
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

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

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