EXPLANATORY MEMORANDUM

The Misuse of Drugs (Amendment)(Revocation) Regulations (Northern Ireland) 2022

S.R. 2022 No. 176

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Health to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule (SR) is made under section sections 7, 10, 22 and 31 of the Misuse of Drugs Act 1971 (the 1971 Act) as adapted by sections 7(9), 31(4) and 38 of that Act and now vested in it and after consultation with the Advisory Council on the Misuse of Drugs in accordance with section 31(3) of that Act.

1.3 This SR is subject to negative resolution before the Northern Ireland Assembly.

2. Purpose of the Regulations

2.1 The purpose of this SR is to revoke The Misuse of Drugs (Amendment No.2) Regulations (Northern Ireland) 2021 on 14 June 2022, in order to maintain parity with England, Wales and Scotland, and to ensure parity for businesses using Gamma-Butyrolactone (GBL) and 1,4-Butanediol (1,4-BD) in NI with the rest of the UK. This revocation SR will ensure that from 14 June 2022, no NI business will require a licence for GBL or 1,4-BD.

3. Background and Legislative Context

3.1 The UK Government laid a Statutory Instrument (SI), The Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2021, to increase controls on (GBL) and (1,4-BD) on the 15 December 2021, which is due to come into force on the 15 June 2022.

3.2 In order to maintain alignment with controlled drugs legislation in England, Wales and Scotland, the Department of Health (DoH) laid a mirroring SR in the NI Assembly on the same date, The Misuse of Drugs (Amendment No. 2) Regulations (Northern Ireland) 2021 No. 342 which is due to come into operation on the 15 June 2022.

3.3 The above named SI and SR were designed to place GBL and 1,4-BD into Schedule 1, to the Misuse of Drugs Regulations 2001 in England, Wales and Scotland and the Misuse of Drugs (NI) Regulations 2002 in Northern Ireland, and to remove an exemption that made certain activities in relation to GBL and 1,4-BD lawful, effectively closing a legal loophole whereby individuals could freely purchase these substances online. Should both sets of regulations be commenced, businesses in England, Wales and Scotland and in Northern Ireland, seeking to import/export, possess, supply or produce GBL and 1,4-BD would require a controlled drug licence to do so.

3.4 Once the legislation was laid, negative impact concerns were raised by legitimate industry users, which revealed a greater breadth and scale of the use of these substances in a much wider set of products that contain them in trace amounts or in a blend or solution, (such as inks, food flavourings and pesticides). This highlighted that, the impact of the legislation, while based on the available information available from the sector at that time, had been significantly underestimated. As a result, the UK Government has decided to revoke The Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2021 and to consult with industry before making further legislation.

3.5 These revocation regulations will revoke the equivalent NI legislation The Misuse of Drugs (Amendment No. 2) Regulations (Northern Ireland) 2021 to ensure parity with England, Wales and Scotland.

3.6 By revoking both The Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2021 and the Misuse of Drugs (Amendment No.2) Regulations (Northern Ireland) 2021, without replacing them immediately, no business in GB or NI will require a licence for GBL or 1,4-BD from 15 June 2022, when they were otherwise due to come into force.

3.7 These revocation regulations will come into operation from 14 June 2022.

4. Consultation

4.1 These revocation regulations have not been subject to consultation as they are considered necessary in order to maintain parity with England, Wales and Scotland so that NI businesses will not require a licence for GBL or 1,4-BD from 15 June 2022. Post revocation, and prior to making new regulations, a UK wide public consultation will be conducted on how best to achieve the intended outcome of preventing the sale of bogus industrial products intended for illicit use, whilst mitigating the impact on legitimate industry users of GBL and 1,4-BD.

5. Equality impact

5.1 The Department of Health has concluded that the proposed amendments will not have a significant impact on equality of opportunity for any group referred to in section 75 of the Northern Ireland Act 1998 and a full Equality Impact Assessment has not been considered necessary.

6. Regulatory impact

6.1 The Statutory Rule will have negligible cost impact on businesses, charities, social economy enterprises, or the voluntary sector in Northern Ireland.

7. Financial implications

7.1 As highlighted above, no business in NI will require a licence for GBL or 1,4-BD from 14 June 2022.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department of Health has considered section 24 of the Northern Ireland Act 1998 and is satisfied that this Statutory Rule is not incompatible with any of the Convention rights; is not incompatible with Community law; does not discriminate against a person or class of person on the grounds of religious belief or political opinion; and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU implications

9.1 There are no anticipated EU implications as a result of these amendments.

10. Parity or Replicatory Measure

10.1 The provisions included in this revocation SR seek to replicate a revocation to The Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2021 being take forward by Home Office, and will ensure that the legislative arrangements in the equivalent NI legislation will be in line with GB.

11. Additional information

11.1 Not applicable.