EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS ACT 1971 (TEMPORARY CLASS DRUG) ORDER 2012

2012 No. 980

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 subjects 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexanone (commonly known as methoxetamine) to a temporary class drug order under the Misuse of Drugs Act 1971.

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.

4.2 Sections 2A and 2B of the 1971 Act, which were inserted by paragraph 3 of Schedule 17 to the Police Reform and Social Responsibility Act 2011, provide that the Secretary of State may make an order (a "temporary class drug order") if two conditions are met. The first condition is that the substance is not a Class A, B or C drug. The second condition is that the Secretary of State has either consulted with the Advisory Council on the Misuse of Drugs ("the ACMD") and has determined that the temporary class drug order should be made, or otherwise has received a recommendation to that effect from the ACMD. After carrying out such consultation the Secretary of State can only proceed to make the order if it appears that the drug is one that is being, or is likely to be, misused, and that misuse is having, or is capable of having, harmful effects. A corresponding requirement applies before the ACMD may make a recommendation. Under section 7A of the 1971 Act, which was inserted by paragraph 8 of Schedule 17 to the Police Reform and Social Responsibility Act 2011, the Secretary of State may also make provision (which may take the form of applying any provision made under sections 7(1), 10 or 22 of the 1971 Act) so as to allow for the lawful production and supply of a temporary class drug and provision for preventing misuse including safe custody.

4.3 A temporary class drug order expires at the end of twelve months unless, if earlier, the substance is brought under the permanent control of the 1971 Act by virtue of an Order in Council under section 2(2) of the 1971 Act or if the temporary class drug order is varied or revoked. A temporary class drug order is a "made affirmative" order, which must be laid before Parliament *after* being made and which requires a resolution of both Houses within 40 sitting days if it is to remain in force.

4.4 The Secretary of State has met the two conditions for methoxetamine to be subject to a temporary class drug order. Methoxetamine is not a Class A, B or C drug. The Secretary of State has consulted the ACMD and has received its recommendation that an order should be made and that methoxetamine is a drug that is being misused and that the misuse is having harmful effects. Controls for methoxetamine are extended to its simple derivatives - stereoisomeric forms, esters and ethers, salts - as well as preparations.

4.5 As methoxetamine (and its simple derivatives) have no recognised medicinal use, the Order also applies the Misuse of Drugs Regulations 2001 to these substances as if they were controlled drugs to which Schedule 1 to the Misuse of Drugs Regulations 2001 and the Misuse of Drugs (Safe Custody) Regulations 1973 applied.

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 of State for Crime Prevention and Anti-social Behaviour Reduction has made the following statement regarding Human Rights:

> In my view the provisions of the Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2012 are compatible with the Convention rights.

7. Policy background

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

7.1 A temporary class drug order enables drug control legislation (with associated enforcement action) to be made to protect the public from the harms of a new psychoactive substance whilst the ACMD make a full assessment of its harms for consideration for permanent control as a Class A, B or C drug under the 1971 Act. The Government was sufficiently concerned about the harms of methoxetamine amid indications of its growing popularity and availability, that on 5 March 2012 it referred to the ACMD for advice under the new provisions – see http://www.homeoffice.gov.uk/publications/alcohol-drugs/drugs/methoxetamine-referral.

7.2 The ACMD advise that the pattern of adverse effects reported following acute use of methoxetamine is similar to that seen with acute ketamine toxicity – including hallucinations, catatonia and dissociative effects. Methoxetamine appears to also present significant additional toxicity, the effects of which include agitation, cardiovascular effects including tachycardia (a fast heart rate) and hypertension (a high blood pressure) and cerebellar features such as ataxia (unsteadiness on the feet). The ACMD highlights that cerebellar features are rarely seen with other drugs and are not seen with acute ketamine toxicity. The ACMD recommended that methoxetamine (and its simple derivatives) be subject to a temporary class drug order and treated as Schedule 1 drugs in applying the Misuse of Drugs Regulations 2001. The ACMD's advice is available at http://www.homeoffice.gov.uk/agencies-public-bodies/acmd/reports-research/. The ACMD will now consider the case for permanent control under the 1971 Act.

7.3 On indictment, the maximum penalties for offences relating to temporary class drug are - on indictment for supply, production or importation/exportation fourteen years'

imprisonment and/or an unlimited fine; on summary conviction, for supply or production, or importation/exportation, six months' imprisonment and/or a prescribed fine (including, for the latter offences, one determined by the value of the drugs if greater than the prescribed amount).

- ***Consolidation***

7.4 None.

8. Consultation outcome

8.1 The Home Office has consulted the Medicines and Healthcare products Regulatory Agency and the Department for Business, Innovation and Skills, who have liaised with chemical industry partners. Through this consultation, neither methoxetamine (nor its simple derivatives) have been identified as having any legitimate medical or chemical use beyond potential research use.

9. Guidance

9.1 The provisions of this Order and its consequences will be communicated to key stakeholders and the wider public, especially young people. The Home Office will issue a circular with legislative guidance primarily for the law enforcement, the courts and forensic providers, while information about the changes will be made widely available via FRANK – the Government's national drugs awareness service.

10. Impact

10.1 The impact on business, charities or voluntary bodies of this Order (which expires at the end of twelve months if not earlier) relates to potential additional administrative costs for the UK pharmaceutical and chemical industry in respect of methoxetamine where there may be research use(s), although costs are likely to be minimal where existing licensing arrangements are suitable. For those businesses selling these substances in the "legal highs" market, the potential harm is such that those trading in this market are expected to comply with the Order or face the risk of prosecution.

10.2 The potential impact on the public sector relates to enforcement and regulatory agencies although they are expected to be small and subsumed into the enforcement and regulatory arrangements for similar and existing controlled drugs, managed within existing resources.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

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

13.1 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.