STATUTORY RULES OF NORTHERN IRELAND

2014 No. 224

HEALTH AND SAFETY

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

Made - - - -	*28th August 2014*
Laid before Parliament	*8th September 2014*
Coming into force - -	*2nd September 2014*

The Secretary of State makes these Regulations in exercise of the powers conferred by articles 3(1)(c), (2) and (4), 17, 40(2), (3) and (4), 54(1), (2)(b) and (3), and 55(2) of, and paragraphs 1(1) and (4), 2, 3, 5, 14(1), 15 and 22 of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978 [F1], which are exercisable by the Secretary of State in relation to explosives, with modifications, by paragraph 4 of Schedule 12 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 [F2].

In accordance with Articles 46(1) and 54(5) of the Health and Safety at Work (Northern Ireland) Order 1978 [F3], as so applied and modified, the Secretary of State has consulted with the Health and Safety Executive for Northern Ireland and such other bodies as appear to the Secretary of State to be appropriate.

F1 S.I. 1978/1039 (N.I. 9). "Executive" was substituted for "Agency" throughout the Order by S.I. 1998/2795 (N.I. 18). Article 3 defines the "general purposes of" Part II, which in turn defines the scope of the power to make health and safety regulations in article 17(1). The general purposes of Part II, as defined in Article 3, were extended by Articles 3(1) and 4(1) of S.I. 1992/1728 (N.I. 17) to cover certain activities relating to offshore installations and pipe-lines. Article 17(6)(e) was revoked by Schedule 4 to the Health and Safety (Offences) Act 2008 (c. 20). Article 55 was amended by S.I. 1998/2795 (N.I. 18).

F2 S.I. 2010/976. Paragraph 4(1)(b) of Schedule 12 enables the Secretary of State to make regulations under the Health and Safety at Work (Northern Ireland) Order 1978 for purposes connected with any reserved matter falling within paragraph 12 or 20 of Schedule 3 to the Northern Ireland Act 1998 (c. 47). By paragraph 4(3) and (4) of Schedule 12 to S.I. 2010/976, the Secretary of State's powers under the 1978 Order to make orders or regulations is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12), and any orders and regulations are subject to annulment in pursuance of a resolution of either House of Parliament.

F3 Article 46(1) was amended by S.I. 1998/2795 (N.I. 18).

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014.

(2) These Regulations come into force on 2nd September 2014.

Interpretation

2.—(1) In these Regulations—

"the 1978 Order" means the Health and Safety at Work (Northern Ireland) Order 1978 [F4];

"acquiring" means taking into your possession, custody or control;

"authorised officer" means a person authorised by the Chief Constable [F5] under regulation 27(2);

"the CLP Regulation" means Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006[F6], as amended from time to time;

"designated area" means any area designated by Order under section 1(7) of the Continental Shelf Act 1964 [F7] and "within a designated area" includes over and under it [F8];

[F9]...

"Great Britain" includes the territorial sea of the United Kingdom other than the part adjacent to Northern Ireland;

"importing into Northern Ireland" includes importing into any part of the territorial sea (notwithstanding regulation 17) [F10];

"licence" (unless otherwise indicated) means a licence granted under regulation 5;

"member of the general public" means an individual [F11] who is acting for purposes not connected with that individual's trade, business or profession (and a trade, business or profession may include the performance of a function of a public nature within the meaning of section 6 of the Human Rights Act 1998 [F12]);

[F13]...

"mixture" means a mixture or solution composed of two or more substances;

"organisation" means any body corporate and any combination of persons or other unincorporated association;

"possessing" means having in your possession, custody or control;

"the Precursors Regulation" means Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors [F14], as amended from time to time;

"public place" means any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission (including any road within the meaning of the Roads (Northern Ireland) Order 1993 [F15]);

"recognised non-NI licence" has the same meaning as in regulation 11;

"responsible person" has the same meaning as in regulation 6;

"substance" means a chemical element and its compounds in the natural state or obtained by any manufacturing process—

(a) including any additive necessary to preserve its stability and any impurity deriving from the process used, but

(b) excluding any solvent that may be separated without affecting the stability of the substance or changing its composition;

"supply" includes supply to another person—

(a) in return for payment or free of charge;

(b) for the purpose of the safe disposal of the substance;

"transport" means transfer or conveyance; and

"using" includes processing, formulating, storing, treating or mixing, including in the production of an article.

(2) The Interpretation Act (Northern Ireland) 1954 [F16] applies to these Regulations as it applies to an Act of the Northern Ireland Assembly.

F4 S.I. 1978/1039 (N.I. 9); relevant amendments are referenced in these Regulations.
F5 The terms "Chief Constable", "constable", "police officer" and "police support staff" are defined in section 43 of the Interpretation Act (Northern Ireland) 1954.
F6 OJ No L 353, 31.12.2008, p1.
F7 1964 c. 29; section 1(7) was amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23) and section 103 of the Energy Act 2011 (c. 16).
F8 The law in force in Northern Ireland applies for the determination of such questions arising out of acts or omissions taking place in the "Northern Irish area", which comprises the part of the area designated by S.I. 1968/891 which lies west of the "Northern Irish border" (see S.I. 1980/184).
F9 Words in reg. 2(1) omitted (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **49(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
F10 Under the Health and Safety at Work (Northern Ireland) Order 1978, "Northern Ireland" includes the territorial sea adjacent to Northern Ireland.
F11 "Individual" means a natural person and does not include a corporation (section 46 of the Interpretation Act (Northern Ireland) 1954).
F12 Section 6 was amended by paragraph 1 of Schedule 18 to the Constitutional Reform Act 2005 (c. 4).
F13 Words in reg. 2(1) omitted (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **49(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
F14 OJ L 39, 9.2.2013, p. 1–11.
F15 S.I. 1993/3160; there are no relevant amendments.
F16 1954 c. 33 (N.I.)

PART 2

Control of tier 1 substances and tier 2 substances

Control of tier 1 substances

3.—(1) A person must not deal with a tier 1 substance except under, and in accordance with, a licence granted by the Secretary of State under regulation 5.

(2) A "tier 1 substance" means a substance mentioned in column 1 of the table in Schedule 1 or any mixture containing that substance, but does not include a mixture falling within the exception in column 2 of that table.

(3) A person deals with a tier 1 substance if that person—

(a) supplies the substance;

(b) acquires the substance;

(c) imports the substance into Northern Ireland [F17];

(d) possesses the substance; or

(e) uses the substance.

(4) But a person ("P") is not to be regarded as possessing or acquiring a tier 1 substance if—

(a) the substance is being transported (including being loaded or unloaded and during breaks which are reasonably incidental to completing the journey within a reasonable length of time);

(b) P is in possession of the substance only by reason of being—

(i) a carrier,

(ii) a person engaged in the work of loading or unloading, or

(iii) the occupier of a place it passes through while on the journey;

(c) P is acting for purposes connected with P's trade, business or profession; and

(d) the substance is under the direction and control of the licence holder.

(5) Paragraph (1) does not apply to—

(a) any department under the control of a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975 [F18]);

(b) the armed forces of the Crown;

(c) an inspector appointed under Article 21 of the 1978 Order, acting as such;

(d) a police officer, acting as such; or

(e) an authorised officer, acting as such.

F17 Under the Health and Safety at Work (Northern Ireland) Order 1978, and these Regulations, "Northern Ireland" includes the territorial sea adjacent to Northern Ireland.

F18 1975 c. 26; there are no relevant amendments.

Control of tier 2 substances

4.—(1) Notwithstanding the prohibition in Article 4(1) of the Precursors Regulation, a member of the general public may deal with a tier 2 substance under, and in accordance with, the terms of—

(a) a licence granted by the Secretary of State under regulation 5; or

(b) a recognised non-NI licence.

(2) A "tier 2 substance" means a "restricted explosives precursor"[F19] within the meaning of Article 3 of the Precursors Regulation, but in each case only if the substance or mixture is not a tier 1 substance.

(3) A member of the general public deals with a tier 2 substance if that person—

(a) acquires the substance;

(b) imports the substance into Northern Ireland;

(c) possesses the substance; or

(d) uses the substance.

F19 Under Article 3(10) of the Precursors Regulation, a "restricted explosives precursor" means a substance listed in Annex I to the Precursors Regulation in a concentration higher than the corresponding limit value set out for that substance in that Annex, and includes a mixture or another substance in which the substance listed in that Annex is present in a concentration higher than the corresponding limit value, but in each case only if the substance or mixture is not excluded by Article 2(2) of the Precursors Regulation. Article 2(2) excludes: (a) any article, defined as an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition; (b) an article containing explosive substances or an explosive mixture of substances designed to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions, including (i) pyrotechnic equipment falling within the scope of Council Directive 96/98/EC (OJ L 46, 17/02/1997, p. 25–56) on marine equipment, and (ii) percussion caps intended specifically for toys falling within the scope of Council Directive 88/378/EEC (OJ L 187, 16/07/1988, p. 1–13) concerning the safety of toys; and (c) medicinal products, which in Northern Ireland will mean: (i) a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 (S.I. 2012/1916), (ii) an investigational medicinal product within the meaning of regulation 2 of the Medicines for Human Use (Clinical Trials) Regulations 2004 (S.I. 2004/1031), (iii) a substance to which Part 12 of the Human Medicines Regulations 2012 or Part 6 of the Medicines for Human Use (Clinical Trials) Regulations 2004 applies by virtue of an order under section 104 or 105 of the Medicines Act 1968 (c. 67) (whether applying subject to exceptions or notifications or not and, in the case of an order under section 104, whether the substance is referred to in the order as a substance or an article), or (iv) a veterinary medicinal product within the meaning of regulation 2 of the Veterinary Medicines Regulations 2013 (S.I. 2013/2033).

Grant of licences

5.—(1) The Secretary of State may grant a licence to—

(a) any person to deal with a tier 1 substance;

(b) a member of the general public to deal with a tier 2 substance.

(2) The Secretary of State may restrict the licence to one or more of the activities mentioned in regulation 3(3) or 4(3), as the case may be.

(3) The term for which a licence is granted must not exceed 3 years, but this does not affect—

(a) a person's right to apply for a further licence to take effect on expiry of that term; or

(b) any power of the Secretary of State to amend, vary, suspend or revoke that licence before expiry of that term.

(4) A licence may be granted subject to such terms and conditions as may be specified in the licence.

(5) Before granting or amending a licence, the Secretary of State must consult the Chief Constable.

(6) In deciding whether to grant or amend a licence, the Secretary of State must have regard to all the circumstances of the case, including in particular—

(a) the intended use of the substance;

(b) the availability of alternative substances that would achieve the same purpose;

(c) the proposed arrangements to ensure that the substance is kept securely;

(d) any danger to public safety or public order that may be caused by the applicant dealing with the substance; and