

EXPLANATORY MEMORANDUM TO
THE POISONS ACT 1972 (EXPLOSIVES PRECURSORS) (AMENDMENT)
REGUATIONS 2018

2018 No. 451

1. Introduction

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

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to strengthen national security by controlling sales and use of chemicals that can be used to illegally make explosives. This instrument will make sulfuric acid a regulated explosives precursor under the Poisons Act 1972 (c. 66) (“the Act”), meaning that members of the public will require a licence to import, acquire, possess or use products containing sulfuric acid concentrated above 15% weight by weight concentration, as well as maintaining suspicious activity reporting requirements.
- 2.2 This instrument will also impose mandatory suspicious activity reporting requirements on aluminium powders, magnesium nitrate hexahydrate, and magnesium powders to assist in the detection and prevention of terrorist attacks.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Act was amended by the Deregulation Act 2015 (c. 20), and in accordance with EU Regulation 98/2013 on the marketing and use of explosives precursors (“the Regulation”), establishes a licensing regime for regulated substances (listed in Part 1 of Schedule 1A to the Act), as well as a reporting regime for a wider list of substances (contained in Part 1 and Part 3 of Schedule 1A to the Act).
- 4.2 The Regulation establishes harmonised rules concerning the availability, possession and use of certain substances or chemical mixtures (above certain concentration levels) that could be misused for the illicit manufacture of explosives. It aims to improve security by controlling the availability of, and introducing suspicious activity reporting in relation to, explosives precursors. Restricted substances are listed in Annex I to the Regulation, and additional substances subject to the suspicious transaction reporting requirements are specified in Annex II, both of which may be amended by delegated acts of the Commission (Article 12 of the Regulation).

Delegated regulations 2017/214, 2017/215 and 2017/216 amend the Regulation to introduce three new chemicals to Annex II. This instrument makes equivalent amendments to Part 3 of Schedule 1A to the Act.

- 4.3 Under the Regulation, Member States may adopt a licensing or registration regime in relation to restricted chemicals (Article 4 of the Regulation) and also operate a suspicious transaction reporting regime (Article 9 of the Regulation). Under Article 13 of the Regulation, where it has reasonable grounds to do so, a Member State may further restrict a substance which is otherwise only subject to the suspicious reporting requirements. This instrument therefore serves to enhance the restrictions on sulfuric acid by amending Schedule 1A to the Act to upgrade it from a reportable to a regulated substance.
- 4.4 Section 3 of the Act makes it an offence for a member of the general public to undertake certain activities in respect of regulated substances without a licence (which may be granted by the Secretary of State in accordance with section 4A of the Act). Section 3A makes it an offence to supply a regulated substance to a member of the general public without verifying first that they are in possession of a licence, or without following the correct procedure. This instrument will serve to bring sulfuric acid within scope of these offences.
- 4.5 Section 3C establishes a duty on suppliers to report any “relevant transaction” which the supplier has reasonable grounds for believing to be suspicious. It also establishes a duty on persons carrying on a trade, business or profession which involves regulated or reportable substances to report the disappearance or theft of any such substance. Failure to comply with either duty is an offence. By implementing the relevant EU delegated regulations through amendment of Part 3 of Schedule 1A to the Act, this instrument will serve to bring aluminium powders, magnesium powders and magnesium nitrate hexahydrate within scope of this duty.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales and Scotland.
- 5.2 The territorial application is England and Wales and Scotland.

6. European Convention on Human Rights

- 6.1 The Minister for Security, Rt Hon Ben Wallace MP has made the following statement regarding Human Rights:

“In my view the provisions of the Poisons Act 1972 (Explosives Precursors) (Amendment) Regulations 2018 are compatible with the Convention rights.”

7. Policy background

- 7.1 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.
- 7.2 The objective of the instrument is to make it more difficult for terrorists to acquire certain chemicals, while making sure to balance security, prosperity, and personal freedoms, as well as continuing to allow legitimate users to have access.

- 7.3 Currently, the supply to members of the public of **seven chemicals** (regulated explosives precursors) above set concentration thresholds, which can be used in the production of homemade explosives is controlled. All controlled substances also have legitimate uses, such as the use of hydrogen peroxide in swimming pool sanitation.
- 7.4 Home users of these chemicals are required to apply to the Home Office for an explosives precursors and poisons (EPP) licence, which is to be presented, alongside photo ID, to a retailer at the point of sale. Retailers are required to record details of the purchase (product name, date, quantity etc.) on the licence.
- 7.5 On 3 October 2017, the Home Secretary announced the intention to further control sulfuric acid, following its widespread use in the manufacture of homemade explosives used in recent terrorist attacks across Europe, including Brussels in 2016 and Parsons Green in 2017. A member of the public will now be required to have a licence to import, acquire, possess or use sulfuric acid concentrated above 15% weight by weight. It will also become an offence to supply sulfuric acid above this concentration to members of the public without first verifying that the member of the public has a licence, entering details of the transaction in the licence, or ensuring that a warning label is affixed to the packaging.
- 7.6 Retailers are also required to monitor transactions of these and a further **eight chemicals** for suspicious activity. Businesses are required to report any suspicious transaction, significant loss or theft to the national contact point. The number of substances listed within Part 3 will change to **ten**. Aluminium powders, magnesium powders and magnesium nitrate hexahydrate will be brought under the suspicious activity reporting regime.
- 7.7 Reporting requirements for aluminium powders, magnesium powders and magnesium nitrate hexahydrate come into force 1 May 2018; the reporting requirements already in place for sulfuric acid will continue to exist. There will be a two month transition period for offences relating to the supply, import and acquisition of sulfuric acid. This is to allow retailers to update their staff training, and to raise awareness within the business. The offences of possessing and using sulfuric acid without a licence will not come into force for 6 months, allowing end users (members of the public) sufficient time to use up personal stores of sulfuric acid or products containing sulfuric acid and allow them time to apply for a licence if necessary.

Consolidation

- 7.8 There is no need for consolidation.

8. Consultation outcome

- 8.1 Government officials have held detailed discussions with chemical industry, business and retail representatives potentially affected by this legislative change. There is widespread support for this change.

9. Guidance

- 9.1 To prepare for the implementation of the instrument, the Home Office will continue to:
- Update existing online guidance and training materials for businesses (including manufacturers) and industry bodies on how to identify products that will be affected by the change;

- Raise public awareness of the changes and update online guidance on how to apply for a licence, and the appeals process if an application is rejected;
- Update guidance for the Police on enforcement issues, including raising awareness of affected substances.

10. Impact

- 10.1 The impact assessment for the legislative changes estimates a net present value over 10 years of -£4.6m, with a direct annual cost to business of £0.5m.
- 10.2 The impact on business, charities or voluntary bodies is estimated to cost £1.3m million in transition costs which are negligible from year 2 onwards, and an annual cost of £0.4m with a net present value of -£4.5 million over 10 years (refer to page 7-12 of the final impact assessment for further detail).
- 10.3 The impact on the public sector is estimated to be negligible (refer to pages 7-12 of the final impact assessment for further detail).
- 10.4 The impact on the general public is estimated to cost £0.1m every 3 years and this represents a present value of -£0.2m over 10 years (refer to page 9 of the final impact assessment for further detail),
- 10.5 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. Small businesses selling these chemicals will be required to check for licences when selling regulated substances including sulfuric acid, and to report any suspicious transactions, losses and thefts to the appropriate authorities.
- 11.2 Trade associations and representative bodies of small businesses were contacted through informal consultation and have met with Home Office officials in follow-up discussions. They were previously involved in the development of guidance for the small business sector.
- 11.3 Most small businesses affected already have to comply with requirements of the Act because of their stocks of other scheduled substances. Full consideration has been given to this segment of the market, however, as a policy designed to protect the public from explosive attacks, it would not work if small and micro businesses were exempt. To minimise the impact of the requirements on small businesses (employing up to 50 people), advice on how to comply with the Act is tailored to the type of business allowing the impacts on smaller businesses to be proportionate and practical for them to implement.

12. Monitoring & review

- 12.1 The substances within the scope of Schedule 1A to the Poisons Act 1972 are continuously reviewed and updated to manage the current threat.
- 12.2 The European Commission is currently undertaking a review of EU Regulation 98/2013 on the marketing and use of explosives precursors. A legislative proposal is expected to be published on 17 April 2018.

13. Contact

- 13.1 The CBRE Protect team at the Home Office can answer any queries regarding the instrument. Email: precursorsandpoisons@homeoffice.x.gsi.gov.uk