3 Following this control, a 'third generation' of synthetic cannabinoids subsequently entered the market and became widely available. On the ACMD's advice, a further generic definition came into effect in 2016 to control this range of compounds as Class B drugs under the 1971 Act due to their potential harms. The ACMD's advice in respect of these substances, along with a number of addenda, can be found here:

https://www.gov.uk/government/publications/third-generation-synthetic-cannabinoids

7.4 On 27 December 2017, the ACMD issued advice recommending amendment of the generic definition of 'third generation' synthetic cannabinoids to reduce the scope. The ACMD recommends replacing the term 'univalent' with a defined member of substituents (alkyl, alkenyl, alkoxy, halide, haloalkyl, cyano, phenyl, benzyl and substituted phenyl and benzyl groups) to reduce the number of compounds unintentionally captured by the generic definition while retaining those compounds that have been found to cause harms. The recommended revised definition continues

to exclude the licensed medicines and the Class A drugs previously excluded. Owing to the continued harms posed by 'third generation' synthetic cannabinoids, the ACMD does not recommend a repeal of the generic definition. The ACMD's advice is available at: https://www.gov.uk/government/publications/legitimate-use-of-controlled-drugs-research-and-healthcare

7.5 On 18 May 2018, the Minister of State for Policing and the Fire Service provided his initial reply to the ACMD's proposal. This is available at: https://www.gov.uk/government/publications/legitimate-use-of-controlled-drugs-research-and-healthcare

7.6 On 15 January 2019, following consultation with the research community, the Minister sent a further letter accepting the ACMD's recommendation for a revised definition. This is available at: https://www.gov.uk/government/publications/legitimate-use-of-controlled-drugs-research-and-healthcare

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 It is not currently intended that amendments to Schedule 2 to the Misuse of Drugs Act 1971 will be consolidated.

10. Consultation outcome

10.1 The ACMD, the independent advisory body set up under the 1971 Act, has recommended amendment of the generic definition for 'third generation' synthetic cannabinoids under the 1971 Act. The Government has also consulted representatives from the research community.

11. Guidance

11.1 The amendment to the generic definition of 'third generation' synthetic cannabinoids 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 setting out the effect of the amendment on the compounds controlled as Class B drugs under the 1971 Act in due course.

12. Impact

12.1 The impact on business, charities or voluntary bodies is beneficial. The Order removes a number of compounds from the generic definition which were unintentionally controlled, and consequently permits research on these compounds without the requirement for a Home Office licence. The impact of the change is limited to the pharmaceutical and healthcare research sector.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

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

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

13.3 The Order removes specific compounds from the scope of the generic definition, and therefore does not apply any additional regulatory burden on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is through the regulatory framework governing controlled drugs, and also through national data collection and surveys on drug misuse.

15. Contact

15.1 Sara Anderson at the Home Office, Telephone: 0207 035 3073 or email: Sara.Anderson@homeoffice.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Gwen Nightingale and Katherine Merrifield at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Nick Hurd MP, the Minister of State for Policing and the Fire Service, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.