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

2014 No. 2081

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 This instrument implements legislative changes to allow for the lawful provision of foil, subject to conditions, by persons employed or engaged in the provision of drug treatment services.

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

3.1 None.

4. Legislative Context

4.1 This instrument is made under sections 22 and 31 of the Misuse of Drugs Act 1971 ("the Act"). Section 31(3) of the Act provides that the Secretary of State may not make regulations under the Act except after consultation with the Advisory Council on the Misuse of Drugs ("ACMD"). The ACMD has been consulted and supports the legislative amendments made by the instrument.

4.2 Whilst the Home Office has legislative responsibilities for the 2001 Regulations, the policy area is shared with the Department of Health and this instrument has been drawn up in consultation with them.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Scotland.

6. European Convention on Human Rights

6.1 As this statutory instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

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

7.1 The supply of *any* article – except a syringe or needle – in cases where the supplier believes it may be used by the recipient to administer a controlled drug or prepare a controlled drug for administration is an offence under section 9A of the Act. Since 2003, drug treatment providers and specified healthcare professionals have been permitted to supply or offer to supply specific articles to drug users for administering illegal drugs. The aim of this policy is to reduce the sharing of injecting equipment and therefore the spread of

water and blood-borne diseases and other infections. To date, swabs, utensils for the preparation of a controlled drug, citric and ascorbic acid, ampoules of water and filters have been added to the legislation on a case by case basis following assessment by the ACMD that the health benefits outweigh any associated risks.

7.2 Following a review, the ACMD concluded that there are significant benefits from administering controlled drugs through inhaling as opposed to injecting, including a reduction in the risk of contracting or spreading blood borne diseases. The ACMD has therefore recommended that the provision of foil as paraphernalia for administering controlled drugs should be made lawful. The ACMD advice is available at https://www.gov.uk/government/publications?departments%5B%5D=advisory-council-on-the-misuse-of-drugs

7.3 The Government accepted the ACMD advice and announced in Written Ministerial Statement on 4 July 2013 that the provision of foil will be made lawful when undertaken by *"persons employed or engaged in drug treatment services as part of structured efforts to get individuals off drugs, whether for the purpose of getting them into treatment in the first place or which form part of their treatment plan"*.

7.4 The authority granted is distinct from that currently applicable to other exempt drug paraphernalia. Under the new regulation 6A(3) only persons "*employed by or engaged in the lawful provision of drug treatment services*" are authorised to supply, or offer to supply foil for use in inhaling controlled drugs. Therefore pharmacists, practitioners, supplementary or nurse independent prescribers, currently authorised under regulation 6A(2) to supply or offer to supply the exempt paraphernalia listed in regulation 6A(1) of the 2001 Regulations, are only authorised to supply, or offer to supply foil if they are "*employed or engaged in drug treatment services*".

7.5 Foil must be supplied as part of "*structured steps*" to engage a patient in a drug treatment plan or which form part of a patient's drug treatment plan. Guidance will set out the expectation that in the vast majority of cases foil will be provided at the early stages of efforts to engage a patient into treatment, or at a time when a patient has been assessed and commenced treatment but has yet to stop taking drugs. However, it is also recognised that there may be a minority of cases where provision of foil will be necessary during the period when a patient was transitioning from injecting drugs to inhaling them as an interim step to ending their use.

- ***Consolidation***

7.6 The Government intends to consolidate the 2001 Regulations at the earliest suitable opportunity. Proposals to consolidate the 2001 Regulations have been the subject of a public consultation.

8. Consultation outcome

8.1 The ACMD has been consulted as statutorily required. The Home Office has also consulted the Department of Health, Public Health England and the Devolved Administrations.

9. Guidance

9.1 The amendments to the legislation and their consequences will be communicated to healthcare professionals and the wider public by the Home Office and the Department of Health. The Home Office will issue a circular explaining the changes and how the conditions will apply in practice. The Department of Health and Public Health England will issue guidance on the changes to the healthcare sector, including drug treatment service providers, using their usual communication channels.

10. Impact

10.1 A Regulatory Impact Assessment of the legislative change is attached to this memorandum.

10.2 The overall impact of the change is assessed as net beneficial both to healthcare professionals and patients. The proposals provide enabling authorities to healthcare professionals employed or engaged in drug treatment services to lawfully supply foil for use in inhaling controlled drugs, and encourages and supports drug users to tackle their addiction.

11. Regulating small business

11.1 This legislation does not apply to small business. In addition, as drug treatment services programmes will be commissioned by the public sector, no impact on business or civil society organisations is identified.

12. Monitoring & review

12.1 The Government will monitor the changes through specific mechanisms being developed to monitor take-up, implementation and adherence to the conditionality over the next year.

13. Contact

Des Niimoi at the Home Office, tel: 020 7035 3533 or e-mail: Desmond.Niimoi@homeoffice.gsi.gov.uk, can answer any queries regarding the instrument.