

**2023 No. 180**

**DANGEROUS DRUGS**

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

*Made* - - - - *18th October 2023*

*Coming into operation* - *8th November 2023*

The Department of Health(a), makes the following Regulations in exercise of the powers conferred by sections 7, 10, 22 and 31 of the Misuse of Drugs Act 1971(b) as adapted by sections 7(9), 31(4) and 38 of that Act and now vested in it(c) and after consultation with the Advisory Council on the Misuse of Drugs in accordance with section 31(3) of that Act.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Misuse of Drugs (Amendment) Regulations (Northern Ireland) 2023 and shall come into operation on 8th November 2023.

(2) The Interpretation Act (Northern Ireland) 1954(d) shall apply to the Regulations as it applies to an Act of the Northern Ireland Assembly.

**Amendment of the Misuse of Drugs Regulations (Northern Ireland) 2002**

**2.**—(1) The Misuse of Drugs Regulations (Northern Ireland) 2002(e) are amended as follows.

(2) In regulation 2(2) (Interpretation), insert the following definitions in the appropriate places insert—

““medical purposes” means the purposes of preventative medicine, medical diagnosis, medical research or the provision of medical care and treatment; and

“nitrous oxide” includes any preparation or other product containing nitrous oxide;”.

(3) In regulation 4 (Exceptions for drugs in Schedules 4 and 5 and poppy-straw)—

(a) in paragraph (1) after “Schedule 5” insert “except nitrous oxide”;

(b) in paragraph (3)(b) after “Schedule 5” insert “except nitrous oxide”.

(4) After regulation 4B (Exceptions for gamma-butyrolactone and 1,4-butanediol), insert—

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(a) Formerly the Department of Health, Social Services and Public Safety; see 2016 c. 5 (N.I.), s. 1(5)

(b) 1971 c. 38, as amended by the Police Reform and Social Responsibility Act 2011 (c. 13)

(c) S.R. & O (N.I.) 1973 No. 504, Article 5(a) and S.I. 1999/283 (N.I. 1), Article 3(6)

(d) 1954 c. 33 (N.I.)

(e) S.R. 2002 No. 1. Relevant amending regulations are S.R. 2003 No. 420, S.R. 2005 No. 119, S.R. 2007 No. 348, S.R. 2012 Nos. 168 and 1916, S.R. 2019 No.208 and S.R. 2020 No. 104

#### **“4C Exceptions for nitrous oxide**

(1) The application of section 3(1) (which prohibits the importation and exportation of controlled drugs) of the Act, in so far as it creates an offence, and the application of sections 50(1) to (4), 68(2) and (3) or 170 of the Customs and Excise Management Act 1979(a), in so far as they apply in relation to a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Act, are hereby excluded in the cases of importation or exportation of nitrous oxide except where a person imports or exports the substance and—

- (a) intends to wrongfully inhale it; or
- (b) knows, or is reckless as to whether, it is likely to be wrongfully inhaled by some other person.

(2) Notwithstanding the provisions of section 4(1)(a) (which prohibits the production of controlled drugs) of the Act, any person may import, export or produce nitrous oxide except where the person—

- (a) intends to wrongfully inhale it; or
- (b) knows, or is reckless as to whether, it is likely to be wrongfully inhaled by some other person.

(3) Notwithstanding the provisions of section 4(1)(b) (which prohibits the supply, and offer to supply, of controlled drugs) of the Act, any person may—

- (a) supply, including by way of administration, nitrous oxide, except where the person knows, or is reckless as to whether, it is likely to be wrongfully inhaled by a person; or
- (b) offer to supply nitrous oxide, except where the person knows, or is reckless as to whether, if the substance were supplied in accordance with the offer, it would be likely to be wrongfully inhaled by any person.

(4) Notwithstanding the provisions of section 5(1) (which prohibits the possession of controlled drugs) of the Act, any person may possess nitrous oxide except where the person—

- (a) intends to wrongfully inhale it; or
- (b) intends to supply it to another person for its wrongful inhalation by any person.

(5) In this regulation, references to wrongful inhalation mean any inhalation other than—

- (a) for medical or dental purposes; or
- (b) of nitrous oxide which has been released into the atmosphere.”.

(5) In regulation 7 (1) (Administration of drugs in Schedules 2, 3, 4 and 5), after “Schedule 5” insert “except nitrous oxide”.

(6) In regulation 10 (Possession of drugs in Schedules 2, 3 and 4)—

- (a) in the heading, for “and 4” substitute “, 4 and nitrous oxide”;
- (b) after sub-paragraph (e) of paragraph 1, insert—
  - “(f) a person specified in sub-paragraph (f) of regulation 8(2) may have nitrous oxide in his possession,”;
- (c) in paragraph (3), after “have” insert “nitrous oxide or”; and
- (d) in sub-paragraph (a) of paragraph (4), after “possession” insert “nitrous oxide or”.

(7) In Schedule 5 (Controlled drugs excepted from the prohibition on importation, exportation and possession and subject to the requirements of regulations 24 and 26)—

- (a) in the heading, after “possession” insert “(apart from nitrous oxide)”; and

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(a) 1979 c. 2 as amended by the Taxation (Cross-border Trade) Act 2018 (c. 22). Other amendments have been made to sections 50, 68 and 170 not relevant to these Regulations.

(b) after paragraph 10 insert—

“**11.** Nitrous oxide. ”

Sealed with the Official Seal of the Department of Health on 18th October 2023.

(L.S.)

*Cathy Harrison*  
A senior officer of the Department of Health

## EXPLANATORY NOTE

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

These Regulations amend the Misuse of Drugs Regulations (Northern Ireland) 2002 (S.R. 2002 No. 1) (“the 2002 Regulations”) to place nitrous oxide, and preparations or products containing nitrous oxide (hereafter referred to as “nitrous oxide”), in Schedule 5 to the 2002 Regulations and to make provision for lawful access to the substance for legitimate purposes, including medical use.

The Schedule to the 2002 Regulations in which a controlled drug is placed affects the extent to which the drug can be lawfully imported, exported, produced, supplied or possessed and dictates the record keeping, labelling and destruction requirements in relation to that drug.

Drugs in Schedule 5 to the 2002 Regulations are, generally, wholly excepted from the prohibitions on import, export and possession of controlled drugs (under sections 3 and 5 of the Misuse of Drugs Act 1971 (c. 38)) by regulation 4 of the 2002 Regulations. Regulation 7 of the 2002 Regulations similarly, generally, permits any person to administer to another person any Schedule 5 controlled drug. However, these regulations (by regulation 2(3) and (5)) exclude nitrous oxide from those general exemptions in the 2002 Regulations.

Instead, a new regulation 4C to the 2002 Regulation (inserted by regulation 2(4)), makes it lawful for persons to import, export, produce, supply (including by way of administration), offer to supply and possess nitrous oxide in certain circumstances. Specifically, persons may undertake those activities except where, dependent on the offence, they intend, know or are reckless as to whether the substance is likely to be wrongfully inhaled by a person. “Wrongful inhalation” means any inhalation which is not for a medical or dental purpose (for example, recreational inhalation for psychoactive effect) or is not of nitrous oxide which has been released into the atmosphere (for example, directly from a cannister or a balloon). Medical purposes are (by the definition inserted by regulation 2(2)) defined in regulation 2 of the 2002 Regulations as the purposes of preventative medicine, medical diagnosis or the provision of medical care and treatment.

Additionally, regulation 10 of the 2002 Regulations is amended (by regulation 2(6)), to make provision for possession, supply and production of nitrous oxide by certain scientific education and research laboratories (regulation 8(2)(f) and new regulation 10(1)(f) of the 2002 Regulations). It also makes provision for group authorities and/or written authorities to be issued by the Department to authorise other activities relating to nitrous oxide (regulation 10(3) and (4) of the 2002 Regulations).

Schedule 5 to the 2002 Regulations is amended (by regulation 2(7)) to include nitrous oxide, and the heading is amended to clarify that the substance is not wholly excepted from the offences of import, export and possession. Placement in Schedule 5 makes nitrous oxide subject to the requirements of regulations 24 and 26 of the 2002 Regulations which relate to the preservation of records relating to, and the furnishing of information with respect to, drugs in Schedules 3 and 5.

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