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Dear Sirs,

The Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014

Summary

The Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014 instrument implements, 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. This implementing instrument also replaces and updates existing legislation relating to the control of explosives precursors in Northern Ireland. The implementing instrument was made on 28 August 2014 and came into effect on 2 September 2014.

Detailed information on implementation

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.

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. The implementing 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.

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 the implementing 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 – nitrobenzene, 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.

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.

In practice there is a third category of substances which is not mentioned specifically in the implementing 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 the implementing instrument.

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.

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. The implementing 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. The implementing instrument imposes a penalty for breach of this obligation.

Contravention of any of the provisions of the implementing 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.

Published copies

Copies of the implementing instrument and ancillary documents are available at <http://www.legislation.gov.uk/nisr/2014/224/contents/made>.

Contact

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