**UK law response to new psychoactive substances (NPS/new synthetic drugs):**

- The purpose of the Misuse of Drugs Act 1971 – the UK's main piece of legislation which sets out the drug control framework – is to target substances for which there is evidence that they pose serious health and, as appropriate, social harms in the UK. The Government aims to strike the right balance between the swiftness of our legislative response to NPS and sufficient scientific evidence of harms from these substances and their misuse.

Temporary drug control provisions: process to make a temporary class drug order

- On 15 November 2011, Section 2A was inserted in the Act (published at http://www.legislation.gov.uk/ukpga/1971/38/contents) to provide the Home Secretary with the power to make temporary class drug orders on NPS – and related compounds – causing sufficient concern in the UK to ban activities relating to their supply and production (including importation). The power does not replace, or add a preliminary stage to, the usual (permanent) drug control process under the Act, but provides the Government with a swift legislative option to respond to a compelling and immediate drug threat.

- A temporary class drug order gives the Government's statutory, independent body of drug experts – the Advisory Council on the Misuse of Drugs (ACMD) – time (up to 12 months) to prepare full advice on the health and social harms of the temporary class drug(s) in relation to permanent control under the Act. Meanwhile, it helps to curtail the availability of temporary class drugs in the UK: most suppliers self-regulate (cease to order/advertise for sale and surrender stocks to police) by the time the order comes into force; UK law enforcement is able to take action against illicit activities involving temporary class drugs at and within UK borders; public health and prevention messages inform the public of the health harms/risks and temporary control provisions.

- The advisory and consultation process leading to a temporary class drug order is similar to the (permanent) drug control process under the Act in that the Home Secretary must consult with and/or receive a recommendation ("initial advice") from the ACMD before taking a decision on making a temporary class drug order. If the Home Secretary makes a referral to the ACMD under the temporary control power, the ACMD has only up to 20 working days to provide initial advice. During this period the ACMD prepares initial advice based on available evidence of health harms of the NPS (as well as other available evidence, such as prevalence of use and availability). There is no need for a review of 'social harm' at the temporary control stage (it will still be required alongside the review of health harms in the ACMD's advice to Government on permanent control). The advisory process under the temporary control power is further set out in the joint Working Protocol between the ACMD and Government which has been developed and agreed by the ACMD and the Home Secretary – published at http://www.homeoffice.gov.uk/publications/agencies-public-bodies/acmd1/workingprotocol?view=Binary.

- A condition to making a temporary class drug order is that it must "appear that a drug is being, or is likely to be, misused; and misuse is having, or is capable of having, harmful effects". Temporary class drugs are subject to a temporary class drug order under Section 2A of the Misuse of Drugs Act 1971 – not listed in the Act. The order lapses after 12 months from coming into effect, within which period the ACMD will aim to provide full advice on the temporary class drug – unless it is revoked or the drug becomes subject to permanent control (listed in the Act) during that period.

- Once the ACMD provides full advice on a temporary class drug, the Home Secretary then considers this advice in relation to permanent control (and classification) under the Act – when the drug is listed in Schedule 2 to the Act, it is subject to permanent control and no longer a temporary class drug. The temporary class drug order on that drug ceases to have effect.

<u>Evidence-gathering process to control NPS:</u>

- Unregulated substances come to the attention of the UK Government via different sources; police seizures, European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) reporting under the European Union (EU) Council Decision 2005/387/JHA, and more recently through the Home Office's Forensic Early Warning System (FEWS) set up by the Government to identify NPS and detect its prevalence more promptly in the UK.

- The UK also has a Drugs Early Warning System (DEWS), which was formalised in 2011 following an examination by the Home Office of the alignment of existing drugs early warnings systems across health and law enforcements bodies. The UK Focal Point - the body based at the Department of Health and the North West Public Health Observatory at the Centre for Public Health, Liverpool John Moores University which collates data and information on drug misuse in the UK and reports it to the EMCDDA - agreed to gather information from partners' drugs early warning and information sharing systems on the prevalence and harms associated with both emerging NPS and changing patterns of use of other controlled drugs.

- When a threat from an emerging NPS becomes apparent, we ask the UK Focal Point to distribute a 'Request for Information' to partners, which include the EMCDDA, the National Treatment Agency for Substance Misuse, the Health Protection Agency, the Medicines and Healthcare products Regulatory Agency (MHRA), toxicology laboratories and forensic providers, police forces and the Serious Organised Crime Agency. In the case of methoxetamine, responses to the request for information issued by the Home Office through DEWS started to be received within an hour of the request being sent out; the resulting information was presented to the ACMD and helped to inform its initial advice on the substance within a short period of time (15 working days).

- The information gathered through FEWS and DEWS is passed to the ACMD to assist their deliberations and – if appropriate – advice to Government in relation to drug control. The evidence needed relates to physical and social harms of

NPS which can be collated from many sources. A framework setting out the different domains of information it may use in this assessment is published at http://www.homeoffice.gov.uk/acmd1/ACMD-multi-criteria-report. Available sources may include – Published Government data (available on websites e.g. British Crime Survey etc); data from national and international organisations (e.g. Other Governments, Forensic services, Office of National Statistics, National Poisons Information Service etc.); local services including healthcare agencies; peer review literature; expert groups and stakeholder organisations; expert individuals; witness statements etc.

- Specifically, the ACMD has on its board chemistry and pharmacology experts to consider issues relating to the receptor affinity and dependency of a drug and will look to the peer review literature by experts within the field.

Wider EU monitoring process and legislative response:

- The EMCDDA has a responsibility (under Council Decision 2005/387/JHA on the information exchange, risk assessment and control of new psychoactive substances) to monitor the emergence and availability of substances that may pose public health and social threats, including the involvement of organised crime in the EU, and to conduct a risk assessment of specific substances with a view to their recommendation for control. The EMCDDA receives reports from EU countries when new substances are identified, and where a specific substance causes concern among member states it is subject to the risk assessment procedure. Following risk assessment, and where appropriate, a recommendation is made to the EU Council to recommend control of the substance by all member states.

- The EU has reviewed the Council Decision 2005/387/JHA and considered new legislative proposals – its findings are set out in its 'Communication from the Commission to the European Parliament and the Council - Towards a stronger European response to drugs' published at http://ec.europa.eu/justice/anti-drugs/files/com2011-6892_en.pdf, to which the Council of the EU has responded with its conclusions published at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/126879.pdf.

Temporary class drug offences and law enforcement:

- Offences committed under the Act in relation to a temporary class drug are subject to the following maximum penalties – similar to Class B or C offences:

    a. 14 years' imprisonment and an unlimited fine on indictment, and
    b. 6 months' imprisonment and a £5,000 fine on summary conviction.

- However, the simple possession of a temporary class drug is not an offence (simple possession of a drug under the 1971 Act means possession of a quantity of drug for personal use, subject to the discretion of the police officer of what quantity will constitute simple possession, as opposed to possession of a quantity

of drug with intent to supply – the law does not set quantities as possession of any quantity for a class A, B or C drug is an offence under the 1971 Act). Law enforcement officers have been given the following powers so that they can take appropriate action to prevent possible harm to the individual:

a. search and detain a person (or vehicle etc) where there are reasonable grounds to suspect that the person is in possession of a temporary class drug;
b. seize, detain and dispose of a suspected temporary class drug, and;
c. arrest or charge a person who commits the offence of intentionally obstructing an enforcement officer in the exercise of their powers here.

- The Misuse of Drugs Act 1971 offences apply irrespective of the means by which the controlled substances are made available to the user, for example through a face to face transaction, or via the internet.

- You have enquired about 'procedures regarding seizures from retailers' of substances that are subject to a temporary class drug order: the Association of Chief Police Officers and Trading Standards (consumer protection law enforcement) have produced internal operational guidance to officers on policing and disrupting the activities of 'head shops' and UK-based websites selling NPS. A copy of typical guidance can be found at http://www.acpo.police.uk/documents/crime/2012/CBADrugsPsychoactiveNov2011.pdf

<u>UK use of temporary class drug orders and impact:</u>

- The UK's first (and - so far - only) temporary class drug order came into effect on 5 April 2012, when methoxetamine[1] (and its simple derivatives) became a temporary class drug, as defined below:

"The following substances are specified under section 2A(1) of the Misuse of Drugs Act 1971 as drugs subject to temporary control—

(a) 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexanone;
(b) any stereoisomeric form of 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexanone;
(c) any ester or ether of a substance specified in paragraph (a) or (b);
(d) any salt of a substance specified in any of paragraphs (a) to (c); and
(e) any preparation or other product containing a substance specified in any of paragraphs (a) to (d)."

- Over 70 websites stopped offering methoxetamine for sale by the time the temporary class drug order took effect in April 2012 (they were under 70 identified in June 2011).

[1] Methoxetamine – chemical name: 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexanone

Police made 49 seizures of methoxetamine in the first 6 months of the temporary class drug order - until the ACMD provided full advice on the drug, mainly from South East England sites. The Serious Organised Crime Agency estimates that over 8 kgs of the drug (unconfirmed data) were seized over that period; while the ACMD noted in its full advice on methoxetamine the potential impact of its temporary class drug order on availability/prevalence in the UK.

- The Serious Organised Crime Agency also leads the UK law enforcement response to websites selling controlled drugs/NPS whether based in the UK or abroad. It has been involved in over 120 of these being closed down in the past year. (the offences of supply/possession/importation etc apply to online sale of illicit drugs under the Misuse of Drugs Act).

<u>Use of comprehensive generic definitions to control (chemically) related drugs:</u>

- Controlled drugs have historically been listed under their specific (comprehensive, chemical) names and simple derivatives (including ethers, ethers, salts, preparations) under the Misuse of Drugs Act 1971.

- Since the first occurrence in 1977, the UK has had the option to use a generic definition to capture a number of compounds that are chemically related to, or potential analogues/derivatives of, the main drug of concern (a generic definition was used to control synthetic cathinones including mephedrone, for example). Where controlled drugs are listed by name, sub- sections of the lists to Schedule 2 of the Act capture their simple derivatives, such as ethers or esters etc in the definition of the drugs controlled under the Act – except where there is a specific exemption. Generic definitions used in the Act can be found in its Schedule 2. However, examples of generic definitions of recently controlled NPS are provided within this response – see pages 6-8.

- Due to the chemical complexity of some drugs (i.e. synthetic drugs and NPS), the ACMD may choose to provide a generic definition to capture existing and/or potential derivative compounds in such instances. The Home Office will consult with legal advisers, forensic services, healthcare and industry (i.e. chemical – through lead government departments) on any generic definition provided by the ACMD, to identify any possible legitimate and/or medicinal uses to take into account for regulatory impact assessments. All Class A, B or C drugs captured under a generic definition are controlled under the 1971 Act, therefore the offence of simple possession will apply to all of them.

- European Database on New Drugs created in 1997 monitors 280 NPS to date. Their large majority are controlled drugs in the UK: 80% of phenethylamine-type NPS, 92% of piperazine derivatives, 90% of cathinones - mostly by way of generic definitions. Of the 49 NPS reported to the EMCDDA in 2011, only 17 were reported more than once by the UK. Of these 17, 14 are already controlled drugs. Forensic providers and the FEWS enable UK law enforcement response by providing added capability to identify non-controlled as well as controlled NPS captured by existing generic definitions.

Examples of generic definitions:

**Synthetic cannabinoids (2012)**

"Any compound structurally derived from 3–(1–naphthoyl)indole, 3-(2-naphthoyl)indole, 1*H*–indol–3–yl–(1–naphthyl)methane or 1*H*-indol-3-yl-(2-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (*N*-methylpiperidin-2-yl)methyl or 2–(4–morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.

Any compound structurally derived from 3–(1–naphthoyl)pyrrole or 3-(2-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (*N*-methylpiperidin-2-yl)methyl or 2–(4–morpholinyl)ethyl, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent.

Any compound structurally derived from 1–(1–naphthylmethylene)indene or 1-(2-naphthylmethylene)indene by substitution at the 3–position of the indene ring by alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (*N*-methylpiperidin-2-yl)methyl or 2–(4–morpholinyl)ethyl, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent.

Any compound structurally derived from 3–phenylacetylindole by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (*N*-methylpiperidin-2-yl)methyl or 2–(4–morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

Any compound structurally derived from 2–(3–hydroxycyclohexyl)phenol by substitution at the 5–position of the phenolic ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2–(4–morpholinyl)ethyl, whether or not further substituted in the cyclohexyl ring to any extent.

Any compound structurally derived from 3-benzoylindole by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (*N*-methylpiperidin-2-yl)methyl or 2–(4–morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

Any compound structurally derived from 3-(1-adamantoyl)indole or 3-(2-adamantoyl)indole by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (*N*-methylpiperidin-2-yl)methyl or 2–(4–morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring to any extent.

Any compound structurally derived from 3-(2,2,3,3-tetramethylcyclopropylcarbonyl)indole by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (*N*-methylpiperidin-2-yl)methyl or 2–(4–morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent."

**Mephedrone and related cathinones (2010 generic definition)**

"Any compound (not being bupropion, cathinone, diethylpropion, pyrovalerone or a compound for the time being specified in sub-paragraph (a) above) structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways, that is to say,

(i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;
(ii) by substitution at the 3-position with an alkyl substituent;
(iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure."

**Naphyrone and related pyrovalerones (2010 generic definition)**

"Any compound structurally derived from 2-aminopropan-1-one by substitution at the 1-position with any monocyclic, or fused-polycyclic ring system (not being a phenyl ring or alkylenedioxyphenyl ring system), whether or not the compound is further modified in any of the following ways, that is to say,

(i) by substitution in the ring system to any extent with alkyl, alkoxy, haloalkyl or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
(ii) by substitution at the 3-position with an alkyl substituent;
(iii) by substitution at the 2-amino nitrogen atom with alkyl or dialkyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure."

**2-DPMP/Desoxypipradrol and other pipradrol-related compounds (2011)**

"Any compound (not being pipradrol) structurally derived from piperidine, pyrrolidine, azepane, morpholine or pyridine by substitution at a ring carbon atom with a diphenylmethyl group, whether or not the compound is further modified in any of the following ways, that is to say,

(i) by substitution in any of the phenyl rings to any extent with alkyl, alkoxy, haloalkyl or halide groups;
(ii) by substitution at the methyl carbon atom with an alkyl, hydroxyalkyl or hydroxy group;
(iii) by substitution at the ring nitrogen atom with an alkyl, alkenyl, haloalkyl or hydroxyalkyl group."

**Methoxetamine and other related compounds (2013)**

"1-Phenylcyclohexylamine or any compound (not being ketamine, tiletamine or a compound for the time being specified in paragraph 1(a) of Part 1 of this Schedule) structurally derived from 1-phenylcyclohexylamine or 2-amino-2-phenylcyclohexanone by modification in any of the following ways, that is to say,

(i) by substitution at the nitrogen atom to any extent by alkyl, alkenyl or hydroxyalkyl groups, or replacement of the amino group with a 1-piperidyl, 1-pyrrolidyl or 1-azepyl group, whether or not the nitrogen containing ring is further substituted by one or more alkyl groups;
(ii) by substitution in the phenyl ring to any extent by amino, alkyl, hydroxy, alkoxy or halide substituents, whether or not further substituted in the phenyl ring to any extent;
(iii) by substitution in the cyclohexyl or cyclohexanone ring by one or more alkyl substituents;
(iv) by replacement of the phenyl ring with a thienyl ring.

NB. In addition, as for named drugs, simple derivatives and preparations of compounds captured by generic definitions are subject to the same levels of control as the main drugs. (for example, see para. 2-6 in Part I of Schedule 2 to the Misuse of Drugs Act, and para. 2 etc in other Parts of that Schedule)