

EXPLANATORY MEMORANDUM TO
THE CONTROL OF EXPLOSIVES PRECURSORS REGULATIONS 2014

2014 No. 1942

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

2. Purpose of the instrument

2.1 The instrument implements Regulation (EU) No 98/2013 on the Marketing and Use of Explosives Precursors ('the Regulation') which establishes harmonised rules concerning the availability, possession and use of chemicals and mixtures of these, that could be misused for the illicit manufacture of explosives. Its purpose is to control the sale of these substances to the general public, and ensure that suspicious transactions, thefts and losses of these chemicals are reported to the appropriate authorities. The chemicals that will be controlled by this instrument are listed at Annexes 1 and 2 of the Regulation.

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

3.1 None.

4. Legislative Context

4.1 This statutory instrument is made using the vires at section 2(2)(a) of the European Communities Act 1972. It will work alongside the Regulation in establishing a licensing regime for explosives precursors along with suspicious transaction reporting requirements. Suitable penalty provisions attach to non compliance.

5. Territorial Extent and Application

5.1 This instrument applies to England, Scotland and Wales. Northern Ireland has existing measures in place relating to the control of explosives precursors and is therefore implementing the Regulation separately in their own instrument.

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

What is being done and why

- 7.1 The objective of the 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 chemicals were deemed significant enough to justify a Regulation. For example, one of the listed chemicals was used by terrorists in the 7/7 London bombings and others have been used in terrorist plots across Europe.
- 7.2 The Regulation controls the supply of **seven chemicals** (Annex 1 of the Regulation) that can be used to produce homemade explosives above specified concentration limits to the general public. Examples of more common uses of these chemicals are nitromethane in model engines, hydrogen peroxide in swimming pool cleaner and nitric acid as jewellery cleaner. To control the supply of these chemicals, this instrument will introduce the requirement for members of the general public seeking to use these chemicals to present a valid licence and photo ID to the supplier at the point of acquisition. The supplier will be required to record the details of the acquisition (including the type and volume of the substance) on the back of the licence. The licence will be valid for up to 3 years and can be obtained online via the Gov.uk website. Members of the general public who seek to apply for a licence to use these chemicals will be required to undergo background security and medical checks during the application process.
- 7.3 Suppliers will be required to monitor transactions of these and a further **eight chemicals** (Annex 2 of the regulation) for suspicious activity at any concentration great enough that the substance is listed as an ingredient on the label. Examples of more common uses of these chemicals include sulphuric acid in drain cleaner and sodium nitrate in fertiliser. Any business that experiences a suspicious transaction, theft or significant loss of these chemicals will be required to report this to the Police.
- 7.4 In addition, the Regulation stipulates that suppliers and wholesalers must ensure that any restricted product is labelled as per the guidance developed by the European Commission.
- 7.5 Five new offences have been created with associated penalties. These offences include inappropriate supply; failure to indicate that a product is restricted from sale; failure to report suspicious behaviours to the authorities; failure to record transaction details; and acquisition, importation, possession or use otherwise than in accordance with a licence.

Penalties for these offences vary and can include the imposition of fines and in more serious cases, terms of imprisonment of up to two years.

- 7.6 The UK Government is required to ensure that the Regulation is implemented on the 2 September 2014 (subject to the transitional provision at Article 16) in order to comply with EU law or risk infraction.
- 7.7 The publication of the consultation in November 2013 prompted an article in the Daily Telegraph on 22 November which incorrectly stated the government was considering banning hair dye and restricting the use of nail varnish remover and types of drain cleaner. However, overall there has been limited media interest in the regulation.

Consolidation

- 7.8 Consolidation is not applicable as there are no existing Regulations or provisions on explosive precursors.

8. Consultation outcome

- 8.1 A seven week written consultation was launched on 21 November 2013 and closed on 9 January 2014. The consultation sought views on proposals to control the sale of explosive precursor chemicals:

Option 1 was to make no changes (do nothing).

Option 2 was to ban sales of Annex 1 chemicals above the concentration limits to the general public. Business to business sales would be unaffected by the ban.

Option 3 was to allow the general public to purchase Annex 1 chemicals above the concentration threshold if they hold a valid licence. Business to business sales would not need to be licensed but business users would need to be prepared to demonstrate an ongoing business need for the substance at the point of sale if asked.

Option 4 was to allow the general public to purchase the Annex 1 chemicals above the concentration threshold (*Group A*) with a licence and the Annex 1 chemicals (*Group B*) by entering personal details into a register at the point of sale.

- 8.2 A total of 45 responses were received from home users, business users, wholesalers and distributors, suppliers and professional societies and members of the general public. 49% of respondents felt that requiring members of the general public to obtain a licence in

order to purchase, use and possess Annex 1 chemicals above the concentration limits met the policy objectives. 78% of respondents would continue to purchase these chemicals if a licence was required. The main objections to licensing were that the cost of obtaining a licence should not be prohibitive and the process should be straightforward. There was very little support for the option to ban these chemicals. Some respondents commented that a ban would have disastrous consequences on their hobbies and detrimental effects for industry as there are no available alternatives.

9. Guidance

9.1 To prepare for the implementation of the instrument, the Home Office will:

- Produce on-line guidance and training materials for businesses (including manufacturers) and industry bodies impacted by these changes, on how to verify licences prior to supply and to identify/report a suspicious transaction, theft or significant loss of these chemicals;
- Develop on-line guidance for the general public on when and how to apply for a licence. This will also detail the internal review process which they can follow should they wish to object to an application refusal or terms and conditions which have been imposed;
- Produce training and guidance for the Police on enforcement issues such as test purchasing, the extent of checks required to assess whether an individual is suitable to hold a licence for these chemicals and the new offences created by this instrument and how to notify the Home Office when they receive reports of licence misuse.

10. Impact

10.1 The impact on business, charities or voluntary bodies is estimated to be £1.7 to £4.6million in transition costs, and £1.7 to £2.1 million per year from year 2 onwards, at a present value of £17.3 to £24.0 million over 10 years (refer to pages 10-14 of the Final Impact Assessment for further detail).

10.2 The impact on the public sector is estimated to be £0.1 million in transition costs, and £0.4 million per year from year 2 onwards at a present value of £0.8million over 10 years (refer to pages 14-16 of the Final Impact Assessment for further detail).

10.3 The Final Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum.

11. Regulating small business

- 11.1 The legislation applies to small businesses. Small businesses supplying these chemicals will be required to report any suspicious transactions, losses and thefts to the appropriate authorities. Businesses supplying these substances or chemicals to members of the public will be required to verify that the individual 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 and the Home 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 met with Home Office officials in follow-up discussions. They have also been involved in the development of guidance for the small business sector.

12. Monitoring & review

- 12.1 The Regulation contains a requirement for the EU Commission to review and provide a report to the European Parliament within three years of the transposition date. This report will consider any problems arising from the Regulation and whether there is a need for reform. A UK review will be coordinated with that review.

13. Contact

E-mail precursorsandpoisons@homeoffice.x.gsi.gov.uk with queries regarding the instrument.