STATUTORY RULES OF NORTHERN IRELAND

2014 No. 224

HEALTH AND SAFETY

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

Made - - - -	*28th August 2014*
Laid before Parliament	*8th September 2014*
Coming into force - -	*2nd September 2014*

The Secretary of State makes these Regulations in exercise of the powers conferred by articles 3(1)(c), (2) and (4), 17, 40(2), (3) and (4), 54(1), (2)(b) and (3), and 55(2) of, and paragraphs 1(1) and (4), 2, 3, 5, 14(1), 15 and 22 of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978 [M1], which are exercisable by the Secretary of State in relation to explosives, with modifications, by paragraph 4 of Schedule 12 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 [M2].

In accordance with Articles 46(1) and 54(5) of the Health and Safety at Work (Northern Ireland) Order 1978 [M3], as so applied and modified, the Secretary of State has consulted with the Health and Safety Executive for Northern Ireland and such other bodies as appear to the Secretary of State to be appropriate.

Marginal Citations

M1 S.I. 1978/1039 (N.I. 9). "Executive" was substituted for "Agency" throughout the Order by S.I. 1998/2795 (N.I. 18). Article 3 defines the "general purposes of" Part II, which in turn defines the scope of the power to make health and safety regulations in article 17(1). The general purposes of Part II, as defined in Article 3, were extended by Articles 3(1) and 4(1) of S.I. 1992/1728 (N.I. 17) to cover certain activities relating to offshore installations and pipe-lines. Article 17(6)(e) was revoked by Schedule 4 to the Health and Safety (Offences) Act 2008 (c. 20). Article 55 was amended by S.I. 1998/2795 (N.I. 18).

M2 S.I. 2010/976. Paragraph 4(1)(b) of Schedule 12 enables the Secretary of State to make regulations under the Health and Safety at Work (Northern Ireland) Order 1978 for purposes connected with any reserved matter falling within paragraph 12 or 20 of Schedule 3 to the Northern Ireland Act 1998 (c. 47). By paragraph 4(3) and (4) of Schedule 12 to S.I. 2010/976, the Secretary of State's powers under the 1978 Order to make orders or regulations is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12), and any orders and regulations are subject to annulment in pursuance of a resolution of either House of Parliament.

M3 Article 46(1) was amended by S.I. 1998/2795 (N.I. 18).

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014.

(2) These Regulations come into force on 2nd September 2014.

Interpretation

2.—(1) In these Regulations—

"the 1978 Order" means the Health and Safety at Work (Northern Ireland) Order 1978 [M4];

"acquiring" means taking into your possession, custody or control;

"authorised officer" means a person authorised by the Chief Constable [M5] under regulation 27(2);

"the CLP Regulation" means Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006[M6], as amended from time to time;

"designated area" means any area designated by Order under section 1(7) of the Continental Shelf Act 1964 [M7] and "within a designated area" includes over and under it [M8];

"EEA State" means, at any time—

(a) a state which at that time is a member State, or

(b) any other state which at that time is a party to the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 [M9], as modified or supplemented from time to time;

"Great Britain" includes the territorial sea of the United Kingdom other than the part adjacent to Northern Ireland;

"importing into Northern Ireland" includes importing into any part of the territorial sea (notwithstanding regulation 17) [M10];

"licence" (unless otherwise indicated) means a licence granted under regulation 5;

"member of the general public" means an individual [M11] who is acting for purposes not connected with that individual's trade, business or profession (and a trade, business or profession may include the performance of a function of a public nature within the meaning of section 6 of the Human Rights Act 1998 [M12]);

"member State" has the same meaning as in Part 2 of Schedule 1 to the European Communities Act 1972 [M13];

"mixture" means a mixture or solution composed of two or more substances;

"organisation" means any body corporate and any combination of persons or other unincorporated association;

"possessing" means having in your possession, custody or control;

"the Precursors Regulation" means Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors [M14], as amended from time to time;

"public place" means any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission (including any road within the meaning of the Roads (Northern Ireland) Order 1993 [M15]);

"recognised non-NI licence" has the same meaning as in regulation 11;

"responsible person" has the same meaning as in regulation 6;

"substance" means a chemical element and its compounds in the natural state or obtained by any manufacturing process—

(a) including any additive necessary to preserve its stability and any impurity deriving from the process used, but

(b) excluding any solvent that may be separated without affecting the stability of the substance or changing its composition;

"supply" includes supply to another person—

(a) in return for payment or free of charge;

(b) for the purpose of the safe disposal of the substance;

"transport" means transfer or conveyance; and

"using" includes processing, formulating, storing, treating or mixing, including in the production of an article.

(2) The Interpretation Act (Northern Ireland) 1954 [M16] applies to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Marginal Citations

M4 S.I. 1978/1039 (N.I. 9); relevant amendments are referenced in these Regulations.

M5 The terms "Chief Constable", "constable", "police officer" and "police support staff" are defined in section 43 of the Interpretation Act (Northern Ireland) 1954.

M6 OJ No L 353, 31.12.2008, p1.

M7 1964 c. 29; section 1(7) was amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23) and section 103 of the Energy Act 2011 (c. 16).

M8 The law in force in Northern Ireland applies for the determination of such questions arising out of acts or omissions taking place in the "Northern Irish area", which comprises the part of the area designated by S.I. 1968/891 which lies west of the "Northern Irish border" (see S.I. 1980/184).

M9 OJ No L 1, 03/01/1994, p. 3, and OJ No L 1, 03/01/1994, p. 572.

M10 Under the Health and Safety at Work (Northern Ireland) Order 1978, "Northern Ireland" includes the territorial sea adjacent to Northern Ireland.

M11 "Individual" means a natural person and does not include a corporation (section 46 of the Interpretation Act (Northern Ireland) 1954).

M12 Section 6 was amended by paragraph 1 of Schedule 18 to the Constitutional Reform Act 2005 (c. 4).

M13 1972 c. 68; Part 2 of Schedule 1 was amended by paragraph 1 of Schedule 1 to the European Union (Amendment) Act 2008 (c. 7).

M14 OJ L 39, 9.2.2013, p. 1–11.

M15 S.I. 1993/3160; there are no relevant amendments.

M16 1954 c. 33 (N.I.)

PART 2

Control of tier 1 substances and tier 2 substances

Control of tier 1 substances

3.—(1) A person must not deal with a tier 1 substance except under, and in accordance with, a licence granted by the Secretary of State under regulation 5.

(2) A "tier 1 substance" means a substance mentioned in column 1 of the table in Schedule 1 or any mixture containing that substance, but does not include a mixture falling within the exception in column 2 of that table.

(3) A person deals with a tier 1 substance if that person—

(a) supplies the substance;

(b) acquires the substance;

(c) imports the substance into Northern Ireland [M17];

(d) possesses the substance; or

(e) uses the substance.

(4) But a person ("P") is not to be regarded as possessing or acquiring a tier 1 substance if—

(a) the substance is being transported (including being loaded or unloaded and during breaks which are reasonably incidental to completing the journey within a reasonable length of time);

(b) P is in possession of the substance only by reason of being—

(i) a carrier,

(ii) a person engaged in the work of loading or unloading, or

(iii) the occupier of a place it passes through while on the journey;

(c) P is acting for purposes connected with P's trade, business or profession; and

(d) the substance is under the direction and control of the licence holder.

(5) Paragraph (1) does not apply to—

(a) any department under the control of a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975 [M18]);

(b) the armed forces of the Crown;

(c) an inspector appointed under Article 21 of the 1978 Order, acting as such;

(d) a police officer, acting as such; or

(e) an authorised officer, acting as such.

Marginal Citations

M17 Under the Health and Safety at Work (Northern Ireland) Order 1978, and these Regulations, "Northern Ireland" includes the territorial sea adjacent to Northern Ireland.

M18 1975 c. 26; there are no relevant amendments.

Control of tier 2 substances

4.—(1) Notwithstanding the prohibition in Article 4(1) of the Precursors Regulation, a member of the general public may deal with a tier 2 substance under, and in accordance with, the terms of—

(a) a licence granted by the Secretary of State under regulation 5; or

(b) a recognised non-NI licence.

(2) A "tier 2 substance" means a "restricted explosives precursor"[M19] within the meaning of Article 3 of the Precursors Regulation, but in each case only if the substance or mixture is not a tier 1 substance.

(3) A member of the general public deals with a tier 2 substance if that person—

(a) acquires the substance;

(b) imports the substance into Northern Ireland;

(c) possesses the substance; or

(d) uses the substance.

Marginal Citations

M19 Under Article 3(10) of the Precursors Regulation, a "restricted explosives precursor" means a substance listed in Annex I to the Precursors Regulation in a concentration higher than the corresponding limit value set out for that substance in that Annex, and includes a mixture or another substance in which the substance listed in that Annex is present in a concentration higher than the corresponding limit value, but in each case only if the substance or mixture is not excluded by Article 2(2) of the Precursors Regulation. Article 2(2) excludes: (a) any article, defined as an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition; (b) an article containing explosive substances or an explosive mixture of substances designed to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions, including (i) pyrotechnic equipment falling within the scope of Council Directive 96/98/EC (OJ L 46, 17/02/1997, p. 25–56) on marine equipment, and (ii) percussion caps intended specifically for toys falling within the scope of Council Directive 88/378/EEC (OJ L 187, 16/07/1988, p. 1–13) concerning the safety of toys; and (c) medicinal products, which in Northern Ireland will mean: (i) a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 (S.I. 2012/1916), (ii) an investigational medicinal product within the meaning of regulation 2 of the Medicines for Human Use (Clinical Trials) Regulations 2004 (S.I. 2004/1031), (iii) a substance to which Part 12 of the Human Medicines Regulations 2012 or Part 6 of the Medicines for Human Use (Clinical Trials) Regulations 2004 applies by virtue of an order under section 104 or 105 of the Medicines Act 1968 (c. 67) (whether applying subject to exceptions or notifications or not and, in the case of an order under section 104, whether the substance is referred to in the order as a substance or an article), or (iv) a veterinary medicinal product within the meaning of regulation 2 of the Veterinary Medicines Regulations 2013 (S.I. 2013/2033).

Grant of licences

5.—(1) The Secretary of State may grant a licence to—

(a) any person to deal with a tier 1 substance;

(b) a member of the general public to deal with a tier 2 substance.

(2) The Secretary of State may restrict the licence to one or more of the activities mentioned in regulation 3(3) or 4(3), as the case may be.

(3) The term for which a licence is granted must not exceed 3 years, but this does not affect—

(a) a person's right to apply for a further licence to take effect on expiry of that term; or

(b) any power of the Secretary of State to amend, vary, suspend or revoke that licence before expiry of that term.

(4) A licence may be granted subject to such terms and conditions as may be specified in the licence.

(5) Before granting or amending a licence, the Secretary of State must consult the Chief Constable.

(6) In deciding whether to grant or amend a licence, the Secretary of State must have regard to all the circumstances of the case, including in particular—

(a) the intended use of the substance;

(b) the availability of alternative substances that would achieve the same purpose;

(c) the proposed arrangements to ensure that the substance is kept securely;

(d) any danger to public safety or public order that may be caused by the applicant dealing with the substance; and

(e) whether the applicant is a fit and proper person to deal with the substance (and, in the case of an application by an organisation, whether the responsible person is a fit and proper person to be responsible for the substance).

(7) But if there are reasonable grounds for doubting the legitimacy of the intended use of a substance or the intentions of the user to use it for a legitimate purpose, the Secretary of State must refuse the application so far as it relates to that substance.

(8) A licence must—

(a) be in a form approved by the Secretary of State; and

(b) include a record of transactions for completion in accordance with regulations 12(7) and 13(3).

(9) The Secretary of State may amend, vary, suspend or revoke any licence.

(10) Where the Secretary of State makes a relevant decision, the Secretary of State must, as soon as reasonably practicable after the decision is made, send a notice to the affected person—

(a) giving a brief description of the reason for the decision, unless it is not in the public interest to do so; and

(b) informing the affected person of the right under regulation 7 to ask the Secretary of State to reconsider the decision.

(11) In this regulation—

"affected person" means the applicant or, for a decision to vary, suspend or revoke a licence, the licence holder; and

"relevant decision" means a decision to—

(a) refuse an application for a licence;

(b) grant an application for a licence subject to any terms or conditions;

(c) refuse an application to amend a licence;

(d) grant an application to amend a licence subject to any terms or conditions; or

(e) vary, suspend or revoke a licence.

Applications

6.—(1) An application for a licence or for the amendment of a licence is valid only if it complies with paragraphs (2) to (7).

(2) An application by an organisation in respect of a tier 1 substance must include details of a person who will be responsible for the substance under the licence (the "responsible person").

(3) An application must—

(a) be made on a form approved for that purpose by the Secretary of State;

(b) contain the information required by that form;

(c) be made in a manner approved for that purpose by the Secretary of State (which may include a requirement that applications and accompanying documentation be submitted by electronic means);

(d) include the signature of the applicant;

(e) in the case of an application by an organisation, include the signature of the responsible person; and

(f) in the case of an application by an individual who us under the age of 18, include the signature of the applicant's parent or guardian.

(4) An application must be accompanied by—

(a) one of the documents specified in paragraph (5) which relates to—

(i) in the case of an application by an individual, the applicant,

(ii) in the case of an application by an individual who is under the age of 18, the applicant's parent or guardian, or

(iii) in the case of an application by an organisation, the responsible person;

(b) such further information or documentation as the Secretary of State may require; and

(c) the appropriate fee.

(5) The documents are—

(a) a valid United Kingdom passport, within the meaning of section 33(1) of the Immigration Act 1971 [M20];

(b) a valid passport or national identity card issued by an EEA State;

(c) a valid passport issued by or on behalf of the authorities of any other country or territory outside the United Kingdom;

(d) a valid Great Britain or Northern Ireland photo-card driving licence;

(e) a valid UK biometric immigration document, issued in accordance with regulations made under section 5 of the UK Borders Act 2007 [M21]; or

(f) a valid electoral identity card issued in accordance with section 13C of the Representation of the People Act 1983 [M22].

(6) The appropriate fee is—

(a) £100 where the application is for the grant of a licence in respect of one or more tier 1 substances, including where the application also relates to one or more tier 2 substances (but see sub-paragraph (b));

(b) £35 where—

(i) the application is for the grant of a licence in respect of one or more tier 1 substances, including where the application also relates to one or more tier 2 substances,

(ii) the applicant previously held a licence in respect of the tier 1 substance,

(iii) that previous licence was valid not more than 3 months before the day on which the application is made, and

(iv) the arrangements relating to the storage or security of the tier 1 substance have not changed.

(c) £35 where the application is for—

(i) the grant of a licence in respect of one or more tier 2 substances only, or

(ii) the amendment of any condition of the licence relating to the storage or security of a tier 1 substance;

(d) £15 where the application is for—

(i) the amendment of a licence in respect of any tier 1 substances or tier 2 substances (other than the amendment mentioned in sub-paragraph (c)(ii));

(ii) the replacement of any lost, damaged or stolen licence.

(7) The Secretary of State may require the applicant to provide additional information or documentation to—

(a) the Secretary of State; or

(b) an authorised officer.

(8) The Secretary of State may carry out such investigations or checks as the Secretary of State thinks appropriate, including investigations and checks about—

(a) the applicant's physical or mental health;

(b) the commission or alleged commission by the applicant of any offence (including cautions or convictions that are spent), whether in the United Kingdom or elsewhere.

(9) In making the application, the applicant is deemed to have consented to—

(a) the carrying out of any investigations or checks that the Secretary of State thinks appropriate in order to decide the application; and

(b) the processing by any person of information about the applicant (including sensitive personal data) that needs to be processed by that person for or in connection with those investigations or checks.

(10) The Secretary of State may provide in guidance under regulation 24 that the requirement for a signature under paragraph (3)(d), (e) or (f) may be satisfied by an electronic signature, subject to such terms and conditions as may be specified.

(11) In this regulation—

"electronic signature" has the same meaning as in section 7(2) of the Electronic Communications Act 2000 [M23];

"parent or guardian" means a person who has who has parental responsibility for a child, within the meaning of Part 2 of the Children (Northern Ireland) Order 1995 [M24]; and

"processing" and "sensitive personal data" have the same meaning as in the Data Protection Act 1998 [M25].

Marginal Citations

M20 1971 c. 77; this definition was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61) and amended by section 1(2) of the British Overseas Territories Act 2002 (c. 8).

M21 2007 c. 30. Section 5 of the UK Borders Act 2007 gives the Secretary of State power to make regulations concerning biometric immigration documents. The Secretary of State has the power to issue a biometric immigration document under regulation 13 of the Immigration (Biometric Registration) Regulations 2008 (S.I. 2008/3048). Regulation 13 has been amended by S.I. 2009/819 and S.I. 2012/594.

M22 1983 c. 2; section 13C was inserted by section 4 of the Electoral Fraud (Northern Ireland) Act 2002 (c. 13) and amended by section 17 of the Northern Ireland (Miscellaneous Provisions) Act 2014 (c. 13).

M23 2000 c. 7.

M24 S.I. 1995/755; Part 2 was amended by section 1 of the Family Law Act (Northern Ireland) 2001 (c. 12); section 199 of the Civil Partnership Act 2004 (c. 33); paragraph 94 of Schedule 5 to the Constitutional Reform Act 2005 (c. 4); paragraphs 71 and 72 of Schedule 6, and paragraph 1 of Schedule 8, to the Human Fertilisation and Embryology Act 2008 (c. 22); and paragraph 24 of Schedule 6 to the Welfare Reform Act 2009 (c. 24) (not yet in force).

M25 1998 c. 29.

Internal review of decisions with regard to a licence

7.—(1) This regulation applies if—

(a) the Secretary of State makes a relevant decision; and

(b) within 28 days beginning on the day on which the affected person is notified of the decision, the affected person asks the Secretary of State to reconsider the decision.

(2) The Secretary of State must carry out a review of the decision.

(3) The provisions of regulation 6 (other than paragraphs (4) to (6)) apply to a request under this regulation as to an application under that regulation.

(4) On conclusion of the review, the Secretary of State must either—

(a) confirm the relevant decision (whether on the same or different grounds);

(b) make such changes to the relevant decision as the Secretary of State thinks fit; or

(c) revoke the relevant decision.

(5) Paragraphs (4) to (7) of regulation 5 apply to a decision under paragraph (4) as to a decision under that regulation.

(6) The Secretary of State must send a notice to the affected person giving a brief description of the reason for the decision in paragraph (4), unless it is not in the public interest to do so.

(7) "Relevant decision" and "affected person" have the meaning given in regulation 5.

PART 3

Obligations on licence holders

General obligations

8.—(1) A licence holder must, on request by the Secretary of State or an authorised officer—

(a) provide the licence for inspection;

(b) permit inspection of any tier 1 substance or tier 2 substance covered by the licence;

(c) permit inspection of the location where the substance is stored; and

(d) provide information in relation to any of the matters in regulation 5(6) or any terms and conditions of the licence.

(2) A licence holder must notify to the Secretary of State as soon as reasonably practicable if the licence holder becomes aware of—

(a) the loss or theft of the licence;

(b) a change of address of the licence holder or the responsible person;

(c) the charge or conviction of the licence holder or the responsible person of any criminal offence, whether in Northern Ireland, elsewhere in the United Kingdom, or in any other place; and

(d) any change that would reasonably affect any of the matters in regulation 5(6) or any terms and conditions of the licence.

(3) A licence holder must return the licence to the Secretary of State immediately on its expiry.

(4) A licence holder must provide the licence for inspection when requested to do so by a person from whom the licence holder seeks to acquire a tier 1 substance or a tier 2 substance (see regulations 12 and 13).

(5) A licence holder must immediately return any licence that has been amended, varied, suspended or revoked to the Secretary of State.

Tier 1 substances: consent to acquisition, transport and import

9.—(1) A licence holder must not acquire, transport through any public place in Northern Ireland or import into Northern Ireland more than 500 grams by weight or 500 millilitres by measure of a tier 1 substance, or undertake to do so, unless—

(a) the licence holder has applied in writing [M26] for the consent of the Chief Constable; and

(b) the Chief Constable has given consent in writing.

(2) An application under paragraph (1)(a) is valid only if it—

(a) is in a form approved by the Secretary of State;

(b) contains such information as may be required by the form;

(c) in the case of acquisition, contains the name and address of the proposed supplier; and

(d) includes the signature of—

(i) the applicant, and

(ii) in the case of an application by an organisation, the responsible person.

(3) An application under paragraph (1)(a) must be made—

(a) not less than 14 days before the date on which the acquisition, transport or import is to take place; or

(b) if that is not reasonably practicable, by a later date as agreed by the Chief Constable.

(4) Consent under paragraph (1)(b)—

(a) must be in a form approved by the Secretary of State;

(b) in the case of acquisition, must include the name and address of the proposed supplier;

(c) may include such conditions relating to transport, storage or use of the tier 1 substance as the Chief Constable thinks fit; and

(d) may be withdrawn by the Chief Constable by notice to the applicant (which may include notifying the applicant orally if notice in writing is not reasonably practicable).

(5) This regulation does not apply to—

(a) Forensic Science Northern Ireland; and

(b) the Commissioners of Irish Lights.

Marginal Citations

M26 "Writing" includes include words typewritten, printed, painted, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in a visible form (section 46, Interpretation Act (Northern Ireland) 1954).

Tier 1 substances: record keeping

10.—(1) A person who holds a licence in respect of a tier 1 substance must complete a record in respect of each supply, acquisition and import into Northern Ireland of a tier 1 substance carried out under the licence, which contains—

(a) the date of the transaction;

(b) the nature and quantity of the tier 1 substance;

(c) whether the transaction is acquisition, supply or import into Northern Ireland;

(d) the name and address of any person—

(i) from whom the licence holder has acquired the tier 1 substance, or

(ii) to whom the licence holder has supplied the tier 1 substance; and

(e) the matters required to be included by regulation 12(8) (where applicable).

(2) The record kept in accordance with the paragraph (1) must—

(a) be completed by the licence holder at the time of the transaction;

(b) include a separate entry for each substance in each transaction;

(c) be retained by the licence holder for a period of two years; and

(d) be provided to the Secretary of State or an authorised officer for inspection on request.

(3) A person who holds a licence in respect of a tier 1 substance must retain for a period of two years, and produce to the Secretary of State or an authorised officer for inspection on request, any invoice, consignment note, receipt and consent relating to any supply, acquisition, import into Northern Ireland, disposal or transport of a tier 1 substance to which the licence holder is a party.

PART 4

Recognised non-NI licences

Recognised non-NI licences

11.—(1) The Secretary of State must publish a list from time to time of recognised member States (if any).

(2) A member State is "recognised" for these purposes if licences granted by the competent authority of that State in accordance with the Precursors Regulation are recognised in the United Kingdom under Article 7(6) of that Regulation.

(3) References in these Regulations to a "recognised non-NI licence" are to—

(a) a licence granted under relevant Great Britain legislation; or

(b) a licence granted in accordance with the Precursors Regulation by the competent authority of a member State that is included in the list (or latest list) published under paragraph (1).

(4) "Relevant Great Britain legislation" means any Act of Parliament of the United Kingdom, or any instrument made under such an Act, that implements the Precursors Regulation in Great Britain.

PART 5

Supply of substances

Supply of tier 1 substances

12.—(1) A person ("S") must not supply a tier 1 substance to another person ("P") unless P provides for inspection—

(a) a licence, in relation to which P is the licence holder or the responsible person, as the case may be; and

(b) one of the documents specified in regulation 6(5) relating to P (but see regulation 26).

(2) S must not supply more than 500 grams by weight or 500 millilitres by measure of a tier 1 substance unless S receives a copy of the consent which—

(a) was issued to the licence holder in accordance with regulation 9(1), and

(b) contains S's name and address as the proposed supplier.

(3) Paragraphs (1) and (2) do not apply where the supply involves despatch to Great Britain or export from the United Kingdom (but see paragraphs (5) and (6) and regulation 14).

(4) Paragraph (2) does not apply to supply to—

(a) Forensic Service Northern Ireland; or

(b) the Commissioners of Irish Lights.

(5) Notwithstanding the prohibition in Article 4(1) of the Precursors Regulation [M27], a person ("S") may supply EU restricted sodium chlorate to a member of the general public ("MGP") by despatch to Great Britain or by export from the United Kingdom to another member State only if MGP provides for inspection—

(a) a licence mentioned in paragraph (6) allowing MGP to acquire and possess (or acquire, possess and use) the EU restricted sodium chlorate; and

(b) one of the documents specified in regulation 6(5) relating to MGP (but see regulation 26).

(6) The licence is—

(a) where the supply involves despatch to Great Britain, a licence issued or recognised under relevant Great Britain legislation; or

(b) where the supply involves export from the United Kingdom to another member State, a licence issued or recognised in accordance with Article 7 of the Precursors Regulation by the member State where MGP is acquiring the EU restricted sodium chlorate.

(7) S must complete the record of transactions on the licence provided by—

(a) P under paragraph (1)(a); or

(b) MGP under paragraph (5)(a), where the licence contains such a record.

(8) S must include on the relevant entry in the record required to be kept by S under regulation 10(1)—

(a) the number of the licence provided under paragraph (1)(a) or (5)(a); and

(b) the number (if any) of the document provided under paragraph (1)(b) or (5)(b).

(9) Where P or MGP is an individual under the age of 18—

(a) S must not supply a tier 1 substance unless P or MGP is accompanied by a parent or guardian; and

(b) the document mentioned in paragraph (1)(b) or (5)(b) must relate to that parent or guardian (and not to P or MGP).

(10) In this regulation—

"EU restricted sodium chlorate" means sodium chlorate which is a restricted explosives precursor within the meaning of the Precursors Regulation;

"parent or guardian" has the same meaning as in regulation 6; and

"relevant Great Britain legislation" has the same meaning as in regulation 11.

(11) This regulation does not apply to supply to a person mentioned in regulation 3(5).

Marginal Citations

M27 Article 4(1) of the Precursors Regulation provides that restricted explosives precursors shall not be supplied, whether in return for payment or free of charge, to members of the general public (in any member State).

Supply of tier 2 substances

13.—(1) Notwithstanding the prohibition in Article 4(1) of the Precursors Regulation, a person ("S") may supply a tier 2 substance to a member of the general public ("MGP") only if MGP provides for inspection—

(a) a licence mentioned in paragraph (2) allowing MGP to acquire and possess (or acquire, possess and use) the tier 2 substance; and

(b) one of the documents specified in regulation 6(5) relating to MGP (but see regulation 26).

(2) The licence is—

(a) a licence or a recognised non-NI licence;

(b) where the supply involves despatch to Great Britain, a licence issued or recognised under relevant Great Britain legislation; or

(c) where the supply involves export from the United Kingdom to another member State, a licence issued or recognised in accordance with Article 7 of the Precursors Regulation by the member State where MGP is acquiring the tier 2 substance.

(3) S must complete the record of transactions on the licence provided by MGP under paragraph (1)(a) (where the licence contains such a record).

(4) Where MGP is an individual under the age of 18—

(a) S must not supply a tier 1 substance unless MGP is accompanied by a parent or guardian; and

(b) the document mentioned in paragraph (1)(b) must relate to that parent or guardian (and not to MGP).

(5) In this regulation—

"parent or guardian" has the same meaning as in regulation 6; and

"relevant Great Britain legislation" has the same meaning as in regulation 11.

Supply of tier 1 substances for despatch or export: consent

14.—(1) This regulation applies where the supply of a tier 1 substance involves—

(a) despatch to Great Britain; or

(b) export from the United Kingdom (whether to another member State or any other place).

(2) Where this regulation applies, a person ("S) must not supply a tier 1 substance to a person ("P"), or undertake to do so, unless—

(a) S has applied in writing for the consent of the Chief Constable; and

(b) the Chief Constable has given consent in writing.

(3) An application under paragraph (2)(a) is valid only if it—

(a) is in a form approved by the Secretary of State;

(b) contains such information as may be required by the form;

(c) contains P's name and address; and

(d) includes the signature of—

(i) S, and

(ii) where S is an organisation, the responsible person.

(4) An application under paragraph (2)(a) must be made—

(a) not less than 14 days before the date on which the supply is to take place; or

(b) if that is not reasonably practicable, by a later date as agreed by the Chief Constable.

(5) Consent under paragraph (2)(b)—

(a) must be in a form approved by the Secretary of State;

(b) must include P's name and address;

(c) may include such conditions relating to transport through any public place in Northern Ireland or export of the tier 1 substance as the Chief Constable thinks fit; and

(d) may be withdrawn by the Chief Constable by notice to the applicant (which may include notifying the applicant orally if notice in writing is not reasonably practicable).

Labelling: Annex I substances

15.—(1) This regulation applies to the label required to be affixed by Article 5 of the Precursors Regulation.

(2) The label must state that the acquisition, possession or use of the substance by the general public is restricted.

(3) The label must be in English, whether or not it is also in another language.

(4) The label must be applied in accordance with Article 31(1), (3) and (5) of the CLP Regulation (reading references to Article 17(1) as a reference to Article 5 of the Precursors Regulation and references to this Chapter as references to Article 31(1) and (3) of the CLP Regulation) [M28].

Marginal Citations

M28 If the substances are also required to be labelled under the CLP Regulation, Article 32(6) of that Regulation will apply in relation to the location of the information on the label, relative to other required information.

PART 6

False statements

False statements, etc.

16.—(1) A person must not knowingly or recklessly make a statement which is false—

(a) in an application for a licence under regulation 6(1);

(b) in purported compliance with a requirement to furnish any information to the Secretary of State, the Chief Constable or an authorised officer pursuant to regulation 6, 7, 8 or 9; or

(c) in an application for consent under regulation 9(1)(a) or 14(2)(a).

(2) A person must not intentionally make a false entry, or remove or omit to include an entry required to be kept, in a record—

(a) required to be kept under regulation 10; or

(b) completed under regulation 12(7) or 13(3).

(3) A person must not possess or use any of the following documents with intent to deceive—

(a) a licence issued under regulation 5;

(b) a recognised non-NI licence;

(c) a document giving consent under regulation 9(1)(b) or 14(2)(b); or

(d) a document so closely resembling a document under sub-paragraphs (a), (b) or (c) as to be calculated to deceive.

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 8 of Schedule 2 applies.

Application of enforcement provisions in the 1978 Order

18.—(1) The following provisions of the 1978 Order [M29] 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.

Marginal Citations

M29 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).

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);

(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 [M30].

Marginal Citations

M30 1968 c.67: section 75(8) was amended by S.I. 1968/1699.

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.

PART 8

Revocations, amendments, savings and transitional provisions

Revocations

28. The legislation specified in column 1 of Schedule 3 is revoked to the extent specified in column 3 of that Schedule.

Consequential and connected amendments

29.—(1) In paragraph 3 of Schedule 1 to the 1978 Order (existing statutory provisions) [M31]—

(a) at the end of sub-paragraph (a) insert " and ";

(b) at the end of sub-paragraph (b) omit "and"; and

(c) omit sub-paragraph (c).

(2) In Article 36(1) of the Pollution Control and Local Government (Northern Ireland) Order 1978 [M32], for the words "to which Article 3 of the Explosives (Northern Ireland) Order 1972 applies" substitute " which is a tier 1 substance within the meaning of the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014 ".

(3) In the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 [M33]—

(a) after article 3(o) [M34] insert—

"(p) any decision to refuse to grant a licence under regulation 5 of the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014, to grant such a licence subject to conditions, to modify such a licence (including any of the conditions of that licence), or to suspend or revoke such a licence;

(q) any decision to refuse an application for a licence or registration under Part 3 of the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006 [M35], to grant such a licence subject to conditions, to modify such a licence (including any of the conditions of that licence), or to revoke such a licence or such registration;".

(b) in article 4(2) [M36] for the words "article 3(d) to (o)" substitute " article 3(d) to (q) ";

(c) in Schedule 2 (excepted licences, certificates and permits) [M37]—

(i) in paragraph 4 for "section 3 of that Act as extended by Article 3 of the Explosives (Northern Ireland) Order 1972" substitute " issued under the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014 ", and

(ii) after paragraph 7 insert—

"**8.** Any licence or certificate issued under Part 3 of the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006."; and

(d) in Schedule 3 (excepted proceedings)—

(i) in paragraph 14 [M38], for "of section 3 of that Act as extended by Article 3 of the Explosives (Northern Ireland) Order 1972" substitute " required under the provisions of the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014 "; and

(ii) after paragraph 25 [M39], insert—

"**26.** Proceedings relating to a licence granted or a certificate of registration issued under Part 3 of the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006.".

(4) In regulation 5(2) of the Dangerous Substances in Harbour Areas Regulations (Northern Ireland) 1991 (application of these Regulations) [M40]—

(a) in sub-paragraph (h) omit ", the Explosives (Northern Ireland) Order 1972"; and

(b) after sub-paragraph (h) insert—

"(i) a tier 1 substance within the meaning of the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014.".

(5) For regulation 3 of the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999 (application) [M41], substitute—

"**Application**

3. These Regulations shall not apply to an industrial activity involving—

(a) substances to which the Explosives Acts (Northern Ireland) 1875 to 1970 or the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006 apply;

(b) tier 1 substances within the meaning of the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014; or

(c) the supply of substances to a member of the general public in contravention of regulation 13 of the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014.".

(6) In Schedule 2 to the REACH Enforcement Regulations 2008 (functions of enforcing authorities) [M42], for paragraph 3 substitute—

"**3.** In Northern Ireland, paragraph 2 does not apply in respect of—

(a) substances for which the Explosives Acts (Northern Ireland) 1875 to 1970, the Health and Safety Quarries (Explosives) Regulations (Northern Ireland) 2006, or the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006 make provision; or

(b) tier 1 substances within the meaning of the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014.".

(7) In regulation 3(5) of the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009 (application) [M43]—

(a) omit ", the Explosives (Northern Ireland) Order 1972"; and

(b) at the end of the paragraph insert " apply or to any tier 1 substance or tier 2 substance within the meaning of the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014 ".

(8) In regulation 3(1) of the Explosives (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009 (application) [M44]—

(a) omit ", the Explosives (Northern Ireland) Order 1972"; and

(b) at the end of the paragraph insert " and any tier 1 substance or tier 2 substance within the meaning of the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014 ".

(9) In regulation 4(3) of the Carriage of Explosives Regulations (Northern Ireland) 2010 (application) [M45]—

(a) omit ", the Explosives (Northern Ireland) Order 1972"; and

(b) at the end of the paragraph insert " and any tier 1 substance or tier 2 substance within the meaning of the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014 ".

(10) In Schedule 12 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 [M46] (explosives)—

(a) in paragraph 2—

(i) in sub-paragraph (1), omit "(as extended by Article 3(1) of the Explosives (Northern Ireland) Order 1972)";

(ii) omit sub-paragraph (4); and

(iii) in sub-paragraph (5), for "sub-paragraphs (1) and (4)" substitute " sub-paragraph (1) ".

(b) in paragraph 4—

(i) omit sub-paragraph (2); and

(ii) in sub-paragraph (6), omit paragraphs (c), (d), (e), (f), (h), (i), (k) and (n);

(iii) in sub-paragraph (6), omit "and, so far as applicable" to the end;

(iv) in sub-paragraph (7), omit "and, so far as applicable" to the end; and

(v) in sub-paragraph (11), omit "or the function under Article 3(2) of the 1972 Order".

Marginal Citations

M31 Paragraph 3 was inserted by S.I. 2010/976. There are no other relevant amendments.

M32 S.I. 1978/1049 (N.I. 19); the definition of "waste" in Article 36(1) was modified by S.R. 2006 No.425. Other amendments are not relevant.

M33 S.R. 1979 No. 195; this Order was amended by section 39 of the Osteopaths Act 1993 (c. 21); section 40 of the Chiropractors Act 1994 (c. 17); S.R. 1987 No. 393; S.R. 2001 No. 248; S.R. 2001 No. 400; S.R. 2003 No. 355; S.R. 2006 No. 425; S.R. 2009 No. 173; S.R. 2009 No. 303; S.R. 2012 No. 318; and S.R. 2014 No. 27.

M34 Article 3 was amended by S.R. 1987 No. 393; S.R. 2001 No. 248; S.R. 2001 No. 400; S.R. 2009 No. 303; S.R. 2012/318 and S.R. 2014 No. 27.

M35 S.R. 2006 No.425; Part 3 was amended by S.R. 2009 No.248.

M36 Article 4 was substituted by S.R. 1987 No. 393, and amended by S.R. 2001 No. 400; S.R. 2009 No. 303; and S.R. 2012 No. 318.

M37 Schedule 2 was amended by S.R. 2006 No.425 and S.R. 2009 No.303.

M38 Paragraph 14 was amended by S.R. 2006 No. 425.

M39 Paragraph 25 was inserted by S.R. 2009 No.303.

M40 S.R. 1991 No.509; regulation 5(2)(h) was amended by S.R. 2006 No.425.

M41 S.R. 1999 No.90; regulation 3 was amended by S.R. 2006 No.425.

M42 S.I. 2008/2852; there are no relevant amendments.

M43 S.R. 2009 No.238; paragraph (5) was amended by S.R. 2009 No.273. Other amendments to regulation 3 are not relevant.

M44 S.R. 2009 No.273; there are no relevant amendments to this regulation.

M45 S.R. 2010 No.59;

M46 S.I. 2010/976.

Amendments relating to police consent to activities involving explosives

30.—(1) The Explosives Act (Northern Ireland) 1970 [M47] is amended as follows.

(2) In section 1 (making and dealing with explosives) [M48]—

(a) in subsection (1)(a)—

(i) for "an officer of police" substitute " the Chief Constable ", and

(ii) for "such an officer" substitute " the Chief Constable ";

(b) in subsection (2), for "a member of the Police Service of Northern Ireland" substitute " an authorised officer ";

(c) in subsection (5), for "officer of police" substitute " authorised officer ";

(d) for subsection (7) substitute—

"(7) In this section, "authorised officer" means a person authorised by the Chief Constable under section 8A(2).".

(3) After section 8 (interpretation) insert—

"**8A Functions of the Chief Constable**

(1) The Chief Constable may direct in writing that any of his functions under this Act, or under regulations made under this Act, 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 this Act, or regulations made under this Act.".

(4) The Explosives Regulations (Northern Ireland) 1970 [M49] are amended as follows.

(5) In regulation 1 (interpretation), omit the definition of "an officer of police".

(6) In the following provisions, for "an officer of police" substitute " the Chief Constable "

(a) regulation 4(1) and (6); and

(b) regulation 11(1).

(7) In the following provisions, for "officer of police" substitute " Chief Constable "

(a) regulation 4(2)(f) and (3);

(b) paragraph (1) of Form 1 in the Schedule;

(c) the heading of Form 2 in the Schedule;

(d) paragraphs (1) and (8) of Form 5 in the Schedule [M50];

(e) paragraphs (1) and (11) of Form 5A in the Schedule;

(f) the heading of Form 6 in the Schedule; and

(g) the heading of Form 6A in the Schedule.

(8) In the following provisions, for "consenting officer of police" substitute " Chief Constable "

(a) paragraphs (7), (10)(a) and (10)(b) of Form 6 in the Schedule; and

(b) paragraph (7) of Form 6A in the Schedule.

(9) In Form 6 in the Schedule, in paragraph (11), for "officer of police who issued this consent" substitute " Chief Constable ".

Marginal Citations

M47 1970 c. 10.

M48 Section 1 was amended by S.I. 1996/1920 (N.I. 17) and S.R. 2006 No.425. References to the "Royal Ulster Constabulary" became the "Police Service of Northern Ireland" (section 78 of the Police (Northern Ireland) Act 2000 (c. 32)). References to fines were amended by S.I. 1984/703 (N.I. 3). References to "Head Constable" became "Inspector or Chief Inspector" (S.R.O. (N.I.) 1970/111).

M49 S.R. 1970 No.110; these Regulations were amended by S.R. 1971 No.332; S.R. 1973 No.474; S.R. 1977 No.128; S.R. 2006 No.425; S.R. 2008 No.491.

M50 Forms 5, 5A, 6 and 6A were substituted by S.R. 1977 No.128.

Transitional provision and savings

31.—(1) Before 3rd March 2016, regulation 4(3) has effect as if paragraphs (c) and (d) were omitted.

(2) Subject to paragraphs (3) to (5), a licence issued in respect of a tier 1 substance under any instrument listed in Schedule 3 which was valid immediately before the relevant date, is to be

treated as a licence granted under regulation 5 and continues in operation on its existing terms and conditions.

(3) Such a licence remains valid until—

(a) its expiry on the date it was due to expire,

(b) its revocation under regulation 5, or

(c) a period of three years beginning on the relevant date,

whichever is the sooner.

(4) The continued operation of such a licence is subject to—

(a) the Secretary of State's power to amend, vary, suspend or revoke a licence under regulation 5; and

(b) any review under regulation 7.

(5) The existing terms and conditions of such a licence do not apply to the extent that they are inconsistent with any provision of these Regulations.

(6) Where an application for a licence, or to amend a licence, under any instrument listed in Schedule 3 has been made to the Secretary of State but not determined by the relevant date—

(a) the application is to be treated as an application under regulation 6;

(b) the provisions of these Regulations (other than regulation 6(1) to (7)) apply to the application; and

(c) the Secretary of State may require the applicant to provide additional information or documentation (including the information or documentation mentioned in regulation 6(2), (3)(b) and (d), (4)(a) and (5)) to—

(i) the Secretary of State, or

(ii) an authorised officer.

(7) Subject to paragraphs (8) and (9), consent to a transaction involving a tier 1 substance issued under the Explosives Act (Northern Ireland) 1970 or any instrument listed in Schedule 3, which was valid immediately before the relevant date, is to be treated as consent granted under regulation 9 or 14, as the case may be, and continues in operation on its existing terms and conditions.

(8) Such consent remains valid until—

(a) its expiry on the date it was due to expire,

(b) its withdrawal under regulation 9 or 14, or

(c) 14 days beginning on the relevant date,

whichever is the sooner.

(9) The existing terms and conditions of such consent do not apply to the extent that they are inconsistent with any provision of these Regulations.

(10) Paragraph (11) applies where—

(a) immediately before the relevant date, a person was exempt from the requirement to obtain consent to, or keep a permanent record of, a transaction involving a tier 1 substance under the Explosives Act (Northern Ireland) 1970 or any instrument listed in Schedule 3; and

(b) that person is not so exempt under these Regulations.

(11) Regulations 9, 10 and 14 do not apply to that person for a period of 3 months beginning on the relevant date.

(12) In this regulation, the “relevant date” means the date of coming into force of these Regulations.

Northern Ireland Office
28th August 2014

Andrew Murrison
Parliamentary Under Secretary of State

SCHEDULE 1

Regulation 3

Tier 1 Substances

Table

1. Substance (or mixture containing that substance)	2. Exceptions
Ammonium nitrate (CAS RN 6484-52-2) (including Calcium Ammonium Nitrate (CAS RN 15245-12-2))	A mixture[1] which contains— (a) not more than 27.65% by weight of nitrogen in relation to ammonium nitrate; and (b) not more than 0.4% by weight of combustible material.
Sodium Chlorate (CAS RN 7775-09-9)	A mixture which contains— (a) 13% or more by weight of water; (b) 30% or more by weight of calcium chloride dehydrate; and (c) an inorganic anti-segregation agent which— (i) prevents the separation of liquid and solid phases under the normal conditions of transport, storage and handling, and (ii) is not capable of chemical reaction with sodium chlorate.
Potassium nitrate (CAS RN 7757-79-1)	A mixture[2] which— (a) has been manufactured for the purpose of commercial supply, and (b) contains not more than 5% by weight of— (i) potassium nitrate, or (ii) potassium nitrate in combination with sodium nitrate.
Sodium nitrate (CAS RN 7631-99-4)	A mixture which— (a) has been manufactured for the purpose of commercial supply, and (b) contains not more than 5% by weight of— (i) sodium nitrate, or (ii) sodium nitrate in combination with potassium nitrate.

[1] A fertiliser was previously expressly referred to as an exception in the legislation. Fertiliser which satisfies these requirements will continue to fall within the exception.

[2] Pest fumigants were previously expressly referred to as an exception in the legislation in relation to both potassium nitrate and sodium nitrate. Pest fumigants which satisfy these requirements will continue to fall within the exception.

SCHEDULE 2

Regulation 17

Premises and Activities within the Territorial Sea or a Designated Area

1.—(1) In this Schedule—

"activity" includes, unless the context otherwise requires, a diving project and standing a vessel by;

"diving project" has the meaning assigned to it by regulation 2(1) of the Diving at Work Regulations (Northern Ireland) 2005 [M51] save that it includes an activity in which a person takes part as a diver wearing an atmospheric pressure suit and without breathing in air or other gas at a pressure greater than atmospheric pressure;

"gas importation and storage zone" has the meaning assigned to it by section 1(5) of the Energy Act 2008 [M52], and "within a gas importation and storage zone" includes over and under it;

"offshore installation" is to be construed in accordance with paragraph 2(2) and (3);

"supplementary unit" means a fixed or floating structure, other than a vessel, for providing energy, information or substances to an offshore installation; and

"vessel" includes a hovercraft and any floating structure which is capable of being navigated.

(2) For the purposes of this Schedule, any structures and devices on top of a well are to be treated as forming part of the well.

(3) Any reference in this Schedule to premises and activities includes a reference to any person, article or substance on those premises or engaged in, or, as the case may be, used or for use in connection with any such activity, but does not include a reference to an aircraft which is airborne.

Marginal Citations

M51 S.R. 2005 No.45, as amended by S.R. 2007 No.247.

M52 2008 c. 32; section 1(5) is amended by paragraph 5 of Schedule 4 to the Marine and Coastal Access Act 2009 (c. 23).

Offshore installations

2.—(1) This paragraph applies within the territorial sea or a designated area (including within a gas importation and storage zone in a designated area) to and in relation to—

(a) any offshore installation and any activity on it;

(b) any activity in connection with, or any activity immediately preparatory to an activity in connection with, an offshore installation, whether carried on from the installation itself, in or from a vessel or in any manner, other than an activity falling within sub-paragraph (4);

(c) a diving project involving—

(i) the survey and preparation of the sea bed for an offshore installation, or

(ii) the survey and restoration of the sea bed consequent on the removal of an offshore installation.

(2) Subject to sub-paragraph (3), in this Schedule, "offshore installation" means a structure which is, or is to be, or has been, used while standing or stationed in water, or on the foreshore or other land intermittently covered with water—

(a) for the exploitation, or exploration with a view to exploitation, of mineral resources by means of a well,

(b) for undertaking activities falling within paragraph 6(2),

(c) for the conveyance of things by means of a pipe,

(d) for undertaking activities that involve mechanically entering the pressure containment boundary of a well, or

(e) primarily for the provision of accommodation for persons who work on or from a structure falling within any of the provisions of heads (a) to (d),

together with any supplementary unit which is ordinarily connected to it, and all the connections.

(3) Any reference in sub-paragraph (2) to a structure or supplementary unit does not include—

(a) a structure which is connected with dry land by a permanent structure providing access at all times and for all purposes;

(b) a well;

(c) a mobile structure which has been taken out of use and is not yet being moved with a view to its being used for any of the purposes specified in sub-paragraph (2);

(d) any part of a pipeline; and

(e) a structure falling within paragraph 8(c).

(4) Subject to sub-paragraph (5), the following activities fall within this paragraph—

(a) transporting, towing or navigating an installation;

(b) any of the following activities carried on in or from a vessel—

(i) giving assistance in the event of an emergency,

(ii) training in relation to the giving of assistance in the event of an emergency,

(iii) testing equipment for use in giving assistance in the event of an emergency,

(iv) putting or maintaining a vessel on stand-by ready for an activity referred to in any of sub-heads (i) to (iii).

(5) Sub-paragraph (4)(b) does not apply in respect of a vessel in or from which an activity is carried on in connection with, or any activity that is immediately preparatory to an activity in connection with, an offshore installation other than an activity falling within sub-paragraph 4(b).

Wells

3.—(1) Subject to sub-paragraph (2), this paragraph applies within the territorial sea or a designated area to and in relation to—

(a) a well and any activity in connection with it; and

(b) an activity which is immediately preparatory to any activity in head (a).

(2) Sub-paragraph (1) includes keeping a vessel on station for the purpose of working on a well but otherwise does not include navigation or an activity connected with navigation.

Pipelines

4.—(1) This paragraph applies within the territorial sea or a designated area to and in relation to—

(a) any pipeline;

(b) any pipeline works;

(c) the following activities in connection with pipeline works—

(i) the loading, unloading, fuelling or provisioning of a vessel which is engaged in pipeline works,

(ii) the loading, unloading, fuelling, repair and maintenance of an aircraft on a vessel which is engaged in pipeline works, or

(iii) the moving, supporting, laying or retrieving of anchors attached to a pipe-laying vessel, including the supervision of those activities and giving of instruction in connection with them.

(2) In this paragraph—

"pipeline" means a pipe or system of pipes for the conveyance of any thing, together with—

(a) any apparatus for inducing or facilitating the flow of any thing through, or through part of, the pipe or system,

(b) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system,

(c) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system,

(d) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in heads (a) to (c),

(e) apparatus for the transmission of information for the operation of the pipe or system,

(f) apparatus for the cathodic protection of the pipe or system, and

(g) a structure used or to be used solely for the support of a part of the pipe or system,

but not including a pipeline of which no initial or terminal point is situated in the United Kingdom, within the territorial sea adjacent to the United Kingdom, or within a designated area;

"pipeline works" means—

(a) assembling or placing a pipeline or length of pipeline including the provision of internal or external protection for it;

(b) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipeline or length of pipeline;

(c) changing the position of or dismantling or removing a pipeline or length of pipeline;

(d) opening the bed of the sea for the purposes of the works mentioned in heads (a) to (c), and tunnelling or boring for those purposes;

(e) any activities incidental to the activities described in heads (a) to (d); or

(f) a diving project in connection with any of the works mentioned in heads (a) to (e) or for the purpose of determining whether a place is suitable as part of the site of a proposed pipeline and the carrying out of surveying operations for settling the route of a proposed pipeline.

Mines

5.—(1) This paragraph applies to and in relation to a mine within the territorial sea or extending beyond it, and any activity in connection with it, while it is being worked.

(2) In this paragraph "mine" has the same meaning as in the Mines Act (Northern Ireland) 1969 [M53].

Marginal Citations

M53 1969 c. 6.

Gas Importation and Storage

6.—(1) Subject to sub-paragraph (3), this paragraph applies within the territorial sea or a gas importation and storage zone in a designated area to and in relation to—

(a) the activities set out in sub-paragraph (2); and

(b) any activity connected with or immediately preparatory to such activities.

(2) The activities are—

(a) the unloading of gas to an installation or pipeline;

(b) the storage of gas, whether temporary or permanent, in or under the shore or bed of any water;

(c) the conversion of any natural feature for the purpose of storing gas, whether temporarily or permanently;

(d) the recovery of gas stored;

(e) exploration with a view to, or in connection with, the carrying on of activities within heads (a) to (d).

(3) Sub-paragraph (1) does not apply to an activity falling within sub-paragraph (2) if the provisions of this Schedule apply to or in relation to that activity by virtue of paragraph 2(1).

(4) In this paragraph—

"gas" means any substance which is gaseous at a temperature of 15ï¿½C and a pressure of 101.325 kPa (1013.25 mb); and

"installation" includes any floating structure or device maintained on a station by whatever means.

(5) For the purposes of sub-paragraphs (2) and (4), references to gas include any substance which consists wholly or mainly of gas.

Production of Energy from Water or Wind

7.—(1) This paragraph applies within the territorial sea or a renewable energy zone in a designated area to and in relation to—

(a) any energy structure; or

(b) any activity connected with or preparatory to—

(i) the exploitation of those areas for the production of energy from water or wind;

(ii) the exploration of such areas with a view to, or in connection with, the production of energy from water or wind; or

(iii) the operation of a cable for transmitting electricity from an energy structure.

(2) In this paragraph—

"energy structure" means a fixed or floating structure or machine, other than a vessel, which is, or is to be, or has been, used for producing energy from water or wind; and

"renewable energy zone" has the same meaning as by section 84(4) of the Energy Act 2004 [M54] and "within a renewable energy zone" includes over and under it.

Marginal Citations

M54 1969 c. 6 (N.I.).

Underground Coal Gasification

8. This paragraph applies within the territorial sea or a designated area to and in relation to—
   (a) underground coal gasification and any activity in connection with it;
   (b) any activity which is immediately preparatory to any activity in sub-paragraph (a); and
   (c) any fixed or floating structure which is, or is to be, or has been, used in connection with the carrying on of activities within sub-paragraphs (a) and (b).

Other activities

9.—(1) Subject to sub-paragraph (2), this paragraph applies within the territorial sea to and in relation to—
   (a) the construction, reconstruction, alteration, repair, maintenance, cleaning, use, operation, demolition and dismantling of any building, or other structure, not being in any case a vessel, or any preparation for any such activity;
   (b) the transfer of people or goods between a vessel or aircraft and a structure (including a building) mentioned in head (a);
   (c) the loading, unloading, fuelling or provisioning of a vessel;
   (d) a diving project;
   (e) the laying, installation, inspection, maintenance, operation, recovery or repair of a cable;
   (f) the construction, reconstruction, finishing, refitting, repair, maintenance, cleaning or breaking up of a vessel except when carried out by the master or any officer or member of the crew of that vessel;
   (g) the maintaining on a station of a vessel which would be an offshore installation were it not a structure to which paragraph 2(3)(c) applies; and
   (h) the transfer of people or goods between a vessel or aircraft and a structure mentioned in head (g).

(2) This paragraph does not apply—
   (a) to a case where paragraph 2, 3, 4, 5, 6, 7 or 8 applies; or
   (b) to vessels which are registered outside the United Kingdom and are on passage through the territorial sea.

SCHEDULE 3 Regulation 28

Revocations

1. Title	*2. Reference*	*3. Extent of Repeal*
Explosives (Northern Ireland) Order 1972	S.I. 1972 No.730 (N.I. 3)[1]	Whole instrument.

[1] This instrument was amended by S.L.R. 1976; functions under this instrument were transferred by S.I. 1973/2163.

[2] This instrument was amended by S.R. 1973 No.171; S.R. 1996 No.429

[3] This instrument was amended by S.R. 1981 No.31.

Explosives Regulations (Northern Ireland) 1972	S.R. No.118[2]	1972	Whole instrument.
Explosives (No. 2) Regulations (Northern Ireland) 1972	S.R. No.218	1972	Whole instrument.
Explosives (Amendment) Regulations (Northern Ireland) 1973	S.R. No.171	1973	Whole instrument.
Explosives Regulations (Northern Ireland) 1973	S.R. No.463	1973	Whole instrument.
Explosives Regulations (Northern Ireland) 1974	S.R. 1974 No.32		Whole instrument.
Explosives Regulations (Northern Ireland) 1976	S.R. No.51[3]	1976	Whole instrument.
Explosives Regulations (Northern Ireland) 1977	S.R. No.128	1977	Regulations 3 and 4 and Schedules 2 and 3.
Explosives Regulations (Northern Ireland) 1981	S.R. 1981 No.31		Whole instrument.
Explosives (Amendment) Regulations (Northern Ireland) 1996	S.R. No.429	1996	Whole instrument.

[1] This instrument was amended by S.L.R. 1976; functions under this instrument were transferred by S.I. 1973/2163.

[2] This instrument was amended by S.R. 1973 No.171; S.R. 1996 No.429

[3] This instrument was amended by S.R. 1981 No.31.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, as regards Northern Ireland, Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors (the "Precursors Regulation"). These Regulations also revoke and replace with modifications regulations made under the Explosives Act (Northern Ireland) 1970 and the Explosives (Northern Ireland) Order 1972 relating to the control of explosives precursors in Northern Ireland.

Under these Regulations, two categories of explosives precursor are controlled.

Tier 1 substances are substances which were previously controlled in Northern Ireland by regulations made under the Explosives Act (Northern Ireland) 1970 by virtue of the Explosives (Northern Ireland) Order 1972. Those substances are defined in regulation 3 and Schedule 1: ammonium nitrate (including calcium ammonium nitrate), sodium chlorate, potassium nitrate and sodium nitrate). Three substances which were controlled under the previous legislation – nitro-benzene, sodium chorite and sodium nitrite – are no longer subject to control and are not included in the definition of a tier 1 substance. Under regulation 3, a person is prohibited from supplying, acquiring, importing into Northern Ireland, possessing or using a tier 1 substance otherwise than under and in accordance with the terms of a licence granted by the Secretary of State. A limited number of persons are exempt from this prohibition.

Tier 2 substances are substances which are "restricted explosives precursors" within the meaning of the Precursors Regulation, as amended from time to time, other than tier 1 substances (see regulation 4). Currently, the tier 2 substances are hydrogen peroxide, nitromethane, nitric acid, potassium chlorate, potassium perchlorate and sodium perchlorate. Under Article 4(1) of the Precursors Regulation, a member of the general public is prohibited from possessing, acquiring, using or importing a tier 2 substance, but regulation 4 permits such a person to do so under and in accordance with the terms of a licence granted by the Secretary of State.
Regulation 5 provides for the grant and amendment of licences, including consultation requirements, the factors that the Secretary of State must consider and communication of the decision to the applicant. A licence may be granted for up to 3 years.
Regulation 6 sets out the requirements of a valid application for a licence. Where an application for a tier 1 substance is made by an organisation, the application must include details of a person who will be responsible for the substance. All applications must be accompanied by an identification document and a specified fee (a new requirement not previously imposed under the previous regulations which are replaced by this instrument).
Regulation 7 provides that the Secretary of State must conduct a review of her decision if requested to do so by the affected person within a specified time period.
Regulation 8 imposes general obligations on all licence holders, including requirements to permit inspections and provide information, and requirements to notify the Secretary of State of certain matters. Regulations 9 and 10 impose obligations on licence holders in respect of tier 1 substances only, including a requirement to obtain the consent of the Chief Constable of the Police Service of Northern Ireland for certain transactions, and a requirement to keep detailed records and documents.
Regulation 11 provides for the recognition of licences issued in Great Britain, or in other member States in accordance with Article 7(6) of the Precursors Regulation.
Regulations 12 to 14 place obligations on suppliers of tier 1 and tier 2 substances. A person must not supply a substance to a person who is required to have a licence unless a specified licence and identification are provided. For tier 1 substances in certain quantities, police consent to the transaction must also be provided. The supplier is required to fill out specified records. A person can supply tier 1 substances, other than sodium chlorate, for despatch or export outside Northern Ireland without requiring a licence, but the supplier must obtain the consent of the Chief Constable for transactions involving any tier 1 substances in certain quantities. A person who supplies a tier 2 substance in Northern Ireland, for despatch to Great Britain, or for export to another member State must require a licence. Suppliers also have obligations under Articles 5 and 9 of the Precursors Regulation in relation to labelling of substances (see regulation 15) and reporting of suspicious transactions and significant thefts and disappearances.
Regulation 16 prohibits the making of a false statement in relation to the licensing process.
Regulation 17 and Schedule 2 restrict the application of the Regulations to certain premises and activities in the territorial sea, except in relation to importation.
Regulation 18 provides for the enforcement of Articles 4 (prohibition on possession, etc of certain substances), 5 (labelling) and 9 (suspicious reporting) of the Precursors Regulation. It applies certain provisions of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1038 (N.I. 9)) to those Articles so that they will be enforced in the same way as health and safety regulations. It is a criminal offence to contravene health and safety regulations under Article 31 of that Order.
Regulations 19 to 23 provide for the enforcement of the Regulations, defences in relation to certain contraventions and separate penalties for certain contraventions of the Regulations.
Regulation 24 provides for the issue of guidance by the Secretary of State and regulation 25 provides for regular review of the Regulations. Regulation 26 allows for the provision of copies of documents in place of originals in certain circumstances. Regulation 27 permits the Chief Constable to delegate his functions under the Regulations to specified police officers and members of the police support staff.

Regulations 28 to 31 and Schedule 3 provide for revocations, consequential amendments, linked amendments, and transitional and saving provisions.
Contravention of these regulations or any requirement or prohibition imposed under these regulations is an offence under Article 31 of the Health and Safety (Northern Ireland) Order 1978.
A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Northern Ireland Office, and is annexed to the Explanatory Memorandum which is available alongside the instrument at www.legislation.gov.ukwww.legislation.gov.uk.
A copy of the transposition note in relation to the implementation of the Precursors Regulation is available from the Northern Ireland Office, and is annexed to the Explanatory Memorandum which is available alongside the instrument at www.legislation.gov.uk.

Status:
Point in time view as at 02/09/2014.

Changes to legislation:
There are currently no known outstanding effects for the The Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014.