

EXPLANATORY MEMORANDUM TO

THE MISUSE OF DRUGS ACT 1971 (AMENDMENT) ORDER 2021

2021 No. 868

1. Introduction

- 1.1 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 Order in Council (the ‘Order’) brings three benzodiazepines, specifically flualprazolam, flunitrazolam and norfludiazepam, under control as Class C drugs under Part 3 of Schedule 2 to the Misuse of Drugs Act 1971 (‘the 1971 Act’), owing to their potential harm and evidence of the prevalence of these drugs in the UK.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The Home Office has reached this view because the powers under which this Order is made cover the United Kingdom (section 40(2) of the 1971 Act) and the territorial application of this Order is not limited either by the 1971 Act or by the Order.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Minister for Crime and Policing has made the following statement regarding Human Rights:

“In my view the provisions of The Misuse of Drugs Act 1971 (Amendment) Order 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 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 lists 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 that a drug has, or

is capable of having when misused, and the type of illegal activity undertaken with regards to that drug.

- 6.2 The control of the benzodiazepines flualprazolam, flunitrazolam and norfludiazepam is predicated on an assessment of their respective harms, and in accordance with recommendations made by the Advisory Council on the Misuse of Drugs ('ACMD'). The ACMD report published on 29 April 2020 states that adverse effects of benzodiazepines include drowsiness, psychomotor impairment, unsteadiness and incoordination, memory loss and confusion. Higher doses may cause loss of consciousness and respiratory depression, especially if used in combination with alcohol or other sedatives. Owing to the greater prevalence of flualprazolam, flunitrazolam and norfludiazepam than the other ten benzodiazepines listed in the report, the ACMD has recommended that those three compounds should be controlled as Class C drugs under the 1971 Act.¹
- 6.3 It is intended that a further related statutory instrument will come into force at the same time as this Order. This will add flualprazolam, flunitrazolam and norfludiazepam to Schedule 1 to the Misuse of Drugs Regulations 2001 (the '2001 Regulations') and will designate these substances under the Misuse of Drugs (Designation) (England, Wales and Scotland) Order 2015 as they have no known legitimate medicinal use in the UK.

7. Policy background

What is being done and why?

- 7.1 This Order controls three benzodiazepines, specifically flualprazolam, flunitrazolam and norfludiazepam, as Class C drugs under the 1971 Act following advice from the ACMD published on 29 April 2020. This is owing to the potential for these compounds to create harm and evidence of the prevalence of these drugs in the UK.
- 7.2 The control of these three benzodiazepines mirrors the treatment of sixteen 'designer' benzodiazepines in 2017, including etizolam, which were controlled under Class C of the 1971 Act via the Misuse of Drugs Act 1971 (Amendment) Order 2017.
- 7.3 Benzodiazepines can be misused in a variety of ways, often in the context of polydrug use. They may be used with other sedatives to increase their effects, or they may be used to 'come down' after stimulant use.
- 7.4 The 2020 ACMD report confirmed that in relation to flualprazolam, as of March 2020, there had been 12 flualprazolam-associated deaths in the UK recorded by regional statistical agencies. Norfludiazepam has been identified in the UK twice, both in 2017: once from a police seizure and once by drug identification provider TICTAC. In relation to flunitrazolam, the report states that it is likely that its potency is greater than that of the already highly potent flunitrazepam (Rohypnol) which is controlled as a Class C drug under the 1971 Act. A small number of seizures have been made at the UK border between 2014 and October 2019.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

¹ <https://www.gov.uk/government/publications/novel-benzodiazepines-prevalence-and-harms-in-the-uk>

9. Consolidation

- 9.1 It is not currently intended that amendments to Schedule 2 to the 1971 Act will be consolidated.

10. Consultation outcome

- 10.1 The ACMD, the independent advisory body set up under the 1971 Act, has recommended the control of the three benzodiazepines as class C substances under the 1971 Act. The ACMD also recommended that they be listed in Schedule 1 of the 2001 Regulations and that they be designated under the Misuse of Drugs (Designation) (England, Wales and Scotland) Order 2015, following a review of their harms.

11. Guidance

- 11.1 The control of these three benzodiazepines and its consequences will be communicated to key stakeholders and the wider public. The Home Office will issue a Circular with legislative guidance primarily for the police and the courts. The Government will continue to update its messaging on the harms of these substances, including through its FRANK information and advisory service online.

12. Impact

- 12.1 There is no, or no significant impact on businesses, charities or voluntary bodies. However, any impact on research organisations is expected to be minimal as these organisations are already likely to be handling controlled drugs acting under a Home Office licence, or in accordance with the 2001 Regulations, and guidance is already widely available in this area.
- 12.2 The impact on the public sector is expected to be minimal. The enforcement of offences in relation to the drugs controlled by the Order will be subsumed into the overall enforcement response to controlled drugs.
- 12.3 An Impact Assessment has not been prepared for this instrument given the limited expected impact of the changes, but we have prepared and published an Economic Note.

13. Regulating small business

- 13.1 The Order applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses, as the ACMD report confirms, having consulted the Medicines and Healthcare products Regulatory Agency (MHRA), that the three benzodiazepines controlled by this Order have been identified as having no known legitimate medicinal use in the UK. As a result, no significant impact or costs on legitimate business are expected.
- 13.3 Theoretically, businesses could incur further costs as they would need to purchase a license to possess the substances for research purposes. However, such businesses are likely to already be in possession of a Home Office licence, and thus the additional cost is expected to be minimal. Domestic licences are issued under the 2001 Regulations. Between 2,250-2,500 domestic licences are issued per year, with 135 licences for drugs scheduled under Schedule 1 to the 2001 Regulations issued between 3 March 2020 to 2 March 2021. Licences are annually renewable and are specific to site and organisations.

14. Monitoring & review

- 14.1 The Government will continue to monitor the control measures through the regulatory framework governing controlled drugs, this will include national data collection and surveys on drug misuse.

15. Contact

- 15.1 Sam Hardy at the Home Office, telephone: 0207 035 1784 or email: Sam.Hardy@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Marcus Starling, Deputy Director for the Drug Misuse and Firearms Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Crime and Policing, Kit Malthouse MP, can confirm that this Explanatory Memorandum meets the required standard.