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

June 2014Contents

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**1. Introduction and summary**

a. Background

This document is in response to the Home Office’s UK wide public consultation launched on 21 November 2013 on the Implementation of the EU Regulation on the Marketing and Use of Explosives Precursors. This consultation ran for 7 weeks.

As Northern Ireland already has a licensing system for precursors in place, a separate letter was sent to these licence holders (home users, business and government bodies) on 9 December 2013 inviting them to take part in the consultation. This also ran for a period of 7 weeks.

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.

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.

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. A substantial amount of research took place following the consultation exercise.

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

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

The Home Office & Northern Ireland 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 & Northern Ireland received a total of 10 responses. Respondents were made up of:

• Businesses (2), and

• Professional societies and hobby associations (8).

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

• Draft the secondary legislation and guidance required to give effect to the policy and make these available to Parliament

• Prepare on-line guidance 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 proportionate applicant suitability decision making process

• Prepare 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, 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.

**Northern Ireland questionnaire**

The response to the 542 letters sent out was very limited and yielded no information that was of any help to us.

b. Issues by type

Economic/administrative issues

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| Issue | Government response |
| Licensing – 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.  Respondents commented that in their opinion Option 3 would meet the policy objectives to:   * Prevent terrorists using explosives precursors in attacks; * Provide a mechanism to alert authorities to terrorist activity; and * Minimise the burdens on industry.   One of the respondents said that as they sell some Annex A chemicals to the public a licence of any cost would dramatically reduce their sales.  .    Some respondents 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.  Respondents asked for clear guidance on how to apply for a licence and clear information materials.  The businesses that responded thought that the need to check licences would not deter them from selling to the general 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.  One hobby association proposed using existing licensing schemes as a basis for the explosives precursors’ regime to create an efficient system. | 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.  Treasury guidelines state that the Government should seek full cost recovery on licensing regimes. The Northern Ireland Office is committed to implementing an efficient and cost effective system and will be using the existing precursor licensing system in Northern Ireland. Current estimates place the maximum cost of processing a licence at approximately £30. In line with Treasury Guidelines we will also be charging a fee for a licence under the Northern Ireland based licensing system. Current estimates place the maximum cost of processing this licence at approximately £100. Applicants may apply for a multiple use and multiple substance licence.  The NIO will keep the application and payment process clear and simple. It will also let people have the details and will also ensure details are available online. Instructions giving clear guidance available for all affected by the regulation will also be put online. This will include lines for businesses to use when informing customers about the regulatory changes.  The Home Office will 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. Given the limited number of estimated home users, the Northern Ireland Office will explore with the Home Office the possibility of including details of NI Annex A licence holders on their database. This would give UK companies one point of contact for verification purposes.  The Northern Ireland Office will seek to exploit existing licensing schemes based on similar suitability requirements where possible. |
| Registration – 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.  However, 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. | 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:   * Prevent terrorists using explosives precursors in attacks; * Provide a mechanism to alert authorities to terrorist activity; and * Minimise the burdens on industry. |
| Banning – There was very little support for the option to ban the Annex 1 precursor chemicals. One respondent commented that a ban would have disastrous consequences on their hobby.  A representative from a Pharmacy association thought that banning would be an overreaction to the scale of the problem. | 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. |

**Process/regulatory issues**

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| Issue | Government response |
| 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. | The European Commission and expert Standing Committee on Explosives Precursors has published 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.”  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 Tier 2 (Annex 1) chemicals or products containing Tier 3 (Annex 2) chemicals.  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.  As soon as the EU guidance is issued, the Northern Ireland Office will disseminate the advice to all potentially affected parties to give as much notice as possible.  The European Commission has confirmed to the UK Government that there is no transition period for the labelling requirement for stock on shelves when the Regulation takes effect. |
| Suspicious transaction identification – specialist suppliers 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. 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.  Some respondents requested further guidance on practical implementation.  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. | The Government 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. It will engage further with retail representatives to ensure clear, plain English, practical and relevant guidance is available to affected businesses. We will also consider working with relevant professional and trade associations to develop codes of conduct for members.  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.  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. |
| Suspicious transaction reporting procedures – Some retailers requested further guidance on how to respond to and report suspicious transactions in a not too burdensome and safe way. | As well as the European Commission guidance, the UK Government will issue clear guidance on the national reporting system. This will include a single point of contact number and a template indicating the information that would be useful for the authorities. There will also be local numbers for people Northern Ireland to contact with any concerns. |
| Checking licences – Some businesses requested an on-line facility to check validity of licences.  The need for clear and easy guidance from the Government was commonly raised. | 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. (Given the limited number of estimated home users the Northern Ireland Office will explore with the Home Office the possibility of putting NI Annex A licence holders on the Home Office database, therefore ensuring one point of contact for UK business)  As well as the European Commission guidance, the UK Government will issue clear guidance on the national system.  The Northern Ireland Office considered the costs of registering licensed transactions on a daily basis. The Northern Ireland 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. |
| Internet sales – 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.  Some respondents felt that sales of the restricted chemicals should only be made face-to-face.  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. | The provision of an on-line licence verification system will assist in safe-guarding internet sales.  The Government feels that as long as suitable checks and safe-guards can be applied, on-line sales could continue.  Licence and identification checks are a necessary part of the safe-guards mentioned above. |
| Proof of business status – 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. | 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. |

**Implementation/training issues**

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| Issue | Government response |
| Training – Some respondents requested support with training of staff. Some of the industry associations and professional societies offered to provide training. | The Northern Ireland Office plans to support training of staff. We will (in conjunction with PSNI security advisers) invite representatives to meetings to raise awareness about the regulation and will also publicise the Know Your Customer campaign regarding suspicious transaction reporting for companies.  Information materials will be provided.  The Home Office is collaborating with other European governments to develop an on-line training tool for retailers. |
| Familiarisation time – 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.  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 was also raised. | The final stage impact assessment has been updated to reflect the information received through the consultation.  We will work with retailers to develop practical solutions to ensure appropriate safe-guards are in place that take account of the issues raised, for example, by minimising the number of staff requiring training. |
| Identifying affected products - 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. | The Home Office will work with trade representatives to assist them to identify the products in scope of the regulation. |

Other issues

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| Issue | Government response |
| Business to business sales – some respondents expressed concern that business to business sales were outside the scope of the regulation, | 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.  This policy complements ongoing work by the Northern Ireland Office and partners to reduce access to hazardous substances along their entire supply chain.  The Northern Ireland Office will publicise the Know Your Customer campaign amongst affected businesses to support the suspicious transaction reporting requirements.  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 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]