



Home Office

Government response to the Home Office Consultation on the Implementation of the EU regulation on the Marketing and Use of Explosives Precursors

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- 1. Introduction and summary**
 - a. Background

This document is in response to the Home Office's public consultation launched on 21 November 2013 on the Implementation of the EU Regulation on the Marketing and Use of Explosives Precursors.

The consultation and impact assessment sought views from affected groups on the options for implementation and aimed to strengthen evidence of the impact of each option on the main affected groups.

This report summarises the responses to the consultation and the Government's proposals in light of the consultation. It should be read along-side The Government Response to the Home Office Consultation on Proposed Changes to the Poisons Act 1972, Poisons List 1982 and Poisons Rules 1982 and Associated Amendments.

b. Consultation process

The consultation and published consultation stage impact assessment sought views on the impact of the policy options on members of the general 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 began on 21 November 2013 and closed on 9 January 2014.

Key affected associations, businesses and hobby interest groups involved in the home use, business use, sale, manufacture, distribution and formulation of chemicals that fall within scope of the explosives precursors regulation were notified of the consultation. We took care to consult small and medium businesses and sole suppliers of the restricted chemicals. A substantial amount of research in the form of one-to-one interviews took place prior to and following the consultation exercise.

A list of the organisations targeted is attached at annex B.

A combination of closed and open questions were used to assist analysis of the responses.

The Home Office would like to thank all interested parties for taking the time to respond to the consultation. We have considered your views very carefully.

c. Profile of respondents

The Home Office received a total of 45 responses. Respondents were made up of:

- home users (42 %),
- business users, wholesalers and distributors (and their associations) (46%),
- retailers (and their associations) (8%), and
- professional societies and members of the general public with a less specific interest (4%).

Annex B gives a more detailed breakdown of the respondents from professional and hobby associations and societies.

d. Decisions resulting from the consultation

The Government has carefully considered the responses to the consultation and has decided to proceed with Option 3: to allow the general public to purchase Annex 1 chemicals above the concentration thresholds if they hold a valid licence.

We have taken stock of the many important issues raised during the consultation and will use the details provided by respondents to develop a practical and simple approach to implementation of the regulation.

e. Next steps

The Home Office needs to implement the regulation by the EU transposition dead-line of 2 September 2014. To prepare for implementation, the Home Office will:

- Draft the secondary legislation and guidance required to give effect to the policy and make these available to Parliament
- Prepare on-line guidance and training materials for businesses and work with industry bodies to disseminate the policy
- Prepare on-line guidance for home users on when and how to apply for a licence
- Establish a licensing authority and a proportionate applicant suitability decision making process
- Prepare training and guidance for the Police on enforcement issues such as test purchases to be conducted on a speculative or reported non-compliance basis
- Develop a communications plan to raise awareness of the new requirements among affected groups.

2. Issues raised during consultation

a. Overview

A variety of organisations and individuals responded to the consultation with written and on-line survey submissions. Umbrella organisations that responded represented the views of retailers, academic experts, business to business suppliers and hobby users.

The following is a brief summary of the main issues raised by organisations. A more detailed breakdown of the responses to selected questions in the consultation survey can be found at [Annex A](#).

Retailers

The most widely expressed concern by retailers was the subjective nature of suspicious transaction reporting. Respondents called for clear and simple government advice on what might constitute a suspicious transaction and the action to take if one is identified.

Business to business suppliers

The most widely expressed concern by business to business retailers related to where the responsibility of labelling requirements for products containing above concentration Annex 1 chemicals would fall.

Home users

The most widely expressed concern by home users was the cost of a licence. Some respondents stated that if the cost of a licence is set too high it could prohibit the activities particularly where only small quantities of the restricted chemicals are used.

No alternatives to the restricted chemicals were known to any of the respondents, therefore, if the chemicals were banned from sale to the general public, they would no longer be able to conduct their activities.

b. Issues by type

Economic/administrative issues

Issue	Government response
<p><u>Licensing</u> – the consultation responses suggest 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.</p> <p>Respondents commented that in their opinion Option 3 would meet the policy objectives to:</p> <ul style="list-style-type: none"> • Prevent terrorists using explosives precursors in attacks; • Provide a mechanism to alert authorities to terrorist activity; and • Minimise the burdens on industry. <p>Some home uses require only small amounts of a restricted substance, therefore, some respondents commented that if the cost of a</p>	<p>The Government is still of the view that licensing will allow legitimate home users to purchase Annex 1 chemicals and to continue their activities where there are no suitable alternative chemicals. It minimises the burdens on retailers. It also provides opportunity to check the suitability of the individual and their intended use prior to acquisition, possession and use.</p> <p>Treasury guidelines state that the Government should seek full cost recovery on licensing regimes. The Home Office is committed to</p>

<p>licence was too high it would prohibit their activities. Concerns were raised about possible low numbers of licence applications and the resulting high cost of licences in that case.</p> <p>Some respondents stated that a licence would allow their activities to continue.</p> <p>Some businesses that responded to the question felt that the need to apply for a licence would deter home users from purchasing their product if it was too complicated or expensive. However, if the system was simple to use regular users would not be deterred.</p> <p>Respondents asked for clear guidance on how to apply for a licence and clear information materials.</p> <p>Most of the businesses that responded thought that the need to check licences would not deter them from selling to the general public. Some wholesalers thought it might have negative impact on their customers who may sell on to the public. One respondent thought a licence would add a level of assurance that the purchaser did have a genuine reason to purchase the restricted product.</p> <p>One hobby association proposed using existing licensing schemes as a basis for the explosives precursors regime to create an efficient system.</p>	<p>implementing an efficient and cost effective system, so we are exploring options of using existing platforms and administration procedures. We are working to ensure that the cost of obtaining a licence for home users is reasonable.</p> <p>Applicants may apply for a multiple use and multiple substance licence.</p> <p>The Home Office is developing an on-line application and payment service and intends to make clear guidance available for all affected by the regulation. This will include lines for businesses to use when informing customers about the regulatory changes.</p> <p>The Home Office will seek to provide an on-line form where the retailer may choose to enter the licence reference number and other identifying detail of the holder e.g. date of birth to check current validity of the licence against Home Office databases. For efficiency, there will be one database for explosives precursors and poisons licences.</p> <p>The Home Office will seek to exploit existing licensing schemes based on similar suitability requirements where possible.</p>
<p><u>Registration</u> – The consultation also suggested that a combination of registration and licensing was a supported option. Some businesses thought that registration details could be easily captured using existing systems. One respondent suggested a simple on-line registration system to allow quick returns on sales data.</p> <p>However, many respondents felt that a stratified system, involving more than one</p>	<p>Registration is not the preferred option of the Government. It does not offer the opportunity to assess the suitability of the individual, it places the burden of the checks on the retailer, and therefore, would not fully deliver the policy objectives:</p> <ul style="list-style-type: none"> • Prevent terrorists using explosives precursors in attacks; • Provide a mechanism to alert authorities to terrorist activity; and • Minimise the burdens on industry.

<p>control measure, would be too complex and costly for retailers to implement and for the general public to understand.</p>	
<p>Banning – There was very little support for the option to ban the Annex 1 precursor 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.</p> <p>Some suppliers deal in only a small range of materials, meaning banning sales to the general public would have a significant impact on their company.</p> <p>A representative from a Pharmacy association thought that banning would be an overreaction to the scale of the problem.</p>	<p>Banning would have the greatest impact on legitimate home users of Annex 1 chemicals and on businesses. Therefore, it is not the preferred option of the Government.</p>
<p>Alignment with poisons regulation – 42% of business respondents to the question stated that they also sold Part 1 poisons. Some respondents commented that it would be simple and preferable to implement one regime for both explosives precursors and poisons.</p>	<p>The Home Office will seek to implement the same regime for control of sales of poisons. Further information can be found in The Government Response to the Home Office Consultation on Proposed Changes to the Poisons Act 1972, Poisons List 1982 and Poisons Rules 1982 and Associated Amendments.</p>

Process/regulatory issues

Issue	Government response
<p>Labelling – Respondents highlighted the need for clear guidance on labelling. Most respondents commented that as long as sufficient notice was given to enable current stock levels to be used up, labels could be easily amended to include an extra line of text at little to no extra cost. Time to use up existing stocks might take up to one to two years.</p>	<p>The European Commission and expert Standing Committee on Explosives Precursors will shortly publish agreed guidance on labelling requirements. Any product containing an above concentration Annex 1 substance that will be offered for sale to the general public must be labelled with: “Acquisition, possession or use by the general public is restricted.”</p> <p>The labelling will not apply to products that will never be supplied to members of the general public (i.e. supply to business end users). It also does not apply to products containing below concentration Annex 1 chemicals or products containing Annex 2 chemicals.</p>

	<p>No one single part of the supply chain could know easily both whether a product contains a restricted chemical above concentration and that it is intended to be offered for sale to the general public, the guidance suggests a collaborative approach between the supplier and the retailer. However, the EU Regulation states that an economic operator who intends to make a restricted product available to the general public shall verify or affix a label. So, the final seller owns the responsibility.</p> <p>As soon as the EU guidance is issued, the Home Office will disseminate the advice to all potentially affected parties to give as much notice as possible.</p> <p>The European Commission has confirmed to the Home Office that there is no transition period for the labelling requirement for stock on shelves when the Regulation takes effect.</p>
<p><u>Suspicious transaction identification</u> – specialist suppliers and wholesalers agreed that the guidance presented was easy to understand and practical to implement. Many of them stated that the advice was consistent with other regimes already in place.</p> <p>However, less specialist retailers to the general public such as supermarkets felt that the guidance was subjective and expressed concern about non face-to-face sales, large volume sales. None of the respondents thought that suspicious transaction reporting would deter them from selling affected products.</p> <p>Some respondents requested further guidance on practical implementation.</p> <p>Some respondents representing major retailers were concerned that some of the suspicious transaction indicators might not comply with Discrimination law through unfair targeting of certain customers.</p>	<p>The Home Office has acknowledged the different levels of expertise and specialism along affected product supply chains and the need to tailor advice to the type of company. The Government will engage further with retail representatives to ensure clear, plain English, practical and relevant guidance and training materials are available to affected businesses. We will also consider working with relevant professional and trade associations to develop codes of conduct for members.</p> <p>The European Commission will issue guidance on implementation of the regulation shortly. The UK Government also intends to issue its own guidance for retailers, other supply chain operators, licence applicants, enforcement and administration bodies.</p> <p>An equality impact assessment will need to be conducted. The advice issued in the UK Government guidance will be checked to ensure compliance with discrimination laws.</p>
<p><u>Suspicious transaction reporting procedures</u> – Some retailers requested further guidance on how to respond to and report suspicious</p>	<p>As well as the European Commission guidance, the UK Government will issue clear guidance on the national reporting system.</p>

<p>transactions in a not too burdensome and safe way.</p>	<p>This will include a single point of contact number and a template indicating the information that would be useful for the authorities.</p>
<p><u>Checking licences</u> – Some businesses requested an on-line facility to check validity of licences.</p> <p>The need for clear and easy guidance from the Government was commonly raised.</p>	<p>The Home Office will seek to provide an on-line form where the retailer may choose to enter the licence reference number and other identifying detail of the holder e.g. date of birth to check current validity of the licence against Home Office databases.</p> <p>As well as the European Commission guidance, the UK Government will issue clear guidance on the national system.</p> <p>The impact assessment considered the costs of registering licensed transactions on a daily basis. The Home Office now thinks that a more proportionate approach would be for the retailers to record details of the transaction on the back of the licence and report any suspicious activity relating to sales.</p>
<p><u>Internet sales</u> – some respondents commented that the addition of a simple text box to on-line forms for licence details would not be too onerous, but this would depend on how the website is run.</p> <p>Some respondents felt that sales of the restricted chemicals should only be made face-to-face.</p> <p>Respondents commented that asking delivery drivers to check documents would incur a cost as the drivers would need to be trained and the checks would take extra time. The risk of possible loss of business was also raised.</p>	<p>The provision of an on-line licence verification system will assist in safe-guarding internet sales.</p> <p>The Government feels that as long as suitable checks and safe-guards can be applied, on-line sales could continue.</p> <p>Licence and identification checks are a necessary part of the safe-guards mentioned above.</p>
<p><u>Proof of business status</u> – Most respondents stated that they would be able to provide proof of VAT status and a company register number. One business respondent commented that they had a company number but were not registered for VAT.</p>	<p>Other suggestions for proving an on-going business need for the restricted and above concentration Annex 1 chemicals will be provided in guidance to sellers.</p>

Implementation/training issues

Issue	Government response
<p><u>Training</u> – Some respondents requested</p>	<p>The Home Office plans to support training of</p>

<p>support with training of staff. Some of the industry associations and professional societies offered to provide training.</p>	<p>staff. Local Police security advisers will invite representatives to local meetings to raise awareness about the regulation. Information materials will be provided. The Home Office is also collaborating with other European governments to develop an on-line training tool for retailers.</p>
<p><u>Familiarisation time</u> – the time suggested in the impact assessment to familiarise staff was considered to be about right by respondents representing specialist supply organisations and pharmacies. Some thought that a slightly longer time of 1.5-2 hours would be more suitable to allow time for reading and raising questions.</p> <p>Major retailers thought the time needed for familiarisation had been underestimated and would depend on the role of the staff member, the type of business and the number of products affected. Issues relating to staff turnover, part time and temporary staff were also raised.</p>	<p>The final stage impact assessment will be updated to reflect the information received through the consultation.</p> <p>We will work with retailers to develop practical solutions to ensure appropriate safeguards are in place that take account of the issues raised, for example, by minimising the number of staff requiring training.</p>
<p><u>Identifying affected products</u> - Some respondents from major retailers requested more clarity on which products pose a threat. But did support the need for control measures. Some retail respondents expressed concern about the scale of affected products, the burden of identifying these products and frequent changes in product formulations. Specialist suppliers, formulators, pharmacists and wholesalers (the majority of respondents to this question) thought the estimated time was about right for their businesses.</p>	<p>The Home Office will work with trade representatives to assist them to identify the products in scope of the regulation.</p>

Other issues








Issue	Government response
<p><u>Business to business sales</u> – some respondents expressed concern that business to business sales were outside the scope of the regulation,</p>	<p>Business to business sales are within scope of suspicious transaction reporting requirements. The European Commission will also review the scope of the regulation in 2017, particularly with regard to whether business to business sales should be included.</p> <p>This policy complements ongoing work by the</p>

Home Office and partners to reduce access to hazardous substances along their entire supply chain. The Home Office continues to work in partnership with industry representatives and trade associations to improve supply chain security for substances of concern. Self-regulatory schemes are supported and plans to work with trade representatives on new codes of conduct are in place. This regulation gives Government the power to mandate reports on suspicious business to business transactions relating to the Annex 1 and 2 chemicals for the first time.




Annex A – Summary of responses

Section 2: questions for home users of annex 1 (above concentration) only

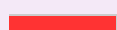
Which above concentration Annex 1 chemicals do you use? (please tick all that apply)

			Response Percent	Response Total
1	Hydrogen peroxide (above 12% w/w)		21.05%	4
2	Nitromethane (above 30% w/w)		26.32%	5
3	Nitric acid (above 3% w/w)		26.32%	5
4	Potassium chlorate (above 40% w/w)		57.89%	11
5	Potassium perchlorate (above 40% w/w)		63.16%	12
6	Sodium chlorate (above 40% w/w)		5.26%	1
7	Sodium perchlorate (above 40% w/w)		5.26%	1
			answered	19
			skipped	26

Would you continue to purchase the Annex 1 chemicals if a licence was required?

			Response Percent	Response Total
1	Yes		77.78%	7
2	No		11.11%	1
3	Don't know		11.11%	1
(not applicable answers removed)			answered	9
			skipped	25

What is the maximum you would pay before you are deterred from applying?

			Response Percent	Response Total
1	£0		17.65%	3

2	£1-£10		5.88%	1
3	£11-20		29.41%	5
4	£21-£40		23.53%	4
5	£41-£60		11.76%	2
6	£61-80		11.76%	2
7	£80+		0.00%	0
			answered	17
			skipped	28

We are also consulting on the option of licensing general public use of poisons on the Part 1 Poisons List. One option would therefore be to offer a multi-purpose licence that can be used to purchase both Annex 1 Chemicals and Part 1 poisons (see the consultation on proposed changes to the Poisons Act 1972, Poisons Rules 1982, Poisons List 1982 and associated amendments). Do you also purchase Part 1 poisons?

			Response Percent	Response Total
1	Yes		68.42%	13
2	No		31.58%	6
			answered	19
			skipped	26



Section 3: questions for all businesses

How would you classify your business?







			Response Percent	Response Total
1	Producer		4.35%	1
2	Formulator		4.35%	1
3	Wholesaler		17.39%	4
4	Retailer		17.39%	4
5	Online Distributor		4.35%	1
6	Other		52.17%	12

	answered	23
	skipped	22





If you are a professional user of these chemicals, would you readily be able to provide one of the forms of documentation listed above?



			Response Percent	Response Total
1	Yes		77.78%	7
2	No		22.22%	2
3	Don't know		0.00%	0
(not applicable answers removed)			answered	9
			skipped	25

To what extent do you agree or disagree that the guidance on suspicious transaction reporting described above is easy to understand?




			Response Percent	Response Total
1	Strongly agree		28.57%	6
2	Tend to agree		38.10%	8
3	Neither agree nor disagree		14.29%	3
4	Tend to disagree		9.52%	2
5	Strongly disagree		4.76%	1
6	Don't know		4.76%	1
			answered	21
			skipped	24

To what extent do you agree or disagree that this guidance would be easy to put into practice?

			Response Percent	Response Total
1	Strongly agree		30.00%	6
2	Tend to agree		25.00%	5
3	Neither agree nor disagree		5.00%	1
4	Tend to disagree		20.00%	4




5	Strongly disagree		15.00%	3
6	Don't know		5.00%	1
			answered	22
			skipped	23

Would the suspicious transaction reporting requirements deter you from selling Annex 1 or 2 substances?




			Response Percent	Response Total
1	Yes		11.76%	2
2	No		70.59%	12
3	Don't know		17.65%	3
			answered	17
			skipped	28

Section 4: questions for annex 1 (above concentration) retailers

Do you agree or disagree with the assumption that there will not be a significant cost to online retailers to update their online application forms?




			Response Percent	Response Total
1	Agree		12.50%	1
2	Don't know		62.50%	5
3	Disagree		25.00%	2
			answered	9
			skipped	36

To what extent do you agree or disagree with the assumption that the private delivery service will not incur a significant cost in having to check for the necessary documents described above?

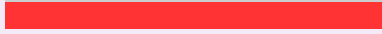

			Response Percent	Response Total
1	Agree		11.11%	1
2	Don't know		22.22%	2
3	Disagree		66.67%	6
			answered	9

	skipped	36
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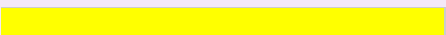
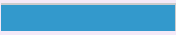
Do you agree or disagree that the costs of adding a single line of text to a label would be negligible if businesses are given good notice?

			Response Percent	Response Total
1	Agree		60.00%	6
2	Don't know		20.00%	2
3	Disagree		20.00%	2
			answered	10
			skipped	35



Do you agree or disagree that that the need to apply for a licence will deter home users from purchasing your product(s)?

			Response Percent	Response Total
1	Agree		60.00%	6
2	Disagree		0.00%	0
3	Don't know		40.00%	4
			answered	11
			skipped	34

Do you agree or disagree that the requirement for home users to have a licence would deter you from selling to the general public?

			Response Percent	Response Total
1	Agree		0.00%	0
2	Disagree		71.43%	5
3	Don't know		28.57%	2
			answered	10
			skipped	35

We are also consulting on proposed changes to the Poisons Act 1972, Poisons Rules 1982, Poisons List 1982 and associated amendments. Do you also sell Part 1 poisons?

			Response Percent	Response Total
1	Yes		41.67%	5
2	No		58.33%	7
			answered	12
			skipped	33

Section 5: questions for all respondents

Do you agree or disagree that the options set out below will ensure the policy objectives are met:

	Agree	Neither agree nor disagree	Disagree	Don't know	Response Total
Option 1: Do nothing	26.5% (9)	20.6% (7)	44.1% (15)	5.9% (2)	33
Option 2: Ban sales of Annex 1 chemicals above the concentration limits to the general public	2.9% (1)	8.8% (3)	82.4% (28)	2.9% (1)	33
Option 3: Allow the general public to purchase, use and possess Annex 1 chemicals above the concentration limits if they hold a valid licence	48.6% (17)	14.3% (5)	31.4% (11)	2.9% (1)	34
Option 4 a): Allow the general public to purchase, use and possess Group A of the Annex 1 chemicals above the concentration limits with a licence, and Group B by entering personal details into a register at the point of sale. Above the concentration limits for Group B, the sale to the general public would be banned.	18.8% (6)	21.9% (7)	50.0% (16)	6.3% (2)	31
Option 4 b): As Option 4 a), but purchase, use and possession of Group B chemicals above the concentration limits will be licensed instead of banned.	50.0% (16)	18.8% (6)	25.0% (8)	3.1% (1)	31
Other	28.6% (2)	14.3% (1)	0.0% (0)	42.9% (3)	6
				answered	34
				skipped	11

Please rank these options in your order of preference:

	First preference	Second preference	Third preference	Fourth preference	Fifth preference	Response Total
Option 1	50.0% (16)	6.3% (2)	3.1% (1)	15.6% (5)	21.9% (7)	31

Option 2	6.9% (2)	6.9% (2)	6.9% (2)	20.7% (6)	55.2% (16)	28
Option 3	25.0% (8)	28.1% (9)	34.4% (11)	9.4% (3)	0.0% (0)	31
Option 4a	6.5% (2)	25.8% (8)	22.6% (7)	29.0% (9)	12.9% (4)	30
Option 4b	19.4% (6)	29.0% (9)	25.8% (8)	19.4% (6)	3.2% (1)	30
					answered	34
					skipped	11

Annex B – List of Targeted Organisations

Association of Aquarists
Association of British Pharmaceutical Industry
Association of Convenience Stores
Association of First Aiders
Agricultural Industries Confederation
Association of Plumbing and Heating Contractors
British Adhesives and Sealants Association
British Aerosol Manufacturer's Association
British Association for Chemical Specialties
British Association of Beauty Therapy and Cosmetology
British Coatings Federation
British Dental Trade Association
British Firework Association
British Healthcare Traders Association
British Independent Retailers Association
British Plastics Federation
British Pyrotechnic Association
British Radio Car Association
British Retail Consortium
British Rubber and Polyurethane Products Association
British Rubber Manufacturer's Association
British Shooting Sports Council
British Spa and Pool Federation
British Tropical Fish Club
Builders Merchants Federation
Carwash Association
Chemical Business Association
Chemical Industries Association
Cosmetics, Toiletry and Perfume Association
Confederation of British Industries
Confederation of Paper Industries
Explosives Industry Group
Federation of Small Businesses
Garden Centre Association
General Pharmaceutical Council
Guild of Professional Beauty Therapists
Health Food Manufacturer's Association
Institute of Swimming Pool Engineers
Model Power Boat Association
National Association of Drainage Contractors
National Association of Street Clubs
National Hairdressers Federation
National Pharmacy Association
National Street Rod Association
Packaging and Films Association
Painting and Decorating Association
Performance Textiles Association
Pharmacy Voice
Pool and Water Treatment Advisory Group
Ornamental Aquatic Fish Trade Association
Royal Society of Chemistry

Royal Pharmaceutical Society
Sport and Recreation Alliance
Surface Engineering Association
Swimming Pool and Allied Trades Association
The Company Chemist
The Hairdressing and Beauty Suppliers Association
Tropical Fish Club
UK Cleaning Products Industry
UK Clinical Pharmacy Association
UK Fashion and Textiles Association
UK Pyrotechnics Society
UK Radio Control Council

[Individuals and private company responders are not included in the above list]