

EXPLANATORY MEMORANDUM

The Misuse of Drugs (Amendment) Regulations (Northern Ireland) 2023

S.R. 2023 No. 180

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Health to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under sections 7, 10, 22 and 31 of the Misuse of Drugs Act 1971 (the 1971 Act) as adapted by sections 7(9), 31(4) and 38 of that Act and now vested in it and after consultation with the Advisory Council on the Misuse of Drugs in accordance with section 31(3) of that Act.
- 1.3 These Regulations are subject to negative resolution before the Northern Ireland Assembly.

2. Purpose of the Regulations

- 2.1 The purpose this Statutory Rule is to place nitrous oxide, and preparations or products containing nitrous oxide (hereafter referred to as “nitrous oxide”), in Schedule 5 to the Misuse of Drugs Regulations 2002 (“the principle Regulations”) and to make provision for lawful access to the substance for legitimate purposes, including medical use.

3. Background and Legislative Context

- 3.1 The 1971 Act controls drugs that are “dangerous or otherwise harmful”. Schedule 2 to the 1971 Act specifies these drugs and groups them in three categories – Part 1 lists drugs known as Class A drugs, Part 2 lists Class B drugs and Part 3 lists Class C drugs. The three-tier system of classification (A, B and C) provides a framework within which criminal penalties are set with reference to the harm that a drug has, or is capable of having when misused, and the type of illegal activity undertaken with regards to that drug.
- 3.2 The Advisory Council on the Misuse of Drugs (ACMD) makes recommendations to Government on the control of dangerous or otherwise harmful drugs, including classification and scheduling under the 1971 Act and its subsequent Misuse of Drugs Regulations. To this end, on 9 June 2023, the UK Government commissioned the ACMD to provide advice on changes to their Misuse of Drugs Regulations, to enable the legitimate use of nitrous oxide. This included advice on appropriate scheduling to enable medical-related uses, and how to enable non-medical-related lawful uses, including industrial uses.
- 3.3 On 11 August, as part of their response, the ACMD highlighted the challenges inherent in the above given there has been no previous precedent for the scheduling of gases under the Misuse of Drugs Regulations, nitrous oxide being the first gas to be controlled under the 1971 Act. Their recommendations therefore included that nitrous oxide should be inserted into Schedule 5 of their Misuse of Drugs Regulations and that Schedule 5 of their Misuse of Drugs Regulations also be amended specifically for nitrous oxide to enable all activities

required for legitimate uses whilst also enabling control of import and export, production, possession, and supply for non-legitimate uses. The Home Office's full response to the ACMD's initial assessment was published on the Home Office's website on 16 June 2023.

- 3.4 The affirmative Order, the [Misuse of Drugs Act 1971 \(Amendment\) Order 2023](#) was laid before UK Parliament on 5th September 2023 and was made on the 11th October 2023 to control nitrous oxide as a Class 'C' drug under the 1971 Act. This affirmative Order will come into force on 8th November 2023 meaning that from this date it will be unlawful to possess, supply, import, export or produce the substance in the UK, unless an exemption applies (for example, for use in healthcare), or the person undertaking the activity holds an appropriate licence.

4. Consultation

- 4.1 The UK Government consulted with a wide range of stakeholders in trying to identify the full range and scale of legitimate uses for nitrous oxide in the UK, as well as the mechanisms and nitrous oxide products required for these purposes. This UK-wide consultation also sought to identify the full range and scale of legitimate uses for nitrous oxide, as well as the mechanisms and nitrous oxide products required for these purposes. The target group for the consultation survey were those with a legitimate business or personal interest in nitrous oxide.
- 4.2 The UK Government received 105 responses to the consultation: 84 were responses to the online survey and 21 were received by email. The UK Government has analysed the responses, and these are summarised [here](#).
- 4.3 These Regulations place nitrous oxide, and preparations or products containing nitrous oxide, in Schedule 5 to the principle Regulations in order to make permissive provision for lawful access to the substance for legitimate purposes in Northern Ireland, including medical use. The aim being that these Regulations will minimise the effect of controlling nitrous oxide on those who seek to use it for legitimate purposes in Northern Ireland, while restricting its availability to those who seek to misuse it.

5. Equality impact

- 5.1 The Department of Health has concluded that the proposed amendments will not have a significant impact on equality of opportunity for any group referred to in section 75 of the Northern Ireland Act 1998 and a full Equality Impact Assessment has not been considered necessary.

6. Regulatory impact

6.1 It is not anticipated that these Regulations will have any adverse impact on business, charities, social economy or voluntary bodies.

7. Financial implications

7.1 None anticipated.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department of Health has considered section 24 of the Northern Ireland Act 1998 and is satisfied that these Regulations are not incompatible with any of the Convention rights; are not incompatible with Community law; do not discriminate against a person or class of person on the grounds of religious belief or political opinion; and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU implications

9.1 There are no anticipated EU implications as a result of these amendments.

10. Parity or Replicatory Measure

10.1 The provisions included in the Statutory Rule seek to replicate similar amendments to the Misuse of Drugs Regulations 2001 which are being taken forward by the Home Office and will ensure that the legislative arrangements in Northern Ireland will be in line with GB.

11. Additional information

11.1 Not applicable