
STATUTORY RULES OF NORTHERN IRELAND

2014 No. 224

**The Control of Explosives Precursors
etc. Regulations (Northern Ireland) 2014**

PART 7

Application, enforcement and supplemental

Application within the territorial sea and a designated area

17. These Regulations apply within the territorial sea and a designated area only to and in relation to the possession, acquisition, use or supply of a substance on premises to which, or in relation to which, any of paragraphs 2 to 9 of Schedule 2 applies.

Application of enforcement provisions in the 1978 Order

18.—(1) The following provisions of the 1978 Order⁽¹⁾ apply to Articles 4(1), 5, 9(3) and 9(4) of the Precursors Regulation as if they were health and safety regulations for the purposes of the 1978 Order, except that these Articles shall not apply to duties placed by the Precursors Regulation on the competent authority or the member State—

- (a) Articles 20 to 30 (enforcement; obtaining and disclosure of information);
- (b) subject to regulations 20 to 22, Articles 31 to 39 (provisions as to offences);
- (c) Article 43(2) (civil liability).

(2) Any function of the Secretary of State under any other provision of the 1978 Order in respect of health and safety regulations (including their enforcement) is exercisable as if the Precursors Regulation were health and safety regulations for the purposes of that Order.

Enforcement

19.—(1) Subject to paragraph (2), the Secretary of State is the enforcing authority for these Regulations and the Precursors Regulation as they apply within Northern Ireland and within the territorial sea.

- (2) The enforcing authority for regulation 15 and Article 5 of the Precursors Regulation is—
- (a) the Health and Safety Executive for Northern Ireland, other than in the circumstances referred to in sub-paragraph (b);

(1) Articles 20 to 39 were amended by Part 3 of the Schedule to the Forgery and Counterfeiting Act 1981 (c. 45); S.I. 1984/1159 (N.I. 9); S.I. 1986/1883 (N.I. 15); S.I. 1987/2049 (N.I. 20); S.I. 1988/595 (N.I. 3); S.I. 1992/1728 (N.I. 17); S.I. 1998/2795 (N.I. 18); paragraph 27 of Schedule 29 to the Civil Partnership Act 2004 (c. 33); paragraph 19 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11); S.I. 2006/1254 (N.I. 9); S.I. 2006/3336 (N.I. 21); section 1 of, and Schedule 3 to, the Health and Safety (Offences) Act 2008 (c. 20).

- (b) the Department of Health, Social Services and Public Safety, where the substance is supplied in or from premises which are registered under section 75 of the Medicines Act 1968(2).

Defence of due diligence

20.—(1) Subject to paragraphs (2) and (3), in any proceedings for an offence under Article 31 of the 1978 Order for a contravention of regulations 13 or 15, or of Articles 5, 9(3) or 9(4) of the Precursors Regulation (by virtue of regulation 18), it is a defence for the person charged (“P”) to prove—

- (a) that the commission of the offence was due to the act or default of another person, not being one of P’s employees (the “other person”); and
- (b) that P took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) P is not, without the leave of the court, entitled to rely on the defence in paragraph (1) unless, not less than 7 days before the hearing, P has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in P’s possession.

(3) For the purpose of enabling the other person to be charged with and convicted of the offence by virtue of Article 34 of the 1978 Order, a person who establishes a defence under this regulation shall nevertheless be treated for the purposes of that Article as having committed the offence.

Proof of lack of knowledge

21.—(1) Subject to paragraph (3), in any proceedings for an Article 4(1) offence or a regulation 13 offence, it is a defence for the accused to prove that the accused neither knew of nor suspected nor had reason to suspect the existence of some fact alleged by the prosecution that it is necessary to prove if the accused is to be convicted of the offence charged.

(2) Paragraph (3) applies where, in any proceedings for an Article 4(1) offence or a regulation 13 offence—

- (a) it is necessary, if the accused is to be convicted of the offence charged, for the prosecution to prove that some substance or mixture involved in the alleged offence was the tier 2 substance that the prosecution allege it to have been, and
- (b) it is proved that the substance or mixture in question was that tier 2 substance.

(3) Where this paragraph applies—

- (a) the accused must not be acquitted of the offence charged by reason only of proving that the accused neither knew nor suspected nor had reason to suspect that the substance or mixture was the particular tier 2 substance alleged, but
- (b) the accused must be acquitted of the offence charged if—

- (i) the accused proves that the accused neither believed nor suspected nor had reason to suspect that the substance or mixture was a tier 2 substance, or
- (ii) the accused proves that the accused believed the substance or mixture to be a tier 2 substance such that, if it had in fact been that tier 2 substance, the accused would not at the material time have been committing any offence to which this regulation applies.

(4) In this regulation—

“an Article 4(1) offence” means an offence under Article 31 of the 1978 Order for a contravention of Article 4(1) of the Precursors Regulation (by virtue of regulation 18); and

“a regulation 13 offence” means an offence under Article 31 of the 1978 Order for a contravention of regulation 13.

General defences

22. Nothing in regulation 20 or 21 affects any defence that it is open to a person charged with an offence to which those regulations apply to raise apart from those regulations.

Penalties

23. A person guilty of an offence under Article 31 of the 1978 Order for a contravention of any the following is liable on summary conviction to a fine not exceeding level 2 on the standard scale—

- (a) any of the terms and conditions as may be specified in a licence in respect of one or more tier 2 substances under regulation 5;
- (b) regulation 12(7);
- (c) regulation 13(3).

Guidance

24.—(1) The Secretary of State may issue guidance relating to—

- (a) applications for licences under these Regulations (including provisions as to signatures);
- (b) the grant and enforcement of licences under these Regulations;
- (c) the obligations of suppliers under these Regulations and Articles 5 and 9 of the Precursors Regulation (incorporating any guidance issued by the European Commission in accordance with those Articles).

(2) The Secretary of State may, from time to time, revise the guidance issued under paragraph (1).

(3) Before issuing or revising any guidance under this regulation, the Secretary of State must consult the Chief Constable, the Health and Safety Executive for Northern Ireland and such other persons as the Secretary of State thinks appropriate.

(4) The Secretary of State must publish any guidance issued or revised under this article.

Review of the regulations

25.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how other member States have implemented the Precursors Regulation, which these Regulations implement in part.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and

- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of four years beginning with the day on which these Regulations come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Provision of documents

- 26.**—(1) The Secretary of State may provide in guidance under regulation 24 that the requirement in regulation 6(4)(a) to provide a document is satisfied by the provision of a copy of the document.
- (2) Guidance mentioned in paragraph (1) does not prevent the Secretary of State from requiring the original document to be provided on request.
 - (3) Paragraph (4) applies where a document is required to be provided to a person (“S”) for inspection under regulation 12(1)(b), 12(5)(b) or 13(1)(b).
 - (4) The requirement may be satisfied by the provision of a copy of the document if S is satisfied that it is a true copy, but an original document must be provided if S so requests it.

Functions of Chief Constable

- 27.**—(1) The Chief Constable may direct in writing that any of his functions under these Regulations as are specified in the direction may be exercised on the Chief Constable’s behalf by such appropriate police officers and members of the police support staff as are specified in the direction.
- (2) The Chief Constable may direct in writing that a constable or a member of the police support staff is an authorised officer for the purpose of these Regulations.