

Interpretation of Article 23a and Article 24 (4-6) of Directive 2001/83EC – the so-called “Sunset Clause”

Legal basis

1. Under Article 23a of Directive 2001/83EC, as inserted by Article 1(22) of Directive 2004/27EC, the Marketing Authorisation (MA) holder is required to notify the competent authority (MHRA in the UK) of the date of actual marketing of the medicinal product, taking account of the various presentations authorised, and to notify the competent authority if the product ceases to be placed on the market either temporarily or permanently. Except in exceptional circumstances, the notification must be made no less than two months before the interruption in supply or removal from the market. This provision has been introduced to avoid the administrative burden associated with maintaining such authorisations.

2. Under Article 24 (4-6) of Directive 2001/83EC, as inserted by Article 1(23) of Directive 2004/27EC, any marketing authorisation which, within three years of granting, is not followed by the placing on the market of the authorised product will cease to be valid. In respect of generic medicinal products, the three year period will start on the date of the grant of the authorisation, or at the end of the period of market exclusivity or patent protection of the reference product, whichever is the later date. If a product is placed on the market after authorisation (see paragraph 7), but subsequently ceases to be placed on the market in the UK for a period of three consecutive years, it will also cease to be valid.

3. Similar provisions in Regulation (EC) 726/2004 of the European Parliament and the Commission apply to medicinal products authorised under the Centralised Procedure. “Sunset clause” notifications of the placing on the market, and the temporary or permanent discontinuation of marketing of these medicinal products should be made to the EMEA. The policy described in this note applies only to medicinal products authorised under national, mutual recognition and decentralised procedures (MRP and DCP). However, as the Department of Health has an interest in the availability of centrally authorised products for supply to the NHS, MA holders should continue to notify them about interruptions and cessations of marketing of these products in accordance with their guidelines (see paragraph 10 below).

Products not marketed for 3 years

4. When the MHRA is aware of the imminent expiry of the three year period, it will notify the marketing authorisation holder in advance that his marketing authorisation will cease to be valid. The MHRA will notify the marketing authorisation holder in both scenarios referred to in the previous paragraph – i.e. both when a product has had a marketing authorisation for three years but has not been on the market at all, and when a product had been placed on the market, but has subsequently not been placed on the market for a consecutive period of three years.

Exceptional circumstances

5. In exceptional circumstances, and on public health grounds, the MHRA may grant an exemption from the invalidation of the MA after three years. Whether there are exceptional circumstances and public health grounds for an exemption will be assessed on a case by case basis. When assessing such cases, MHRA will, in particular, consider the implications for patients and public health more generally of an MA no longer being valid. In line with the interpretation of the Coordination Group for the Mutual Recognition and Decentralised Procedures (Human) – the CMD(h) - the MHRA will consider applications for exemption from invalidation of the MA after three years (a) in cases where the medicinal product has been granted under the Mutual Recognition or Decentralised Procedures with the UK as the Reference Member State but the product is no longer on the UK market and (b) in cases where the UK MA is held only so that the MA holder may export his product to one or more 3rd countries (ie countries outside the European Economic Area). The MHRA will also consider applications for exemption from invalidation of the MA in circumstances when a medicinal product has been voluntarily removed from the market for three years while safety concerns remain under consideration.

Failure to comply

6. These provisions are implemented in the UK by regulation 7 of, and Schedule 3 to, the Medicines for Human Use (Marketing Authorisations etc) Regulations 1994, as amended; in particular, paragraph 6(cc) and 6B of Schedule 3 each provide that breach of the relevant notification obligation by a UK MA holder constitutes a criminal offence. Failure to notify a cessation or interruption, or failure to notify within the time limit is, however, not an offence if the MA holder took all reasonable precautions and exercised all due diligence to avoid such a failure.

Notifications

7. In accordance with the MHRA's interpretation of the expression "placing on the market" when used elsewhere in the Directive, the MHRA's view is that a product is "placed on the market" at the first transaction by which the product enters the distribution chain in the UK. The MA holder must therefore notify the MHRA when a product with a new MA is first placed into the distribution chain, rather than the first date on which it becomes available to individual patients. The MHRA requests that you notify us of this first "placing on the market" within one calendar month. In order to ensure that a MA continues to be valid, the MA holder must ensure that at least one packaging presentation (e.g. bottle or blister pack) of the product, which can include own label supplies (ie a product supplied with an alternative company livery to that of the MA holder), authorised under that MA is present on the market.

8. The MA holder must report all cessations/interruptions to the MHRA. However, the MHRA does not need to be notified of the following:

(a) Normal seasonal changes in manufacturing and/or distribution schedules (such as cold and 'flu remedies);

(b) Short term temporary interruptions in placing on the market that will not affect normal availability to distributors.

9. If you are in doubt about whether or not you need to notify an interruption in supply, you should err on the side of caution and report it to the MHRA in the normal way. You must notify the MHRA if any of the presentations authorised under a single MA cease to be placed on the market either temporarily or permanently, but, as stated above, the absence of availability of one or more presentations – as long as one presentation of the product (e.g. bottle or blister strip) authorised under the single MA remains on the market – will not invalidate the MA. Problems relating to manufacturing or assembly should also be discussed with the appropriate GMP Inspector and issues of availability of medicines relating to suspected or confirmed product defects should be directly notified to, and discussed with, the Defective Medicines Reporting Centre (Tel: 020 3080 6574).

10. The Department of Health also has an interest in the availability of products for supply to the NHS, and together with the Association of the British Pharmaceutical Industry (ABPI) and the British Generic Manufacturers Association (BGMA), has developed best practice guidelines for notifying medicine shortages. These guidelines, together with DH/ABPI guidelines “Ensuring Best Practice in the Notification of Product Discontinuations” complement the statutory requirements under the European legislation. MA holders should therefore continue to notify the Department of Health about interruptions and cessations of marketing in accordance with these guidelines. The Department of Health guidelines are available on their website at:

www.dh.gov.uk/medicinesupply

Ensuring appropriate and continued supplies

11. In this context, your attention is also drawn to Article 81 of Directive 2001/83EC as substituted by Article 1 (57) of Directive 2004/27EC, under which the MA holder and the distributors of a medicinal product actually placed on the market shall, within the limits of their responsibilities, ensure appropriate and continued supplies of that medicinal product to pharmacies and persons authorised to supply medicinal products so that the needs of patients in the Member State in question are covered. Failure by a MA holder to comply with this obligation is a criminal offence, unless the MA holder took all reasonable precautions and exercised all due diligence to avoid such a failure.

Contacting the MHRA

12. Until the MHRA has made the necessary changes to enable notifications to be made electronically, you should send notifications associated with this policy statement by email to the following dedicated mailbox at the MHRA

to: sunsetclause@mhra.gsi.gov.uk