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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 366**

**HEALTH AND SAFETY**

**The Making Available on the Market and Supervision of  
Transfers of Explosives Regulations (Northern Ireland) 2016**

*Made - - - - 29th September 2016*

*Coming into operation 21st October 2016*

The Department of Justice (“the Department”) is designated for the purposes of section 2(2) of the European Communities Act 1972 (“the 1972 Act”)(1) in relation to the placing on the market, transfer and safety of explosives for civil use.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Department that it is expedient for certain references to provisions of the EU instruments to be construed as a reference to those provisions as amended from time to time.

The Department, being the Department concerned(2) makes the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act(3) and Articles 17(1) to (6)(4) and 55(2) of, and paragraphs 1(1) and (4), 5 and 14(1) of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978 (“the 1978 Order”)(5).

In accordance with Article 46(1) of the 1978 Order it has consulted with the Health and Safety Executive for Northern Ireland and such bodies as appeared to be appropriate.

**PART 1**

**INTRODUCTION**

**Citation and commencement**

**1.** These Regulations may be cited as the Making Available on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 2016 and shall come into operation on 21st October 2016.

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(1) 1972 c.68.

(2) S.I. 1978/1039 (N.I. 9), Article 2(2).

(3) 1972 c.68; paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51), and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

(4) Article 17 shall be read with S.I. 1992/1728 (N.I. 17), Articles 3(2) and 4(2).

(5) S.I. 1978/1039 (N.I. 9); the general purposes of Part II referred to in Article 17(1) were extended by S.I. 1992/1728 (N.I. 17), Articles 3(1) and 4(1). Article 55(2) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraph 19.

## Interpretation

### 2.—(1) In these Regulations—

“the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978;

“the 1993 Regulations” means the Placing on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 1993<sup>(6)</sup>;

“accreditation” has the meaning set out in point 10 of Article 2 of RAMS (as amended from time to time);

“accreditation certificate” means a certificate, issued by the United Kingdom Accreditation Service (a company limited by guarantee incorporated in England and Wales under number 03076190) or a national accreditation body in another EEA State, attesting that a conformity assessment body meets the notified body requirements;

“authorised representative” means a person established within an EEA State appointed in accordance with regulation 12(1) who has received a written mandate from the manufacturer to act on the manufacturer’s behalf in relation to specified tasks;

“CE marking” means a marking which takes the form set out in Annex II of RAMS as amended from time to time);

“Chief Constable” means the Chief Constable of the Police Service of Northern Ireland;

“civil explosive” means an explosive which has been or would be classified in accordance with the United Nations Recommendations as falling within Class 1 but does not include—

- (a) ammunition the acquisition of which is regulated or prohibited by virtue of the Firearms (Northern Ireland) Order 2004<sup>(7)</sup>; or
- (b) any explosive which it is shown is intended for lawful use by the armed forces or the police of any country; or
- (c) a pyrotechnic article;

“civil explosive article” means an article containing one or more civil explosive substances;

“civil explosive substance” means an explosive substance in a civil explosive;

“Class 1” means Class 1 in respect of explosives or the classification of dangerous goods as set out in the United Nations Recommendations;

“the Commission” means the Commission of the European Union;

“competent authority” has the meaning given in regulation 4(8)(a);

“competent national authority” means an authority having responsibility for enforcing the law of an EEA State which implements the Directive;

“conformity assessment” means the process demonstrating whether the essential safety requirements relating to a civil explosive have been fulfilled;

“conformity assessment body” means a body that performs conformity assessment activities, including calibration, testing, certification and inspection;

“the Department” means the Department of Justice;

“the Directive” means [Directive 2014/28/EU](#) of the European Parliament and of the Council on the harmonisation of the laws of the member States relating to the making available on the market and supervision of explosives for civil uses (recast)<sup>(8)</sup>;

<sup>(6)</sup> [S.I. 1993 No.488](#).

<sup>(7)</sup> [S.I. 2004 No.702 \(N.I.3\)](#).

<sup>(8)</sup> [O.J. L96,29.3.14](#), p.1.

“distributor”, in relation to civil explosives, means a person in the supply chain, other than a manufacturer or an importer, who makes a civil explosive available on the market and “distribution” in relation to Part 3 is to be construed accordingly;

“economic operator” means a manufacturer, authorised representative, importer, distributor or any person who engages in the storage, use, transfer, import, export or trading of civil explosives;

“enforcing authority” means—

- (d) in relation to Part 2, the Chief Constable;
- (e) in relation to Part 3, Sub-Parts A and B, the Department of Justice and the market surveillance in relation to that Part by the Department of Justice;
- (f) in relation to Part 3, Sub-Part C, the Secretary of State;

“essential safety requirements” means the requirements set out in Schedule 1 (essential safety requirements);

“EU declaration of conformity” means a declaration of conformity required to be drawn up in accordance with regulation 7(1)(a) (EU declaration of conformity and CE marking);

“the Executive” means the Health and Safety Executive established under Section 10 of the Health and Safety at Work etc Act 1974<sup>(9)</sup>;

“explosive” means any explosive article or explosive substance which would—

- (g) if packaged for transport, be classified in accordance with the United Nations Recommendations as falling within Class 1; or
- (h) be classified in accordance with the United Nations Recommendations as—
  - (i) being unduly sensitive or so reactive as to be subject to spontaneous reaction and accordingly too dangerous to transport; and
  - (ii) falling within Class 1,

but does not include an explosive substance produced as part of a manufacturing process which thereafter reprocesses it in order to produce a substance or preparation which is not an explosive substance;

“explosive article” means an article containing one or more explosive substances;

“explosive substance” means a substance or preparation, not including a substance or preparation in a solely gaseous form or in the form of vapour, which is—

- (i) capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings; or
- (j) designed to produce an effect by heat, light, sound, gas or smoke, or a combination of these as a result of a non-detonative, self-sustaining, exothermic chemical reaction;

“harmonised standard” has the meaning set out in point 1(c) of Article 2 of Regulation (EU) 1025/2012 of the European Parliament and of the Council on European standardisation<sup>(10)</sup> (as amended from time to time);

“importer” , in relation to civil explosives, means any person who—

- (k) is established in an EEA State; and
- (l) places a civil explosive from a third country on the market;

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<sup>(9)</sup> 1974 c.37.

<sup>(10)</sup> O.J. L316, 14.11.12, p.12.

“making available on the market” means any supply for distribution of an explosive, consumption or use on the market in an EEA State in the course of commercial activity, whether in return for payment or free of charge, and related expressions must be construed accordingly;

“manufacture” in relation to civil explosives includes—

(m) in relation to explosive articles, their repair, modification, disassembly or unmaking;

(n) in relation to explosive substances, their reprocessing, modification or adaptation,

but it does not include the packing, unpacking, re-packing, labelling or testing of explosives or the division of an amount of explosives stored in bulk into smaller amounts and the placing of those smaller into containers;

“manufacturer” , in relation to civil explosives, means a person who—

(o) manufactures a civil explosive, or has a civil explosive designed or manufactured; and

(p) markets that civil explosive under that person’s name or trade mark or uses it for their own purposes;

“market surveillance authority” means the authority designated by paragraph 2 of Schedule 2, namely the Department of Justice;

“Mobile Explosives Manufacturing Unit” means a moveable unit, whether mounted on a vehicle or not, for manufacturing and charging explosives from dangerous goods that are not explosives, with the unit consisting of various tanks, bulk containers and related equipment;

“notified body requirements” means the requirements set out in Schedule 3 (Notified body requirements);

“place on the market” means the first making available on the market in an EEA state, and related expressions must be construed accordingly;

“RAMS” means Regulation [\(EC\) 765/2008](#) of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation [\(EEC\) No 339/93](#)<sup>(11)</sup>;

“recall” means taking any measure aimed at achieving the return of a civil explosive that has already been made available to the end-user and related expressions must be construed accordingly;

“recipient competent authority document” has the meaning given in regulation 4(8)(b);

“relevant authority” has the meaning given in regulation 4(8)(c);

“relevant conformity assessment procedure” means a conformity assessment procedure referred to in regulation 32 (conformity assessment procedures);

“technical documentation” has the meaning given in regulation 6 (Technical documentation and conformity assessment);

“technical specification” means a document that prescribes technical requirements to be fulfilled by a civil explosive;

“transfer” when used in relation to civil explosives means any physical movement of civil explosives apart from movement within one site and whether or not transferring possession of or property in the civil explosives is involved;

“United Nations Recommendations” means the United Nations Recommendations on the Transport of Dangerous Goods (based on those originally prepared by the United Nations Committee of Experts on the Transport of Dangerous Goods considered by the Economic and

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(11) O.J. L218, 13.8.2008, p.30.

Social Committee of Experts at its twenty-third session (Resolution 645G (XXIII) of 26 April 1957)(12) as revised or reissued from time to time;

“withdraw” when used in relation to a civil explosive, means taking any measure aimed at preventing a civil explosive in the supply chain from being made available on the market and related expressions must be construed accordingly.

(2) Any reference in the definitions in this regulation of “explosive substance” to liquid gas, gaseous form or vapour, means, respectively, liquid, gas, gaseous form or vapour at normal atmospheric temperature and pressure.

(3) Any reference in these Regulations to a numbered Annex is a reference to the Directive so numbered.

(4) In Part 3 “risk” means a risk, other than a minimal risk which—

(a) could arise from lawful and readily predictable human behaviour; and

(b) may result in—

(i) harm to the health or safety of any person;

(ii) unintended damage to property; or

(iii) unintended harm to the environment.

(5) Until the entry into force of any amendment made to Annex II (technical regulations, standards, testing and certification) to the EEA Agreement by a Decision of the EEA Joint Committee(13), inserting a reference to the Directive(14) into that Annex, references in regulations 2(1) and 4 and Part 3 and its related Schedules to, as the case may be, “an EEA state”, “another EEA State”, “the EEA State”, “other EEA State” or “other EEA States” are to be construed as referring to, respectively, “a member State”, “another member State”, “the member State”, “other member State” and “other member States”.

(6) The Interpretation Act (Northern Ireland) 1954(15) shall apply to these Regulations as it applies to an Act of the Assembly.

## Application

3.—(1) Regulations 4 to 43 do not apply in respect of the transfer of civil explosives to, by or on behalf of, where following the transfer, the explosives are in the possession of—

(a) inspectors appointed under Article 21 of the 1978 Order exercising their power to take possession of and detain articles or substances under Article 22(2)(i) of that Order as modified by Schedule 2 to these Regulations;

(b) constables acting in the execution of their duties;

(c) a person appointed to assist the Police Service of Northern Ireland as mentioned in section 44 of the Police (Northern Ireland) Act 2000 (police support staff) who is duly authorised by the Chief Constable in respect of such transfer or possession;

(d) customs officers acting in the performance of their functions;

(e) the Crown in respect of any civil explosives which are intended for use for the purposes of the department of the Secretary of State having responsibility for defence; or

(f) a person exercising a power of seizure under section 74 of the Explosives Act 1875.

(12) Current edition (1997): ISBN 92-1-139057 5.

(13) The EEA Joint Committee is established by Article 92 of the EEA Agreement.

(14) Directive 2014/28/EU is a recast of, and replaces, Council Directive 1993/15/EC of 5th April 1993 (OJ No. L121, 15.5.1993, p.20) which applied in relation to the EEA by virtue of Decision No. 7/94 of 21st March 1994 of the EEA Joint Committee amending Protocol 47 and certain Annexes to the EEA Agreement (OJ No. L160, 28.6.1994, p.1). Directive 2014/28/EU is referred to in its heading as being a text with EEA relevance.

(15) 1954 c.33 (N.I.).

(2) Regulations 4, 5 and 6 of The Identification and Traceability of Explosives Regulations (Northern Ireland) 2013(16) do not apply to –

- (a) an explosive which is transported and delivered without packaging or in a mobile explosives manufacturing unit for its direct unloading into the blast hole;
- (b) an explosive manufactured at a blasting site that is loaded immediately after being produced;
- (c) fuses, which are cord-like non-detonating igniting devices;
- (d) safety fuses, which consist of a core of fine grained black powder surrounded by a flexible woven fabric with one or more protective outer coverings and which, when ignited, burn at a predetermined rate without any external explosive effect; or
- (e) cap-type primers, which consist of a metal or plastic cap containing a small amount of primary explosive mixture that is readily ignited by impact and which serve as igniting elements in small arms cartridges or in percussion primers for propelling charges.

## PART 2

### AUTHORISATION

#### **Authorisation to transfer civil explosives**

4.—(1) Before any civil explosives are transferred, the consignee must obtain from the competent authority for the place where the transfer will terminate, a recipient competent authority document which grants approval for the transfer.

(2) No person may consign any civil explosives for carriage to a place outside Northern Ireland unless the approval of the relevant authority has been obtained,

(3) No person may consign any civil explosives for carriage unless that person is satisfied that the consignee has the recipient competent authority document required by paragraph (1).

(4) No person may carry civil explosives unless the civil explosives are accompanied by the recipient competent authority document required by paragraph (1) or a copy of that document certified by or on behalf of the consignee to be a true copy thereof.

(5) For the purposes of this regulation, any transfer of civil explosives to a place outside the area of the EEA States is treated as a transfer which will terminate at the place where the civil explosives are immediately before leaving the area of the EEA States.

(6) The consignee of any civil explosives must retain the recipient competent authority document or a copy thereof for a period of three years from the completion of the transfer.

(7) Except as part of a transfer carried out in accordance with this regulation, the importation of civil explosives into the United Kingdom is prohibited.

(8) In this regulation—

(a) “competent authority” means—

- (i) in respect of Northern Ireland, the Chief Constable;
- (ii) in respect of Great Britain, the Executive; and
- (iii) in respect of a place in the territory of an EEA State other than the United Kingdom, the authority whose responsibilities are specified in Article 11 of the Directive;

- (b) “recipient competent authority document” means a document issued in accordance with Article 11.2, 11.4 or 11.6 of the Directive by the competent authority of the EEA State in which the transfer will terminate; and
- (c) “relevant authority” means—
  - (i) in respect of a transfer or part of a transfer which takes place within Northern Ireland, the Chief Constable;
  - (ii) in respect of a transfer or part of a transfer which takes place in Great Britain, the Executive; and
  - (iii) in respect of a transfer or part of a transfer which takes place in the territory of an EEA State other than the United Kingdom, the competent authority for each place where the transfer takes or is to take place.

## PART 3

### SUB-PART A: MAKING AVAILABLE ON THE MARKET – OBLIGATIONS OF ECONOMIC OPERATORS, SUB-PART B: CONFORMITY ASSESSMENT, SUB-PART C: NOTIFICATION OF CONFORMITY ASSESSMENT BODIES

#### SUB-PART A: MAKING AVAILABLE ON THE MARKET – OBLIGATIONS OF ECONOMIC OPERATORS

##### MANUFACTURERS

#### **Design and manufacture in accordance with essential safety requirements**

5. Before placing a civil explosive on the market or using it for their own purposes, a manufacturer must ensure that it has been designed and manufactured in accordance with Schedule 1 (Essential safety requirements).

#### **Technical documentation and conformity assessment**

6. Before placing a civil explosive on the market or using it for their own purposes, a manufacturer must, in respect of that civil explosive—

- (a) have a relevant conformity assessment procedure carried out; and
- (b) draw up the technical documentation referred to—
  - (i) for a civil explosive in respect of which the conformity assessment procedure in regulation 32(a) is being carried out, in point 3(c) of Module B of Annex III to the Directive (as amended from time to time);
  - (ii) for a civil explosive in respect of which the conformity assessment procedure in regulation 32(b) is being carried out, in point 2 of Module G of Annex III to the Directive (as amended from time to time).

#### **EU declaration of conformity and CE marking**

7.—(1) Where the conformity of a civil explosive with the essential safety requirements has been demonstrated by a relevant conformity assessment procedure, the manufacturer must, before placing the civil explosive on the market or using it for their own purposes—

- (a) draw up a declaration of conformity in accordance with regulation 33 (EU declaration of conformity); and

- (b) affix the CE marking in accordance with regulation 34 (CE marking).
- (2) The manufacturer must keep the EU declaration of conformity up to date.
- (3) Where a civil explosive is subject to more than one EU instrument requiring a declaration of conformity to be drawn up, the manufacturer must draw up a single declaration of conformity, which—
  - (a) identifies the EU instruments; and
  - (b) includes references to the publication of those EU instruments in the Official Journal of the European Union.

#### **Retention of technical documentation and EU declaration of conformity**

8. A manufacturer must keep the technical documentation and the EU declaration of conformity drawn up in respect of a civil explosive for a period of 10 years beginning on the day on which the civil explosive is placed on the market.

#### **Compliance procedures for series production**

- 9.—(1) A manufacturer of civil explosives which are manufactured by series production must ensure that, before placing such a civil explosive on the market, procedures are in place to ensure that any civil explosive so manufactured will be in conformity with this Part.
- (2) In doing so, the manufacturer must take adequate account of—
- (a) any change in the design or characteristics of the civil explosive; and
  - (b) any change in a harmonised standard or in another technical specification by reference to which the EU declaration of conformity was drawn up.

#### **Traceability of certain civil explosives excluded from the scope of regulations 4, 5 and 6 of the Identification and Traceability of Explosives Regulations (Northern Ireland) 2013 (ITOER (NI) 2013)**

10.—(1) A manufacturer of a civil explosive which is excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013, by virtue of regulation 3(2), must, before placing such a civil explosive on the market—

- (a) ensure that it bears a type, batch or serial number or other element allowing its identification; and
- (b) indicate on the civil explosive—
  - (i) any of—
    - (aa) the manufacturer's name;
    - (bb) registered trade name; or
    - (cc) registered trade mark; and
  - (ii) a single postal address at which they can be contacted.

(2) Where the small size, shape or design of the civil explosive does not allow the information specified in paragraph (1)(a) to be indicated on it, the manufacturer must ensure that such information is indicated on its packaging or in a document accompanying the civil explosive.

(3) Where it is not possible to indicate the information specified in paragraph (1)(b) on the civil explosive, the manufacturer must indicate that information on the packaging or in a document accompanying the civil explosive.



(4) The contact details referred to in paragraph (1) must be provided in a language which can be easily understood by end-users and the market surveillance authority in the EEA State in which the civil explosive is to be made available to such end-users.

### **Instructions and safety information**

**11.—**(1) When placing a civil explosive on the market, a manufacturer must ensure that it is accompanied by instructions and safety information in a language which can be easily understood by end-users in the EEA State in which the civil explosive is to be made available to such end-users.

(2) Where the civil explosive is being made available to end-users in the United Kingdom, the language referred to in paragraph (1) which can easily be understood by end-users is English.

(3) The instructions and safety information referred to in paragraph (1) and labelling, must be clear, understandable and intelligible.

## **AUTHORISED REPRESENTATIVES**

### **Appointment of authorised representative by written mandate**

**12.—**(1) A manufacturer may, by written mandate, appoint a person as their authorised representative to perform specified tasks on the manufacturer's behalf.

(2) The mandate must allow the authorised representative to do at least the following in relation to a civil explosive covered by the mandate—

- (a) perform the manufacturer's obligations under regulation 8 (Retention of technical documentation and EU declaration of conformity); and
- (b) perform the manufacturer's obligations under regulation 20 (Provision of information and cooperation).

(3) A manufacturer must not delegate the performance of their functions under regulation 5 (Design and manufacture in accordance with essential safety requirements) and regulation 6 (Technical documentation and conformity assessment) to an authorised representative.

(4) An authorised representative must comply with all the duties imposed on the manufacturer in relation to each obligation under this Part that the authorised representative is appointed by the manufacturer to perform, and accordingly—

- (a) as far as those duties are concerned, references in this Part (except in this regulation) to the manufacturer are to be taken as including a reference to the authorised representative; and
- (b) if the authorised representative contravenes or fails to comply with any of those duties, the authorised representative may be proceeded against as though the authorised representative were the manufacturer.

(5) A manufacturer who has appointed an authorised representative to perform on their behalf an obligation under this Part remains responsible for the proper performance of that obligation.

## **IMPORTERS**

### **Prohibition on placing on the market civil explosives which are not in conformity**

**13.** An importer must not place a civil explosive on the market unless it is in conformity with the essential safety requirements.

### **Requirements which must be satisfied before an importer places a civil explosive on the market**

**14.—**(1) Before placing a civil explosive on the market, an importer must ensure that—

- (a) a relevant conformity assessment procedure has been carried out by the manufacturer;
  - (b) the manufacturer has drawn up the technical documentation;
  - (c) the civil explosive—
    - (i) bears the CE marking; and
    - (ii) is accompanied by the required documents; and
  - (d) the manufacturer has complied with the requirements, where applicable, set out in regulation 10 (Traceability of certain civil explosives excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013) to the extent not already covered by subparagraph (c)(ii).
- (2) In paragraph (1)(c)(ii), “required documents” means any documents that are required to be provided with the civil explosive pursuant to—
- (a) regulation 10(2) and (3) (Traceability of certain civil explosives excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013); and
  - (b) regulation 11 (Instructions and safety information).

**Prohibition on placing on the market civil explosives considered not to be in conformity with the essential safety requirements**

**15.—**(1) Where an importer considers, or has reason to believe, that a civil explosive is not in conformity with the essential safety requirements, the importer must not place the civil explosive on the market.

(2) Where the civil explosive presents a risk, the importer must inform the manufacturer and the market surveillance authority of that risk.

**Information identifying importer**

**16.—**(1) Before placing a civil explosive on the market, an importer must indicate on the civil explosive—

- (a) any of—
  - (i) the name;
  - (ii) registered trade name; or
  - (iii) registered trade mark of the importer; and
- (b) a postal address at which the importer can be contacted.

(2) The information specified in paragraph (1) must be in a language which can be easily understood by end-users and the market surveillance authority in the EEA State in which the civil explosive is to be made available to such end-users.

(3) Where it is not possible to indicate the information specified in paragraph (1) on the civil explosive, the importer must indicate that information—

- (a) on the packaging; or
- (b) in a document accompanying the civil explosive.

**Instructions and safety information**

**17.—**(1) When placing a civil explosive on the market, an importer must ensure that it is accompanied by instructions and safety information in a language which can be easily understood by end-users in the EEA State in which the civil explosive is to be made available to such end-users.

(2) Where the civil explosive is being made available to end-users in the United Kingdom, the language referred to in paragraph (1) which can be easily understood by end-users is English.

#### **Retention of technical documentation and EU declaration of conformity**

**18.** An importer must, for a period of 10 years beginning on the day on which the civil explosive is placed on the market—

- (a) keep a copy of the EU declaration of conformity at the disposal of the market surveillance authority; and
- (b) ensure that the technical documentation can be made available to that authority, upon request.

### **MANUFACTURERS AND IMPORTERS**

#### **Duty to take action in respect of civil explosives placed on the market which are considered not to be in conformity**

**19.**—(1) A manufacturer or importer who considers, or has reason to believe, that a civil explosive which they have placed on the market is not in conformity with this Part must immediately take the corrective measures necessary to—

- (a) bring the civil explosive into conformity;
- (b) withdraw the civil explosive; or
- (c) recall the civil explosive.

(2) Where the civil explosive presents a risk, the manufacturer or importer must immediately inform the competent national authorities of any EEA State in which the manufacturer or importer made the civil explosive available on the market, of the risk, giving details of—

- (a) the respect in which the civil explosive is considered not to be in conformity with this Part; and
- (b) any corrective measures taken.

#### **Provision of information and cooperation**

**20.**—(1) A manufacturer or importer must, further to a reasoned request from a competent national authority, provide the authority with the information and documentation necessary to demonstrate that the civil explosive is in conformity with this Part—

- (a) in paper or electronic form; and
- (b) in a language which can be easily understood by the authority.

(2) A manufacturer or importer must, at the request of a competent national authority, cooperate with the authority on any action taken to—

- (a) evaluate a civil explosive in accordance with paragraph 8 of Schedule 2 (Evaluation of civil explosives presenting a risk);
- (b) eliminate the risks posed by a civil explosive which the manufacturer or importer has placed on the market.

### **DISTRIBUTORS**

#### **Duty to act with due care**

**21.** When making a civil explosive available on the market, a distributor must act with due care to ensure that it is in conformity with this Part.

**Requirements which must be satisfied before a distributor makes a civil explosive available on the market**

**22.—**(1) Before making a civil explosive available on the market, a distributor must verify that—

- (a) the civil explosive—
  - (i) bears the CE marking;
  - (ii) is accompanied by the required documents;
  - (iii) is accompanied by instructions and safety information in a language which can be easily understood by end-users in the EEA State in which the civil explosive is to be made available.
- (b) the manufacturer has complied with the requirements, where applicable, set out in regulation 10 (Traceability of certain civil explosives excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013) to the extent not already covered by sub-paragraph (a)(ii); and
- (c) the importer has complied with the requirements set out in regulation 16 (Information identifying importer) to the extent not already covered by sub-paragraph (a)(ii).

(2) In paragraph (1)(a)(ii), “required documents” means the documents that are required to be provided with the civil explosive pursuant to—

- (a) regulation 10(2) and (3) (Traceability of certain civil explosives excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013); and
- (b) regulation 16(3) (Information identifying importer).

**Prohibition on making available on the market civil explosives considered not to be in conformity with the essential safety requirements**

**23.—**(1) Where a distributor considers, or has reason to believe, that a civil explosive is not in conformity with the essential safety requirements, the distributor must not make the civil explosive available on the market.

(2) Where the civil explosive presents a risk, the distributor must inform the following persons of the risk—

- (a) the manufacturer or the importer; and
- (b) the market surveillance authority.

**Duty to take action in respect of civil explosives made available on the market which are not in conformity**

**24.—**(1) A distributor who considers, or has reason to believe, that a civil explosive which the distributor has made available on the market is not in conformity with this Part must make sure that the necessary corrective measures are taken to—

- (a) bring that civil explosive into conformity;
- (b) withdraw the civil explosive; or
- (c) recall the civil explosive.

(2) Where the civil explosive presents a risk, the distributor must immediately inform the competent national authorities of any EEA State in which the distributor has made the civil explosive available on the market, of that risk, giving details of—

- (a) the respect in which the civil explosive is considered not to be in conformity with this Part; and
- (b) any corrective measures taken.

### **Provision of information and cooperation**

**25.**—(1) A distributor must, further to a reasoned request from a competent national authority, provide the authority with the information and documentation, in paper or electronic form, necessary to demonstrate that the civil explosive is in conformity with this Part.

(2) A distributor must, at the request of a competent national authority, cooperate with the authority on any action taken to—

- (a) evaluate a civil explosive in accordance with paragraph 8 of Schedule 2 (Evaluation of civil explosives presenting a risk); and
- (b) eliminate the risks posed by a civil explosive which the distributor has made available on the market.

### **IMPORTERS AND DISTRIBUTORS**

#### **Storage and transport**

**26.** Each importer and distributor must ensure that, while a civil explosive is under their responsibility, its storage or transport conditions do not jeopardise its conformity with the essential safety requirements.

#### **Cases in which obligations of manufacturers apply to importers and distributors**

**27.** An economic operator (“A”) who would, but for this regulation, be considered an importer or distributor, is to be considered a manufacturer for the purposes of this Part and is subject to the obligations of a manufacturer under this Part, where A—

- (a) places a civil explosive on the market under A’s own name or trade mark; or
- (b) modifies a civil explosive already placed on the market in such a way that it may affect whether the civil explosive is in conformity with this Part.

### **ALL ECONOMIC OPERATORS**

#### **Translation of a declaration of conformity**

**28.**—(1) Before making a civil explosive available on the market, an economic operator must ensure that the EU declaration of conformity is prepared in, or translated into, the language required by the EEA State in which it is to be made available on the market.

(2) Where the civil explosive is to be made available on the market in the United Kingdom, the language required is English.

#### **Identification of economic operators**

**29.**—(1) This regulation applies in relation to civil explosives excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013 by virtue of regulation 3(2).

(2) An economic operator (“E”) who receives a request from the market surveillance authority before the end of the relevant period, must, within such period as the authority may specify, identify to the market surveillance authority—

- (a) any economic operator who has supplied E with a civil explosive to which this regulation applies; and
- (b) any economic operator to whom E has supplied a civil explosive to which this regulation applies.

(3) The relevant period is—

- (a) for information under paragraph (2)(a), a period of 10 years beginning on the day on which E was supplied with the civil explosive;
- (b) for information under paragraph (2)(b), a period of 10 years beginning on the day on which E supplied the civil explosive.

### **Prohibition on improper use of CE marking**

**30.**—(1) An economic operator must not affix the CE marking to a civil explosive unless—

- (a) that economic operator is the manufacturer; and
- (b) the conformity of the civil explosive with the essential safety requirements has been demonstrated by a relevant conformity assessment procedure.

(2) An economic operator must not affix to a civil explosive a marking (other than the CE marking) which purports to attest that the civil explosive is in conformity with the essential safety requirements.

(3) An economic operator must not affix to a civil explosive a marking, sign or inscription which is likely to mislead any other person as to the meaning or form of the CE marking.

(4) An economic operator must not affix to a civil explosive any other marking if the visibility, legibility and meaning of the CE marking would be impaired as a result.

## **SUB-PART B: CONFORMITY ASSESSMENT**

### **Presumption of conformity**

**31.**—(1) A civil explosive which is in conformity with a harmonised standard, or part of such a standard, the reference to which has been published in the Official Journal of the European Union, is to be presumed to be in conformity with the essential safety requirements covered by that standard, or that part of that standard.

(2) The presumption in paragraph (1) is rebuttable.

### **Conformity assessment procedures**

**32.** For the assessment of conformity of a civil explosive, the manufacturer must follow one of the following procedures referred to in Annex III to the Directive (as amended from time to time)—

- (a) EU-type examination (Module B), and, at the choice of the manufacturer, any of the following procedures—
  - (i) conformity to type based on internal production control plus supervised product checks at random intervals (Module C2);
  - (ii) conformity to type based on quality assurance of the production process (Module D);
  - (iii) conformity to type based on product quality assurance (Module E);
  - (iv) conformity to type based on product verification (Module F);
- (b) conformity based on unit verification (Module G).

### **EU declaration of conformity**

**33.** The EU declaration of conformity for a civil explosive must—

- (a) state that the fulfilment of the essential safety requirements has been demonstrated in respect of the civil explosive;

- (b) contain the elements specified in the relevant modules set out in Annex III to the Directive (as amended from time to time) for the relevant conformity assessment procedure followed in respect of the civil explosive; and
- (c) have the model structure set out in Annex IV to the Directive (as amended from time to time).

### **CE marking**

**34.**—(1) The CE marking must be affixed visibly, legibly and indelibly to the civil explosive.

(2) Where it is not possible or warranted, on account of the nature of the civil explosive, to affix the CE marking in accordance with paragraph (1), the CE marking must be affixed to—

- (a) the packaging; and
- (b) the accompanying documents.

(3) The CE marking must be followed by the identification number of the notified body which carried out the relevant conformity assessment procedure for the civil explosive, where that body is involved in the production control phase.

(4) The identification number of the notified body must be affixed—

- (a) by the notified body itself; or
- (b) under the instructions of the notified body, by the manufacturer or the manufacturer's authorised representative.

(5) In the case of a civil explosive—

- (a) manufactured for the manufacturer's own use;
- (b) transported and delivered unpackaged or in a Mobile Explosives Manufacturing Unit for its direct unloading into the blast-hole; or
- (c) manufactured at the blasting site which is loaded immediately after being produced (in situ production),

the CE marking must be affixed to the accompanying documents.

## **SUB-PART C: NOTIFICATION OF CONFORMITY ASSESSMENT BODIES**

### **Notified bodies**

**35.**—(1) For the purposes of this Part, a notified body is a conformity assessment body—

- (a) which has been notified to the European Commission and to the other EEA States—
  - (i) under regulation 36 (Notification); or
  - (ii) by the Secretary of State, before 20th April 2016, in accordance with Article 24 of the Directive (as amended from time to time); and
- (b) in respect of which no objections are raised by the European Commission or the other EEA States—
  - (i) within two weeks of a notification, where an accreditation certificate is issued; or
  - (ii) within two months of a notification, where accreditation is not used.

(2) Paragraph (1) has effect subject to regulation 41 (Changes to notifications).

### **Notification**

**36.**—(1) The Secretary of State must notify to the European Commission and the other EEA States only those conformity assessment bodies that qualify for notification.

(2) A conformity assessment body qualifies for notification if the first and second conditions below are met.

(3) The first condition is that the conformity assessment body makes an application to the Secretary of State for notification and that the application is accompanied by—

- (a) a description of—
  - (i) the conformity assessment activities that the conformity assessment body intends to carry out;
  - (ii) the conformity assessment module for which the conformity assessment body claims to be competent; and
  - (iii) the civil explosive for which the conformity assessment body claims to be competent; and either
- (b) an accreditation certificate; or
- (c) the documentary evidence necessary for the Secretary of State to verify, recognise and regularly monitor the conformity assessment body's compliance with the notified body requirements.

(4) The second condition is that the Secretary of State is satisfied that the conformity assessment body meets the notified body requirements.

(5) For the purposes of paragraph (4), the Secretary of State may accept an accreditation certificate in accordance with paragraph (3)(b) as sufficient evidence that the conformity assessment body meets the notified body requirements.

(6) When deciding whether to notify a conformity assessment body that qualifies for notification to the European Commission and the other EEA States, the Secretary of State may—

- (a) have regard to any other matter which appears to the Secretary of State to be relevant; and
- (b) set conditions that the conformity assessment body must meet.

(7) The Secretary of State must notify to the European Commission of the United Kingdom's procedures for the assessment and notification of conformity assessment bodies, and any changes to those procedures.

### **Presumption of conformity of notified bodies**

**37.**—(1) Where a conformity assessment body demonstrates its conformity with the criteria laid down in a harmonised standard (or part of such a standard), the reference of which has been published in the Official Journal of the European Union, the Secretary of State is to presume that the conformity assessment body meets the notified body requirements covered by that standard (or part of that standard).

(2) The presumption in paragraph (1) is rebuttable.

### **Contents of notification**

**38.** A notification under regulation 36 must include—

- (a) details of—
  - (i) the conformity assessment activities in respect of which the conformity assessment body has made its application for notification;
  - (ii) the conformity assessment module or modules in respect of which the conformity assessment body has made its application for notification; and
  - (iii) the civil explosive in respect of which the conformity assessment body has made its application for notification; and either



- (b) an accreditation certificate; or
- (c) documentary evidence which attests to—
  - (i) the conformity assessment body's competence; and
  - (ii) the arrangements in place to ensure that the conformity assessment body will be monitored regularly and will continue to meet the notified body requirements.

### **Monitoring**

**39.**—(1) The Secretary of State must monitor each notified body with a view to verifying that the notified body—

- (a) continues to meet the notified body requirements;
- (b) meets any conditions set in accordance with regulation 36(6)(b); and
- (c) carries out its functions in accordance with these Regulations.

(2) The Secretary of State must inform the European Commission of the United Kingdom's procedures for the monitoring of notified bodies, and any changes to those procedures.

### **United Kingdom Accreditation Service**

**40.** The Secretary of State may authorise the United Kingdom Accreditation Service (a company limited by guarantee incorporated in England and Wales under number 03076190) to carry out the following activities on behalf of the Secretary of State—

- (a) assessing whether a conformity assessment body meets the notified body requirements; and
- (b) monitoring notified bodies in accordance with regulation 39 (Monitoring).

### **Changes to notifications**

**41.**—(1) Where the Secretary of State determines that a notified body no longer meets a notified body requirement, or that it is failing to fulfil any of its obligations under these Regulations other than conditions set out in accordance with regulation 36(6)(b), the Secretary of State must restrict, suspend or withdraw the body's status as a notified body under regulation 35.

(2) With the consent of a notified body, or where the Secretary of State determines that a notified body no longer meets a condition set in accordance with regulation 36(6)(b), the Secretary of State may restrict, suspend or withdraw the body's status as a notified body under regulation 35.

(3) In deciding what action is required under paragraph (1) or (2), the Secretary of State must have regard to the seriousness of the failure.

(4) Where the Secretary of State takes action under paragraph (1) or (2), the Secretary of State must immediately inform the European Commission and the other EEA States.

(5) Where the Secretary of State has taken action in respect of a notified body under paragraph (1) or (2), or where the notified body has ceased its activity, the notified body must, at the request of the Secretary of State—

- (a) transfer its files relating to the activities it has undertaken as a notified body to another notified body or to the Secretary of State; or
- (b) keep its files relating to the activities it has undertaken as a notified body available for the Secretary of State and the market surveillance authorities for a period of 10 years from the date they were created.

**Operational obligations of notified bodies**

**42.** When a notified body carries out a relevant conformity assessment procedure, it must do so in accordance with Schedule 4 (operational obligations of notified bodies).

**Subsidiaries and contractors**

**43.—**(1) Where a notified body subcontracts specific conformity assessment activities, or has such activities carried out by a subsidiary, the activities are only to be treated as having been carried out by a notified body for the purposes of regulation 32 (Conformity assessment procedures) where the conditions in paragraphs (2) and (3) are met.

(2) The notified body must—

- (a) ensure that the subcontractor or subsidiary meets the notified body requirements; and
- (b) inform the Secretary of State accordingly.

(3) The notified body must have obtained the agreement of the client to the use of a subcontractor or subsidiary.

(4) Where a notified body subcontracts specific conformity assessment activities, or has such activities carried out by a subsidiary, the notified body must for a period of at least 10 years, beginning on the day on which the activities are carried out, keep at the disposal of the Secretary of State the documentation concerning—

- (a) the assessment of the qualifications of the subcontractor or the subsidiary; and
- (b) the conformity assessment activities carried out by the subcontractor or subsidiary.

(5) When monitoring a notified body in accordance with regulation 39 (Monitoring), the Secretary of State must treat the notified body as responsible for the tasks performed by a subcontractor or subsidiary, wherever the subcontractor or subsidiary is established.

## PART 4

### ENFORCEMENT OF THE REGULATIONS

**Enforcement in relation to Part 2 and Part 3, market surveillance and further matters**

**44.** Schedule 2, which makes provisions as to—

- (a) enforcement in relation to Part 2 and Part 3 of these Regulations;
- (b) market surveillance in relation to Part 3 of these Regulations;
- (c) compliance, withdrawal and recall notices; and
- (d) a defence of due diligence, appeals against notices and further provisions in relation to enforcement;

has effect.

## PART 5

### TRANSITIONAL PROVISIONS AND REVOCATION

#### Transitional provisions

**45.**—(1) Despite the revocation of the 1993 Regulations by these Regulations, a recipient competent authority document issued under the 1993 Regulations which was valid immediately before the relevant date is deemed to be a valid recipient competent authority document for the purposes of regulation 4 of these Regulations.

(2) Where an application for a recipient competent authority document under the 1993 Regulations has been made to, and received by, the Chief Constable before the relevant date and the application has not been refused or granted by that date, the application is deemed to be an application for a recipient competent authority document under regulation 4 of these Regulations and the provisions of these Regulations apply to the application.

(3) In this regulation—

- (a) “the 1993 Regulations” means the Placing on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 1993<sup>(17)</sup>;
- (b) “recipient competent authority document” has the same meaning as in regulation 4(8)(b); and
- (c) “relevant date” is 21st October 2016.

#### Revocation

**46.** The 1993 Regulations are revoked from 21st October 2016.

Sealed with the Official Seal of the Department of Justice on 29th September 2016



*Claire Sugden*  
Minister of Justice

## SCHEDULE 1

Reg 5

## ESSENTIAL SAFETY REQUIREMENTS

(This Schedule reproduces, with minor modifications, the provision of Annex II to the Directive)

## PART 1

## GENERAL REQUIREMENTS

1. Each civil explosive must be designed, manufactured and supplied in such a way as to present a minimal risk to the safety of human life and health, and to prevent damage to property and the environment under normal, foreseeable conditions, in particular as regards the safety rules and standard practices until such time as it is used.
2. Each civil explosive must attain the performance characteristics specified by the manufacturer in order to ensure maximum safety and reliability.
3. Each civil explosive must be designed and manufactured in such a way that when appropriate techniques are employed it can be disposed of in a manner which minimises effects on the environment.

## PART 2

## SPECIAL REQUIREMENTS

4. As a minimum, the following information and properties – where appropriate – must be considered or tested. Each civil explosive should be tested under realistic conditions. If this is not possible in a laboratory, the test should be carried out in the conditions in which the civil explosive is to be used.
  - (a) Design and characteristic properties, including chemical composition, degree of homogeneity and, where appropriate, dimensions and grain size distribution.
  - (b) The physical and chemical stability of the civil explosive in all environmental conditions to which it may be exposed.
  - (c) Sensitiveness to impact and friction.
  - (d) Compatibility of all components as regards their physical and chemical stability.
  - (e) The chemical purity of the civil explosive.
  - (f) Resistance of the civil explosive against influence of water where it is intended to be used in humid or wet conditions and where its safety or reliability may be adversely affected by water.
  - (g) Resistance to low and high temperatures, where the civil explosive is intended to be kept or used at such temperatures and its safety or reliability may be adversely affected by cooling or heating of a component or of the civil explosive as a whole.
  - (h) The suitability of the civil explosive for use in hazardous environments (e.g. firedamp atmospheres, hot masses, etc.) if it is intended to be under such conditions.
  - (i) Safety features intended to prevent untimely or inadvertent initiation or ignition.
  - (j) The correct loading and functioning of the civil explosive when used for its intended purpose.
  - (k) Suitable instructions and, where necessary, markings in respect of safe handling, storage, use and disposal.

- (l) The ability of the civil explosive, its wrapping or other components to withstand deterioration during storage until the “use by” date specified by the manufacturer.
  - (m) Specification of all devices and accessories needed for reliable and safe functioning of the civil explosive.
5. The various groups of civil explosives must at least also comply with the following requirements:
- (a) Blasting Explosives
    - (i) The proposed method of initiation must ensure safe, reliable and complete detonation or deflagration as appropriate, of the blasting explosive. In the particular case of black powder, it is the capacity as regards deflagration which is to be checked.
    - (ii) Blasting explosives in cartridge form must transmit the detonation safely and reliably from one end of the train of cartridges to the other.
    - (iii) The fumes produced by blasting explosives intended for underground use may contain carbon monoxide, nitrous gases, other gases, vapours or airborne solid residues only in quantities which do not impair health under normal operating conditions.
  - (b) Detonating cords, safety fuses, other fuses and shock tubes
    - (i) The covering of detonating cords, safety fuses, other fuses and shock tubes must be of adequate mechanical strength and adequately protect the explosive filling when exposed to normal mechanical stress.
    - (ii) The parameters for the burning times of safety fuses must be indicated and must be reliably set.
    - (iii) Detonating cords must be capable of being reliably initiated, be of sufficient initiation capability and comply with requirements as regards storage even in particular climatic conditions.
  - (c) Detonators (including delay detonators) and relays
    - (i) Detonators must reliably initiate the detonation of the blasting explosives which are intended to be used with them under all foreseeable conditions of use.
    - (ii) Delay connectors for detonating cords must be reliably initiated.
    - (iii) The initiation capability must not be adversely affected by humidity.
    - (iv) The delay times of delay detonators must be sufficiently uniform to ensure that the probability of overlapping of the delay times of adjacent time steps is insignificant.
    - (v) The electrical characteristics of electrical detonators must be indicated on the packaging (e.g. no-fire current, resistance, etc.).
    - (vi) The wires of electric detonators must be of sufficient insulation and mechanical strength including the solidity of the link to the detonator, taking account of their intended use.
  - (d) Propellants and rocket propellants
    - (i) These materials must not detonate when used for their intended purpose.
    - (ii) Propellants where necessary (e.g. those based on nitrocellulose) must be stabilised against decomposition.
    - (iii) Solid rocket propellants, when in compressed or cast form, must not contain any unintentional fissures or gas bubbles which dangerously affect their functioning.

## SCHEDULE 2

Reg 44

ENFORCEMENT POWERS IN RESPECT OF TRANSFERS, AND THE PLACING ON THE MARKET, OF CIVIL EXPLOSIVES, MARKET SURVEILLANCE, COMPLIANCE, WITHDRAWAL AND RECALL NOTICES, DEFENCE OF DUE DILIGENCE, APPEALS AGAINST NOTICES AND FURTHER PROVISIONS IN RELATION TO ENFORCEMENT

## PART 1

ENFORCEMENT POWERS IN RESPECT OF TRANSFERS, AND THE PLACING ON THE MARKET, OF CIVIL EXPLOSIVES AND MARKET SURVEILLANCE

**Enforcement powers, market surveillance and designation of market surveillance authority**

1. This Part applies in relation to—
  - (a) the enforcement of Part 2 of these Regulations by the Chief Constable; and
  - (b) the enforcement of Sub-Parts A and B of Part 3 of these Regulations, and market surveillance in relation to that Part, by the Department and
  - (c) the enforcement of Sub-Part C of Part 3 of these Regulations by the Secretary of State.
2. In Northern Ireland, the Department is designated as the market surveillance authority for the purposes of the Directive and RAMS in respect of civil explosives.
3. In its enforcement of Sub-Parts A and B of Part 3, the Department must enforce RAMS in respect of its application to civil explosives.
4. When enforcing Part 3, the enforcing authority must exercise its powers in a manner which is consistent with—
  - (a) paragraph 8 (Evaluation of civil explosives presenting a risk);
  - (b) paragraph 9 (Enforcement action in respect of civil explosives which are not in conformity and which present a risk);
  - (c) paragraph 10 (EU safeguard procedure);
  - (d) paragraph 11 (Enforcement action in respect of civil explosives which are in conformity, but present a risk);
  - (e) paragraph 12 (Enforcement action in respect of formal non-compliance); and
  - (f) paragraph 13 (Restrictive measures).
5. Subject to paragraph 7, and to the extent that they would not otherwise do so in the case of Part 2, the provisions of the 1978 Order referred to in paragraph 6 apply to Part 2 and Part 3 of these Regulations for the purposes of their enforcement as if Part 2 and Part 3 of these Regulations were health and safety regulations for the purposes of that Order.
6. In relation to the enforcement of the provisions referred to in paragraph 1—
  - (a) Articles 21 to 33, 35, 36, 38 and 39 of, and Schedule 3A to, the 1978 Order apply as provided in paragraph 7; and
  - (b) Articles 34(1) and (2) and 34A of the 1978 Order apply in relation to offences under Article 31 of the 1978 Order as applied by sub-paragraph (a) and the modifications specified in paragraph 7.

7.—(1) For the purposes of the enforcement of the provisions referred to in paragraph 1, and in respect of any related proceedings for a contravention of any of those provisions, the provisions of the 1978 Order mentioned in paragraph 6 apply as if—

- (a) any reference to the relevant statutory provisions in those provisions were a reference to—
  - (i) those provisions as modified by this paragraph; and
  - (ii) Part 2 and Part 3 of these Regulations;
- (b) references to “risk” were references to “risk” within the meaning of regulation 2(4) of these Regulations;
- (c) in Article 21—
  - (i) in paragraph (1)—
    - (aa) “Every enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
    - (bb) “within its field of responsibility” were omitted;
  - (ii) in paragraph (2), sub-paragraph (b) were omitted; and
  - (iii) in paragraph (3)—
    - (aa) “the enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
    - (bb) “which appointed him” were omitted;
- (d) in Article 22—
  - (i) in paragraph (1), “within the field of responsibility of the enforcing authority which appointed him” were omitted;
  - (ii) in paragraph 2(c)(i), “his (the inspector’s) enforcing authority” were a reference to the Department or the Chief Constable, as the case may be;
  - (iii) in paragraph 2(h), the reference to any article or substance which appears to an inspector to have caused or to be likely to cause danger to health or safety included a reference to any civil explosive item which an inspector has reasonable cause to believe will contravene the relevant statutory provisions, present a risk or be unlawfully acquired, used or dealt in;
  - (iv) in paragraph (2)(i), the reference to “sub-paragraph (h)” included a reference to paragraph (2)(h) as modified by this paragraph;
  - (v) paragraph (3) were omitted;
  - (vi) in paragraphs (4) and (5), the reference to paragraph (2)(h) included a reference to paragraph (2)(h) as modified by this paragraph; and
  - (vii) in paragraph (6), the reference to paragraph (2)(i) included a reference to paragraph (2)(i) as modified by this paragraph;
- (e) in Article 23—
  - (i) before sub-paragraph (a), there were inserted—
    - “(za) is making available on the market a civil explosive which presents a risk;”;
  - (ii) in sub-paragraph (b)(ii) after “specifying the”, there was inserted “risk, or”; and
  - (iii) in sub-paragraph (b)(iv) after “requiring that person to”, there were inserted “address the risk or”;
- (f) in Article 24, as well as permitting an inspector to serve a prohibition notice in the circumstance specified in paragraph (2), it permitted an inspector to serve a prohibition

notice on a person if, as regards any activities to the article applies, the inspector is of the opinion that, as carried on or likely to be carried on by or under the control of that person, the activities involve or, as the case may be, will involve a risk or a contravention of any of the relevant statutory provisions (as referred to in this paragraph);

- (g) in Article 25, paragraphs (3), (4) and (6) were omitted;
- (h) in Article 27A, in paragraph (1)—
  - (aa) “an enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
  - (bb) before “inspector” where it first appears, there were inserted “an”;
- (i) in Article 28—
  - (aa) “the enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
  - (bb) “which appointed him” were omitted;
- (j) in Article 29, in paragraph (1)—
  - (i) sub-paragraph (b) were omitted; and
  - (ii) “or, as the case may be, to the enforcing authority in question” were omitted;
- (k) in Article 29A, in paragraph (2) for “an enforcing authority” there were substituted “the Department”;
- (l) in Article 30—
  - (i) in paragraph (3)(a), “or any enforcing authority” were omitted;
  - (ii) in paragraph (4)—
    - (aa) “or an enforcing authority” were omitted; and
    - (bb) “, (including in the case of an enforcing authority, any inspector appointed by it)” were omitted;
  - (iii) in paragraph (5)(a), “or for the purposes of the enforcing authority in question in connection with the relevant statutory provisions” were omitted;
  - (iv) in paragraph (6)—
    - (aa) “16(4)(a) or” were omitted; and
    - (bb) for sub-paragraph (b), there were substituted—
      - “(b) for the purposes of any legal proceedings or for the purposes of a report of any such proceedings;”;
- (m) in Article 31—
  - (i) in paragraph (1) sub-paragraphs (a), (b) and (d) were omitted; and
  - (ii) paragraph (2) has effect subject to paragraph (2A) as follows—
    - “(2A) The maximum penalty for an offence under this article involving a contravention of Part 3 of the Making Available on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 2016 is—
      - (a) on summary conviction, imprisonment for a term not exceeding three months or a fine not exceeding the statutory minimum, or both;
      - (b) on conviction on indictment, imprisonment for a term not exceeding two years, or a fine, or both”;
  - (iii) paragraph (3) were omitted;
- (n) in Article 32—



- (i) in paragraph (1)—
  - (aa) sub-paragraphs (a) and (b) were omitted;
  - (bb) for the words from “and it appears” to the end, there were substituted “and it appears from the investigation or, in a case falling within sub-paragraph (d), from the proceedings at the inquiry, that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject-matter of the investigation or inquiry, summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within three months of the conclusion of the intervention or inquiry.”; and
- (ii) in paragraph (3)—
  - (aa) the reference to six months were a reference to twelve months; and
  - (bb) “a responsible enforcing authority”, “an enforcing authority” and “the enforcing authority” were each respectively, a reference to the Department or the Chief Constable, as the case may be”; and
- (iii) in paragraph (4)—
  - (aa) the reference to “the designer, manufacturer, importer or supplier of any thing” were a reference to an economic operator within the meaning of regulation 2(1); and
  - (bb) “and in that paragraph” to the end were omitted;
- (o) in Article 33, for “any enforcing authority” there were a reference to the Department or the Chief Constable, as the case may be;
- (p) in Article 36—
  - (aa) “the enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
  - (bb) “which appointed him” were omitted; and
- (q) in Article 39, the reference in paragraph (3A) to “an explosive article or substance” were a reference to a civil explosive article or a civil explosive substance within the meaning of regulation 2(1).

(2) The provisions of the 1978 Order referred to in paragraph 6, except Articles 21 and 22, do not apply in relation to the performance of the functions of the Secretary of State under Sub-Part C of Part 3 or the functions under that Part of a notified body which is a public body performing its functions on behalf of the Crown.

### **Evaluation of civil explosives presenting a risk**

8. Where the Department has sufficient reason to believe that a civil explosive presents a risk, the Department must carry out an evaluation in relation to the civil explosive covering the relevant requirements of Part 3 of these Regulations applying in respect of that civil explosive.

### **Enforcement action in respect of civil explosives which are not in conformity and which present a risk**

9.—(1) Where, in the course of the evaluation referred to in paragraph 8, the Department finds that the civil explosive is not in conformity with Part 3 of these Regulations, it must, without delay, require a relevant economic operator to—

- (a) take appropriate corrective actions to bring the civil explosive into conformity with those requirements within a prescribed period;

*Status: This is the original version (as it was originally made).*

- (b) withdraw the civil explosive within a prescribed period; or
  - (c) recall the civil explosive within a prescribed period.
- (2) The Department must inform the notified body which carried out the conformity assessment procedure in respect of the civil explosive of—
- (a) the respect in which the civil explosive is not in conformity with Part 3; and
  - (b) the actions which the Department is requiring the relevant economic operator to take.
- (3) Where the Department considers that the lack of conformity referred to in sub-paragraph (1) is not restricted to the United Kingdom, it must notify the Secretary of State of—
- (a) the results of the evaluation; and
  - (b) the actions which it has required the economic operator to take.
- (4) Where the Secretary of State receives a notice under sub-paragraph (3), the Secretary of State must inform the European Commission and the other EEA States of—
- (a) the results of the evaluation; and
  - (b) the actions which the Department has required the economic operator to take.
- (5) Where the relevant economic operator does not take adequate corrective action within the prescribed period, the Department must take appropriate measures to—
- (a) prohibit or restrict the civil explosive being made available on the market in the United Kingdom;
  - (b) withdraw the civil explosive from the United Kingdom market; or
  - (c) recall the civil explosive.
- (6) Where the Department takes measures under sub-paragraph (5), it must notify the Secretary of State of those measures without delay.
- (7) Where the Secretary of State receives a notice under sub-paragraph (6), the Secretary of State must notify the European Commission and the other EEA States of those measures without delay.
- (8) The notices in sub-paragraphs (6) and (7) must include details about the civil explosive and, in particular—
- (a) the data necessary for the identification of the civil explosive which is not in conformity with Part 3;
  - (b) the origin of the civil explosive;
  - (c) the nature of the lack of conformity alleged and the risk involved;
  - (d) the nature and duration of the measures taken;
  - (e) the arguments put forward by the relevant economic operator; and
  - (f) whether the lack of conformity is due to either of the following—
    - (i) failure of the civil explosive to meet requirements relating to a risk;
    - (ii) shortcomings in the harmonised standards referred to in regulation 31 (Presumption of conformity) conferring a presumption of conformity.
- (9) In this paragraph, “prescribed period” means a period which is—
- (a) prescribed by the Department; and
  - (b) reasonable and commensurate with the nature of the risk presented by the civil explosive.
- (10) For the purposes of sub-paragraph (5), “take appropriate measures” includes the Department making arrangements with the competent national authority for Great Britain as to measures referred to in that sub-paragraph being taken there by that authority.

## **EU safeguarding procedures**

10.—(1) Where another EEA State has initiated the procedure under Article 42 of the Directive (as amended from time to time) the Department must, without delay, inform the Secretary of State of—

- (a) any measures taken by the Department in respect of the civil explosive; and
- (b) any additional information which the Department has at its disposal relating to the lack of conformity of the civil explosive.

(2) Where another EEA State has initiated the procedure under Article 42 of the Directive (as amended from time to time) the Secretary of State must, without delay, inform the European Commission and the other EEA States of—

- (a) any measures taken by the Department in respect of the civil explosive;
- (b) any additional information which the Department has at its disposal relating to the lack of conformity of the civil explosive; and
- (c) any objections that the Secretary of State may have to the measure taken by the EEA State initiating the procedure.

(3) Where a measure taken by another EEA State in respect of a civil explosive is considered justified under Article 42(7) of the Directive, as amended from time to time, the Department must ensure that appropriate measures, such as withdrawal, are taken in respect of the civil explosive without delay.

(4) Where a measure taken by another EEA State in respect of a civil explosive is considered justified by the European Commission under Article 43(1) of the Directive (as amended from time to time) the Department must take the necessary measures to ensure that the civil explosive is withdrawn from the United Kingdom market.

(5) Where the Department has taken action under sub-paragraph (3) or (4), it must inform the Secretary of State.

(6) Where the Secretary of State receives a notice under sub-paragraph (5), the Secretary of State must inform the European Commission of the action taken.

(7) If a measure taken by the Department pursuant to paragraph 9 is considered unjustified by the European Commission under Article 43(1) of the Directive (as amended from time to time) the Department must withdraw that measure.

(8) For the purposes of sub-paragraph (4), “take the necessary measures” includes the Department making arrangements with the competent national authority for Great Britain as to measures referred to that in that sub-paragraph being taken there by that authority.

## **Enforcement action in respect of civil explosives which are in conformity, but present a risk**

11.—(1) Where, having carried out an evaluation under paragraph 8, the Department finds that although a civil explosive is in conformity with Part 3 of these Regulations it presents a risk, the Department must require a relevant economic operator to take appropriate measures to—

- (a) ensure that the civil explosive concerned, when placed on the market, no longer presents a risk;
- (b) withdraw the civil explosive within a prescribed period; or
- (c) recall the civil explosive within a prescribed period.

(2) Where the Department takes measures under sub-paragraph (1), it must notify the Secretary of State immediately.

(3) Where the Secretary of State receives a notice under sub-paragraph (2), the Secretary of State must notify the European Commission and the other EEA States immediately.

(4) The notices referred to in sub-paragraphs (2) and (3) must include details about the civil explosive and, in particular—

- (a) the data necessary for the identification of the civil explosive concerned;
- (b) the origin and the supply chain of the civil explosive;
- (c) the nature of the risk involved; and
- (d) the nature and duration of the measures taken by the Department.

(5) In this paragraph, “prescribed period” means a period which is—

- (a) prescribed by the Department; and
- (b) reasonable and commensurate with the nature of the risk presented by the civil explosive.

### **Enforcement action in respect of formal non-compliance**

12.—(1) Where the Department makes one of the following findings relating to a civil explosive, it must require a relevant economic operator to put an end to the non-compliance concerned within a specified period—

- (a) the CE marking—
  - (i) has not been affixed; or
  - (ii) has been affixed otherwise than in accordance with regulations 30 (Prohibition on improper use of CE marking) and 34 (CE marking);
- (b) where a notified body is involved in the production control phase for the civil explosive, the identification number of the notified body—
  - (i) has not been affixed; or
  - (ii) has been affixed otherwise than in accordance with regulation 34 (CE marking);
- (c) the EU declaration of conformity—
  - (i) has not been drawn up; or
  - (ii) has been drawn up otherwise than in accordance with regulations 7 (EU declaration of conformity and CE marking) and 33 (EU declaration of conformity);
- (d) the technical documentation is either not available or not complete;
- (e) the following information that is required in respect of the civil explosive is absent, false or incomplete—
  - (i) the information specified in regulation 10 (Traceability of certain civil explosives excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013);
  - (ii) the information specified in regulation 16 (Information identifying importer); or
- (f) any other administrative requirement imposed on the manufacturer or importer under Part 3 has not been fulfilled.

(2) Until the specified period has elapsed, the Department must not commence proceedings in relation to Part 3 of these Regulations, or take any other enforcement action in relation to that Part, against the relevant economic operator in respect of the non-compliance concerned.

(3) Where the non-compliance referred to in sub-paragraph (1) persists, the Department must take the appropriate measures to—

- (a) restrict or prohibit the civil explosive being made available on the market;
- (b) ensure that the civil explosive is withdrawn; or
- (c) ensure that the civil explosive is recalled.

(4) This paragraph does not apply where a civil explosive presents a risk.

### **Restrictive measures**

13.—(1) When enforcing Part 3, the Department must comply with the requirements of Article 21 of RAMS (as amended from time to time) in relation to any measure to—

- (a) prohibit or restrict a civil explosive being made available on the market;
- (b) withdraw a civil explosive; or
- (c) recall a civil explosive.

## **PART 2**

### **COMPLIANCE, WITHDRAWAL AND RECALL NOTICES**

#### **Compliance, withdrawal and recall notices**

14. In addition to the powers available to the Department under Part 1 of this Schedule for enforcing Part 3 of these Regulations, the Department may use the powers set out in this Part.

#### **Compliance notice**

15.—(1) The Department may serve a compliance notice on a relevant economic operator in respect of a civil explosive if the Department has reasonable grounds for believing that there is non-compliance.

(2) A compliance notice must—

- (a) require the relevant economic operator on which it is served to—
  - (i) end the non-compliance within such period as may be specified in the notice; or
  - (ii) provide evidence, within such period as may be specified in the notice, demonstrating to the satisfaction of the Department that the non-compliance has not in fact occurred; and
- (b) warn the economic operator that, if the non-compliance persists or if satisfactory evidence has not been produced under paragraph (a) within the period specified in the notice, further action may be taken in respect of the civil explosive or any civil explosive of the same type made available on the market by that relevant economic operator.

(3) A compliance notice may include directions as to the measures to be taken by the economic operator to secure compliance, including different ways of securing compliance.

(4) Subject to sub-paragraph (5), the Department may revoke or vary a compliance notice by serving a notification on the economic operator.

(5) The Department may not vary a compliance notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

#### **Withdrawal notice**

16.—(1) The Department may serve a withdrawal notice on a relevant economic operator in respect of a civil explosive if the Department has reasonable grounds for believing that—

- (a) the civil explosive has been made available on the market; and
- (b) there is non-compliance.

(2) A withdrawal notice must prohibit the relevant economic operator from making the civil explosive available on the market without the consent of the Department.

(3) A withdrawal notice may require the relevant economic operator to take action to alert end-users to any risk presented by the civil explosive.

(4) A withdrawal notice may require the relevant economic operator to keep the Department informed of the whereabouts of any civil explosive referred to in the notice.

(5) A consent given by the Department pursuant to a withdrawal notice may impose such conditions on the making available on the market as the Department considers appropriate.

(6) Subject to sub-paragraph (7), the Department may revoke or vary a withdrawal notice by serving a notification on the economic operator.

(7) The Department may not vary a withdrawal notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

### **Recall notice**

17.—(1) The Department may serve a recall notice on a relevant economic operator in respect of a civil explosive if the Department has reasonable grounds for believing that—

- (a) the civil explosive has been made available to end-users; and
- (b) there is non-compliance.

(2) A recall notice must require the relevant economic operator to use reasonable endeavours to organise the return of the civil explosive from end-users to the relevant economic operator or another person specified in the notice.

(3) A recall notice may—

- (a) require the recall to be effected in accordance with a code of practice;
- (b) require the relevant economic operator to—
  - (i) contact end-users in order to inform them of the recall, to the extent that it is practicable to do so;
  - (ii) publish a notice in such form and such manner as is likely to bring to the attention of end-users any risk the civil explosive poses and the fact of the recall; or
  - (iii) make arrangements for the collection or return of the civil explosive from end-users or its disposal; or
- (c) impose such additional requirements on the relevant economic operator as are reasonable and practicable with a view to achieving the return of the civil explosive.

(4) In determining what requirements to include in a recall notice, the Department must take into consideration the need to encourage distributors and end-users to contribute to its implementation.

(5) A recall notice may only be issued by the Department where—

- (a) other action which it may require under or by virtue of this Schedule would not suffice to address the non-compliance;
- (b) the action being undertaken by the relevant economic operator is unsatisfactory or insufficient to address the non-compliance;
- (c) the Department has given not less than 10 days' notice to the relevant economic operator of its intention to serve such a notice; and
- (d) the Department has taken account of any advice obtained under sub-paragraph (6).

(6) A relevant economic operator which has received notice from the Department of an intention to serve a recall notice may, at any time prior to the service of the recall notice, require the Department to seek the advice of such person as the Institute determines on the questions of—

- (a) whether there is non-compliance; and

(b) whether the issue of a recall notice would be proportionate.

(7) Sub-paragraphs (5)(b), (c) and (d) do not apply in the case of a civil explosive presenting a serious risk requiring, in the view of the Department, urgent action.

(8) Where a relevant economic operator requires the Department to seek advice under sub-paragraph (6), that relevant economic operator is to be responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the Department.

(9) In this paragraph “Institute” means the charitable organisation with the registered number 803725 and known as the Chartered Institute of Arbitrators.

(10) A recall notice served by the Department may require the relevant economic operator to keep the Department informed of the whereabouts of a civil explosive to which the recall notice relates, so far as the relevant economic operator is able to do so.

(11) Subject to sub-paragraph (12), the Department may revoke or vary a recall notice by serving a notification on the economic operator.

(12) The Department may not vary a recall notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

### **Compliance with a withdrawal or recall notice**

18.—(1) A person must not contravene any requirement or prohibition imposed by a withdrawal or recall notice served pursuant to this Part (including any such notice as varied by the Department or on appeal).

(2) The provisions of Article 31(1)(c) of the 1978 Order apply to sub-paragraph (1) for the purposes of its enforcement as if it were health and safety regulations for the purposes of that Order.

(3) The maximum penalty for an offence under Article 31(1)(c) of the 1978 Order, as applied by sub-paragraph (2), is determined in accordance with sub-paragraph (4).

(4) The penalty referred to in sub-paragraph (3) is—

- (a) on summary conviction, imprisonment for a term not exceeding three months or a fine not exceeding the statutory minimum, or both; and
- (b) on conviction on indictment, imprisonment for a term not exceeding two years, or a fine, or both.

### **Interpretation**

19. In this Part, “non-compliance” means that a civil explosive—

- (a) presents a risk; or
- (b) is not in conformity with Part 3 of these Regulations or RAMS in its application to civil explosives.

## **PART 3**

### **DEFENCE OF DUE DILIGENCE, APPEALS AGAINST NOTICES AND FURTHER PROVISIONS IN RELATION TO ENFORCEMENT**

#### **Defence of due diligence**

20.—(1) Subject to sub-paragraphs (2) and (4), in proceedings for an offence under Article 31(1)(c) of the 1978 Order involving a contravention of Part 3 or paragraph 18, it is a defence for a person

*Status: This is the original version (as it was originally made).*

(“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under sub-paragraph (1) which involves a third party allegation unless P has—

- (a) served a notice in accordance with sub-paragraph (3); or
- (b) obtained the leave of the court.

(3) The notice must—

- (a) give any information on P’s possession which identifies or assists in identifying the person who—
  - (i) committed the act or default; or
  - (ii) supplied the information on which P relied; and
- (b) be served on the person bringing the proceedings not less than seven clear days before the hearing of the proceedings.

(4) P may not rely on a defence under sub-paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied upon the information, having regard in particular—

- (a) to the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether P had any reason to believe the information.

(5) In this paragraph, “third party allegation” means an allegation that the commission of the offence was due—

- (a) to the act or default of another person; or
- (b) to reliance on information supplied by another person.

### **Service of documents**

21. Any document required or authorised by these Regulations to be served on a person may be served by—

- (a) delivering it to that person in person;
- (b) leaving it at that person’s proper address; or
- (c) sending it by post or electronic means to that person’s proper address.

(2) In the case of a body corporate, a document may be served on a director of that body.

(3) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.

(4) For the purposes of this paragraph, “proper address” means—

- (a) in the case of a body corporate or its director—
  - (i) the registered or principal office of that body; or
  - (ii) the email address of the secretary or clerk of that body;
- (b) in the case of a partnership, a partner or person having control or management of the partnership business—
  - (i) the principal office of the partnership; or
  - (ii) the email address of the partner or person having that control or management;
- (c) in any other case, a person’s last known address, which includes an email address.



(5) If a person to be served with a document has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept service, that address shall also be treated as that person's proper address.

### **Action by enforcing authority**

22.—(1) The Department may itself take action which an economic operator could have been required to take by a notice served under or by virtue of Parts 1 or 2 of this Schedule where the conditions for serving such a notice are met and either—

(a) the Department has been unable to identify any economic operator on whom to serve such a notice; or

(b) the economic operator on whom such a notice has been served has failed to comply with it.

(2) If the Department has taken action as a result of the condition in sub-paragraph (1)(b) being met, the Department may recover from the economic operator, as a civil debt, any costs or expenses reasonably incurred by the Department in taking the action.

(3) A civil debt recoverable under sub-paragraph (2) may be recovered summarily by way of a complaint pursuant to Article 62 of the Magistrates' Court (Northern Ireland) Order 1981<sup>(18)</sup>.

### **Appeals against notices**

23.—(1) An application for an order to vary or set aside the terms of a notice served under Part 2 of this Schedule may be made to the appropriate court—

(a) by the economic operator on whom the notice has been served; and

(b) in the case of a notice other than a recall notice, by a person having an interest in the civil explosive in respect of which the notice has been served.

(2) An application must be made before the end of the period of 21 days beginning with the day on which the notice was served.

(3) The appropriate court may only make an order setting aside a notice served under Part 2 of this Schedule if satisfied—

(a) that the civil explosive to which that notice relates is in conformity with Part 3 and does not present a risk; or

(b) that the enforcing authority failed to comply with paragraph 4 when serving the notice.

(4) On an application to vary the terms of a notice referred to in Part 2 of this Schedule, the appropriate court may vary the terms of the notice as it considers appropriate.

(5) In this paragraph, the "appropriate court" is to be determined in accordance with paragraph 24 (appropriate court for appeals against notices).

### **Appropriate court for appeals against notices**

24.—(1) The appropriate court for the purposes of paragraph 23 is—

(a) the court in which proceedings have been brought for an offence in relation to the civil explosive under Article 31 (Offences) of the 1978 Order;

(b) an industrial tribunal seized of appeal proceedings against a notice which relates to the civil explosive and which had been served under or by virtue of Part 1 of this Schedule; or

(c) in any other case, a magistrates' court.

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<sup>(18)</sup> S.I. 1981 No. 1675 (N.I. 26).

(2) A person aggrieved by an order made by a magistrates' court pursuant to an application under paragraph 23, or by a decision of such a court not to make such an order, may appeal against that order or decision to the Crown Court.

### SCHEDULE 3

Reg 2(1)

#### NOTIFIED BODY REQUIREMENTS

1. A conformity assessment body must be established in the United Kingdom and have legal personality.

2. A conformity assessment body must be a third party body independent of the organisation or the explosive it assesses.

3.—(1) A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities must not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of explosives, nor the representative of any of those parties.

(2) Sub-paragraph (1) does not preclude the use of explosives that are necessary for the operations of the conformity assessment body or the use of explosives for personal purposes.

4. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities must not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of explosives, or represent the parties engaged in those activities.

5. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities must not engage in activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified (including consultancy services).

6. A conformity assessment body must ensure that the activities of its subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.

7. A conformity assessment body and its personnel must carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and must be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in those activities.

8. A conformity assessment body must be capable of carrying out all of the conformity assessment activities in relation to which it has been, or it is to be, notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.

9. A conformity assessment body must have at its disposal—

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment activities;
- (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency and the ability of reproduction of those procedures, and have appropriate policies and procedures in place that distinguish between tasks it carries out as a notified body and other activities;

- (c) procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the process.
10. A conformity assessment body must have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and must have access to the necessary equipment or facilities.
11. The personnel responsible for carrying out conformity assessment activities must have—
- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
  - (b) satisfactory knowledge of the requirements of the assessments which the personnel carry out and adequate authority to carry out those assessments;
  - (c) appropriate knowledge and understanding of the essential safety requirements, of the applicable harmonised standards and of the Directive and of these Regulations;
  - (d) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.
12. A conformity assessment body must be able to demonstrate the impartiality of its top level management and the personnel responsible for carrying out the conformity assessment activities.
13. The remuneration of the top level management and the personnel responsible for carrying out the conformity assessment activities must not depend on the number of assessments carried out or on the results of those activities.
14. A conformity assessment body must have, and must satisfy the Secretary of State that it has, adequate civil liability insurance in respect of its activities.
15. A conformity assessment body must ensure that its personnel observe professional secrecy with regard to all information obtained in carrying out their tasks in accordance with these Regulations and that proprietary rights are protected.
16. Paragraph 15 does not prevent the personnel from providing information to the Secretary of State or the enforcing authority in respect of Part 3 of these Regulations.
17. A conformity assessment body must participate in, or ensure that its personnel who are responsible for carrying out the conformity assessment activities are informed of, the relevant standardisation activities and the activities of any notified body coordination group established under the Directive and must apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

#### SCHEDULE 4

Reg 42

##### OPERATIONAL OBLIGATIONS OF NOTIFIED BODIES

1. A notified body must carry out conformity assessments in accordance with the relevant conformity assessment procedures.
2. A notified body must carry out conformity assessments in a proportionate manner, avoiding unnecessary burdens on economic operators.
3. A notified body must perform its activities taking due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

4. A notified body must respect the degree of rigour and the level of protection required to ensure that the explosive is in conformity with the requirements of these Regulations.

5. Where a notified body finds that essential safety requirements or corresponding harmonised standards or other technical specifications have not been met by a manufacturer, it must require the manufacturer to take appropriate corrective measures and must not issue a certificate of conformity or grant an approval.

6. Where, in the course of the monitoring of conformity following the issue of a certificate or grant of an approval, a notified body finds that an explosive is no longer in conformity with the essential safety requirements, it must require the manufacturer to take appropriate corrective measures and must suspend or withdraw the certificate of conformity or approval (if necessary).

7. Where the notified body has required a manufacturer to take corrective measures and the manufacturer has failed to take such measures, or those measures have not had the required effect, the notified body must restrict, suspend or withdraw any certificate of conformity or approval.

8. Paragraph 9 applies where a notified body is minded to—

- (a) refuse to issue a certificate of conformity or grant an approval;
- (b) restrict, suspend or withdraw a certificate of conformity or approval.

9. Where this paragraph applies, the notified body must—

- (a) give the person applying for the certificate of approval, or the person to whom the certificate or approval was given, a notice in writing giving reasons and specifying the date on which the refusal, restriction, suspension or withdrawal is intended to take effect;
- (b) give the person applying for the certificate or approval, or the person to whom the certificate or approval was given, an opportunity to make representations within a reasonable period from the date of the notice; and
- (c) take account of any such representations before taking its decision.

10. A notified body must inform the Secretary of State of—

- (a) any refusal, restriction, suspension or withdrawal of a certificate of conformity or approval;
- (b) any circumstances affecting the scope of, or conditions for, notification under regulation 36 (notification);
- (c) any request for information which it has received from the enforcing authority in respect of Part 3 regarding conformity assessment activities; and
- (d) on request, conformity assessment activities performed within the scope of its notification under regulation 10 and any other activity performed, including cross-border activities and subcontracting.

11. A notified body must make provision in its contracts with its clients enabling such clients to appeal against a decision—

- (a) to refuse to issue a certificate of conformity or grant an approval; or
- (b) to restrict, suspend or withdraw a certificate of conformity or approval.

12. A notified body must provide other bodies notified under the Directive carrying out similar conformity assessment activities covering the same civil explosives with relevant information on issues relating to negative and, on request, positive conformity assessment results.

13. A notified body must participate in the work of any notified body coordination group established under the Directive, directly, or by means of its designated representatives.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations, in respect of Northern Ireland, implement [Directive 2014/28/EU](#) of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses (recast) (the Directive).

2. The Directive repeals and replaces Council [Directive 93/15/EEC](#) on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses<sup>(19)</sup> (the repealed Directive) as amended by Regulation [\(EC\) No 1882/2003](#) of the European Parliament and of the Council of 29th September 2003<sup>(20)</sup>, Regulation [\(EC\) No 219/2009](#) of the European Parliament and of the Council of 11th March 2009<sup>(21)</sup> and Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25th October 2012<sup>(22)</sup>.

3. The repealed Directive was implemented in Northern Ireland by the Placing on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 1993<sup>(23)</sup> (the 1993 Regulations). These Regulations repeal and replace the 1993 Regulations.

4. Part 2 establishes a system for the supervision of transfers of civil explosives. Before any civil explosives are moved, apart from movement on the same site, the consignee must obtain a recipient competent authority document from the competent authority for the place within the EEA States where the transfer will terminate.

5. Part 3 makes provision in relation to “economic operators”, conformity assessment and notification of conformity assessment bodies. Duties are imposed on manufacturers, importers and distributors of civil explosives. Provision is made as to the appointment in writing of authorised representatives by manufacturers who may then perform certain tasks on the manufacturer’s behalf.

6. For manufacturers the duties include ensuring that a civil explosive has been designed and manufactured in accordance with the essential safety requirements set out in Schedule 1, having a relevant conformity assessment procedure carried out before the civil explosive is placed on the market and affixing the CE marking.

7. For importers the obligations include ensuring that they are not placing on the market civil explosives which are not in conformity with the essential safety requirements, checking that the manufacturer has carried out a relevant conformity assessment procedure and indicating on the civil explosives the address, name, registered trade name or trade mark of the importer.

8. The obligations on distributors include acting with due care to ensure that civil explosives are in conformity and checking that the civil explosives bear the CE marking.

9. Sub-Part C of Part 3 sets out provisions concerning the bodies which can carry out conformity assessment procedures.

10. Part 4 and Schedule 2 make provisions as to enforcement and market surveillance and related matters

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<sup>(19)</sup> O.J. L121, 15.5.1993, p.20.

<sup>(20)</sup> O.J. L284, 31.10.2003, p. 1.

<sup>(21)</sup> O.J. L87, 31.3.2009, p. 109.

<sup>(22)</sup> O.J. L316, 14.11.2012, p. 12.

<sup>(23)</sup> [S.R. 1993/488](#).

**Status:** This is the original version (as it was originally made).

**11.** Part 5 provides for the power to grant exemptions and miscellaneous provisions..

**12.** Schedules 3 and 4 set out, respectively, notified body requirements and operational obligations of notified bodies.