

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

2010 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 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.