EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL

8155/22 + 1

C (22)1840

COMMISSION DELEGATED REGULATION (EU) …/... of 29.3.2022 amending Regulation (EC) No 273/2004 of the European Parliament and of the Council and Council Regulation (EC) No 111/2005 as regards the inclusion of certain drug precursors in the list of scheduled substances

Submitted by Home Office 30 June 2022

SUBJECT MATTER

1. This Explanatory Memorandum (EM) relates to amendments of **Regulation (EC) No 273/2004 of the European Parliament and of the Council and Council Regulation (EC) No 111/2005 as regards the inclusion of certain drug precursors in the list of scheduled substances.**

2. Drug precursor chemicals (DPCs) are chemicals which may be used for the illicit manufacture of narcotic drugs or psychotropic substances. International duties to control DPCs are designated by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (the 1988 Convention), to which the UK (and the EU Member States) are a signatory.

3. The Convention establishes controls on DPCs to prevent the illicit manufacturing of drugs while also allowing for legitimate trade, delivered through a requirement for licensing and, additionally in some cases, for “pre-export notifications” (“PENs”) to the receiving country and export checks. The DPC control system is therefore one of international cooperation between exporting and importing jurisdictions to check that the receiving jurisdiction accepts the DPCs being imported, before export is permitted.

4. Regulation (EC) No 273/2004 of the European Parliament and of the Council lays down measures for monitoring trade in DPCs within the EU, while Council Regulation (EC) No 111/2005 governs trade in DPCs between the EU and third countries. The two Regulations jointly implement the measures envisaged by Article 12 of the 1988 Convention.

5. The Delegated Act schedules two additional DPCs, ethyl alpha-phenylacetoacetate (EAPA) and methyl 3-oxo-2-(3,4

methylenedioxyphenyl)butanoate (MAMDPA),under Category 1 (those that pose the greatest risk). EAPA is used to produce 1-Phenyl-2-propanone (P-2-P), also known as benzyl methyl ketone (BMK). BMK is a precursor of amphetamine and methamphetamine. MAMDPA is used to produce 3,4-Methylenedioxyphenylpropan-2-one (PMK), which, in its turn, is a precursor of 3,4-methylenedioxymethamphetamine (MDMA), commonly known as 'ecstasy'.

6. By scheduling these substances, the EU seeks to provide national authorities with the legal means to fight effectively against their use in the illicit production of narcotic drugs. The Regulations set out the applicable control and monitoring measures for the substances.

7. Regulations (EC) No 273/2004 and 111/2005 jointly implement the measures envisaged by Article 12 of the 1988 Convention to which the EU (and the UK) is a signatory. National competent authorities have indicated the seizure of ethyl alpha-phenylacetoacetate (EAPA) and methyl 3-oxo-2-(3,4-methylenedioxyphenyl)butanoate (MAMDPA), and as such the EU have taken the decision to control these chemicals. Before similar measures are applied in GB it is necessary, subject to due consultation, to amend UK legislation.

SCRUTINY HISTORY

8. On December 2020, the Home Office submitted an EM on EU document COM(2020)768; a report on the evaluation of the EU drug precursors regulations 111/2005 & 273/2004. The House of Commons European Scrutiny Committee considered the EM on 20 January 2021 and did not report substantively on the Commission's evaluation (report 34, 19/21). The Lords European Union Committee similarly completed their scrutiny of the Commission report without follow up (Sift 39, 8 January 2021).

MINISTERIAL RESPONSIBILITY

9. The Home Secretary has responsibility for international drug control decisions.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

10. The delegated act will not apply in GB but will be implemented directly in Northern Ireland under the NI Protocol.

11. In GB, drug precursor policy is reserved to the UK Government under paragraph B1 of Schedule 5 of the Scotland Act 1998 and paragraph 54 of Schedule 7A of the Government of Wales Act 2006.

12. The Northern Ireland Executive Ministers have a particular interest in this delegated act because it will impact on Northern Ireland directly by virtue of the UK/EU Withdrawal Agreement and the NI Protocol.

LEGAL AND PROCEDURAL ISSUES

i. Legal Base

The legal base for the delegated act is Article 15 of Regulation (EC) No 273/2004 and Article 30a of Regulation (EC) No 111/2005, under which the Commission is empowered to adopt delegated acts in order to adapt the Annexes to new trends in diversion of drug precursors.

Regulation (EC) No 273/2004 and Regulation (EC) No 111/2005 are closely linked. They jointly implement the measures envisaged by Article 12 of the 1988 UN Convention. Therefore, the bundling of two empowerments based on different basic legislative acts into one single delegated act is justified by the close material link between the empowerments in question.

ii. Voting Procedure

The European Parliament and/or Council may object to the delegated act within two months of the Commission adopting the act, which will prevent it from coming into force. To exercise their right of objection, a majority in the European Parliament is necessary, or a qualified majority in the Council.

iii. Timetable for adoption and implementation

The regulation will come into force on the 20th day after it is published in the Official Journal of the EU.

POLICY IMPLICATIONS

The Commission has discretion regarding the Category in which to schedule a drug precursor. By designating EAPA and MAMDPA as Category 1, they will be subject to the strictest controls and monitoring. For instance they need to be stored in secured premises (e.g. locks, video-camera surveillance) and will require import and export licenses.

Once in force, there will be a regulatory divergence whereby EAPA and MAMDPA are subject to controls and licensing in NI, but not GB. Control of these two substances as DPCs will introduce a requirement for a domestic drug precursor chemical licences for businesses handling them. It will also introduce requirements in

respect of the import and export of these substances, including pre-export notifications and import and export licences. At present trade in DPCs between NI and GB is minimal and the numbers of NI businesses holding Drug Precursor Chemical Licences are very small.

Regulations (EC) 273/2004 and 111/2005 apply in NI as a result of the Northern Ireland Protocol. The changes will have direct effect in NI.

Before introducing equivalent measures in GB, the Government must first make amendments to existing domestic DPC regulations which form part of retained EU law.

CONSULTATION

No consultation has been taken by the UK Government or the Department of Health in Northern Ireland on this matter with key stakeholders.

To date a regulatory impact assessment has not taken place. Before undertaking legislative change an impact assessment or economic note would be prepared.

FINANCIAL IMPLICATIONS

Any impact assessment or economic note would include financial implications.

MINISTERIAL NAME AND SIGNATURE

Kit Malthouse MP

Minister for Crime and Policing

Home Office