STATUTORY INSTRUMENTS

2008 No. 295

DANGEROUS DRUGS

The Controlled Drugs (Drug Precursors) (Intra-Community Trade) Regulations 2008

Made - - - -	*7th February 2008*
Laid before Parliament	*11th February 2008*
Coming into force - -	*7th March 2008*

The Secretary of State, in exercise of the powers conferred upon her by section 2(2) of the European Communities Act 1972 [M1], hereby makes the following Regulations:

Marginal Citations

M1 1972 c. 68. The Secretary of State is the designated Minister for the purposes of these Regulations by virtue of S.I. 1981/1536 and S.I. 1983/1706.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Controlled Drugs (Drug Precursors) (Intra-Community Trade) Regulations 2008 and shall come into force on 7th March 2008.

(2) The Regulations shall extend to the United Kingdom.

Interpretation

2. In these Regulations:

"the Community Regulation" means Regulation (EC) No. 273/2004 of the European Parliament and of the Council dated 11th February 2004 [M2]; and

"the 1990 Act" means the Criminal Justice (International Co-operation) Act 1990 [M3].

"scheduled substance" and "operator" have the same meaning as in the Community Regulation.

Marginal Citations

M2 OJ No. L 47 18.2.2004, p. 1.

M3 1990 c. 5; section 13 has been amended by the Proceeds of Crime Act 2002 (c. 29).

Competent authorities

3.—(1) For the purposes of the Community Regulation, the words "the competent authorities" shall be taken, to the extent specified in paragraphs (2) to (4), as a reference to the persons specified in those paragraphs.

(2) In Articles 3, 8(2) **[**F1and 9(3)**]** of the Community Regulation, the Secretary of State.

(3) In Article 8(1) a person authorised for the purposes of these Regulations by the Director General of the Serious Organised Crime Agency;

(4) In Articles 5(5) **[**F2and 9(1)**]** of the Community Regulation, any of the following—

(a) a constable;

(b) an officer of Revenue and Customs under section 2(1) of the Commissioners for Revenue and Customs Act 2005 (appointment of staff) M4 or other person authorised by the Commissioners for Her Majesty's Revenue and Customs;

(c) a person authorised for the purposes of these Regulations by the Director General of the Serious Organised Crime Agency;

(d) the Secretary of State.

Textual Amendments

F1 Words in reg. 3(2) substituted (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **11(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F2 Words in reg. 3(4) substituted (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **11(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M4 2005 c. 11.

Licences

4. A licence, other than a special licence, issued by the Secretary of State in accordance with Article 3(2) of the Community Regulation shall be issued for a period not exceeding three years.

5.—(1) The Secretary of State may issue a special licence in accordance with Article 3(2) of the Community Regulation and may provide for a special registration in accordance with Article 3(6) of the Community Regulation to the persons specified in paragraph (2).

(2) The persons specified for the purposes of paragraph (1) are—

(a) a pharmacist or a person lawfully conducting a retail pharmacy business;

(b) a veterinary practitioner or a veterinary surgeon;

(c) an officer of Revenue and Customs or other person authorised by the Commissioners for Her Majesty's Revenue and Customs;

(d) a chief officer of police;

(e) the Director General of the Serious Organised Crime Agency;

F3(f) . . . . . .

(g) an official working in an official laboratory; and

(h) the armed forces.

(3) In this regulation—

(a) "pharmacist" in relation to Great Britain means **[**F4a person registered as a pharmacist in Part 1 or 4 of the register maintained under article 19 of the Pharmacy Order 2010**]**, and in relation to Northern Ireland (subject to any order made under paragraph 1 of Schedule 4 to the Medicines Act 1968 (application of provisions to Northern Ireland) M5) means a person registered in the register of pharmaceutical chemists for Northern Ireland made out and maintained under Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976 M6 and "a person lawfully conducting a retail pharmacy business" means a person lawfully conducting such a business in accordance with section 69 of the Medicines Act 1968 (requirements for lawfully conducting a retail pharmacy business);

(b) "veterinary practitioner" means a person registered in the supplementary veterinary register kept under section 8 of the Veterinary Surgeons Act 1966 (keeping of supplementary veterinary register) M7 and "veterinary surgeon" means a person registered in the register of veterinary surgeons kept under section 2 of that Act (keeping of veterinary surgeons register);

(c) "officer of Revenue and Customs" means a person appointed under section 2(1) of the Commissioners for Revenue and Customs Act 2005 M8 and the Commissioners for Her Majesty's Revenue and Customs;

(d) "chief officer of police" means a chief officer of police of a police force in England and Wales, **[**F5the chief constable of the Police Service of Scotland**]**, the Chief Constable of the Police Service of Northern Ireland, the Ministry of Defence Police M9, the British Transport Police Force M10 and the Civil Nuclear Constabulary M11;

(e) "an official working in an official laboratory" means—

(i) a public analyst appointed under section 27 of the Food Safety Act 1990 (power to appoint public analyst) M12 or in the case of Northern Ireland, under article 27 of the Food Safety (Northern Ireland) Order 1991 M13;

(ii) a sampling officer within the meaning of Schedule 3 to the Medicines Act 1968;

(iii) a person employed or engaged in connection with a scheme for testing the quality or amount of the drugs, preparations and appliances supplied under the National Health Service Act 1977 M14 or the National Health Service (Scotland) Act 1978 M15 and the regulations made under those Acts; and

(iv) a person engaged in the work of any laboratory to which the drug has been sent for forensic examination when acting in the course of his duty as a person so engaged; and

(f) "armed forces" means the Royal Navy, the Royal Marines, the regular army and the regular air force, and any reserve or auxiliary force of any of those services which has been called out on permanent service or embodied.

Textual Amendments

F3 Reg. 5(2)(f) omitted (1.4.2013) by virtue of The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 90(2)**

F4 Words in reg. 5(3)(a) substituted (27.9.2010) by The Pharmacy Order 2010 (S.I. 2010/231), art. 1(5), **Sch. 4 para. 64** (with Sch. 5); S.I. 2010/1621, art. 2(1), Sch.

F5 Words in reg. 5(3)(d) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 90(3)**

Marginal Citations

M5 1968 c. 67.

M6 S.I. 1976/1213.
M7 1966 c. 36.
M8 2005 c. 11.
M9 as defined in section 1 of the Ministry of Defence Police Act 1987 c 4
M10 as defined in section 20 of the Railways and Transport Safety Act 2003 c 20
M11 as defined in section 52 of the Energy Act 2004 c 20
M12 1990 c. 16.
M13 SI 1991/762 (NI. 7)
M14 1977 c. 49.
M15 1978 c. 29.

Penalties

6.—(1) Subject to paragraph (2), the obligations imposed on operators by Article 5 (documentation), Article 7 (labelling) and Article 8 (notification of the competent authorities) of the Community Regulation shall be treated as if they are requirements imposed on them by regulations made under section 13(1) of the 1990 Act (regulations about scheduled substances) and as if references in those Articles to scheduled substances are references to scheduled substances within the meaning of Part 2 of that Act.

(2) Where a person is convicted of an offence contrary to section 13(5) of the 1990 Act as a result of the application of paragraph (1), section 13(5)(a) of the 1990 Act shall have effect as if for the words "6 months" there are substituted the words " 3 months ".

(3) For the purposes of this regulation section 45 of the Criminal Proceedings Etc. (Reform) (Scotland) Act 2007 [M16] shall not apply to section 13(5) of the 1990 Act.

Marginal Citations
M16 2007 Asp 6

7.—(1) An operator who fails to comply with any of the requirements imposed by Article 3 of the Community Regulation (requirements for placing on the market of scheduled substances) is guilty of an offence and liable—

(a) on summary conviction, to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

(2) The reference in paragraph (1) to a person who fails to comply with any of the requirements imposed by Article 3 of the Community Regulation includes a person, who in purported compliance with any such provision—

(a) furnishes information which he knows to be false in a material particular; or

(b) recklessly furnishes information which is false in a material particular.

Powers of entry

8. The powers conferred by subsection (1) of section 23 of the Misuse of Drugs Act 1971(powers to search and obtain evidence relating to dealings in controlled drugs) [M17] shall be exercisable also for the purposes of the execution of Article 3 of the Community Regulation and subsection (3) of

that section (excluding paragraph (a)) shall apply also to the offence under Regulation 7, taking references in those subsections to controlled drugs as references to scheduled substances.

Marginal Citations

M17 1971 c. 38; section 23 has been amended by the 1990 Act, section 23(4), the Drug Trafficking Act 1994 (c. 37), **section 65** and paragraph 4 of Schedule 1 and the Proceeds of Crime Act 2002 (c. 29), **section 457** and Schedule 12 and has been modified by the Northern Ireland Act 1998 (c. 47).

Revocations

9.—(1) Subject to paragraphs (2) and (3), the Controlled Drugs (Substances Useful for Manufacture) (Intra-Community Trade) Regulations 1993 [M18] and the Controlled Drugs (Substances Useful for Manufacture) (Intra-Community Trade) (Amendment) Regulations 2004 [M19] are hereby revoked.

(2) Paragraph (1) shall not affect the validity of—

(a) any licence granted under the Regulations revoked by that paragraph,

(b) any register of operators established under those Regulations, or

(c) any customer declarations issued under those Regulations.

(3) Paragraph (1) shall not apply in respect of any offence under the Regulations revoked by that paragraph committed before the commencement of these Regulations.

Marginal Citations

M18 S.I. 1993/2166 as amended by S.I. 2004/850.

M19 S.I. 2004/850

Vernon Coaker
Parliamentary Under Secretary of State

Home Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Regulation (EC) 273/2004 ("the Community Regulation"). The Community Regulation itself requires operators who possess or place on the market a scheduled substance (substances useful for the manufacture of controlled drugs, known as drug precursors) to have a licence where that substance is in Category 1 of Annex I to the Community Regulation and to register where that substance is in Category 2 of Annex I to that Regulation. It permits such licences to be issued either for a specified duration or to be subject to a reporting requirement and permits Member States to operate a special system of licensing and registration for particular persons. The Community Regulation requires operators to appoint a responsible officer before placing on the market a scheduled substance in Category 1 or 2 of Annex I to the Community Regulation and imposes obligations on operators in respect of the documentation, recording and labelling of such substances. It also requires operators to inform the competent authorities of any circumstances which suggest that scheduled substances might be diverted for the illicit manufacture of narcotic drugs or psychotropic substances and to provide those competent authorities every 6 months with a summary of the transactions involving scheduled substances used and supplied in that period.

The Community Regulation requires Member States to adopt the measures necessary to enable the competent authorities to obtain information on any orders for or operations involving scheduled substances, to enter operators' business premises to obtain evidence of irregularities and, where necessary, to detain consignments that fail to comply with the Community Regulation. It also requires Member States to determine the penalties applicable to infringements of the provisions of the Community Regulation.

Regulation 3 of these Regulations specifies which authorities will perform the role given to competent authorities under the Community Regulation. Regulation 4 of these Regulations provides that licences shall be issued for a period of 3 years and regulation 5 specifies the extent of the special system of licensing and registration that the Secretary of State will operate.

Regulation 6(1) of these Regulations provides that the requirements under Articles 5, 7 and 8 of the Community Regulation are to be treated as if they are requirements imposed by regulations made under section 13(1) of the Criminal Justice (International Co-operation) Act 1990 ("the 1990 Act"). The 1990 Act provides for penalties for breaches of regulations made under section 13(1) of that Act and regulation 6(2) of these Regulations modifies that penalty in respect of the requirements under Articles 5, 7 and 8 of the Community Regulation. Regulation 7 of these Regulations specifies that it is an offence to fail to comply with a requirement imposed by Article 3 of the Community Regulation and specifies the penalty for that offence. These Regulations therefore enable breaches of the Community Regulation to be penalised.

Regulation 8 of these Regulations applies for the purposes of executing Article 3 of the Community Regulation. It provides the power under section 23(1) of the Misuse of Drugs Act 1971 to enter premises of a person carrying on a business as a producer or supplier of any scheduled substance and to demand the production of, and to inspect, any books or documents relating to dealing in any such drugs and to inspect any stocks of any such drugs. These Regulations therefore enable breaches of the Community Regulation to be investigated.

Regulation 9 of these Regulations revokes the Controlled Drugs (Substances Useful for Manufacture) (Intra-Community Trade) Regulations 1993 ("the 1993 Regulations") but provides that the 1993 Regulations will continue to have effect in respect of any offence committed under them in respect of which criminal proceedings have been commenced before the commencement of these Regulations. Regulation 8 of these Regulations also provides that the validity of any

licence or customer declaration issued, or register established, under the 1993 Regulations is not affected by the revocation.

Status:
Point in time view as at 31/12/2020.

Changes to legislation:
There are currently no known outstanding effects for the The Controlled Drugs (Drug Precursors)(Intra-Community Trade) Regulations 2008.