

EXPLANATORY STATEMENT

CUSTOMS ACT 1901

CUSTOMS (PROHIBITED IMPORTS) REGULATIONS (AMENDMENT)

STATUTORY RULES 1988 NO. 374

ISSUED BY THE AUTHORITY OF THE MINISTER OF STATE FOR SCIENCE,
CUSTOMS AND SMALL BUSINESS

These Statutory Rules give the Secretary of the Department of Community Services and Health the power to authorise other officers to exercise certain of the numerous administrative functions entrusted to the Secretary under the Customs (Prohibited Imports) Regulations (the Regulations) in relation to the importation of therapeutic goods.

Recent advice from the Attorney-General's Department was to the effect that in the absence of an express provision in the Regulations, the Secretary had no general power to delegate his powers under the Regulations, nor authorise another officer to exercise his powers on his behalf.

In the interests of administrative convenience and efficiency therefore, the amendments to the Regulations, as detailed below, to so delegate the Secretary's powers have been made. The Statutory Rules ensure that the same avenues of appeal under regulation 5G which exist in relation to the decisions of the Secretary, apply in relation to decisions of authorised persons.

Details of the Regulations are as follows:

Regulation 1: is a machinery provision which defines the Customs (Prohibited Imports) Regulations as the "Principal Regulations" for the purposes of these Statutory Rules.

Regulation 2: amends regulation 5A of the Principal Regulations by inserting a new subregulation 5A(8) which defines the term "authorised person" to mean, a person authorised in writing by the Secretary of the Department of Community Services and Health to be an authorised person for the purposes of Regulation 5A. This definition is similar to that used in other Customs (Prohibited Imports) and Customs (Prohibited Exports) Regulations. (See for instance regulation 4C of the Customs (Prohibited Imports) Regulations).

- . The Schedule to these Statutory Rules must be read in conjunction with this regulation, as it provides for the words "or an authorised person" or "or authorised person", as appropriate, to be inserted after "Secretary of the Department of Community Services and Health" in subregulations 5A(1), 5A(3) and 5A(4).

This allows persons authorised by the Secretary to grant permissions to import therapeutic substances. (See Regulation 8 for the right of appeal against a decision of an authorised person).

Regulation 3: amends regulation 5B of the Principal Regulations by inserting a new subregulation 5B(5) which defines the term "authorised person" for the purposes of regulation 5B. (The definition is the same as that used in regulation 5A, for which comment is made in Regulation 2).

- . The Schedule to these Statutory Rules must be read in conjunction with this regulation, as it provides for the words "or an authorised person" or "or authorised person", as appropriate, to be inserted after "Secretary of the Department of Community Services and Health" in subregulations 5B(1) and 5B(2), where first occurring, paragraphs 5B(2)(a), and (b), and subregulation 5B(2A), where first occurring and paragraph 5B(2A)(b), wherever occurring, and subregulations, 5B(2C) and 5B(4).

This allows persons authorised by the Secretary to grant applicants a licence to import therapeutic substances. (See Regulation 8 for the right of appeal against a decision of an authorised person).

Regulation 4: amends regulation 5C of the Principal Regulations by inserting in subregulation 5C(1) a definition of "authorised person" for the purposes of regulation 5E. (The definition is the same as that used in regulation 5A, for which comment is made in Regulation 2).

- . The Schedule to these Statutory Rules must be read in conjunction with this regulation, as it provides for the words "or an authorised person" to be inserted after "Secretary of the Department of Community Services and Health" in subregulation 5C(4).

This allows persons authorised by the Secretary to approve the disposal of designated therapeutic substances. (See Regulation 8 for the right of appeal against a decision of an authorised person).

Regulation 5: amends regulation 5D of the Principal Regulations by inserting a new subregulation 5D(6) which defines the term "authorised person" for the purposes of regulation 5E. (The definition is the same as that used in regulation 5A, for which comment is made in Regulation 2).

- . The Schedule to these Statutory Rules must be read in conjunction with this regulation, as it provides for the words "or an authorised person" to be inserted after "Secretary of the Department of Community Services and Health" in subparagraph 5D(1)(b)(i).

This amendment is consequential upon regulation 5E (which deals with the disposal of designated therapeutic substances) as subparagraph 5D(1)(b)(i) provides that it is a condition of a licence granted to a person under regulation 5B that the person shall not dispose of certain designated therapeutic substances without the approval of the Secretary, or now, an authorised person. (See Regulation 8 for the right of appeal against a decision of an authorised person).

Regulation 6: amends regulation 5E of the Principal Regulations by inserting a new subregulation 5E(6) which defines the term "authorised person" for the purposes of Regulation 5E. (The definition is the same as that used in regulation 5A, for which comment is made in Regulation 2).

- . The Schedule to these Statutory Rules must be read in conjunction with this regulation, as it provides for the words "or an authorised person" or "or authorised person" as appropriate, to be inserted in subregulations 5E(2), 5E(3), 5E(3A), and 5E(4), where first, second, third, fourth and sixth occurring.

This amendment allows persons authorised by the Secretary to approve the disposal of designated therapeutic substances. (See Regulation 8 for the right of appeal against a decision of an authorised person).

Regulation 7: amends regulation 5F of the Principal Regulations by inserting a new subregulation 5F(4) which defines the term "authorised person" for the purposes of regulation 5F. (The definition is the same as that used in regulation 5A, for which comment is made in Regulation 2).

- . The Schedule to these Statutory Rules must be read in conjunction with this regulation, as it provides for the words "or an authorised person" or "or authorised person" as appropriate, to be inserted in subregulation 5F(1), where first and second occurring, paragraphs 5F(2)(a) and (b) and subregulation 5F(3), where first and second occurring.

This amendment ensures that when an authorised person makes certain decisions, such as refusing a permission to import therapeutic substances, that person has an obligation to furnish a statement of reasons.

Regulation 8: amends regulation 5G of the Principal Regulations by inserting a new subregulation 5G(10) which defines the term "authorised person" for the purposes of regulation 5A, 5B, or 5E. (The definition is the same as that used in regulation 5A, for which comment is made in Regulation 2).

- . The Schedule to these Statutory Rules must be read in conjunction with this regulation, as it provides for the words "or an authorised person" or "or authorised person" as appropriate, to be inserted in subregulation 5G(1), 5G(2),

5G(3), 5G(4), where first occurring, 5G(5), where first, second and third occurring, and 5G(8), where first, second and third occurring.

This amendment ensures that a person who is aggrieved by certain decisions of an authorised person, for example, to refuse a person permission to import therapeutic substances, may request the Minister of State for Community Services and Health to review the decision.

Regulation 9: provides that further amendments to the Principal Regulations are set out in the Schedule to these Statutory Rules.

The Schedule: amends regulations 5A, 5B, 5C, 5E, 5F and 5G of the Principal Regulations by inserting the words "or an authorised person" or "or authorised person", as appropriate, after certain references to the "Secretary of the Department of Community Services and Health". These amendments are discussed further under the respective explanations to the regulations themselves.

(S.R. 353/88)