

## SCHEDULES

### SCHEDULE 17

Section 151

#### TEMPORARY CLASS DRUG ORDERS

##### *Amendments of the Misuse of Drugs Act 1971*

- 1 The Misuse of Drugs Act 1971 is amended in accordance with paragraphs 2 to 20.
- 2 In section 2 (controlled drugs and their classification for purposes of Act), in subsection (1)—
  - (a) in paragraph (a), for the words after “specified” substitute “—
    - (i) in Part I, II or III of Schedule 2, or
    - (ii) in a temporary class drug order as a drug subject to temporary control (but this is subject to section 2A(6));”, and
  - (b) at the end of paragraph (b) insert “, and
  - (c) the expression “temporary class drug” means any substance or product which is for the time being a controlled drug by virtue of a temporary class drug order;”.
- 3 After section 2 insert—

##### **“2A Temporary class drug orders**

- (1) The Secretary of State may make an order (referred to in this Act as a “temporary class drug order”) specifying any substance or product as a drug subject to temporary control if the following two conditions are met.
- (2) The first condition is that the substance or product is not a Class A drug, a Class B drug or a Class C drug.
- (3) The second condition is that—
  - (a) the Secretary of State has consulted in accordance with section 2B and has determined that the order should be made, or
  - (b) the Secretary of State has received a recommendation under that section that the order should be made.
- (4) The Secretary of State may make the determination mentioned in subsection (3)(a) only if it appears to the Secretary of State that—
  - (a) the substance or product is a drug that is being, or is likely to be, misused, and
  - (b) that misuse is having, or is capable of having, harmful effects.
- (5) A substance or product may be specified in a temporary class drug order by reference to—
  - (a) the name of the substance or product, or

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- (b) a description of the substance or product (which may take such form as the Secretary of State thinks appropriate for the purposes of the specification).
- (6) A substance or product specified in a temporary class drug order as a drug subject to temporary control ceases to be a controlled drug by virtue of the order—
  - (a) at the end of one year beginning with the day on which the order comes into force, or
  - (b) if earlier, upon the coming into force of an Order in Council under section 2(2) by virtue of which the substance or product is specified in Part 1, 2 or 3 of Schedule 2.
- (7) Subsection (6)—
  - (a) is subject to subsection (10), and
  - (b) is without prejudice to the power of the Secretary of State to vary or revoke a temporary class drug order by a further order.
- (8) The power of the Secretary of State to make an order under this section is subject to section 2B.
- (9) An order under this section is to be made by statutory instrument.
- (10) An order under this section—
  - (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the period of 40 days beginning with the day on which the order is made unless before the end of that period the order is approved by a resolution of each House of Parliament.
- (11) In calculating that period of 40 days no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (12) Subsection (10)(b)—
  - (a) is without prejudice to anything previously done or to the power of the Secretary of State to make a new order under this section;
  - (b) does not apply to an order that only revokes a previous order under this section.

## **2B Orders under section 2A: role of Advisory Council etc**

- (1) Before making an order under section 2A the Secretary of State—
  - (a) must consult as mentioned in subsection (2), or
  - (b) must have received a recommendation from the Advisory Council to make the order.
- (2) The Secretary of State must consult—
  - (a) the Advisory Council, or
  - (b) if the order is to be made under section 2A(1) and the urgency condition applies, the person mentioned in subsection (3).
- (3) The person referred to in subsection (2)(b) is—

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- (a) the person who is for the time being the chairman of the Advisory Council appointed under paragraph 1(3) of Schedule 1, or
  - (b) if that person has delegated the function of responding to consultation under subsection (1)(a) to another member of the Advisory Council, that other member.
- (4) The “urgency condition” applies if it appears to the Secretary of State that the misuse of the substance or product to be specified in the order as a drug subject to temporary control, or the likelihood of its misuse, poses an urgent and significant threat to public safety or health.
- (5) The duty of the Advisory Council or any other person consulted under subsection (1)(a) is limited to giving to the Secretary of State that person’s opinion as to whether the order in question should be made.
- (6) A recommendation under subsection (1)(b) that a temporary class drug order should be made may be given by the Advisory Council only if it appears to the Council that—
  - (a) the substance or product is a drug that is being, or is likely to be, misused, and
  - (b) that misuse is having, or is capable of having, harmful effects.”.
- 4 In section 3 (restriction of importation and exportation of controlled drugs), in subsection (2)(a) after “this Act” insert “or by provision made in a temporary class drug order by virtue of section 7A”.
- 5 In section 4(1) (restriction of production and supply of controlled drugs), after “this Act” insert “, or any provision made in a temporary class drug order by virtue of section 7A,”.
- 6 In section 5 (restriction of possession of controlled drugs), after subsection (2) insert—

“(2A) Subsections (1) and (2) do not apply in relation to a temporary class drug.”.
- 7 In section 7 (authorisation of activities otherwise unlawful under foregoing provisions of Act), after subsection (9) insert—

“(10) In this section a reference to “controlled drugs” does not include a reference to temporary class drugs (see instead section 7A).”.
- 8 After section 7 insert—

**“7A Temporary class drug orders: power to make further provision**

- (1) This section applies if a temporary class drug order specifies a substance or product as a drug subject to temporary control.
- (2) The order may—
  - (a) include provision for the exception of the drug from the application of section 3(1)(a) or (b) or 4(1)(a) or (b),
  - (b) make such other provision as the Secretary of State thinks fit for the purpose of making it lawful for persons to do things in respect of the drug which under section 4(1) it would otherwise be unlawful for them to do,

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- (c) provide for circumstances in which a person's possession of the drug is to be treated as excepted possession for the purposes of this Act, and
  - (d) include any provision in relation to the drug of a kind that could be made in regulations under section 10 or 22 if the drug were a Class A drug, a Class B drug or a Class C drug (but ignoring section 31(3)).
- (3) Provision under subsection (2) may take the form of applying (with or without modifications) any provision made in regulations under section 7(1), 10 or 22.
- (4) Provision under subsection (2)(b) may (in particular) provide for the doing of something to be lawful if it is done—
  - (a) in circumstances mentioned in section 7(2)(a), or
  - (b) in compliance with such conditions as may be prescribed by virtue of section 7(2)(b).
- (5) Section 7(8) applies for the purposes of this section.
- (6) Section 31(1) (general provision as to regulations) applies in relation to a temporary class drug order that contains provision made by virtue of this section as it applies to regulations under this Act.”
- 9 In section 9A (prohibition of supply etc of articles for administering or preparing controlled drugs), in subsection (4)—
  - (a) at the end of paragraph (a) omit “or”,
  - (b) in paragraph (b) after “of a controlled drug” insert “, other than a temporary class drug,”, and
  - (c) at the end of that paragraph insert “, or
    - (c) the administration by any person of a temporary class drug to himself in circumstances where having the drug in his possession is to be treated as excepted possession for the purposes of this Act (see section 7A(2)(c)).”.
- 10 In section 10 (power to make regulations for preventing misuse of controlled drugs), after subsection (2) insert—
 

“(3) In this section a reference to “controlled drugs” does not include a reference to temporary class drugs (see instead section 7A).”.
- 11 In section 11 (power to direct special precautions for safe custody of controlled drugs to be taken at certain premises), in subsection (1) after “of this Act” insert “or by provision made in a temporary class drug order by virtue of section 7A that is of a corresponding description to such regulations”.
- 12 (1) Section 13 (directions prohibiting prescribing, supply etc of controlled drugs by practitioners in other cases) is amended as follows.
  - (2) In subsection (1)—
    - (a) after “section 10(2) of this Act” insert “or of corresponding provision made in a temporary class drug order”, and
    - (b) after “said paragraph (i)” insert “or of any such corresponding provision”.
  - (3) After subsection (1) insert—

- “(1A) For the purposes of subsection (1), provision made in a temporary class drug order is “corresponding provision” if it—
- (a) is made by virtue of section 7A(2)(d), and
  - (b) is of a corresponding description to regulations made in pursuance of section 10(2)(h) or (as the case may be) 10(2)(i).”.
- 13 In section 18 (miscellaneous offences), after subsection (4) insert—
- “(5) In this section (and in references in Schedule 4 that refer to this section), any reference to regulations made under this Act is to be taken as including a reference to provision made in a temporary class drug order by virtue of section 7A.
- (6) For this purpose, a reference in subsection (1) or (2) to regulations made in pursuance of section 10(2)(h) or (i) is a reference to any provision of a temporary class drug order which—
- (a) is made by virtue of section 7A(2)(d), and
  - (b) is of a corresponding description to regulations made in pursuance of section 10(2)(h) or (as the case may be) (i).”.
- 14 In section 22 (further power to make regulations)—
- (a) renumber the existing provision as subsection (1), and
  - (b) after that subsection insert—
- “(2) The power to make regulations under this section does not apply in relation to temporary class drugs (see instead section 7A).”.
- 15 (1) Section 23 (powers to search and obtain evidence) is amended as follows.
- (2) In subsection (2) after “any regulations” insert “or orders”.
- (3) In subsection (3)(a) after “any regulations” insert “or orders”.
- 16 After section 23 insert—

**“23A Temporary class drugs: further power to search, seize and detain**

- (1) Subsection (3) applies in any case where—
- (a) a constable has reasonable grounds to suspect that a person (“P”) is in possession of a temporary class drug, and
  - (b) it does not appear to the constable that a power under section 23(2) applies to the case.
- (2) But if any provision has been made by virtue of section 7A(2)(c) (excepted possession) that applies to the temporary class drug in question, subsection (3) applies only if the constable has no reason to believe that P’s possession of the drug is to be treated as excepted possession for the purposes of this Act.
- (3) The constable may—
- (a) search P, and detain P for the purposes of searching P;
  - (b) search any vehicle or vessel in which the constable suspects that the drug may be found, and for that purpose require the person in control of the vehicle or vessel to stop it;

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- (c) seize and detain anything found in the course of the search which appears to the constable to be a temporary class drug or to be evidence of an offence under this Act.

In this subsection, “vessel” has the same meaning as in section 23(2).

- (4) Subsection (5) applies if a constable reasonably believes that anything detained under subsection (3)(c) is a temporary class drug but is not evidence of any offence under this Act.
- (5) The constable may dispose of the drug in such manner as the constable thinks appropriate.
- (6) A person who intentionally obstructs a constable in the exercise of the constable’s powers under subsection (3) commits an offence.”.

17 (1) Section 25 (prosecution and punishment of offences) is amended as follows.

(2) After subsection (2) insert—

“(2A) Subsection (2B) applies if an offence specified in the first column of Schedule 4 is committed in relation to a temporary class drug.

(2B) The punishments which may be imposed on a person convicted of the offence summarily or (as the case may be) on indictment in relation to the temporary class drug are the same as those which could be imposed had the person been convicted of the offence in that way in relation to a Class B drug (see the fifth column of Schedule 4).”.

(3) After subsection (3) insert—

“(3A) The punishments which may be imposed on a person convicted of an offence under section 23A(6) are the same as those which, under Schedule 4, may be imposed on a person convicted of an offence under section 23(4).”.

18 In section 30 (licenses and authorities) after “of regulations” insert “or orders”.

19 In section 37(1) (interpretation), after the definition of “supplying” insert—

““temporary class drug order” means an order made under section 2A(1);”.

20 In section 38(1) (special provisions as to Northern Ireland) for “2, 7,” substitute “2, 2A, 2B, 7, 7A,”.

#### *Amendments of other legislation*

21 In Schedule 1 to the Customs and Excise Management Act 1979 (controlled drugs: variation of punishments for certain offences)—

(a) in paragraph 1—

(i) in the opening words for “or a Class B drug” substitute “, Class B drug or a temporary class drug”, and

(ii) in paragraph (b)(ii) of the substituted words after “Class B drug” insert “or a temporary class drug”, and

(b) in paragraph 3, for “and “Class C drug”” substitute “, “Class C drug” and “temporary class drug””.

- 22 In section 19 of the Criminal Justice (International Co-operation) Act 1990 (ships used for illicit traffic), in subsection (4)(b) after “Class B drug” insert “or a temporary class drug”.