
STATUTORY INSTRUMENTS

2023 No. 1099

DANGEROUS DRUGS

The Misuse of Drugs (England and Wales and Scotland) (Amendment) Regulations 2023

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| <i>Made</i> | - - - - | <i>16th October 2023</i> |
| <i>Laid before Parliament</i> | | <i>18th October 2023</i> |
| <i>Coming into force</i> | - - | <i>8th November 2023</i> |

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 7(1)(b), 10(1), 22(1)(a) and 31(1)(a) of the Misuse of Drugs Act 1971(1).

In accordance with section 31(3) of that Act the Secretary of State has consulted the Advisory Council on the Misuse of Drugs.

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Misuse of Drugs (England and Wales and Scotland) (Amendment) Regulations 2023 and come into force on 8th November 2023.

(2) In these Regulations “the 2001 Regulations” means the Misuse of Drugs Regulations 2001(2).

(3) These Regulations extend to England and Wales and Scotland.

Amendment of the Misuse of Drugs Regulations 2001

2. The 2001 Regulations are amended in accordance with regulations 3 to 8 below.

Amendment of regulation 2

3. In regulation 2(1) (interpretation), insert the following definitions in the appropriate places—

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

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

(1) 1971 c. 38. See the definition of “prescribed” in section 37(1). Section 22 was amended by section 177(1) of, and paragraph 12 of Schedule 4 to, the Customs and Excise Management Act 1979 (c. 2). Other amendments have been made to sections 7, 10, 22 and 31 not relevant to these Regulations.

(2) S.I. 2001/3998. Relevant amending instruments are S.I. 2003/2429, 2005/2864, 2012/973, 2018/1055 and 2020/559.

Amendment of regulation 4

4. 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 sub-paragraph (b) of paragraph (3) after “Schedule 5” insert “except nitrous oxide”.

New regulation 4C

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

“Exemptions for nitrous oxide

4C.—(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(3), 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 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 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.”.

(3) 1979 c. 2. Section 50 was amended by section 114(1) of the Police and Criminal Evidence Act 1984 (c. 60) (“the 1984 Act”), paragraphs 3 and 44(1) and (2) of Schedule 7 to the Taxation (Cross-border Trade) Act 2018 (c. 22) and S.I. 2015/664. Sections 68 and 170 were also amended by section 114(1) of the 1984 Act and S.I. 2015/664. Other amendments have been made to sections 50, 68 and 170 not relevant to these Regulations.

Amendment of regulation 7

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

Amendment of regulation 10

7. 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”;
 - (d) in sub-paragraph (a) of paragraph (4), after “possession” insert “nitrous oxide or”.

Amendment of Schedule 5

8. 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)”;
 - (b) after paragraph 10 insert—
 - “11. Nitrous oxide.”.

16th October 2023

Chris Philp
Minister of State
Home Office

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Misuse of Drugs Regulations 2001 (S.I. 2001/3998) (“the 2001 Regulations”) to place nitrous oxide, and preparations or products containing nitrous oxide (hereafter referred to as “nitrous oxide”), in Schedule 5 to the 2001 Regulations and to make provision for lawful access to the substance for legitimate purposes, including medical use.

The Schedule to the 2001 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 2001 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 2001 Regulations. Regulation 7 of the 2001 Regulations similarly, generally, permits any person to administer to another person any Schedule 5 controlled drug. However, these regulations (by regulations 4 and 6) exclude nitrous oxide from those general exemptions in the 2001 Regulations.

Instead, new regulation 4C of the 2001 Regulations (inserted by regulation 5) 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 3) defined in regulation 2 of the 2001 Regulations as the purposes of preventative medicine, medical diagnosis or the provision of medical care and treatment.

Additionally, regulation 10 of the 2001 Regulations is amended (by regulation 7) 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 2001 Regulations). It also makes provision for group authorities and/or written authorities to be issued by the Secretary of State to authorise other activities relating to nitrous oxide (regulation 10(3) and (4) of the 2001 Regulations).

Schedule 5 to the 2001 Regulations is amended (by regulation 8) 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 2001 Regulations which relate to the preservation of records relating to, and the furnishing of information with respect to, drugs in Schedules 3 and 5.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector and community bodies is available with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk. Copies may be obtained from the Drug Misuse Unit of the Home Office at 2 Marsham Street, London, SW1P 4DF.