

EXPLANATORY MEMORANDUM TO
THE CONTROL OF EXPLOSIVES PRECURSORS ETC. REGULATIONS
(NORTHERN IRELAND) 2014

2014 No. 224

1. This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty. This is the second explanatory memorandum, which replaces and corrects errors in the first explanatory memorandum which was laid before Parliament.

2. **Purpose of the instrument**

2.1 These Regulations implement, as regards Northern Ireland, Regulation (EU) No 98/2013 on the marketing and use of explosives precursors (the “Precursors Regulation”), which establishes harmonised rules concerning the supply, possession, import and use of certain substances and mixtures, which could be misused for the illicit manufacture of explosives. These Regulations also replace and update existing legislation relating to the control of explosives precursors in Northern Ireland.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 Under the previous legislation controlling explosives precursors, no fee was charged on an application for a licence. Under this instrument, a fee is charged for applications on the basis of full cost recovery, in accordance with Her Majesty’s Treasury guidelines.

3.2 This instrument is made using powers which are vested in the Department of Justice of Northern Ireland, but exercisable by the Secretary of State for purposes connected with any reserved matter falling within paragraph 12 or 20 of Schedule 3 to the Northern Ireland Act 1998 (reserved matters: firearms and explosives; import and export controls). These powers were last exercised by the Secretary of State to make the Identification and Traceability of Explosives Regulations (Northern Ireland) 2013 (S.R. 2013 No. 48).

3.3 This instrument came into force before it was laid before Parliament, and accordingly it has been laid before Parliament less than 21 days before it comes into force, which breaches the 21 day rule. A notification was sent to the Speaker of the House of Commons and of the House of Lords, in accordance with section 4(1) of the Statutory Instruments Act 1946.

3.4 It is necessary for this instrument to come into force on 2 September 2014 because this instrument implements the Precursors Regulation, which comes into force on that date. Although the Precursors Regulation is directly applicable in member States, the UK is required to impose penalties for infringement of its provisions. If this instrument is not in force by 2 September

2014, the UK will be in breach of EU law. Further, if the instrument is not in force by that date, there would be an adverse impact on businesses. This is because the Precursors Regulation creates a prohibition on the supply of certain substances to, or the possession, import or use of those substances by, members of the general public. Member States are then permitted to (but are not required to) permit possession, use and import by way of a licensing system. If no licensing system is in place by 2 September 2014, the prohibition in the Precursors Regulation would take effect so that no businesses would be able to supply these substances to members of the general public.

3.5 This instrument was not laid in Parliament earlier because there were unforeseen delays with the impact assessment, which needed to be finalised before the instrument could be made. Relevant stakeholders were made aware of the policies in this instrument during the full public consultation (see further below) and licence holders under the existing regime were contacted individually during that process. The date of coming into force of this instrument was notified to such persons during that process.

4. Legislative Context

4.1 This instrument implements the Precursors Regulation in respect of Northern Ireland. That Regulation establishes harmonised rules concerning the supply of certain substances to, and possession, import and use of those substances by, members of the public. The substances controlled are contained in two Annexes to the Precursors Regulation. The substances in Annex 1 are subject to greater restrictions than the substances in Annex 2.

4.2 The Precursors Regulation prohibits the supply of Annex 1 substances to, or the possession, import or use of those substances by, members of the public. Member States are permitted to establish a licensing system which would allow such persons to deal with the substances. This instrument establishes such a licensing system in Northern Ireland.

4.3 Since the 1970s, existing legislation in Northern Ireland has prohibited the supply of certain substances to any person (whether a business or a member of the public) unless that person has a licence. Those existing controls were more restrictive than those now introduced by the Precursors Regulation, and there is an overlap between some of the substances already covered by the existing controls and those which are included in the Annexes to the Precursors Regulation. This instrument maintains and updates the existing, more restrictive, provisions in Northern Ireland and integrates that existing licensing system with the new licensing system required to implement the Precursors Regulation.

4.4 The Precursors Regulation places an obligation on suppliers of Annex 1 substances to members of the public to affix a label which indicates that the substance is restricted. This instrument clarifies that obligation (see regulation 15).

4.5 The Precursors Regulation requires suppliers to report suspicious transactions and significant disappearances and thefts of substances in both Annex 1 and 2 to a national contact point. This instrument imposes penalties and creates enforcement provisions in respect of this requirement.

4.6 The Precursors Regulation is implemented in Great Britain by the Control of Explosives Precursors Regulations 2014 (S.I. 2014/1942). A Transposition Note is attached to this Explanatory Memorandum.

5. Territorial Extent and Application

5.1 This instrument extends to Northern Ireland (which includes the territorial sea adjacent to Northern Ireland and a designated area adjacent to Northern Ireland).

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The objective of the Precursors Regulation is to make it easier for authorities to detect attempts to purchase high risk explosives precursors, while still allowing purchase for legitimate purposes. The dangers posed by these substances were considered by member States to be significant enough to justify a Regulation. For example, one of the Annex 1 substances was used by terrorists in the 7/7 London bombings and others have been used in terrorist plots across Europe. Examples of more common uses of Annex 1 substances include nitromethane in model engines, hydrogen peroxide in swimming pool cleaner and nitric acid as jewellery cleaner. Examples of more common uses of Annex 2 substances include sulphuric acid in drain cleaner and sodium nitrate in fertiliser.

7.2 The Precursors Regulation bans the supply to, or use, import or possession by, members of the public of seven substances (Annex 1) above specified concentrations, which could be used to make home-made explosives. Member States can decide to allow supply of these substances above the concentrations on presentation of a licence. This instrument allows members of the public to obtain a licence for the possession, use or import of these substances, and requires them to present that licence and valid photo identification to the supplier at the point of acquisition. The supplier will be required to record the details of the acquisition on the back of the licence. The licence will be valid for up to 3 years. Persons who apply for a licence to use these substances will be required to undergo background security and medical checks during the application process.

7.3 Northern Ireland has had existing legislation in place since the early 1970s to control some of the precursors covered by the Precursors Regulation. Under the existing legislation, all persons (including both businesses and

members of the public) are prohibited from possessing, acquiring, manufacturing, importing or using certain substances otherwise than in accordance with a licence issued by the Secretary of State. Licence holders are required to obtain consent from the Police Service of Northern Ireland prior to acquisition or transport of quantities of more than 500g by weight or 500ml by measure of the relevant precursor and are required to keep records. The existing controls have been notified to the Commission under Article 13(6) of the Precursors Regulation, but are re-stated and updated in this instrument, and are integrated with the licensing system in respect of substances covered by the Precursors Regulation. The main changes to the existing system are:

- Licences will now be issued for up to three years, rather than for an indefinite period.
- Three of the substances which were previously controlled in Northern Ireland – nitro-benzene, sodium chlorite and sodium nitrite – will no longer be controlled under the new integrated regime.
- The requirements for applications, criteria for the grant of licences and the right to request reconsideration of decisions will now be set out clearly in the legislation.
- Northern Ireland departments are now required to obtain consent to transactions and keep records (save for Forensic Science Northern Ireland).
- Suppliers must require a licence and identification from licence holders and must fill out a log on the back of the licence.

7.4 This existing system is integrated with the new EU system by creating two ‘tiers’ of substance:

- ‘Tier 1 substances’ are substances which were previously controlled in Northern Ireland (other than the three which are no longer controlled). The tier 1 substances are: ammonium nitrate (including calcium ammonium nitrate), sodium chlorate, potassium nitrate and sodium nitrate.
- ‘Tier 2 substances’ are substances which are included in Annex 1 to the Precursors Regulation but are not Tier 1 substances. The tier 2 substances are: hydrogen peroxide, nitromethane, nitric acid, potassium chlorate, potassium perchlorate and sodium perchlorate.

7.5 In practice there is a third category of substances which is not mentioned specifically in this instrument: these are the substances included in Annex 2 to the Precursors Regulation, which are subject only to reporting requirements under the provisions of that Regulation. Some of these Annex 2 substances are also ‘tier 1 substances’, so they are also subject to licensing requirements under this instrument.

7.6 The licensing process for tier 1 substances and tier 2 substances is the same. Licences can be issued subject to terms and conditions, for example about storage, use, maximum quantities, maximum levels of concentration, and reporting of disappearances or thefts. Persons who hold licences in respect

of tier 1 substances have additional obligations, such as record keeping and a requirement to obtain police consent for certain transactions.

7.7 The Precursors Regulation also imposes obligations on persons supplying Annex 1 substances to members of the public to ensure that such substances are labelled as restricted. This instrument clarifies the extent of this obligation and imposes a penalty for breach. In addition, the Precursors Regulation requires suppliers to monitor transactions of Annex 1 substances and Annex 2 substances for suspicious activity. This instrument imposes a penalty for breach of this obligation.

7.8 Contravention of any of the provisions of this instrument is an offence, punishable by up to two years imprisonment or a fine or both. However, some offences – failure to fill out the log on a licence or breach of terms and conditions of a tier 2 licence – are subject to lower penalties.

8. Consultation outcome

8.1 The Home Office launched a seven week consultation on 21 November 2013. This was UK-wide and it covered Northern Ireland. However, in light of the different legislative background in Northern Ireland, a separate written consultation was produced which specifically addresses Northern Ireland and a seven week consultation covering Northern Ireland was also launched on 9 December 2013 and closed on 27 January 2014. Although this approach necessarily involved some duplication, the Northern Ireland Office considered that this would be beneficial as we would have a broader base of responses. In addition, in order to ensure that persons holding licences under the existing legislation would be caught, a letter drawing attention to the consultation was sent to such Northern Ireland licence holders on 10 December 2013.

8.2 The consultations sought views on the impact of the policy options on members of the public, suppliers, business users, manufacturers, distributors and formulators. The documents gave some detail on how each of the options might work in practice, and detailed the possible costs and administrative burdens. The UK wide Home Office consultation document is available at <https://www.gov.uk/government/consultations/precursors-and-poisons-consultations>. The Northern Ireland consultation document is available at <https://www.gov.uk/government/consultations/marketing-and-use-of-explosives-precursors>.

8.3 Very few responses were received in relation to the elements of the consultation which were focused on Northern Ireland, so the Northern Ireland Office also considered the responses received in respect of the UK wide consultation by the Home Office. The Northern Ireland Office's consultation response will be published shortly.

8.4 The consultation responses suggested that licensing was the favoured option amongst retailers, businesses and users. Licensing was felt to retain consumer choice and targeted the end user rather than the retailer. Many respondents felt that a stratified system, involving more than one control

measure, would be too complex and costly for retailers to implement and for the general public to understand. Respondents highlighted the need for clear guidance on labelling and some respondents requested further guidance on the requirement to report suspicious transactions and significant disappearances and thefts.

9. Guidance

9.1 The Secretary of State will issue guidance on applications, the grant and enforcement of licences, and the obligations of suppliers under this instrument and the Precursors Regulation. Guidance issued by the Secretary of State will incorporate or refer to any guidance issued by the European Commission under the Precursors Regulation.

10. Impact

10.1 The impact on businesses, charities or voluntary bodies is estimated to be £14,313 to £52,981 in transition costs and £14,950 to £23,168 per year in ongoing costs, at a present value of £142,998 to £252,404 over 10 years.

10.2 The total cost to the public sector is estimated to be £738 in transition costs and ongoing costs of £22,318 per year at a present value of £192,844 over 10 years.

10.3 Licensing will cost home users £4885 per year over 10 years. This cost is already included in the cost to the public sector of the licensing system.

10.4 The Final Impact Assessment will be published alongside the Explanatory Memorandum.

11. Regulating small business

11.1 The legislation applies to small businesses. Small businesses supplying these substances will be required to report any suspicious transactions, losses and thefts to the appropriate authorities, and suppliers to persons who require a licence under the integrated regime will be required to verify that the person holds a valid licence.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the EU will fund an online e-learning tool to assist businesses with identifying a suspicious transaction. The Northern Ireland Office will also provide tailored guidance on how the regulation will affect their everyday business practices.

11.3 Trade associations and representative bodies of small businesses were contacted during consultation and have been in contact with Northern Ireland Office officials in follow-up discussions.

12. Monitoring & review

12.1 The Precursors Regulation contains a requirement for the European Commission to review and provide a report to the European Parliament by 2 September 2017. This report will consider any problems arising from the Precursors Regulation and whether there is a need for reform.

12.2 The Secretary of State is required to conduct a review of this instrument by 2 September 2018. That review will take into account the outcome of the European Commission review.

13. Contact

13.1 For further information contact the Protective Security Unit, Security and Protection Group, Northern Ireland Office, Stormont House, Stormont, Belfast, BT4 3SH, or email precursors@nio.x.gsi.gov.uk.

Northern Ireland Office
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