

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

2014 No. 224

1. This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

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

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

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

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

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

3.4 It is necessary for this instrument to come into force on 2 September 2014 because this instrument implements the Precursors Regulation, which comes into force on that date. Although the Precursors Regulation is directly applicable in member States, the UK is required to impose penalties for infringement of its provisions. If this instrument is not in force by 2 September 2014, the UK will be in breach of EU law. Further, if the instrument is not in force by that date, there would be an adverse impact on businesses. This is

because the Precursors Regulation creates a prohibition on the supply of certain substances to, or the possession, import or use of those substances by, members of the general public. Member States are then permitted to (but are not required to) permit possession, use and import by way of a licensing system. If no licensing system is in place by 2 September 2014, the prohibition in the Precursors Regulation would take effect so that no businesses would be able to supply these substances to members of the general public.

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

4. Legislative Context

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

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

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

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

4.5 The Precursors Regulation requires suppliers to report suspicious transactions and significant disappearances and thefts of substances in both

Annex 1 and 2 to a national contact point. This instrument imposes penalties and creates enforcement provisions in respect of this requirement.

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

5. Territorial Extent and Application

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

6. European Convention on Human Rights

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

7. Policy background

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

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

7.3 Northern Ireland has had existing legislation in place since the early 1970s to control some of the precursors covered by the Precursors Regulation. Under the existing legislation, all persons (including both businesses and members of the public) are prohibited from possessing, acquiring, manufacturing, importing or using certain substances otherwise than in

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

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

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

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

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

7.6 The licensing process for tier 1 substances and tier 2 substances is the same. Licences can be issued subject to terms and conditions, for example about storage, use, maximum quantities, maximum levels of concentration, and reporting of disappearances or thefts. Persons who hold licences in respect of tier 1 substances have additional obligations, such as record keeping and a requirement to obtain police consent for certain transactions.

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

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

8. Consultation outcome

8.1 A written consultation was launched on 9 December 2013 and closed on 9 January 2014. The Northern Ireland Office also sent a supplemental questionnaire to licence holders under the existing system. The consultation sought views on the impact of the policy options on members of the public, suppliers, business users, manufacturers, distributors and formulators. The documents gave some detail on how each of the options might work in practice, and detailed the possible costs and administrative burdens. The consultation document and the Government response to consultation are available at <https://www.gov.uk/government/consultations/marketing-and-use-of-explosives-precursors>.

8.2 The consultation responses suggested that licensing was the favoured option amongst retailers, businesses and users. Licensing was felt to retain consumer choice and targeted the end user rather than the retailer. Many respondents felt that a stratified system, involving more than one control measure, would be too complex and costly for retailers to implement and for the general public to understand. Respondents highlighted the need for clear guidance on labelling and some respondents requested further guidance on the requirement to report suspicious transactions and significant disappearances and thefts.

9. Guidance

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

10. Impact

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

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

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

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

11. Regulating small business

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

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

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

12. Monitoring & review

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

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

13. Contact

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

Northern Ireland Office
September 2014

TRANSPOSITION NOTE

Regulation (EU) No. 98/2013 on the Marketing and Use of Explosives Precursors

Introductory Note

The Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014 implement Regulation (EU) No. 98/2013 on the Marketing and Use of Explosives Precursors (the “Precursors Regulation”) in respect of Northern Ireland only.

The Precursors Regulation contains a safeguard clause under which national protection against the illicit use of explosives precursors that is similar to or higher than that envisaged by the Precursors Regulation may be maintained (see Article 13). The existing provisions in force in Northern Ireland are described in the notification made in respect of Northern Ireland under Article 13.6 of the Precursors Regulation. Those existing provisions are consolidated and updated in the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014 in order to:

- a) make them more comprehensible to the persons to whom they apply, in order to minimise the burden on individuals and on businesses; and
- b) achieve consistency with the Precursors Regulation and clarify the interaction between the national and European provisions.

Shorthand used in the Transposition Note

“*Incorporated for coherence and comprehensibility*”: This refers to incorporation of some elements of an EU Regulation for the sake of coherence and in order to make them comprehensible to the persons to whom they apply.

“*Implementation required or invited*”: This refers to transposition of provisions of an EU Regulation where the relevant provisions are so worded as to require or invite implementation by the Member States or where legislation is necessary to make the provisions workable or enforceable in the Member State.

“*Legislation not required*”: This refers to the lack of any need for legislative implementation by Member States, either because the obligations under the provisions are clear or because administrative implementation is sufficient.

Article	Objective	Transposition
3	Defines terms used in the Precursors Regulation.	<i>Incorporated for coherence and comprehensibility</i> <u>Regulation 2(1)</u> Some of the definitions in the Precursors Regulation are incorporated in this regulation, and will apply to both ‘tier 1’ and ‘tier 2’ substances to ensure consistency between the national and European provisions.
4(1)	Prohibits supply of restricted explosives precursors (“precursors”) to, and possession, use or import of precursors by, members of the general public (“individuals”)	<i>Incorporated for coherence and comprehensibility</i> <u>Regulations 3(1) and (7), 12(1) and Schedule 1</u> These provisions prohibit any person from supplying, acquiring, importing, possessing or using ammonium nitrate (including calcium ammonium nitrate), sodium

		chlorate, potassium nitrate or sodium nitrate otherwise than in accordance with a licence (see Article 13 of the Precursors Regulation below). The prohibition in relation to sodium chlorate repeats in part the prohibition in Article 4(1) of the Precursors Regulation, but this is necessary because to do otherwise would make the more restrictive protection incoherent and incomprehensible to the persons to whom it applies. There is a general exception to the requirement to have a licence in respect of supply for despatch outside Northern Ireland or for export from the UK, but this exception does not apply in relation to the supply of sodium chlorate outside Northern Ireland insofar as it falls within the prohibition in Article 4(1) (see regulation 12(5) and (6)).
4(2) and (6)	Permits Member States to maintain or establish a licensing regime to allow precursors to be supply to, or acquired, possessed, used or imported by, an individual.	<i>Implementation required or invited</i> <u>Regulations 3 and 4</u> These provisions permit all persons (regulation 3) and individuals (regulation 4) to deal with substances under and in accordance with a licence issued by the Secretary of State. Details of the licensing process are dealt with in relation to Article 7 below.
4(3)	Permits Member States to maintain or establish a licensing regime to allow precursors to be supplied to, or acquired, possessed or used by, an individual.	<i>Legislation not required</i> A registration system is not adopted in Northern Ireland.
4(4)	Requires Member States to notify implementing measures under 4(2) or 4(3) to the Commission.	<i>Legislation not required</i> The details of the UK's implementing measures will be separately communicated to the Commission.
4(6)	Requires individuals to obtain a licence for importation of precursors into Member States.	<i>Implementation required or invited and incorporated for coherence and comprehensibility</i> <u>Regulations 3 and 4</u> This requirement is incorporated into the general requirement to obtain a licence for possession, use and acquisition so that the provisions are coherent and comprehensible to the persons to whom they apply. Details of the licensing process are dealt with in relation to Article 7 below.
4(7)	Requires suppliers of	<i>Implementation required or invited and incorporated</i>

	<p>precursors to individuals to require a licence or to register in accordance with national provisions</p>	<p><i>for coherence and comprehensibility</i></p> <p><u>Regulations 12 and 13</u></p> <p>Under the Precursors Regulation, suppliers may only supply in compliance with the regime established by the Member State, so implementation is required.</p> <p>Under these provisions, suppliers must require a licence and specified identification from the person acquiring the substance. Additional requirements apply in relation to the substances subject to more restrictive national protection (see regulation 14).</p> <p>Suppliers need to ensure that the licence being verified is sufficient for their purposes, for example:</p> <ul style="list-style-type: none"> • If a person holds a licence issued under this instrument, or a licence issued in another Member State which is recognised in Northern Ireland (“recognised non-NI licence”), suppliers can supply precursors (other than sodium chlorate, which is subject to greater restrictions in Northern Ireland) for the purpose of acquisition, possession and use in Northern Ireland based on that licence (regulation 13). • Suppliers can supply precursors for the purpose of acquisition, possession and use in Great Britain with a licence issued under the equivalent Great Britain legislation, or a licence recognised in Great Britain (regulation 12(5) and (6) and 13). • Suppliers can supply precursors for export from the United Kingdom to another Member State where the individual has a licence issued or recognised (in accordance with Article 7(6) of the Precursors Regulation) by the Member State where the individual is acquiring the precursor (regulation 12(5) and (6) and 13).
5	<p>Requires suppliers of precursors to affix an appropriate warning label, or to verify that an appropriate warning label is affixed</p>	<p><i>Incorporated for coherence and comprehensibility</i></p> <p><u>Regulation 15</u></p> <p>In order to ensure that the requirement is comprehensible to suppliers, this regulation clarifies that the label must be in English, must state that the precursor is restricted, and must be applied in accordance with relevant provisions of Regulation (EC) No. 1272/2008 (see recital (6) of the Precursors Regulation).</p>
7	<p>Sets out conditions that Member States must comply with when</p>	<p><i>Implementation required or invited</i></p> <p><u>Regulations 5, 6, 7, 8, 9, 10, 11, 14, 16 and 24</u></p>

	implementing a licensing system in accordance with Article 4(2) and (6).	<p>Article 7 of the Precursors Regulation invites implementation. The provisions are:</p> <ul style="list-style-type: none"> • Rules for granting licences, including limitation of validity and conditions (regulation 5) • Requirements for applications, including fees and full disclosure of previous convictions and cautions (regulation 6) • Internal review of licences (regulation 7) • Obligations of licence holders (regulations 8 to 10 and 14) • Recognition of non-Northern Ireland licences in accordance with Article 7(6) of the Precursors Regulation (regulation 11) • Prohibition on the making of false statements (regulation 16) • Issue of guidance by the Secretary of State about the grant of licences (regulation 24) <p>Note: Challenge to a licensing decision by the Secretary of State is made to the High Court by way of judicial review, which does not require legislation.</p>
8	Sets out conditions that Member States must comply with when implementing a registration system in accordance with Article 4(3).	<p><i>Legislation not required</i></p> <p>A registration system is not adopted in Northern Ireland.</p>
9(2)	Requires Member States to set up one or more national contact points for the reporting of suspicious transactions.	<p><i>Legislation not required</i></p> <p>The details of the national contact points in respect of Northern Ireland will be published and will be separately communicated to the Commission.</p>
9(3) and (4)	Requires suppliers to report suspicious transactions or significant disappearances and thefts to the national contact point.	<p><i>Legislation not required</i></p> <p>But see Article 11 below.</p>
9(6)	Requires Member States to ensure that Commission guidelines are disseminated.	<p><i>Legislation not required</i></p> <p>The details of dissemination measures taken in respect of Northern Ireland will be separately communicated to the Commission.</p>
10	Requires Member States to ensure that personal	<p><i>Legislation not required</i></p>

	data is processed in accordance with Directive 95/46/EC.	All data controllers and data processors will be required to comply with the provisions of the Data Protection Act 1998 (c. 29).
11	Requires Member States to provide for effective, proportionate and dissuasive penalties for infringement of the Precursors Regulation and to ensure that they are implemented.	<p><i>Implementation required or invited</i></p> <p><u>Regulations 18, 19, 20, 21, 22 and 23</u></p> <p>The Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014 are health and safety regulations within the meaning of the Health and Safety at Work (Northern Ireland) Order 1978. Under Article 31 of the 1978 Order, any contravention of health and safety regulations is a criminal offence, punishable by a maximum of two years' imprisonment or a fine or both. Various enforcement powers also apply to health and safety regulations (for example, Articles 20 to 39 and 43 of the 1978 Order).</p> <p>Regulation 18 provides that contravention of Articles 4(1), 5, 9(3) or 9(4) of the Precursors Regulation is a criminal offence in the same way as a contravention of health and safety regulations, and subject to the same penalty. Similarly, the enforcement provisions in the 1978 Order also apply to Articles 4(1), 5, 9(3) or 9(4) of the Precursors Regulation.</p> <p>Regulation 19 provides for the allocation of enforcement responsibility.</p> <p>Regulations 20 to 22 provide for specific defences, and regulation 23 provides for lower penalties, where appropriate and proportionate.</p>
13	Permits Member States to maintain national protection in relation to substances (1) not listed in the Annexes, (2) listed in Annex 1, but at a lower concentration, or (3) listed in Annex 2. Member States must notify the Commission of such measures.	<p><i>Implementation required or invited</i></p> <p><u>Regulations 3, 9, 10, 12, 13, 14 and Schedule 1</u></p> <p>The Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014 maintain national protection in respect of substances which could be used for the illicit manufacture of explosives. Those measures were notified to the Commission in accordance with Article 13.6 of the Precursors Regulation and include additional restrictions on (a) sodium chlorate (in Annex 1 to the Precursors Regulation); and (b) ammonium nitrate, calcium ammonium nitrate, potassium nitrate and sodium nitrate (in Annex 2 to the Precursors Regulation). Supply to, and possession, acquisition, use and import by, all persons including professional users is prohibited otherwise than under and in accordance with a licence.</p> <p>Note the following updates to the existing national protections:</p>

		<ul style="list-style-type: none"> • Licences are now limited to a period of 3 years, consistent with the provisions implementing the Precursors Regulation. • Three substances which are not included in Annex 1 or 2, but which were previously restricted in Northern Ireland, are no longer restricted: nitro-benzene, sodium chlorite and sodium nitrite. • The existing practice in relation to the issue and enforcement of licences is set out in legislation, consistent with the principle of legal certainty in EU law. • There are a number of minor administrative changes in the way that licences are issued and administered, consistent with the provisions implementing the Precursors Regulation.
16	Transitional provision relating to the prohibition in Article 4(1), permitting the possession and use of precursors until 2 March 2016.	<p><i>Implementation required or invited</i></p> <p><u>Regulation 30</u></p> <p>Between 2 September 2014 and 2 March 2016 a licence will only be required to be issued in respect of the acquisition or import into Northern Ireland (not possession or use) of ‘tier 2’ substances.</p> <p>Note that other transitional provisions relate to the update and consolidation of the existing national protection maintained in Northern Ireland.</p>
17	Permits Member States to maintain existing registration regimes	<p><i>Legislation not required</i></p> <p>A registration system is not adopted in Northern Ireland.</p>