STATUTORY INSTRUMENTS

2008 No. 296

DANGEROUS DRUGS

The Controlled Drugs (Drug Precursors)(Community External 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(**a**), hereby makes the following Regulations:

Citation, commencement and extent

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

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

Interpretation

2. In these Regulations—

"the 1979 Act" means the Customs and Excise Management Act 1979(**b**);

"the 1990 Act" means the Criminal Justice (International Co-operation) Act 1990(**c**);

"the Community Regulation" means Council Regulation (EC) No. 111/2005 dated 22nd December 2004(**d**);

"scheduled substance" (except the first and third references in regulation 5(1)), "import", "export" and "operator" have the same meanings as in the Community Regulation; and

"customs territory of the Community" has the same meaning as in Article 3(**e**) of Council Regulation (EEC) No. 2913/92 dated 12th October 1992(**f**).

(**a**) 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.
(**b**) 1979 c. 2.
(**c**) 1990 c. 5; section 13 has been amended by the Proceeds of Crime Act 2002 (c. 29).
(**d**) O.J. No. L 22, 26.1.2005, p. 1.
(**e**) Article 3(1) was amended by European Parliament and EC Council Regulation 82/97 dated 19th December 1996 (OJ L17, 21.1.97, p. 1) Article 1(1)(a).
(**f**) O.J. No. L 302, 19.10.1992, p. 1.

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 (7), as a reference to the persons specified in those paragraphs.

(2) In Articles 6, 7, 10(3), 11 (except references to competent authorities of the country of destination), 12, 13, 16, 17 (except references to competent authorities of a third country), 19 to 21, 24, 26(5) and 32 of the Community Regulation, the person specified in sub-paragraph 7(d).

(3) In Article 4 of the Community Regulation, any person specified in paragraph 7.

(4) In Articles 8, 14 and 26(1) and (2) of the Community Regulation, any person specified in paragraph 7(b).

(5) In Article 9 of the Community Regulation, any person specified in sub-paragraph 7(c).

(6) In Article 26(3) of the Community Regulation, any person specified in paragraph 7.

(7) The persons specified for the purposes of this paragraph are—

(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) (**a**) 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.

Licences

4. A licence issued by the Secretary of State in accordance with Article 6(1) of the Community Regulation shall be issued for a period not exceeding three years.

Offences and penalties: documentation, labelling, provision of information

5.—(1) Subject to paragraph (2), the obligations imposed under Articles 3 to 5, 8 and 9 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 II 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 this regulation, section 13(5)(a) of the 1990 Act (penalty on summary conviction) shall have effect as if for the words "6 months" there is substituted "3 months".

Requirements, offences and penalties: exports

6.—(1) An operator who is concerned in the export of a scheduled substance that requires a customs declaration shall ensure that he has a valid export authorisation for that export in accordance with Articles 12 to 19 of the Community Regulation.

(2) An operator who is concerned in the export of a scheduled substance shall ensure that he presents an export authorisation to the customs office when the customs declaration is made, or in the absence of a customs declaration, either at the customs office of exit or other competent authorities at the point of exit from the customs territory of the Community as required by Article 14(2) of the Community Regulation.

(3) For the purposes of section 68 of the 1979 Act (offences in relation to exportation of prohibited or restricted goods) any scheduled substances shall be deemed to be exported contrary

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(**a**) 2005 c. 11.

to a restriction for the time being in force with respect to it under these Regulations if it is exported without the requisite authorisation referred to in paragraph (1).

(4) Where a person is convicted of an offence, as a result of the application of paragraph (3), contrary to section 68 of the 1979 Act (offences in relation to exportation of prohibited or restricted goods)—

(a) section 68(1)(**a**) of the 1979 Act shall have effect as if after the word "greater" there is added the words "but not exceeding level 5 on the standard scale";

(b) section 68(3)(a)(**b**) of the 1979 Act shall have effect as if—

(i) after the word "greater" there is added the words "but not exceeding the statutory maximum"; and

(ii) for the words "6 months" there is substituted "3 months";

(c) section 68(3)(b)(**c**) of the 1979 Act shall have effect as if for the words "7 years" there is substituted "2 years".

(5) An operator who fails to comply with any requirement imposed by virtue of this regulation is guilty of an offence and liable to the penalties specified in regulation 9(2).

(6) For the purposes of this regulation section 45 of the Criminal Proceedings Etc. (Reform) (Scotland) Act 2007 (**d**) shall not apply to section 68(3)(a) of the 1979 Act.

Requirements, offences and penalties: imports

7.—(1) An operator who is concerned in the import into the customs territory of the Community of a scheduled substance listed in Category 1 of the Annex to the Community Regulation shall ensure that he has a valid import authorisation for that import in accordance with Articles 20 to 25 of the Community Regulation.

(2) An operator who is concerned in the import into the customs territory of the Community of a scheduled substance listed in Category 1 of the Annex to the Community Regulation shall present the import authorisation obtained in accordance with Article 20 of the Community Regulation to the customs office when the scheduled substances are declared for a customs procedure in accordance with Article 22 of the Community Regulation.

(3) For the purposes of section 50(2) and (3)(**e**) of the 1979 Act (penalty for improper importation of goods) any scheduled substances shall be deemed to be imported contrary to a restriction for the time being in force with respect to it under these Regulations if it is imported without the requisite authorisation referred to in paragraph (1).

(4) Where a person is convicted of an offence, as a result of the application of paragraph (3), contrary to section 50(2) and (3) of the 1979 Act (penalty for improper importation of goods)—

(a) Section 50(4)(a)(**f**) of the 1979 Act shall have effect as if—

(i) after the word "greater" there is added the words "but not exceeding the statutory maximum"; and

(ii) for the words "6 months" there is substituted "3 months";

(b) Section 50(4)(b) of the 1979 Act shall have effect as if for the words "7 years" there is substituted "2 years".

(5) An operator who fails to comply with any requirement imposed by virtue of this regulation is guilty of an offence and liable to the penalties specified in regulation 9(2).

(6) For the purposes of this regulation section 45 of the Criminal Proceedings Etc. (Reform) (Scotland) Act 2007 shall not apply to section 50(4)(a) of the 1979 Act.

(**a**) Section 68(1) was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46.
(**b**) Section 68(3) was amended by the Forgery and Counterfeiting Act 1981 (c. 45), section 23(2).
(**c**) Section 68(3)(b) was amended by the Finance Act 1988 (c. 39), section 12(1), (6).
(**d**) 1007 Asp 6
(**e**) Section 50(2) and (3) were amended by the Police and Criminal Evidence Act 1984 (c. 60), section 114(1).
(**f**) Section 50(4) was amended by S.I. 1996/2686, regulation 4(1)(a) and by the Finance Act1988, section 12(1), (6).

Offences and penalties: licensing and registration

8. An operator who fails to comply with any of the requirements imposed by Article 6 or 7 of the Community Regulation (licensing and registration of operators) is guilty of an offence and liable to the penalties specified in regulation 9(2).

Offences and penalties: general

9.—(1) Any reference in regulation 6, 7 or 8 to a person who fails to comply with any of the requirements of the Community Regulation includes a person, who in purported compliance with the Community Regulation—

(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.

(2) The penalties specified for the purposes of this paragraph are—

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

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

Powers of entry

10. 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) (**a**) shall be exercisable also for the purposes of the execution of Articles 6 and 7 of the Community Regulation and the requirements in regulations 6 and 7, and subsection (3) of that section (excluding paragraph (a)) shall apply also to an offence under regulation 6, 7 or 8, taking references in those subsections to "controlled drugs" as references to "scheduled substances".

Revocations

11.—(1) Subject to paragraph (2), the Controlled Drugs (Substances Useful for Manufacture) Regulations 1991(**b**) and the Controlled Drugs (Substances Useful for Manufacture) (Amendment) Regulations 1992(**c**) are hereby revoked.

(2) The Regulations revoked by paragraph (1) shall continue to have effect in respect of any offence under them committed before these Regulations are commenced.

Home Office
7th February 2008

Vernon Coaker
Parliamentary Under Secretary of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Regulation (EC) No. 111/2005 ("the Community Regulation"). The Community Regulation itself imposes obligations on operators in respect of the documentation, recording and labelling of scheduled substances (substances useful for the manufacture of controlled drugs, known as drug precursors). It also requires operators engaged in

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(**a**) 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).
(**b**) S.I. 1991/1285; as amended by S.I. 1992/2914.
(**c**) S.I. 1992/2914.

the export or import or in intermediary activities involving scheduled substances to have a licence where those substances are in Category 1 of the Annex to the Community Regulation and to register where those substances are in Category 2 of that Annex. It requires operators to notify the competent authorities about their export, import or intermediary activities and about any circumstances which suggest that scheduled substances intended for import, export or intermediary activities might be diverted for the illicit manufacture of narcotic drugs or psychotropic substances. The Community Regulation also imposes obligations on operators to obtain an export authorisation prior to exporting scheduled substances that require a customs declaration and to obtain an import authorisation prior to importing scheduled substances in Category 1 of the Annex to the Community Regulation.

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 to establish that a diversion or attempted diversion of scheduled substances has taken place. 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 limits the validity of a licence issued under Article 6(1) of the Community Regulation to 3 years. The power to make this provision is found at Article 9 of the Commission Regulation (EC) no 1277/2005. Regulation 5 of these Regulations provides that the requirements under Articles 3 to 5, 8, 9, 14 and 22 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") so that it will be a criminal offence to breach these requirements. The 1990 Act provides for penalties for breaches of regulations made under section 13(1) of that Act and regulation 5(3) of these Regulations modifies that penalty in respect of the requirements under Articles 3 to 5, 8, 9, 14 and 22 of the Community Regulation. Penalties under sections 50 and 68 of the Customs and Excise Management Act 1979 will apply to breaches of Articles 20 and 12 of the Community Regulation respectively, subject to those specific modifications made to those penalties by regulations 6(4) and 7(4) of these Regulations. Regulations 6(5) and 7(5) of these Regulations provide that it will be an offence to fail to comply with any requirements specified in regulations 6 and 7. Regulation 8 of these Regulations provides that it is an offence to fail to comply with the requirements of Article 6 or 7 of the Community Regulation. Regulation 9(2) of these Regulations specifies the penalty in respect of an offence under regulation 6(5), 7(5) or 8 of these Regulations. These Regulations therefore enable breaches of the Community Regulation to be penalised.

Regulation 10 of these Regulations applies, for the purposes of executing Articles 6 and 7 of the Community Regulation and regulations 6 and 7 of these Regulations, 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 11 of these Regulations revokes the Controlled Drugs (Substances Useful for Manufacture) Regulations 1991 ("the 1991 Regulations") and the Controlled Drugs (Substances Useful for Manufacture) (Amendment) Regulations 1992 but provides that the 1991 Regulations will continue to have effect in respect of any offence committed under them before the commencement of these Regulations.

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