

EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS ACT 1971 (AMENDMENT) ORDER 2022

2022 No.

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 Following an assessment of their harms, the Advisory Council on the Misuse of Drugs (“ACMD”) has recommended that three drugs, Gamma-Hydroxybutyric Acid, referred to for the purposes of this Order in Council as 4-Hydroxy-n-butyric acid, (GHB), Gamma-Butyrolactone (GBL) and 1,4-Butanediol (1,4-BD), be moved from Class C to Class B under the Misuse of Drugs Act 1971 (“the 1971 Act”) owing to evidence of harm and of the prevalence of these drugs in the UK. The ACMD also recommended that GBL and 1,4-BD be placed in Schedule 1 to the Misuse of Drugs Regulations 2001 (“the 2001 Regulations”), and further recommended the removal of an exemption from the 2001 Regulations that made certain activities in relation to GBL and 1,4-BD lawful, meaning that legitimate industrial users will require a controlled drugs licence. Collectively, these three drugs are referred to below as “GHB and related substances” (“GHBRs”). This Order in Council (the “Order”) places GHBRs in Class B under the 1971 Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 Kit Malthouse MP, Minister for Crime and Policing, has made the following statement regarding Human Rights:

“In my view the provisions of The Misuse of Drugs Act 1971 (Amendment) Order 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 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 that a drug has, or is capable of having when misused, and the type of illegal activity undertaken with regards to that drug.

- 6.2 This Order moves GHBRS from Class C to Class B under the 1971 Act following recommendations made by the ACMD in its report, “Assessment of the harms of gamma-hydroxybutyric acid, gamma-butyrolactone, and closely related compounds”, published on 20th November 2020¹. GHB was controlled under the 1971 Act and placed in Class C by The Misuse of Drugs Act 1971 (Modification) Order 2003 (S.I. 2003/1243). GBL and 1,4-BD were controlled under the 1971 Act and placed in Class C by The Misuse of Drugs Act 1971 (Amendment) Order 2009 (S.I. 2009/3209).
- 6.3 Following the recommendation of the ACMD, the Misuse Of Drugs (Amendment) (England, Wales and Scotland) Regulations 2021 (“the 2021 Regulations”), laid on 15 December 2021, implement another recommendation of the ACMD in its report published on 20th November 2020, by placing GBL and 1,4-BD in Schedule 1 to the 2001 Regulations. This is the schedule in which drugs are ordinarily placed if they have no known legitimate medicinal use in the UK. Placing the drugs in schedule 1 and removing the existing exemption will mean that industrial users will need to apply for, and obtain, a controlled drugs licence from the Home Office to import, export, produce, supply or possess these drugs.

7. Policy background

What is being done and why?

- 7.1 The ACMD is a statutory, independent advisory body established by the 1971 Act. The ACMD makes recommendation to the government on the control of dangerous or otherwise harmful drugs, including the classification and scheduling under the 1971 Act and the 2001 Regulations. The ACMD also consider any substances which are, or appear to be, misused and which are capable, or appear to be capable, of having harmful effects.
- 7.2 The ACMD’s report (paragraph 9.4) said: “In the UK in recent years, GHBRS have been used to facilitate serious crimes, including murder, rape, sexual assault and robbery. Some of these crimes occur in a chemsex context, however this is not exclusively the case.” The report describes a number of criminal cases, which, it says “demonstrate the extreme harm that can be inflicted on others by predators using GHBRS”. The ACMD found that in terms of the use of GHBRS to facilitate crime: “..there is strong new evidence of significant criminal harm from GHBRS, including murder, drug-facilitated sexual assault and robbery.”
- 7.3 The ACMD also found that GHBRS use is associated with a wide range of health harms, including “a marked increase in deaths between 2008 and 2018, and that “there is a strong base of new evidence about the mental health harms caused by GHBRS since the Advisory Council on the Misuse of Drugs last considered their harms.” The ACMD concluded: “There is increasing evidence of physical, mental and social health harms related to GHBRS. Of particular note are the new harms identified since the ACMD last considered GHBRS - severe harm from crimes facilitated by GHBRS and mental health harms associated with GHBRS use.”

¹ The ACMD’s report is available at the following link:
<https://www.gov.uk/government/publications/assessment-of-the-harms-of-gamma-hydroxybutyric-acid-gamma-butyrolactone-and-closely-related-compounds>

7.4 The ACMD made eight recommendations in their report. These include that GHBRs be moved from Class C to Class B, which is implemented by this Order. The 2021 Regulations implement the recommendation that GBL and 1,4-BD be placed in Schedule 1 and that their legitimate industrial uses are made subject to a Home Office controlled drugs licensing regime. The 2021 Regulations will come into force six months after they are laid, on 15th June 2022, to enable businesses to prepare for the introduction of the requirement to hold a Home Office licence, including to apply for and, subject to an assessment of their application, be granted a domestic controlled drugs licence in advance of the instrument coming into force.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

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

10. Consultation outcome

10.1 The ACMD has recommended the control of GHBRs as Class B drugs under the 1971 Act, and that GBL and 1,4-BD be listed in Schedule 1 of the 2001 Regulations. The Home Office has liaised with representatives of the chemical industry in preparing the Impact Assessment.

11. Guidance

11.1 The effect of the reclassification of GHBRs under the 1971 Act and the inclusion of GBL and 1,4-BD in Schedule 1 to the 2001 Regulations will be communicated to key stakeholders and the wider public before each comes into force. 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.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies from this Order.

12.2 There is no, or no significant, impact on the public sector. The move of GHBRs from Class C to Class B is expected to mean, on average, marginally higher penalties for those convicted of offences under the 1971 Act in relation to GHBRs. However, the number of offenders convicted annually of such offences is very low.

12.3 Reclassification will benefit the public by reflecting the newly understood harms of the drug. Increased penalties for offences under the 1971 Act, coupled with the effects of the 2021 Regulations, are expected to deter and prevent crime and lead to an overall benefit.

12.4 A full Impact Assessment is submitted with this memorandum and the 2021 Regulations and is published alongside the Explanatory Memorandum on legislation.gov.uk.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Government will continue to monitor the control measures through the regulatory framework governing controlled drugs, this will include national data collection and surveys on crime and drug misuse.

15. Contact

15.1 Paul Nicol at the Home Office, Telephone: 07717 591 537, or email: paul.nicol@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Marcus Starling, Deputy Director for Drug Misuse and Firearms Unit, at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kit Malthouse MP, the Minister for Crime and Policing, can confirm that this Explanatory Memorandum meets the required standard.