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WORKING PAPER

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From:	UK delegation
To:	Working Party on Technical Harmonisation (Explosives Precursors)
Subject:	Comments from the United Kingdom delegation on the proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors, amending Annex XVII to Regulation (EC) No 1907/2006 and repealing Regulation (EU) no 98/2013 on the marketing and use of explosives precursors

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07-09-2018 - UK Amendments to EU Regulation 98-2013

Article	Current Text	Suggested Text	Comment/Justification
3 (7)	Member of the public means any natural or legal person who has a need for a restricted explosives precursor for purposes that are not connected with their trade, business, craft or profession;	Member of the public means any natural or legal person who is acting for purposes that are not connected with their trade, business, craft or profession;	This means members of the public who do not have a need for restricted explosives precursors are not subject to restrictions. It creates a separate group of people who are: 1) Not subject to licensing etc 2) Not subject to professional user verification. Craft suggests hobby, which is not a professional use.
3 (8)	'Professional user' means any natural or legal person who has a demonstrable need for a restricted explosives precursor for purposes connected with their trade, business, craft or profession which exclude making that restricted explosives precursor available to another person.	'Professional user' means any natural or legal person who has a demonstrable need for a restricted explosives precursor for purposes connected with their trade, business, craft or profession which exclude making that restricted explosives precursor available to another person.	As above.
3 (12)	'regulated explosives precursor'	'regulated explosives precursor' means a	This draws a useful line for retailers

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	means a substance listed in Annexes I or II and includes a mixture or other substance in which a substance listed in those Annexes is present;	substance listed in Annexes I or II and includes a mixture or other substance in which a substance listed in those Annexes is present; excluding mixtures in which the concentration of any such substance is below 1 % and there are four or more ingredients.	to avoid requirements placed on very low risk products, but both conditions need to be met.
4	Unless otherwise provided for in this Regulation or in other legal acts of the Union, Member States shall not prohibit, restrict or impede the making available of a regulated explosives precursor.	Unless otherwise provided for in this Regulation or in other legal acts of the Union, Member States shall not prohibit, restrict or impede the making available of a regulated explosives precursor on grounds related to the prevention of the illicit manufacture of explosives.	This allows restrictions on potential explosives precursors for other reasons, e.g. safety/national security controls, controls on corrosive substances to prevent “acid attacks”.
7 (1)	An economic operator who makes available a restricted explosives precursor to another economic operator shall inform that economic operator that the acquisition, possession and use of that restricted explosives precursor by members of the general public is subject to a restriction as set out in Article 5 (1) and (3).	An economic operator who makes available a restricted explosives precursor to another economic operator shall inform that economic operator that the acquisition, possession and use of that restricted explosives precursor by members of the general public is subject to a restriction as set out in Article 5 (1) and (3). An economic operator who makes available a regulated explosives precursor to another economic operator shall inform that economic operator that the supply of that regulated explosive precursor is subject to the reporting	The main issue retailers have in applying the regulation is the identification of regulated precursors in products. The more specialist nature and higher concentrations of restricted precursors makes them easier to identify.

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		requirements as set out in Article 9 (1) to (5).	
7 (3)	An online marketplace that acts as an intermediary shall take measures to ensure that its users, when making available restricted explosives precursors through its services, are informed of their obligations pursuant to this Regulation.	An online marketplace that acts as an intermediary shall take measures to ensure that its users, when making available regulated explosives precursors through its services, are informed of their obligations pursuant to this Regulation.	As above.
8 (2)	For the purpose of verifying that a prospective customer is a professional user or a farmer, an economic operator who makes available a restricted explosive precursor to a professional user or a farmer shall for each transaction request the following: a) The trade, business or profession of the prospective customer b) The intended use of the restricted explosives precursor by the prospective customer.	For the purpose of verifying that a prospective customer is a professional user or a farmer, an economic operator who makes available a restricted explosive precursor to a professional user or a farmer shall for each transaction request the following: a) The trade, business or profession of the prospective customer b) The intended use of the restricted explosives precursor by the prospective customer. c) The proof of identity of the individual, home address and company name and address.	

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9 (3)	Economic operators may refuse the suspicious transaction and shall report the suspicious transaction or attempted transaction within 24 hours, including if possible the identity...	Economic operators may refuse the suspicious transaction and shall report the suspicious transaction or attempted transaction within 24 hours of determining that it was suspicious, including if possible the identity...	We do not want to deter those who have pondered over whether it is suspicious from reporting the transaction because they are scared they are too late.
Annex I	Nitromethane upper limit 40% w/w	Nitromethane upper limit 100% w/w	The current proposal would prevent drag racers and model boat and plane hobbyists from participating in their activities. We have issued 51 licences for nitromethane (concentration between 40 and 100% w/w) for these purposes since September 2014. Asking drag racers to form clubs to gain access to concentrated nitromethane would represent a weakening of our current security measures. With a licensing regime we know who has access, can regularly assess the suitability of applicants and require security measures to be put in place at premises. Without a licensing regime, we lose these capabilities.

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Annex I	Sodium Chlorate upper limit 40% w/w Potassium Chlorate upper limit 40% w/w Sodium Perchlorate upper limit 40% w/w Potassium Perchlorate upper limit 40% w/w	Sodium Chlorate upper limit 100% w/w Potassium Chlorate upper limit 100% w/w Sodium Perchlorate upper limit 100% w/w Potassium Perchlorate upper limit 100% w/w	Since September 2014 the UK has issued 69 licences to members of the public for the acquisition, possession and use of these substances for the purposes of pyrotechnic experimentation. These individuals also require an explosives licence for their activity (issued by the police) and are subject to robust background checks. According to the evidence available to us, there have been no instances of misuse of these substances in the UK after a customer has been licensed. Losing our licensing ability may also drive the market for these chemicals underground, weakening our current security measures.
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Article 3 (14) To Note: We support the retention of the farmer definition in Article 3 (14) of the amendment. A removal of this definition would adversely impact upon small holders and horse paddock owners in the UK. These groups require the use of ammonium nitrate for legitimate purposes but would not be captured, or would be unable to demonstrate this requirement, under the “Professional User” definition alone.