EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS ACT 1971 (AMENDMENT) ORDER 2015

2015 No. [ ]

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 This Order in Council ("the Order") classifies the following new psychoactive substances as Class A drugs under Part 1 of Schedule 2 to the Misuse of Drugs Act 1971;

- 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (commonly known as MT-45) and
- 4-methyl-5-(4-methylphenyl)-4,5-dihydrooxazol-2-amine (commonly known as 4,4'-DMAR).

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 which are considered to be the most harmful controlled drugs, Part 2 lists Class B drugs, and Part 3 lists Class C drugs. The three-tier A, B, C system of classification provides a framework within which criminal penalties are set with reference to the level of harm that a drug has or is capable of having 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 controlled drugs in Schedule 2 to the 1971 Act by means of an Order in Council. The draft Order is made in Privy Council subject to the prior approval of both Houses of Parliament by affirmative resolution. Section 2(5) of the 1971 Act also provides that the Secretary of State shall not lay a draft Order except after consultation with the Advisory Council on the Misuse of Drugs ("ACMD").

4.3 The classification of the drugs listed in paragraphs 2.1 above is predicated on an assessment of their respective harms and in accordance with recommendations made by the ACMD.

4.4 MT-45 is a synthetic opioid. The ACMD advises that the drug presents potential harms including the risk of addiction and respiratory depression. The ACMD further highlights reports by member states of the European Union (EU) of adverse

effects and incidents including coma and fatalities linked to MT-45 as a cause or contributory factor.

4.5 4,4'-DMAR is a new psychoactive substance with stimulant properties. The ACMD advises that the use of 4,4'-DMAR has been linked as a cause or contributory factor to health harms including agitation, convulsions and hyperthermia prior to deaths reported in the UK and EU member states.

4.6 The ACMD has recommended that MT-45 and 4,4'-DMAR be subject to Class A control as drugs that are being, or are likely to be, misused, and that misuse is having, or is capable of having, harmful effects.

4.7 The ACMD has been consulted, as required by statute, on the above changes.

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 Minister for Crime Prevention, the Rt Hon Lynne Featherstone MP, has made the following statement regarding Human Rights:

> "In my view, the provisions of the Misuse of Drugs Act 1971 (Amendment) Order 2015 are compatible with the Convention rights."

7. Policy background

- ***What is being done and why***

7.1 MT-45 was developed by Dainippon Pharmaceutical Co. Ltd in the 1970s as an analgesic drug structurally related to controlled (Class B) drug lefetamine. The results of animal testing have shown that MT-45 substitutes for and has a similar potency to (Class A) morphine, and suggest that its addictive and serious harm potential is akin to controlled opioids. Although the ACMD has not received reports on MT-45 in the UK, the drug is available for sale online and has been identified in pure form or mixed with other new psychoactive substances. The EU has also published a report and a risk assessment on MT-45 as a substance of concern due to the potential harms, at www.emcdda.europa.eu/publications/joint-reports/MT-45.pdf and www.emcdda.europa.eu/publications/risk-assessment/mt-45.pdf, respectively. MT-45 is being controlled as a Class A drug, to protect the public, as recommended by the ACMD following its advice on harms which is published at www.gov.uk/government/publications/report-summary-synthetic-opioid-mt-45.

7.2 4,4'-DMAR was reported to the EU by the Netherlands for the first time in December 2012. It has been detected in the UK and EU in powder and tablet form, as well as in 'legal high' products alongside other new psychoactive substances. The ACMD's assessment of evidence on the harms of this drug includes reports of fatalities over a relatively short period of time. The EU has also published a report and a risk assessment on 4,4'-DMAR as a substance of concern due to its potential harms, at www.emcdda.europa.eu/publications/joint-reports/4-4-DMAR and

www.emcdda.europa.eu/publications/risk-assessment/4,4-DMAR, respectively. 4,4'-DMAR is being controlled as a Class A drug, to protect the public, as recommended by the ACMD following its advice on harms which is published at www.gov.uk/government/publications/report-summary-synthetic-stimulant-44-dmar.

- ***Consolidation***

7.3 None.

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 being controlled following a review of evidence on their potential harms.

9. Guidance

9.1 Public health messaging on the potential harms of synthetic opioids including MT-45 and new psychoactive substances including 4,4'-DMAR has been updated to reflect the ACMD's advice on these drugs and to raise public awareness and reduce demand. Legal changes and their consequences will be communicated to key stakeholders and the wider public. The Home Office will issue a Circular with legislative guidance primarily for UK law enforcement and the courts.

10. Impact

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

10.2 An Impact Assessment and Equality Impact Assessment are attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The harm that can be done from the misuse and diversion of these drugs is such that those offering them for sale as alternatives to controlled drugs are expected to comply with the Misuse of Drugs Act 1971 and its subordinate legislation, however small the business. Impact on legitimate small research businesses is minimised as these businesses are already likely to be acting under 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

Cyrille Marcel at the Home Office, tel: 020 7035 0618 or e-mail: Cyrille.Marcel2@homeoffice.gsi.gov.uk, can answer any queries regarding the legislation.