

EXPLANATORY MEMORANDUM TO
THE MISUSE OF DRUGS ACT 1971 (TEMPORARY CLASS DRUG) ORDER 2013

2013 No. 1294

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 the following substances and products to temporary control under the Misuse of Drugs Act 1971:

(i) 25I-NBOMe and other related substances:

2-(4-Iodo-2,5-dimethoxyphenyl)-*N*-[(2-methoxyphenyl)methyl]ethanamine;
2-(4-Bromo-2,5-dimethoxyphenyl)-*N*-[(2-methoxyphenyl)methyl]ethanamine;
2-(2,5-Dimethoxy-4-methylphenyl)-*N*-[(2-methoxyphenyl)methyl]ethanamine;
2-(4-Chloro-2,5-dimethoxyphenyl)-*N*-[(2-methoxyphenyl)methyl]ethanamine.

(ii) 5- and 6- APB and other related substances:

1-(Benzofuran-5-yl)-propan-2-amine and its *N*-methyl derivatives;
1-(Benzofuran-6-yl)-propan-2-amine and its *N*-methyl derivatives;
1-(2,3-Dihydro-1-benzofuran-5-yl)-propan-2-amine and its *N*-methyl derivatives;
1-(2,3-Dihydro-1-benzofuran-6-yl)-propan-2-amine and its *N*-methyl derivatives;
2-(1*H*-Indol-5-yl)-1-methylethylamine;
2-(1*H*-Indol-6-yl)-1-methylethylamine.

(iii) Stereoisomeric forms of those substances, the salts of those substances or their stereoisomeric forms, and preparations or other products containing the substances, stereoisomeric forms or salts.

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 under section 2B(1)(b) 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 provision as to safe custody.

4.3 A temporary class drug order expires at the end of twelve months unless the substance is earlier 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 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 the substances specified in paragraph 2.1 to be subject to a temporary class drug order. These substances are not a Class A, B or C drugs. The Secretary of State has received a recommendation from the ACMD that an order should be made on the basis that these substances are drugs that are being misused and that the misuse is having harmful effects. Controls for these substances are extended to some of their simple derivatives - stereoisomeric forms and salts - as well as preparations.

4.5 As these substances (and their simple derivatives) have no recognised medicinal use, the Order also applies the Misuse of Drugs Regulations 2001 (“the 2001 Regulations”) and the Misuse of Drugs Regulations (Northern Ireland) 2002 (“the 2002 Regulations”) as if those substances were specified in Schedule 1 to the 2001 Regulations and the 2002 Regulations. The Order also applies the Misuse of Drugs (Safe Custody) Regulations 1973 and the Misuse of Drugs (Safe Custody) (Northern Ireland) 1973 to the substances.

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 has made the following statement regarding Human Rights:

In my view the provisions of the Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2013 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 to be made (and associated enforcement action taken) 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.

7.2 25I-NBOMe and related substances are variants of the 2C-X series of the psychoactive phenethylamines, which are currently controlled as Class A drugs under the 1971 Act by generic definition. The ACMD's initial assessment indicates that these substances are highly potent hallucinogens and are probably regarded as alternatives to LSD. Clinical observations from presentations have identified that these compounds have a number of adverse effects including - tachycardia, hypertension, agitation and aggression, hallucinations, seizures, hyperpyrexia, clonus, elevated white blood cell count and metabolic acidosis. The ACMD recommends urgent action because of the high risk of overdose in powder or liquid form, and the report from the Serious Organised Crime Agency of large quantities entering the UK. The ACMD recommended that 25I-NBOMe and related substances seen in the UK should be subject to a temporary class drug order under the 1971 Act. The ACMD's advice is available at <https://www.gov.uk/government/publications?departments%5B%5D=advisory-council-on-the-misuse-of-drugs>. The ACMD will now consider the case for permanent control under the 1971 Act.

7.3 5- and 6- APB and related substances, phenethylamine-type materials, are related to Class A drugs ecstasy (MDMA) and 3,4-methylenedioxyamphetamine (MDA). They are commonly sold under the brand name 'Benzofury' and marketed as a legal form of ecstasy, available in the form of powders or tablet. The ACMD advise from anecdotal user reports that the consumption of these substances can cause insomnia, increased heart rate and anxiety, with some experiencing MDMA like symptoms. Several deaths and hospitalisations in the UK have been associated with these compounds, albeit mostly with other drugs. The long-term use of 5- and 6-APB indicates that there is a potential risk of cardiac toxicity. The ACMD recommended that 5- and 6- APB and related substances seen in the UK should be subject to a temporary class drug order. The ACMD's advice is available at the link above. The ACMD will also consider the case for permanent control under the 1971 Act.

7.4 The maximum penalties for supply, production or importation/exportation of temporary class drugs are, on indictment, fourteen years' imprisonment and/or an unlimited fine, and on summary conviction, six months' imprisonment and/or a prescribed fine (including, for the latter offences, a fine determined by the value of the drugs if greater than the prescribed amount).

- *Consolidation*

7.5 The Order does not amend any existing instrument so the question of consolidation does not arise.

8. Consultation outcome

8.1 The Home Office has consulted the Medicines and Healthcare products Regulatory Agency, the Department for Business, Innovation and Skills and chemical and pharmaceutical partners. Through this consultation, these substances (including their simple derivatives) have not 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 these substances 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 Joseph Ponan at the Home Office, tel: 020 7035 6069 or e-mail: Joseph.Ponan@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.



HOME OFFICE

POLICY EQUALITY STATEMENT (PES)

Name of Policy/Guidance/Operational Activity

Subject to a temporary class drug order a number of NBOMe and benzofuran compounds as well as related substances, including some of their simple derivatives, which are considered to be sufficiently harmful when misused to warrant their temporary control under the provisions made by Section 2A of the Misuse of Drugs Act 1971, to protect the public from their potential harms while the Advisory Council on the Misuse of Drugs (ACMD) undertakes a full assessment of these drugs in relation to permanent control under the 1971 Act.

The intended objectives are to curb the availability of these compounds through 'legal high' retailers and suppliers 'self-regulating' (complying with the law by removing these compounds from sale) and law enforcement activity against illicit production, supply and import/exportation on commencement of temporary drug control measures, and to deter demand and misuse amongst the public, especially young people and young adults, while enabling the undertaking of activities involving one or more of these compounds under the Misuse of Drugs Regulations 2001.

Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.

The ACMD's thematic advice to Government on NPS (2011), available at <https://www.gov.uk/government/publications/novel-psychoactive-substances-report-2011>, highlights evidence that 'Users, particularly young people, who are in possession of what they think are "legal highs" may well be in possession of controlled substances and could face the prospect of being subject to prosecution and a potential criminal record if found in possession of them by the Police.' This advice also points to the availability of harmful substances through modern technologies which are appealing to young people and, in relation to harms, the that the 'use of NPS can also result in young people and young adults putting themselves in situations where they may be vulnerable or at risk of other harms (e.g. through collapse, intoxication, etc) including accidents and being victims of crime (e.g. sexual or physical assault)'.

The 2011 report also gives due consideration to the impact of legislation in relation to 'Police enforcement and the criminalisation of Young People' outweighed by the need for Government intervention to protect young people from harmful drug use in light of the assessment that they 'have made it clear that the belief that these substances are "legal and therefore safe" is the main driver for trying them.' Government considerations of these issues led to the introduction of temporary drug control provisions under the 1971 Act to take swift action to protect the public from potentially harmful NPS and a cross-government NPS Action Plan (<https://www.gov.uk/government/publications/annual-review-of-the-drug-strategy-2010>) combining legislative approaches with targeted prevention, treatment and research policies.

On the drugs to be subject to temporary drug control specifically, on 29 May the ACMD provided advice to Government under Section 2B of the 1971 Act including an initial assessment of evidence on prevalence and health harms, including potential harms, from the misuse of the new psychoactive substances (NPS) identified as NBOMe and benzofuran compounds, as well as related substances, and currently sold as legal alternatives to existing controlled Class A drugs. The following summary of the ACMD's initial assessment (<https://www.gov.uk/government/publications?departments%5B%5D=advisory-council->

[on-the-misuse-of-drugs](#)) focuses on considerations made in respect of protected characteristics under the provisions of the Equalities Act 2010:

NBOME compounds and related substances:

25I-NBOME and related substances are variants of the 2C-X series of the psychoactive phenethylamines, which are currently controlled as Class A drugs under the 1971 Act, by generic definition. The ACMD’s initial assessment indicates that these substances are highly potent hallucinogens and are probably regarded as alternatives to LSD. Clinical observations from presentations (young adult men) have identified that these compounds have a number of adverse effects including - tachycardia, hypertension, agitation and aggression, hallucinations, seizures, hyperpyrexia, clonus, elevated white blood cell count and metabolic acidosis. The ACMD recommends urgent action because of the high risk of overdose in powder or liquid form, and the report from the Serious Organised Crime Agency of large quantities entering the UK. International, anecdotal evidence includes reports of deaths of 18 and 21 year-old men linked to these compounds. The ACMD recommended that 25I-NBOME and related substances seen in the UK should be subject to a temporary class drug order under the 1971 Act. The ACMD’s advice is available at <https://www.gov.uk/government/publications?departments%5B%5D=advisory-council-on-the-misuse-of-drugs>.

Benzofuran compounds and related substances:

5- and 6- APB and related substances, phenethylamine-type materials, are related to Class A drugs ecstasy (MDMA) and 3,4-methylenedioxyamphetamine (MDA). They are commonly sold under the brand name ‘Benzofury’ and marketed as a legal form of ecstasy, available in the form of powders or tablet. The ACMD advise from anecdotal user reports that the consumption of these substances can cause insomnia, increased heart rate and anxiety, with some experiencing MDMA like symptoms. Several deaths and hospitalisations in the UK have been linked with these compounds (including young adults), albeit associated with poly-substance misuse. The long-term use of 5- and 6-APB indicates that there is a potential risk of cardiac toxicity. The ACMD recommended that 5- and 6- APB and related substances seen in the UK should be subject to a temporary class drug order. The ACMD’s advice is available at the link above.

Data from the Home Office’s Forensic Early Warning System (FEWS) has also shown that ‘Benzo Fury’ contains a variety of any given number of compounds, including various controlled drugs as well as benzofuran compounds and related substances. This also means those caught in possession of NPS products which they perceive as ‘legal’ and ‘safe’ but which in fact contain controlled drugs and substances whose effects are unknown face the risk of prosecution for a range of criminal offences.

However, since its inception in 2011, the FEWS findings have also fed into public health messaging, including through the FRANK service whose campaigns target young people and those around them as well as young adults, that NPS products sold as ‘legal highs’ can neither be assumed to be ‘safe’ nor be guaranteed to be ‘legal’. Other protected characteristics were considered, but deemed not disproportionately affected.

SCS sign off	<i>[Considerations are detailed in Part 2]</i>	Name/Title	Daniel Greaves – Head of Drugs and Alcohol Unit
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I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.

Directorate/Unit	Drugs & Alcohol Unit, Drugs Alcohol & Community Safety	Lead	Joseph Ponan
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	Directorate	contact	
Date	30 May 2013	Review Date	Within 12 months