

EXPLANATORY MEMORANDUM TO
THE MISUSE OF DRUGS (DESIGNATION) (AMENDMENT) (No.2) (ENGLAND,
WALES AND SCOTLAND) ORDER 2014

2014 No. 1376

AND

THE MISUSE OF DRUGS (AMENDMENT) (ENGLAND, WALES AND SCOTLAND)
REGULATIONS 2014

2014 No. 1377

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 instruments

2.1 These instruments complement the Misuse of Drugs Act 1971 (Amendment) Order 2014 (“the 2014 Order”). The 2014 Order classifies khat for control under Part 3 of Schedule 2 to the Misuse of Drugs Act 1971 (“the 1971 Act”) as a Class C drug.

2.2 The Misuse of Drugs (Designation) (Amendment) (No.2) (England, Wales and Scotland) Order 2014 (“the 2014 Designation Order”) amends the Misuse of Drugs (Designation) Order 2001 (“the 2001 Designation Order”) by designating khat as a drug to which section 7(4) of the 1971 Act applies. The Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2014 (the “2014 Regulations”) amend the Misuse of Drugs Regulations 2001 (“the 2001 Regulations”) by inserting khat in Schedule 1.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The 2014 Order comes into force on 24th June 2014. Amendments to the 2001 Designation Order and the 2001 Regulations are necessary to complement the 2014 Order. As required under the 1971 Act, the Advisory Council on the Misuse of Drugs (‘ACMD’) has been consulted on both instruments.

4.2 Section 7(3) of the 1971 Act requires the Secretary of State to make regulations to allow drugs controlled under the 1971 Act to be used for medicinal purposes. Section 7(3) does not apply to any drug designated by order under section 7(4) of the 1971 Act, essentially as a drug which has no recognised medicinal use. The 2014 Designation Order designates khat as a drug to which section 7(4) applies.

4.3 The 2014 Regulations insert khat into Schedule 1 to the 2001 Regulations. The Schedule into which a drug is placed primarily dictates the extent to which it is lawful to import, export, produce, supply, administer and possess the drug and it also imposes requirements around prescription writing, record keeping, labelling, destruction and safe custody. As a drug

designated under the 2014 Designation Order, khat is placed into Schedule 1 to the 2001 Regulations by the 2014 Regulations because it does not have any recognised medicinal use. Khat is therefore subject to the strictest level of controls.

5. Territorial Extent and Application

5.1 These instruments apply to Great Britain.

5.2 Separate instruments will be made by the Northern Ireland Assembly.

6. European Convention on Human Rights

6.1 As the instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

• *What is being done and why*

7.1 The explanatory memorandum to the 2014 Order which can be found at <http://www.legislation.gov.uk/ukdsi/2013/9780111105504/memorandum/contents> sets out the full policy background to the 2014 Order. In summary, the drug subject to the 2014 Order is sufficiently “dangerous or otherwise harmful” to warrant control under the 1971 Act.

7.2 The 2014 Regulations insert khat into Schedule 1 to the 2001 Regulations for the reasons explained at paragraph 4.3.. Khat is designated under the 2014 Designation Order as a drug to which section 7(4) of the 1971 Act applies because it has no recognised legitimate use beyond potential research use.

• *Consolidation*

7.3 Consolidation is not thought appropriate on this occasion.

8. Consultation outcome

8.1 The Home Office has consulted the ACMD and the Medicines and Healthcare products Regulatory Agency (MHRA) who have indicated that there is no known medicinal use of khat in the UK. The Department for Business, Innovation & Skills has not indicated that khat has any industrial use.

9. Guidance

9.1 The changes in the law and their consequences will be communicated to targeted audiences and the wider public, especially local communities including individuals and businesses involved in khat-related activities. The Home Office will issue a circular with legislative guidance primarily for law enforcement, the courts and forensic providers, to accompany national policing guidance for frontline law enforcement and criminal justice agencies, while information about the changes will be made widely available via the Government’s national drugs awareness service, FRANK.

10. Impact

10.1 The potential impact on organisations including charities relates to the administrative costs of undertaking activities involving khat under Home Office licence for the purpose of

research. These costs are likely to be minimal for organisations already licensed for similar activities involving other controlled drugs.

10.2 The potential impact on the public sector relates to law enforcement and regulatory costs, although any of these are expected to be small and subsumed into arrangements for other Schedule 1 controlled drugs.

10.3 The Impact Assessment relevant to the 2014 Regulations and 2014 Designation Order was attached to the explanatory memorandum for the 2014 Order [SI 2014/1352] at <http://www.legislation.gov.uk/ukdsi/2013/9780111105504/resources> and no separate assessments have been prepared for these two instruments which complement it.

11 Regulating small business

11.1 The legislation applies to small business. The harm that can be done through the misuse and diversion of khat is such that the Government will expect all businesses to comply with the law. However, the impact is minimised for those businesses already likely to be handling controlled drugs under a Home Office licence and guidance is widely available in this area.

12 Monitoring & review

12.1 The Government will monitor the control measures through the regulatory framework governing controlled drugs in England and the Devolved Administrations.

13 Contact

13.1 Cyrille Marcel at the Home Office, tel: 020 7035 0618 or e-mail: Cyrille.Marcel2@homeoffice.gsi.gov.uk can answer any queries regarding the instruments.