CONTROLLED DRUGS (PROCEDURE FOR SPECIFICATION) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Controlled Drugs (Procedure for Specification) Bill as introduced to the House of Commons on 16 October 2024 (Bill 20).

- These Explanatory Notes have been prepared by the Home Office with the consent of Alex McIntyre MP in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1. The purpose of the Bill is to amend the delegated power contained in section 2 of the Misuse of Drugs Act 1971 (MDA 1971), which permits amendment to Schedule 2 of that Act by statutory instrument. Schedule 2 of the 1971 Act specifies substances or products as "controlled drugs" under the Act (i.e. Class A, B and C drugs) and contains interpretative provision for the Schedule. This Bill changes the form of amending statutory instrument from Order in Council to Regulations made by the Secretary of State. This will ensure that new substances can be made subject to control under the MDA 1971 more rapidly. The Bill will also allow for this power to be exercised in combination with other delegated powers. This will ensure that, where appropriate, amendments can be made to the MDA 1971 and, for example, the Misuse of Drugs Regulations 2001 (the associated permissions and exceptions), in one statutory instrument (subject to the affirmative resolution procedure). The Bill does not alter the degree of parliamentary scrutiny, statutory preconditions for the exercise of the power or control over the executive but will enable quicker implementation of control under the MDA 1971.

Policy background

2. The MDA 1971, which extends UK wide, is the principal legislation which controls substances that are dangerous or otherwise harmful. These substances become 'controlled drugs' by being listed and classified as Class A, B or C drugs under Schedule 2 to the MDA 1971 according to their relative harmfulness, or by being specified in a temporary class drug order as a drug subject to temporary control. The MDA 1971 imposes criminal penalties, associated with each class, for offences including unlawful possession, supply, offer to supply, production, importation and exportation of controlled drugs.

3. As it stands, any amendments to Schedule 2 to the MDA 1971 (which lists controlled drugs and contains interpretative provision) that controls, removes from control, or amends the control of drugs are made by Order in Council (i.e. by the King in Council) and such Order may be varied or revoked by a subsequent Order in Council.

4. Any statutory instrument that seeks to control, remove or amend the control of a drug under the MDA 1971 will need to go through the draft affirmative resolution procedure. Following the debates in, and approval by, both Houses of Parliament, the statutory instrument will then be 'made' at the Privy Council meeting and will then come into force on the specified date, which is generally 28 days later.

5. The Privy Council generally meets only once in each month (and not during recess). Any amendment to Schedule 2 to the MDA 1971 can only be 'made' at the Privy Council meeting. In practice, this means that the statutory instrument may come into force after an additional four to six weeks following the debates. The impact is that any new substances listed in the statutory instrument are not subject to the provisions of the MDA 1971 in that time. In the interim, these substances are likely to be captured by the Psychoactive Substances Act 2016 (provided they

meet the test of psychoactivity and do not satisfy any of the exemptions therein) which means that there will be no possession offence other than in a custodial setting or with intent to supply. In addition, during this period, there will be lower penalties for associated drug offences such as supply, import and export.

6. The recent and ongoing emergence of novel synthetic opioids, including fentanyls and Nitazenes, presents a significant risk to public health, due to their very high potency. The risk is particularly high to dependent drug users, due to the adulteration of e.g. heroin with novel synthetics. With the rapid development of synthetic drugs, it is vital that any new controls come into force at the earliest opportunity as a matter of public safety.

7. The Bill seeks to amend the delegated power to specify 'controlled drugs' under section 2 of the MDA 1971 so that the form of statutory instrument is Regulations made by the Secretary of State, rather than Order in Council. The statutory instrument will remain subject to the draft affirmative procedure and the statutory preconditions of acting after consultation with or on the recommendation of the Advisory Council on the Misuse of Drugs.

8. This Bill will ensure that the Secretary of State can make the Regulations, and introduce changes to the associated Regulations, expeditiously following approval of the instrument by both Houses of Parliament.

Legal background

9. The Misuse of Drugs Act 1971 ("the 1971 Act") provides the legislative framework for the regulation of dangerous or otherwise harmful drugs in the UK. The 1971 Act applies to "controlled drugs" – there are two categories of controlled drugs (as set out in section 2(1) of the 1971 Act). First, substances or products specified in Schedule 2 to the Act (see section 2(1)(a)(i) of the 1971 Act). That Schedule divides controlled drugs into one of three classes (Class A, B or C). The second category of controlled drugs is any substance or product specified in a temporary class drug order as a drug subject to temporary control (see section 2(1)(a)(ii) of the 1971 Act).

10. The 1971 Act provides for a range of offences in relation to controlled drugs, including:

    1.4 importation and exportation (section 3);

    2.4 production, supply or offering to supply (section 4); and

    3.4 possession and possession with intent to supply (section 5).

11. Substances and products are specified as Class A, B or C drugs by being placed, respectively, in Part I, Part II and Part III of Schedule 2 to the 1971 Act. Part IV of that Schedule contains interpretative provision for that Schedule (i.e. defines expressions used).

12. Section 2(2) of the 1971 Act contains a delegated power for His Majesty, by Order in Council, to amend Schedule 2 to the Act (i.e. the list of "controlled drugs"). Such amendments may add any substance or product to, or remove any substance from, Parts I to III of that Schedule (i.e. the list

of Class A, B or C drugs) (section 2(2) of the 1971 Act) and amend Part IV of that Schedule (i.e. the interpretative provisions) (section 2(3) of the 1971 Act). Such Order in Council may be varied or revoked by a subsequent Order in Council (section 2(4) of the 1971 Act).

13. Prior to the making of such Order by His Majesty in Council, the Order must have been laid before Parliament and approved by a resolution of each House of Parliament (i.e. the draft affirmative resolution procedure) (section 2(5) of the 1971 Act). The Secretary of State may only lay such an Order before Parliament after consultation with, or when acting on the recommendation of, the Advisory Council on the Misuse of Drugs ("the ACMD") (section 2(5) of the 1971 Act). The ACMD are an expert advisory Council, established under section 1 of the 1971 Act, responsible for keeping under review, and advising Ministers on, the situation in the United Kingdom with regard to drug misuse.

14. This Bill seeks to amend the form of statutory instrument for amending Schedule 2 of the 1971 Act, from Order in Council to Regulations made by the Secretary of State.

Territorial extent and application

15. This Bill will extend and apply to England, Wales, Scotland and Northern Ireland.

Commentary on provisions of Bill

Clause 1: Amendment of the Misuse of Drugs Act 1971

16. This clause amends section 2(2) to (5) of the MDA 1971, which relate to the delegated power to amend Schedule 2 to the 1971 Act by an Order in Council, to provide that such amendment is to be made by Regulations made by the Secretary of State. The effect of this is to change the requirement for any amendment to Schedule 2 to the MDA 1971, in particular to specify "controlled drugs" as Class A, B or C drugs, or to make interpretative provision in relation to that Schedule, from a statutory instrument 'made' by the King in Council and to regulations to be 'made' by the Secretary of State following debates in both Houses of Parliament. The instrument will remain subject to the draft affirmative resolution procedure.

17. Subsection (2) amends section 2(2) to (5) of the 1971 Act to remove the existing delegated power to amend Schedule 2 to the 1971 Act by His Majesty by Order in Council, and accompanying procedural provisions, and replace it with a power for the Secretary of State to, by regulations made by statutory instrument, amend Schedule 2. New section 2(5) provides that such statutory instrument is subject to the draft affirmative resolution procedure (meaning it can only be 'made' following debates and approval by both Houses of Parliament), may be combined with other statutory instruments (where the relevant delegated powers permit), and may only be laid before Parliament following the consultation or recommendation of the Advisory Council on the

Misuse of Drugs.

18. Subsection (3) makes a consequential amendment to section 2A(6)(b) (temporary Class Drugs Orders)) of the 1971 Act to replace the term 'Order in Council' with the term 'Regulations'. This is to reflect that statutory instruments amending Schedule 2 to the 1971 Act will be 'Regulations' made by the Secretary of State, not Orders in Council.

19. Subsection (4) makes consequential amendments to section 31 (General provisions as to regulations) of the 1971 Act, to disapply the general rules contained there (such as that regulations are subject to the negative resolution procedure) to regulations made under section 2(2) of the 1971 Act. That is because the procedural provisions relating to the delegated power under section 2(2) of the 1971 Act are contained within section 2 of that Act itself.

20. Subsection (5) makes saving provision to ensure that any existing draft Orders in Council which have been laid in Parliament before the Bill comes into force and have not completed the Parliamentary process will continue to follow the procedure under the previous provisions (i.e. will require a debate in, and approval by, both Houses of Parliament and then will be 'made' at the Privy Council). It also makes a saving provision to ensure that any amendments made to Schedule 2 to the 1971 Act by Order in Council contained to have legal effect (i.e. the amendments remain legally effective).

Clause 2: Extent, commencement and short title

21. This clause provides that the Bill extends to England, Wales, Scotland and Northern Ireland and that it will come into force on the day on which it is passed.

22. The clause also provides for the short title of the Bill: the Controlled Drugs (Procedure for Specification) Act 2024.

Commencement

23. Clause 2 provides that the Bill will come into force on the date in which it is passed.

Financial implications of the Bill

24. There are no expected significant costs to public bodies in implementing this Bill. An assessment has not been made of the financial implications, but these will be expected to be minimal. These provisions are technical in the nature and will not provide any direct financial impact. Any future amendment made under the MDA 1971 will follow the usual cost consideration by way of an Impact Assessment or Economic Note which will be published alongside the Statutory Instrument.

Economic Impact

25. There is no, or no significant, impact on business, charities, or voluntary bodies from this proposal. The impact on the public sector, including impact on the police, criminal justice system and prisons, is assumed to be negligible. This is because the change facilitates a quicker implementation of drug controls, but the control would still occur. This could result in quicker enforcement and reduced harms, but this is unlikely to have a substantial monetary impact. Because of this, no impact assessment has been produced as part of this proposal.

Parliamentary approval for financial costs or for charges imposed

26. Not applicable.

Compatibility with the European Convention on Human Rights

27. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined in Section 1 of the Act). However it is not necessary for ministers to sign a statement under Section 19 of the Human Rights Act 1998 in respect of compatibility with the ECHR if the Bill is a Private Members' Bill.

Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
Clause 1	Yes	Yes	No	Yes	No	Yes	No
Clause 2	Yes	Yes	No	Yes	No	Yes	No

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