

**STANDARD FORM OF EXPLANATORY MEMORANDUM FOR EUROPEAN UNION
LEGISLATION AND DOCUMENTS**

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**COUNCIL DECISION ON THE EU POSITION TO BE ADOPTED AT THE 62ND UN
COMMISSION ON NARCOTIC DRUGS ON SCHEDULING SUBSTANCES UNDER
THE UN CONVENTIONS ON DRUGS**

Submitted by Home Office on 23rd January 2019.

SUBJECT MATTER

1. The European Commission has proposed that the EU takes a common position at the next Commission on Narcotic Drugs (CND) meeting on the scheduling of substances, and has set out that the 11 EU Member States¹ which are members of the CND vote in favour of scheduling the following substances under the UN Single Convention on Narcotic Drugs of 1961 (the 1961 Convention) as amended by the 1972 Protocol and the UN Convention on Psychotropic Substances of 1971 (the 1971 Convention):

- Cyclopropylfentanyl
- Methoxyacetylfentanyl
- Ortho- fluorofentanyl
- p-Fluoro-butyrylfentanyl
- p-Methoxy-butyrylfentanyl
- ADB- FUBINACA
- FUB- AMB
- ADB- CHMINACA
- CUMYL- 4CN- BINA
- N- ethylnorpentylone

Under Article 1 of Council Decision 2004/757/JHA (the 2004 Council Decision) of April 2004, which sets out minimum provisions in respect of illicit drug trafficking, any substances listed in the 1961 and 1971 Conventions are automatically brought within scope of the 2004 Council Decision. The UK opted out of this Council Decision on 1 December 2014 pursuant to Article 10(4) of Protocol No. 36 to the EU Treaties.

This proposal is made under the procedural legal base set out in Article 218(9) of the Treaty on the Functioning of the European Union (TFEU), which enables a common position to be adopted on the EU's behalf in respect of acts of an international body having a legal effect. Since the CND's scheduling decisions do

¹ Austria, Belgium, Croatia, Czech Republic, France, Germany, Hungary, Italy, Netherlands, Slovakia, Spain.

not affect common rules in the area of illicit drug trafficking by which the United Kingdom is bound (i.e. the 2004 Council Decision), the proposal will therefore not apply to the UK.

SCRUTINY HISTORY

2. An Explanatory Memorandum on the establishment of Council Decision 2004/757/JHA (10372/01) was cleared by the then sub-committee E at sift 1077 on 19 November 2001. The Commons European Scrutiny Committee reported on four occasions as raising issues of legal or political importance in reports 4,11,20 & 26, but was cleared on 01/2 on 24 April 2002.

MINISTERIAL RESPONSIBILITY

3. The Home Secretary has responsibility for domestic legislation and policy concerning drug control.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

4. The UK's policy and domestic legislation relating to drug control are reserved matters.
5. However, the Devolved Administrations have an interest and have been consulted in the preparation of this Explanatory Memorandum.

LEGAL AND PROCEDURAL ISSUES

i. Legal basis:

The legal basis for this proposal is Article 83(1) in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union (TFEU). Article 83(1) TFEU enables the EU to establish minimum rules concerning the definition of offences and sanctions in the area of illicit drug trafficking and Article 218(9) TFEU allows a common position to be adopted on the EU's behalf in respect of acts of an international body having a legal effect. The proposal relates specifically to the scope of 2004 Council Decision, which was adopted under the former Title VI of the Treaty on European Union. Pursuant to the notification given under Article 10(4) of Protocol (No. 36) to the Treaties, the United Kingdom is no longer bound by this Decision. Accordingly, since the CND's scheduling decisions do not affect common rules in the area of illicit drug trafficking by which the United Kingdom is bound, this proposal will not apply to the United Kingdom.

ii. European Parliament Procedure

In accordance with Article 218(10) TFEU, the European Parliament shall be informed of this Decision.

iii. Voting procedure

Qualified Majority Voting. The United Kingdom will not have a vote as we have opted out of the 2004 Council Decision.

iv. Impact on United Kingdom Law

This measure will not apply to the UK.

v. Application to Gibraltar

This measure will not apply to Gibraltar.

vi. Fundamental rights analysis

This measure, aimed at controlling substances hazardous to health, would not engage any fundamental rights in a disproportionate way.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

6. The proposal relates to the EU Member States only and would not apply to non-EU European Economic Area states.

SUBSIDIARITY

7. There are no subsidiarity concerns for the UK.

POLICY IMPLICATIONS

8. On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.
9. This proposal will not apply to the UK and as such will have no direct policy implications. The substances set out above that are being considered for international control are already controlled in the UK under the Misuse of Drugs Act 1971.
10. Member States to which this measure does apply and who are members of the Commission on Narcotic Drugs will be required to vote in favour of scheduling these substances at the sixty-second session of the Commission on Narcotic Drugs under the UN Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol and the UN Convention on Psychotropic Substances of 1971.

CONSULTATION

11. The Devolved Administrations have been consulted on this Explanatory Memorandum.

IMPACT ASSESSMENT

12. The Commission has not produced an impact assessment for this proposal.

FINANCIAL IMPLICATIONS

13. There are no direct financial implications for the UK.

TIMETABLE

14. We expect the Council to adopt this proposal shortly.

A handwritten signature in black ink, appearing to read 'Victoria Atkins', with a large, stylized flourish at the end.

Victoria Atkins
Minister for Crime, Safeguarding and Vulnerability