EXPLANATORY MEMORANDUM TO

THE CONTROL OF EXPLOSIVES PRECURSORS AND POISONS REGULATIONS 2023

2023 No. 63

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument makes a number of amendments to the regime governing regulated and reportable substances under the Poisons Act 1972 (as amended – "the 1972 Act"). The purpose of the amendments is to strengthen existing safeguards that are in place to prevent the illicit use of certain explosives precursors and poisons to cause harm. These amendments were identified following a detailed review of the legislation relating to controls of explosives precursors and poisons following the Manchester Arena and Parsons Green explosives attacks in 2017.

3. Matters of special interest to Parliament

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

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland only.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland only.

5. European Convention on Human Rights

5.1 As The Minister of State for Security, Rt Hon Tom Tugendhat MBE MP, has made the following statement regarding Human Rights:

"In my view the provisions of The Control of Explosives Precursors and Poisons Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The 1972 Act provides a regime for the regulation of certain explosives precursors and poisons. These are the substances that are listed in Schedule 1A to the Act and are divided into four categories: regulated explosives precursors and regulated poisons (referred to by the 1972 Act, where appropriate, as "regulated substances"), reportable explosives precursors and poisons (referred to by the 1972 Act, where appropriate, as "reportable substances").

6.2 The requirements imposed by the 1972 Act in respect of reportable and regulated substances include:

- A requirement for a member of the general public to acquire an Explosives Precursors and Poisons licence to legally import, acquire, possess or use a regulated substance.
- A requirement for businesses to report any suspicious transactions or attempted transaction involving reportable or regulated substances, or any significant thefts or losses of any reportable or regulated substances.
- A requirement for businesses to only sell regulated substances to members of the general public with a valid Explosives Precursors and Poisons licence.

6.3 The Control of Poisons and Explosives Precursors Regulations 2015 (S.I. 2015/966) ("the 2015 Regulations") impose additional requirements relating to the supply of reportable and regulated substances.

6.4 The 1972 Act imposes various offences for failure to comply with the various requirements.

6.5 The 1972 Act confers various powers on the Secretary of State to make regulations. These include the power to impose additional requirements relating to the supply of the relevant explosives precursors or poisons; or about the means by which suspicious transactions involving such substances, or of thefts or disappearances of them, are to be reported to the Secretary of State.

6.6 The 1972 Act also confers a power on the Secretary of State to modify Schedule 1A to the Act, by means of regulations.

7. Policy background

What is being done and why?

7.1 The Home Office are strengthening the controls of the most dangerous poisons and precursors by amending the regime that governs the regulation of explosives precursors and poisons under the Poisons Act 1972. This will build on the 2015 regulation which was derived from EU regulation 98/2013 on the marketing and use of explosives precursors which required an EU member state to restrict sales of certain substances and mixtures that could be misused for the illicit manufacture of explosives.

7.2 Following the Manchester Arena attack in 2017, an Operational Improvement Review (OIR) was announced by the Commissioner of the Metropolitan Police and Director General of MI5. This was designed to identify and take forward improvements to processes and capabilities for managing terrorism investigations. Lord Anderson was commissioned to deliver a stocktake, which made three broad recommendations concerning Exploiting Data; Multi-Agency Engagement; and Domestic Extremism. While the OIR was not published due to its classified nature, Lord Anderson's public report covering an overview of the post-2017 attack reviews can be read here: Attacks_in_London_and_Manchester_Open_Report.pdf (publishing.service.gov.uk).

7.3 The recommendations outlined in the OIR led to a review of the policy relating to explosives precursors and poisons, where a number of key legislative gaps were identified. Policy proposals were considered based on this evidence and scientific evidence surrounding the risk posed by specific chemical substances, resulting in a public consultation which ran from 16th December 2021 – 10th March 2022. These proposals were then considered and assessed in light of the evidence and consultation responses, resulting in this legislative package.

7.4 This work forms part of the Government CONTEST strategy, most recently updated in 2018, which aims to reduce the risk of terrorism to the UK and its citizens and interests overseas.

7.5 The Control of Explosives Precursors and Poisons Regulations 2023 ("the 2023 Regulations") impose the following requirements:

- Businesses selling reportable and regulated substances to other businesses must inform them that the substance in question is subject to regulation under the 1972 Act.
- Businesses supplying regulated explosives precursors to other businesses must obtain and record certain information about the identity of the business customer and the nature of the customer's business. The supplier must also be satisfied that the regulated precursor is being obtained for a purpose reasonably connected with the business. This information should be recorded and stored for 18 months.
- Businesses who make supplies of regulated or reportable substances as part of their business, and who engage workers to assist in making such supplies, must ensure that the workers are provided with relevant information about the requirements that apply in relation to such substances.
- Operators of online marketplaces must have proportionate procedures in place to provide their users who use the online marketplace to supply regulated or reportable substances, with information about the requirements surrounding the supply of such substances. The operator must also report any suspicious activity relating to the same of regulated or reportable substances by those using the online marketplace.
- All suspicious activity reporting under section 3C must be made within 24 hours of forming the belief that a transaction is suspicious, or within 24 hours of a significant theft or loss of reportable or regulated substances being detected.
- All suspicious activity reports must be made via the electronic reporting service or by telephone.
- When making a suspicious activity report, businesses (including online marketplaces) must provide all information that they hold which is likely to be useful in identifying the individual involved in the suspicious transaction).

7.6 The 2023 Regulations also make amendments to the tables of substances that are provided by Schedule 1A to the 1972 Act.

7.7 Together, the measures in this instrument aim to strengthen existing controls on explosives precursors and poisons to prevent their use for terrorist and other illicit purposes, while ensuring that legitimate users can still access substances they need without undue restriction.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union.

8.2 Regulation 2 of the 2015 Regulations ("Regulation 2") modifies the effect of the 1972 Act in relation to exports of regulated explosives precursors; with regulation 2(3) making provision for exports to persons who are in member states of the European Union. Regulation 2(3) provides that references in section 3A to a licence or

recognised non-GB licence are (in relation to such exports) to be read as references to a licence issued or recognised in accordance with Article 7 of Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15th January 2013 on the marketing and use of explosives precursors ("the 2013 Regulation").

8.3 The effect of Regulation 2(3) is to require that a person exporting a regulated explosives precursor to a person in an EU member state must comply with the verification and other requirements that are imposed by section 3A.

8.4 The 2013 Regulation was repealed by Article 22 of Regulation (EU) No 1148/2019 of the European Parliament and of the Council of 20th June 2018 on the marketing and use of explosives precursors, with effect from 1 February 2021. The reference in Regulation 2(3) to a licence issued or recognised in accordance with the 2013 Regulation is therefore obsolete and is being repealed by this instrument. This proposal was not part of the consultation referred to below and was identified later. However, as the Regulation referred to is no longer in force, we do not anticipate that removing these provisions will have an impact on businesses or members of the public.

8.5 The effect of this amendment is that the Regulation 2(4) will apply to exports of regulated explosives precursors to member states of the EU in the same way as it applies to exports to other states. The requirements of Section 3A will no longer apply.

9. Consolidation

9.1 Consolidation is not being done

10. Consultation outcome

10.1 A twelve-week public consultation ran between 16th December 2021 and 10th March 2022. The consultation paper can be found here: Consultation paper: amendments to the Poisons Act 1972 - GOV.UK (www.gov.uk). Responses were accepted via an online survey on gov.uk and by post, with four workshops also being held with key external stakeholders.

10.2 A total of 118 responses were received through the online survey, 110 of which were from members of the public, professional users or associations or licence holders. 3 were provided by suppliers, manufacturers and online marketplaces, and the remaining responses were blank. 9 written responses were also received via email, mostly from business and chemical associations who represent a number of retailers of chemical products.

10.3 Broadly, retailers and businesses did not consider that these amendments would have a significant impact on their day-to-day operations. The vast majority of negative responses to the consultation were received by members of the public who were concerned that the proposal in option 3 of the consultation to introduce upper concentration levels for regulated explosives precursors. These respondents voiced concerns that such a requirement would have a disproportionate negative impact on those with explosives precursors and poisons licences, and would not provide the desired security benefit. After considering these responses, the Home Office agreed that the policy intent of the proposal could be achieved in a more proportionate way and decided not to proceed with legislating on this measure in these regulations.

10.4 The full summary of consultation responses is contained at Annex A of the Impact Assessment for these regulations which will be made available alongside this instrument. Having considered all evidence available, including scientific evidence, the consultation responses, and other evidence available, the Government decided to pursue all measures contained in option 3 of the consultation, with the exception of the measure on upper concentration levels.

11. Guidance

11.1 To prepare for the commencement of the instrument on 1st October 2023, the Home Office will publish the following guidance:

- Update online guidance and training materials for businesses (including manufacturers, small businesses and large retailers) and industry bodies on how to identify/report a suspicious transaction, theft, or significant loss to include guidance on the new requirements in this instrument relating to suspicious activity reporting.
- Produce online guidance for businesses on how to comply with the supply chain notification requirement, and how to obtain and record certain information about the identity of the business customer and the nature of the customer's business. This will include ways that the supplier can be satisfied that the regulated precursor is being obtained for a purpose reasonably connected with the business.
- Produce guidance for online marketplaces on how to comply with the measures imposed by this instrument.
- Update online guidance for home users of explosives precursors and poisons on when and how they can apply for a licence, including for the newly regulated substances, and the appeals process if an application is rejected.
- Produce training and guidance for police on enforcement issues and the offence that applies under section 7(4) of the 1972 Act for failure to comply with the requirements imposed by this instrument.

11.2 Where relevant, the guidance will aim to be made available online within a month after the laying date.

12. Impact

12.1 The impact on business, charities or voluntary bodies is as follows. The total estimated costs, which mostly fall to businesses (over 10-years in present values), lie in a range of £0.1 to £1.2 million, with a central estimate of £0.6 million. The benefits of the policy have not been monetised. Non-monetised benefits include reducing the likelihood of future terror attacks and impacts of attacks by deterring terrorists from purchasing more harmful substances. The best estimate of the Net Present Social Value (NPSV) and Business Net Present Value (BNPV) is -£0.6 million. The net direct cost to business per year is estimated to be about £0.1 million. The main analytical risk is around the unmonetised costs and benefits.

12.2 There is no significant impact on the public sector.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. Copies may also be obtained from the Explosives Precursors and Poisons team at the Home

Office, 2 Marsham Street, London SW1P 4DF (precursorsandpoisons@homeoffice.gov.uk).

13. Regulating small business

13.1 Small and micro-businesses may be affected by the changes, but most affected businesses already have to comply with requirements of the Poisons Act 1972 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 be effective if small and micro-businesses were exempt. Advice on how to comply with the Poisons Act 1972 is tailored to the type of business such that the impacts on smaller businesses are proportionate and the measures practical for them to implement. A Small and Medium Business Assessment has been completed and will be published as part of the wider Impact Assessment accompanying these measures.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to review the effectiveness of the measures at least every five years. A report to be published setting out the conclusions of the first review before 1st October 2028, with subsequent reviews conducted at least every five years.

14.2 A statutory review clause is included in the instrument.

15. Contact

15.1 Rachel Roberts at the Home Office, Telephone: 0300 0735 747 or email: precursorsandpoisons@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Henry Hirsch, Deputy Director for Chemical, Biological, Radiological, Nuclear and Explosives, Science & Technology Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Tom Tugendhat MBE MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.