



Home Office Consultation on Proposed Changes to the Poisons Act 1972, and Associated Regulations

Response by ACS (the Association of Convenience Stores)

ACS welcomes the opportunity to respond to this consultation. ACS represents 33,500 stores across the UK, many of which sell products which contain ingredients listed under the Poisons List Part 2. Part 1 poisons, considered the most dangerous, can currently only be sold through retail pharmacy businesses, and therefore do not affect our members.

This consultation response will set out our position regarding proposed changes to regulations on the sale of these Part 2 chemicals, or products containing these chemicals, and how these will directly impact upon our members.

Currently, premises selling products which contain specified poisons on their ingredients list are required to register with their local authorities. While some stores, generally larger multiples, may choose not to stock these products to avoid this regulatory burden, there is little information available to independent retailers to help them identify which products are affected, and therefore whether they need to obtain a license.

The proposed changes outlined in this consultation aim to address failings in the current system, ensure appropriate limitations on the public availability of poisons are in place, while minimising burdens on retailers. The Impact Assessment even suggests that the proposed option, (option 2 outlined below) is a de-regulatory measure. However the practical implications of the proposed regulatory changes would in fact add significant burdens to retailers.

ACS is therefore calling on Government not to introduce regulations which will create unnecessary and excessive burdens on businesses, and instead to adopt a proportionate approach based upon quantities of products in store in relation to the associated risks and need for regulation.

Proposed regulatory options

The proposals outlined in this consultation are:

- Option 1. Stay the same. The consultation highlights failings in the current regime and the need for reform. We would agree that the current registration scheme places the emphasis on businesses, rather than the end user. Risks associated with products containing chemicals are primarily in the quantity of chemicals and their intended use. Any regulation should therefore be aimed at limiting high quantity purchases, and on targeting the end user, not retail.
- Option 2. Remove the requirement for retailers to register or purchase a license to

sell Part 2 poisons. However, introduce mandatory suspicious transactions, theft and significant loss recording and reporting for all products containing part 1 or 2 poisons, in any quantity great enough for the chemical to be listed in the ingredients. This would apply to both end user and business to business sales. This is the preferred Government option, as it would mirror requirements set out in EU regulations on the sale of explosive precursors.

- Option 3. Move all part 2 poisons above the concentration threshold to part 1, so they can only be sold by registered pharmacists. Anyone wishing to buy these products would have to register their personal details at point of sale. While presenting fewer regulatory burdens for retail, this could significantly limit customer choice and affect the market for affected products.

ACS understands the need to govern the availability of these poisons to ensure they are not used illegally, and supports the aim to ensure this is achieved with minimal burdens on industry and legitimate users. However, the Governments' preferred option, while aiming to provide a consistent regulatory approach by mirroring requirements for the sale of explosive precursors, would in fact increase burdens on even the smallest retailer, due to the large increase in the number of products included in the reporting requirements.

The table below sets out some of the products which can contain part 2 poisons, and would therefore be included in any monitoring or reporting requirements.

Poison	Product type
Ammonia	Window Cleaner
Formic acid	Laundry detergent
Nicotine	Tobacco products, e-cigarettes
Nitrobenzene	Shoe polish
Potassium hydroxide	Cosmetics
Sodium hydroxide	Kitchen cleaner (drain cleaners etc)

These products are often sold in members' stores, meaning a large number of convenience stores would be affected by the proposed regulatory changes.

ACS therefore does not believe any of the options above meet the intended aim minimising burdens on retail, and cannot support any of the three options set out in the consultation. We are calling on Government to adopt a proportionate approach which exempts low risk businesses who do not primarily stock or sell affected products in any significant quantity from the reporting requirements. Any scheme should, however, still ensure that all businesses are provided with information on the potential risks of products containing poisons, and details of how to report any concerns they may have.

Suspicious transactions reporting

The EU has produced draft guidance on how to identify suspicious behaviour (designed for use with regulations on the sale of explosive precursors) in order to help inform which transactions may need to be recorded and reported. It is important that guidance for retailers is clear, and we are concerned that in its current form the EU guidance could lead to accusations of discrimination.

Many of the examples of suspicious behaviour listed could also have legitimate reasons and result in unfair targeting of certain customers, for example those who do not speak English fluently, or those with learning difficulties or disabilities that make it harder for them to communicate. For example, someone who is not confident in communicating may find it more difficult to make eye contact, explain what they plan to use products for, or discuss chemical concentrations or handling instructions.

Any of these may be described as a suspicious transaction under the proposed EU draft guidance. We believe clear guidance would need to be issued around how to apply this list to the suspicious transactions reporting requirement, in order to ensure that retailers did not inadvertently fall foul of discrimination law.

Impact assessment

The impact assessment published alongside the consultation sets out the expectation that compliance with these regulations would take 2 hours per business, and one hour for each member of staff to familiarise themselves with the regulations. However, the requirement for checking the ingredients list of each product stocked, would vary significantly between stores based on their size, number of products stocked and what systems they had in place. Average convenience stores stock between 1500-5000 separate product lines (SKUs). Stores would have to review the ingredients of every product which could potentially contain a poison.

This assessment of product ingredients would also have to be done every time new products were ordered or products were reformulated. In addition, it is also not clear how retailers would be informed of any changes to product ingredients, meaning they could inadvertently be in breach of these regulations unless regular checks on ingredients lists were made, which would further increase the cost for retailers.

As mentioned above, we therefore do not see these proposals as a deregulatory measure. Given the reporting requirements, when compared to the current regime of registration and licenses, the proposals are at best cost neutral for retailers, with the potential to actually increase costs depending on the detail to be set out in the regulations.

These burdens seem particularly disproportionate for small businesses who stock very small quantities of these products. We believe these businesses, given their low risk, should be exempt from monitoring and reporting requirements, but still given the means to report any suspicious activity if they wish.

Communication

Another concern is how retailers will be informed that these products are subject to regulation, and how advice and training materials will be provided to ensure they are able to comply.

For companies who regularly sell these products, training and processes will be built in to their day to day business. But for those who only occasionally sell affected products, systems need to be put in place to ensure they are informed of the regulations. This could take the form of a requirement on producers to include an information note alongside

deliveries, or a requirement for clear communication and engagement from local enforcement authorities.

Enforcement

The consultation also does not set out any indication of enforcement approaches or penalties for breaching these regulations. As set out above, we support the intention behind the regulations and the need for compliance, however there are practical difficulties, especially for small stores who do not regularly stock these products. We would wish to ensure that any enforcement approach took this into account, and clear guidance was issued to local authorities on the importance of engagement with local businesses as a first step to understanding the level of support or information that would be required to help businesses comply.

ACS is therefore calling on Government not to introduce regulations which will create unnecessary and excessive burdens on businesses, and instead to adopt a proportionate approach based upon quantities of products in store in relation to the associated risks and need for regulation.