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STATUTORY INSTRUMENTS

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**2005 No. 1653**

**DANGEROUS DRUGS**

**The Misuse of Drugs (Amendment) (No. 2) Regulations 2005**

*Made* - - - - 22nd June 2005  
*Laid before Parliament* 23rd June 2005  
*Coming into force* - - 18th July 2005

The Secretary of State, in exercise of the powers conferred upon him by sections 7, 10, 22 and 31 of the Misuse of Drugs Act 1971<sup>(1)</sup>, having consulted the Advisory Council on the Misuse of Drugs in accordance with section 31(3) of that Act, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Misuse of Drugs (Amendment) (No. 2) Regulations 2005 and shall come into force on 18th July 2005.

**Amendment of the Misuse of Drugs Regulations 2001**

- 2.—(1) The Misuse of Drugs Regulations 2001<sup>(2)</sup> shall be amended as follows.  
(2) After regulation 4 insert—

**“Exceptions for drugs in Schedule 1**

**4A.**—(1) Section 5(1) of the Act (which prohibits the possession of controlled drugs) shall not have effect in relation to a fungus (of any kind) which contains psilocin or an ester of psilocin<sup>(3)</sup> where that fungus—

- (a) is growing uncultivated;
- (b) is picked by a person already in lawful possession of it for the purpose of delivering it as soon as is reasonably practicable into the custody of a person lawfully entitled to take custody of it and it remains in that person’s possession for and in accordance with that purpose;

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(1) 1971 c. 38. Section 22 of that Act was amended by section 177(1) of, and paragraph 12 of Schedule 4 to, the Customs and Excise Management Act 1979 (c. 2).  
(2) S.I.2001/3998, to which there are amendments not relevant to these Regulations.  
(3) The Drugs Act 2005 (c. 17) in section 21 inserts into Part 1 of Schedule 2 to the Misuse of Drugs Act 1971 a fungus (of any kind) which contains psilocin or an ester of psilocin and thereby classifies such a fungus a Class A drug.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (c) is picked for either of the purposes specified in paragraph (2) and is held for and in accordance with the purpose specified in paragraph (2)(b), either by the person who picked it or by another person; or
  - (d) is picked for the purpose specified in paragraph (2)(b) and is held for and in accordance with the purpose in paragraph (2)(a), either by the person who picked it or by another person.
- (2) The purposes specified for the purposes of this paragraph are—
- (a) the purpose of delivering the fungus as soon as is reasonably practicable into the custody of a person lawfully entitled to take custody of it; and
  - (b) the purpose of destroying the fungus as soon as is reasonably practicable.”.
- (3) In schedule 1, after “Etryptamine” insert “Fungus (of any kind) which contains psilocin or an ester of psilocin”.

Home Office  
22nd June 2005

*Paul Goggins*  
Parliamentary Under Secretary of State

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Misuse of Drugs Regulations 2001 (the 2001 Regulations). Regulation 2(2) inserts a new regulation 4A into the 2001 Regulations and provides that section 5(1) of the Misuse of Drugs Act 1971, which makes it unlawful for a person to have a controlled drug in his possession, will not apply to a fungus (of any kind) containing psilocin or an ester of psilocin (commonly known as magic mushrooms) in certain circumstances. When section 21 of the Drugs Act 2005 is brought into force, such a fungus will be a Class A drug. These Regulations will be brought into force on the same day that section 21 of the 2005 Act will be brought into force. Regulation 2(2) inserts a new regulation 4A into the 2001 Regulations which excepts from the offence of possession magic mushrooms in 4 scenarios. First, where the magic mushrooms are growing uncultivated. Second, where the magic mushrooms are picked by a person already in lawful possession of them, for example the landowner on whose land the mushrooms are growing, for the purpose of delivering them into the custody of a person who is lawfully entitled to take custody of them so long as the mushrooms remain in that person's custody for and in accordance with that person. Third, where the magic mushrooms are picked, by anyone, for the purpose of either delivering them into the custody of a person who is lawfully entitled to take custody of them or destroying them as soon as is reasonably practicable and then held, whether by the person who picked them or by another, for and in accordance with the purpose of destroying them as soon as is reasonably practicable. Fourth, where the magic mushrooms are picked for the purpose of destruction as soon as is reasonably practicable and then held, whether by the person who picked them or by another, for and in accordance with the purpose of delivering them as soon as is reasonably practicable into the custody of a person who is lawfully entitled to take custody of them. Regulation 2(3) inserts a fungus containing psilocin or an ester of psilocin into Schedule 1 to the 2001 Regulations, enabling the Secretary of State to issue a licence under regulation 5 of the 2001 Regulations in respect of the production, supply, offer to supply or possession of those fungi.