



# Misuse of Drugs Act 1971

## 1971 CHAPTER 38

### *Controlled drugs and their classification*

#### **2 Controlled drugs and their classification for purposes of this Act.**

(1) In this Act—

- (a) the expression “controlled drug” means any substance or product for the time being specified<sup>[F1]</sup>—
  - (i) in Part I, II or III of Schedule 2, or
  - (ii) in a temporary class drug order as a drug subject to temporary control (but this is subject to section 2A(6));]
- (b) the expressions “Class A drug”, “Class B drug” and “Class C drug” mean any of the substances and products for the time being specified respectively in Part I, Part II and Part III of that Schedule<sup>[F2]</sup>, and
- (c) the expression “temporary class drug” means any substance or product which is for the time being a controlled drug by virtue of a temporary class drug order;]

and the provisions of Part IV of that Schedule shall have effect with respect to the meanings of expressions used in that Schedule.

- (2) Her Majesty may by Order in Council make such amendments in Schedule 2 to this Act as may be requisite for the purpose of adding any substance or product to, or removing any substance or product from, any of Parts I to III of that Schedule, including amendments for securing that no substance or product is for the time being specified in a particular one of those Parts or for inserting any substance or product into any of those Parts in which no substance or product is for the time being specified.
- (3) An Order in Council under this section may amend Part IV of Schedule 2 to this Act, and may do so whether or not it amends any other Part of this Schedule.
- (4) An Order in Council under this section may be varied or revoked by a subsequent Order in Council thereunder.
- (5) No recommendation shall be made to Her Majesty in Council to make an Order under this section unless a draft of the Order has been laid before Parliament and approved

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by a resolution of each House of Parliament; and the Secretary of State shall not lay a draft of such an Order before Parliament except after consultation with or on the recommendation of the Advisory Council.

#### Textual Amendments

- F1** Words in s. 2(1)(a) substituted (15.11.2011) by [Police Reform and Social Responsibility Act 2011 \(c. 13\), s. 157\(1\), Sch. 17 para. 2\(a\)](#); S.I. 2011/2515, art. 3(g)
- F2** S. 2(1)(c) and preceding word inserted (15.11.2011) by [Police Reform and Social Responsibility Act 2011 \(c. 13\), s. 157\(1\), Sch. 17 para. 2\(b\)](#); S.I. 2011/2515, art. 3(g)

### [<sup>F3</sup>2A Temporary class drug orders

- (1) The Secretary of State may make an order (referred to in this Act as a “temporary class drug order”) specifying any substance or product as a drug subject to temporary control if the following two conditions are met.
- (2) The first condition is that the substance or product is not a Class A drug, a Class B drug or a Class C drug.
- (3) The second condition is that—
  - (a) the Secretary of State has consulted in accordance with section 2B and has determined that the order should be made, or
  - (b) the Secretary of State has received a recommendation under that section that the order should be made.
- (4) The Secretary of State may make the determination mentioned in subsection (3)(a) only if it appears to the Secretary of State that—
  - (a) the substance or product is a drug that is being, or is likely to be, misused, and
  - (b) that misuse is having, or is capable of having, harmful effects.
- (5) A substance or product may be specified in a temporary class drug order by reference to—
  - (a) the name of the substance or product, or
  - (b) a description of the substance or product (which may take such form as the Secretary of State thinks appropriate for the purposes of the specification).
- (6) A substance or product specified in a temporary class drug order as a drug subject to temporary control ceases to be a controlled drug by virtue of the order—
  - (a) at the end of one year beginning with the day on which the order comes into force, or
  - (b) if earlier, upon the coming into force of an Order in Council under section 2(2) by virtue of which the substance or product is specified in Part 1, 2 or 3 of Schedule 2.
- (7) Subsection (6)—
  - (a) is subject to subsection (10), and
  - (b) is without prejudice to the power of the Secretary of State to vary or revoke a temporary class drug order by a further order.
- (8) The power of the Secretary of State to make an order under this section is subject to section 2B.

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- (9) An order under this section is to be made by statutory instrument.
- (10) An order under this section—
  - (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the period of 40 days beginning with the day on which the order is made unless before the end of that period the order is approved by a resolution of each House of Parliament.
- (11) In calculating that period of 40 days no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (12) Subsection (10)(b)—
  - (a) is without prejudice to anything previously done or to the power of the Secretary of State to make a new order under this section;
  - (b) does not apply to an order that only revokes a previous order under this section.

#### Textual Amendments

**F3** Ss. 2A, 2B inserted (15.11.2011) by Police Reform and Social Responsibility Act 2011 (c. 13), s. 157(1), Sch. 17 para. 3; S.I. 2011/2515, art. 3(g)

## 2B Orders under section 2A: role of Advisory Council etc

- (1) Before making an order under section 2A the Secretary of State—
  - (a) must consult as mentioned in subsection (2), or
  - (b) must have received a recommendation from the Advisory Council to make the order.
- (2) The Secretary of State must consult—
  - (a) the Advisory Council, or
  - (b) if the order is to be made under section 2A(1) and the urgency condition applies, the person mentioned in subsection (3).
- (3) The person referred to in subsection (2)(b) is—
  - (a) the person who is for the time being the chairman of the Advisory Council appointed under paragraph 1(3) of Schedule 1, or
  - (b) if that person has delegated the function of responding to consultation under subsection (1)(a) to another member of the Advisory Council, that other member.
- (4) The “urgency condition” applies if it appears to the Secretary of State that the misuse of the substance or product to be specified in the order as a drug subject to temporary control, or the likelihood of its misuse, poses an urgent and significant threat to public safety or health.
- (5) The duty of the Advisory Council or any other person consulted under subsection (1)
  - (a) is limited to giving to the Secretary of State that person's opinion as to whether the order in question should be made.

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- (6) A recommendation under subsection (1)(b) that a temporary class drug order should be made may be given by the Advisory Council only if it appears to the Council that—
- (a) the substance or product is a drug that is being, or is likely to be, misused, and
  - (b) that misuse is having, or is capable of having, harmful effects.]

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**Textual Amendments**

- F3** Ss. 2A, 2B inserted (15.11.2011) by [Police Reform and Social Responsibility Act 2011 \(c. 13\)](#), s. 157(1), [Sch. 17 para. 3](#); S.I. 2011/2515, art. 3(g)

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