

**EXPLANATORY MEMORANDUM TO
THE DEREGULATION ACT 2015 (POISONS AND EXPLOSIVES PRECURSORS)
(CONSEQUENTIAL AMENDMENTS, REVOCATIONS AND TRANSITIONAL
PROVISIONS) ORDER 2015**

2015 No. 968

- 1.** This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument will revoke The Poisons List Order 1982, The Poisons Rules 1982 and The Control of Explosives Precursors Regulations 2014. These instruments will be replaced by The Poisons Act 1972 as amended by the Deregulation Act 2015 and The Control of Poisons and Explosives Precursors Regulations 2015.

2.2 The instrument provides for a transitional arrangement that allows licences granted under The Control of Explosives Precursors Regulations 2014 to be treated as if they had been granted under the Poisons Act 1972 as amended.

2.3 The Schedule to the instrument also makes consequential amendments to certain statutory instruments as a result of the various amendments to the Poisons Act 1972.

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

3.1 None.

4. Legislative Context

4.1 The instrument will sit alongside substantive amendments made to the Poisons Act 1972 via the Deregulation Act 2015 and The Control of Poisons and Explosives Precursors Regulations 2015. The effect will be to create a cohesive licensing regime in relation to certain poisons and explosives precursors (regulated and reportable substances, as defined). The amendments to the Poisons Act 1972 and the new instruments will come into effect at the same time, subject to an early commencement provision to enable licence applications to be made and considered in advance of the operation of the substantive licensing regime.

5. Territorial Extent and Application

5.1 This instrument applies to England, Scotland and Wales only.

6. European Convention on Human Rights

The Minister for Immigration and Security, James Brokenshire MP has made the following statement regarding Human Rights:

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

7. Policy background

- What is being done and why

7.1 The UK Government has a commitment through the Red Tape Challenge to reduce burdens on businesses. The Poisons Act 1972 and the Poisons Rules 1982 were highlighted as adding burdens to businesses. The objectives of the various legislative amendments are to strengthen the control of the most dangerous poisons and explosives precursors, while removing unnecessary burdens on business and to make it easier for authorities to detect attempts to purchase high risk chemicals, while still allowing purchase for legitimate purposes.

7.2 The explosives precursors chemicals covered by the instrument have been used by terrorists to manufacture home-made explosives in the UK and across Europe. For example, hydrogen peroxide was used by terrorists in the London bombings of 7 and 21 July 2005. The UK supported Regulation (EU) No 98/2013 on the marketing and use of explosives precursors (which the various legislative amendments seek to implement) throughout negotiation as part of its broader strategy to deny terrorist access to hazardous materials.

7.3 The Poisons Act 1972 (as amended) and the Control of Poisons and Explosives Precursors Regulations 2015 introduce the following requirements:

- A member of the general public wishing to purchase a regulated substance (poison or explosives precursor) will need to obtain a licence;
- Businesses that sell or supply both regulated and reportable substances will need to report suspicious transactions, significant losses and thefts to the police; and
- Wholesalers or retailers of regulated substances will be required to indicate that the product is restricted on the product label.

7.4 In practical terms, a member of the public wishing to obtain a regulated substance will be required to present a valid licence and photo ID to the retailer at the point of purchase. Examples of home use of regulated substances include swimming pool cleaner and bleaching agents. The retailer will be required to record the details of the purchase

(including the type and volume of the substance) on the reverse of the licence. The licensing requirement does not apply to business to business transactions (including wholesale transactions) for professional use.

7.5 The Home Office is the competent authority for processing the licence applications. The licences may be valid for up to 3 years and can be obtained online via the Gov.uk website. Home users of these chemicals will be required to undergo background security and mental health checks during the licence application process.

7.6 Retailers will also be required to report suspicious transactions of regulated and reportable substances. This requirement applies to business to business sales, wholesale transactions and retail sales to the general public. Examples of home use of reportable substances include drain cleaner and fertiliser. Any business that experiences a suspicious transaction, theft or significant loss of these substances should report it to the anti-terrorism hotline.

8. Consultation outcome

8.1 A seven week written consultation was launched on 21 November 2013 and closed on 9 January 2014. The consultation sought views from small businesses, large retailers (including supermarkets and departments stores), hobbyists, specialist retailers of professional products and academia on proposals to control the sale of explosive precursor chemicals and poisons.

8.2 The consultations received 81 responses (45 for Explosives Precursors and 36 for Poisons) in total. While this is not a large number, both consultations received a strong response from representative bodies and trade associations representing the views of hundreds and, in some cases, several thousand members. Although some respondents supported the do nothing option; licensing remains our preferred approach for controlling access to the most hazardous explosive precursors and poisons (with suspicious reporting for others). This option was also the most proportionate and the one which best meets our policy objectives. Banning these substances would increase the risk of a black market and harm the sale of products that have legitimate uses with no known alternatives.

8.3 Where consequential amendments affect legislation owned by other departments, those departments have been consulted.

9. Guidance

9.1 To prepare for the implementation of the Poisons Act 1972 as amended, the Home Office has:

- Published on-line guidance and training materials for businesses (including manufacturers, small businesses and large retailers) and industry bodies on how to identify/report a suspicious transaction, theft or significant loss;

- Prepared tailored advice for delivery companies on how to identify a valid licence when delivering an internet purchase to a home address;
- Developed on-line guidance for home users on when and how to apply for a licence, and the appeals process if an application is rejected;
- Produced training and guidance for the Police on enforcement issues and the new offences created by this instrument

10. Impact

10.1 The validation of the poisons impact assessment estimates that the overall saving to business per year would be £20k and would count towards the Home Office's OUT total.

11. Regulating small business

11.1 Small businesses selling products containing explosives precursors will be required to report any suspicious transactions, losses and thefts to the appropriate authorities. They will also be required to record the detail of any sales of regulated explosives precursors to a member of the general public on the reverse of the licence and, where necessary, label an affected product indicating that its use, possession and acquisition is restricted.

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 in 2015. The Home Office has provided tailored guidance on how the regulation affects their everyday business practices in partnership with representative bodies and trade associations. The UK's network of Counter Terrorism Security Advisors was tasked to communicate the changes to small businesses in their local area.

11.3 Representative associations of small businesses including hardware and convenience stores were invited to participate in the public consultation. Home Office officials have held follow-up discussions with representative bodies to identify suitable channels for communicating the changes and to identify affected products.

12. Monitoring & review

12.1 The Home Office will review the effectiveness of the legislation in the UK every two years.

13. Contact

Anne-Marie Fry at the Home Office Tel: 02070350896 or email: precursorsandpoisons@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.