Proposal for a COUNCIL DECISION on the position to be adopted, on behalf of the European Union, in the sixty second session of the Commission on Narcotic Drugs on the scheduling of substances under the United Nations Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

Submitted by the Home Office on 28 February 2018

SUBJECT MATTER

This draft Council Decision seeks to establish a common EU position on the scheduling of three substances to the 1988 United Nations (UN) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This Convention entered into force on 11 November 1990. Pursuant to Article 12, paragraphs 2 to 7 of the Convention, substances may be added to the Tables of that Convention to enable international control. The UK is one of 189 signatories to the 1988 convention.

The UN's Commission on Narcotic Drugs (UNCND) should, during its sixty second session of 18 to 22 March 2019 in Vienna, take a decision on the addition of three new substances to Table I of the 1998 Convention. These substances are known as drug precursors and are required for the manufacture of internationally controlled drugs. The substances, 3,4-MDP-2-P methyl glycidate ("PMK glycidate"), 3,4-MDP-2-P methyl glycidic acid ("PMK glycidic acid") and alphaphenylacetoacetamide (APAA) are precursors of MDMA, amphetamine and methamphetamine. In the UK, MDMA is controlled as a Class A drug under the Misuse of Drugs Act 1971 and is a schedule 1 drug under the Misuse of Drugs Regulations 2001. Methamphetamine is controlled as a Class A drug under the 1971 Act, Amphetamine is a Class B drug under the 1971 Act and both are schedule 2 drugs under the 2001 Regulations.

PMK glycidate, PMK glycidic acid and APAA are according to the assessment of the UN's International Narcotic Control Board, frequently used in the illicit manufacture of, respectively, MDMA and related substances; 3,4-MDP-2-P and subsequently MDMA and related substances; and amphetamine and methamphetamine. There is evidence that the volume and extent of the illicit manufacture of these substances poses serious public health or social problems so as to warrant the placing of these substances under international control.

The effective control of chemicals used in the illicit manufacture of narcotic drugs and psychotropic substances is an important tool in combating drug trafficking. However, these chemicals also have legitimate commercial uses as they are legally used in a wide variety of industrial processes and consumer products.

Control in the EU is achieved via European Regulation (EC) No 111/2005 on trade in drug precursors between EU and third countries, amended by Regulation (EU) No 1259/2013, and Regulation (EC) No 273/2004, on trade in drug precursors within the EU, amended by Regulation (EU) No 1258/2013. In the UK, the 2 statutory

instruments that impose licence and reporting obligations on those trading in scheduled substances are:

- Controlled Drugs (Drug Precursors) (Intra-Community Trade) Regulations 2008 (SI 2008 No. 295).
- Controlled Drugs (Drug Precursors) (Community External Trade) Regulations 2008 (SI 2008 No. 296)

The main objective of the regulations and SIs are to prevent diversion of drug precursors for illicit manufacture while maintaining competitive domestic and international markets for legitimate trade.

SCRUTINY HISTORY

This is a new proposal to schedule these three substances. Regulation 1258/2013 was subject to scrutiny as EM 14514/12 on which HO submitted an EM dated 15 October 2012. Regulation 1259/2013 was subject to scrutiny as EM 15394/12 on which HO submitted an EM dated 15 October 2012. Lords EUC examined the proposals in sub-committee F and cleared them following correspondence with Ministers on 22 May 2013. The Commons ESC reported on 2 occasions, clearing the proposals in report 20, 12/13.

MINISTERIAL RESPONSIBILITY

The Home Secretary has responsibility for international drug control decisions.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

The Council Decision has no immediate impact on the devolved administrations. However, should the UNCND take a decision on the addition of the new substances to Table I of the 1998 Convention, the EU will need to amend the EU legislation to take account of these substances. If these are adopted during the proposed Implementation Period, they will take effect in UK law.

LEGAL AND PROCEDURAL ISSUES

i. Legal basis

The legal basis for this proposal is Article 207 in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union (TFEU).

ii. European Parliament Procedure

The European Parliament is to be kept informed.

iii. Voting procedure

Qualified Majority Voting (QMV)

iv. Impact on United Kingdom Law

The Council Decision has no immediate impact on UK law. However, should the UNCND take a decision on the addition of the new substances to Table I of the 1998

Convention, the EU will need to amend the EU legislation to take account of these substances. If these are adopted during the proposed Implementation Period, they will take effect in UK law, during the proposed Implementation Period.

v. Application to Gibraltar

The adoption of this Council Decision will have no direct impact on Gibraltar.

vi. Fundamental rights analysis

No fundamental rights issues arise.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

The adoption of this Council Decision has no direct application to the EEA but should the UNCND take a decision on the addition of the new substances to Table I of the 1998 Convention, the EU will need to amend the EU legislation to take account of these substances and this will have effects for the EEA States, who apply Regulation (EC) No 273/2004.

SUBSIDIARITY

The EU has adopted two Regulations in this area regulating the trade in drug precursors. It is clear from these Regulations that the EU will follow the position of the UNCND. Consequently, in our view, the proposed Council Decision to adopt an EU position at the UNCND on the addition of new precursors is consistent with the principle of subsidiarity, as the proposed action is better achieved by the Member States acting together.

POLICY IMPLICATIONS

On 23 June 2016, 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.

The Home Office discharges its authority as Competent Authority for Great Britain and Northern Ireland. With a limited number of conditions and exceptions, the Home Office operates a licensing regime which applies to companies and individuals in the UK if they wish to manufacture, store, research, develop, import or export drug precursor chemicals.

As illicit manufacturers innovate and develop new methods of drug production, it becomes necessary to introduce new controls on the chemicals used for such manufacture. We have good relations with industry and previous additions of substances to the UN convention schedules have seen no impact in policy terms.

CONSULTATION

No formal consultation has been conducted. An informal discussion was had at the 23rd Meeting of the Group of Experts on Drug Precursor in November

IMPACT ASSESSMENT

The Government has not produced an impact assessment as this measure will have minimal impact on the UK pharmaceutical and chemicals industries. The European Commission has not produced an impact assessment.

FINANCIAL IMPLICATIONS

There are currently two UK manufacturers of amphetamine, and both hold the required licences to allow them to trade in the new substances. There are three UK manufacturers of MDMA, who also already hold the necessary licences. There are currently no UK manufactures of methamphetamine. Any new company entering the market would be liable for the maximum licence fee of £3,655 as prescribed by statute for a Category one precursor drug.

TIMETABLE

This will go to General Affairs Council on Thursday 7 March. The UNCND will vote on 17 March.

Victoria Atkins
Minister for Crime, Vulnerability and Safeguarding