

2010 No. 1004

HEALTH AND SAFETY

**The Identification and Traceability of Explosives
Regulations 2010**

<i>Made</i> - - - -	<i>25th March 2010</i>
<i>Laid before Parliament</i>	<i>29th March 2010</i>
<i>Coming into force</i> - -	<i>5th April 2012</i>

The Secretary of State makes these Regulations —

(a) in exercise of the powers conferred by sections 15(1), (2), (3)(c), (4)(b), (5)(a) and (9) and 82(3)(a) of, and paragraphs 1(1) and (4), 3(2), 6(1), 15(1) and 16 of Schedule 3 to, the Health and Safety at Work etc. Act 1974(a) (“the 1974 Act”); and

(b) for the purpose of giving effect without modifications to proposals submitted by the Health and Safety Executive under section 11(3) of the 1974 Act after carrying out consultations in accordance with section 50(3) of the 1974 Act.

Citation and commencement

1. These Regulations may be cited as the Identification and Traceability of Explosives Regulations 2010 and shall come into force on 5th April 2012.

Interpretation

2.—(1) In these Regulations —

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

“distributor” means a person in the supply chain, other than a manufacturer or an importer, who makes an explosive available on the market and “distributes” and “distribution” shall be construed accordingly;

“explosive” means an explosive article or substance which has been classified in accordance with the UN Recommendations as falling within Class 1;

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

“explosive substance” means —

(a) a solid or liquid substance, or

(a) 1974 c. 37; section 11 is substituted by S.I. 2008/960; sections 15(1) and 50(3) are amended by the Employment Protection Act 1975 (c. 71) Schedule 15, paragraphs 6 and 16 respectively and section 50(3) is further amended by the Health Protection Agency Act 2004, Schedule 3, paragraph 5(1) and (3) and by S.I. 2008/960.

(b) a mixture of solid or liquid substances or both, which is 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 which is designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as a result of non-detonative, self-sustaining, exothermic chemical reactions;

“manufacture” includes —

- (a) in relation to explosive articles, their repair, modification, disassembly or unmaking; and
- (b) in relation to explosive substances, their reprocessing, modification or adaptation;

“site”, in relation to the definition of “transfer” and regulations 5(2) and 7(2), means the whole area under the control of the same person and, for these purposes —

- (a) all places adjoining each other under the control of the same person shall be treated as a whole area; and
- (b) two or more areas under the control of the same person separated only by a road, railway or inland waterway shall be treated as a whole area;

“transfer” means any physical movement of explosives apart from movement within one site; and

“UN 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 Social Committee of Experts at its twenty-third session (Resolution 645G (XXIII) of 26th April 1957))(a) as revised or reissued from time to time.

(2) In these Regulations, any reference to acquiring an explosive shall mean acquiring possession of or property in such explosive.

(3) Where an explosive is transported (including being loaded or unloaded and during breaks which are reasonably incidental to completing the journey within a reasonable length of time), the explosive shall not be treated as being kept or acquired by a person who has possession of it only by reason of being —

- (a) a carrier;
- (b) a person engaged in the work of loading or unloading; or
- (c) the occupier of a place it passes through while on the journey.

Application and extension outside Great Britain

3.—(1) These Regulations apply to every explosive except the following —

- (a) ammunition the acquisition of which is regulated or prohibited by virtue of the Firearms Acts 1968 to 1997(b);
- (b) an explosive which it is shown is intended for lawful use by the armed forces or the police of any country;
- (c) a pyrotechnic article;
- (d) an explosive which is transported and delivered without packaging or in a mobile explosives manufacturing unit for its direct unloading into the blast-hole; and
- (e) an explosive which is used immediately at the place of manufacture.

(2) These Regulations shall apply outside Great Britain to and in relation to the acquisition or keeping of an explosive on premises to which, or in relation to which, the specified provisions apply by virtue of the 2001 Order, as those provisions apply to and in relation to the acquisition or keeping of an explosive in Great Britain.

(3) In this regulation —

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

(b) 1968 c. 27, 1982 c. 31, 1988 c. 45, 1992 c. 31, 1994 c. 31, 1997 c. 5, and 1997 c. 64.

- (a) “the 2001 Order” means the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2001(a);
- (b) “mobile explosives manufacturing unit” means a unit, or vehicle mounted with a unit, for manufacturing and charging explosives from dangerous goods that are not explosives, with the unit consisting of various tanks, bulk containers and related equipment;
- (c) “pyrotechnic article” means any article containing explosive substances or an explosive mixture of substances designed to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions; and
- (d) “specified provisions” means sections 1 to 59 and 80 to 82 of the Health and Safety at Work etc. Act 1974.

Unique identification

4.—(1) Subject to paragraphs (3) and (4), any person who manufactures an explosive shall, as soon as is practicable after that manufacture and before transfer of the explosive —

- (a) mark each explosive item in respect of the explosive with a unique identification in accordance with Schedule 2;
- (b) where an associated label in respect of that marking is required by that Schedule, attach the label in accordance with those requirements; and
- (c) where a passive inert electronic tag or associated tag is to be applied in respect of that marking, place that tag in accordance with the applicable provisions of that Schedule.

(2) The unique identification shall —

- (a) comprise the components described in Schedule 1; and
- (b) be marked on or firmly affixed to the explosive item concerned in a way which ensures that it is durable and clearly legible.

(3) Paragraph (1) shall not apply where the explosive is manufactured for export and is marked with an identification in accordance with the requirements of the importing country for allowing traceability of the explosive.

(4) Where an explosive is subject to a further manufacturing process after its original manufacture, the manufacturer shall mark each explosive item in respect of the explosive subjected to that further process, with a new unique identification only if the original unique identification is no longer marked in the way that paragraph (2)(b) requires and any new marking so required shall be done as soon as is practicable after that further process and before transfer of the explosive.

(5) Subject to paragraph (7), a person who imports an explosive into Great Britain shall, as soon as is practicable after import and before acquisition of the explosive by another person —

- (a) mark each explosive item in respect of the explosive with a unique identification in accordance with Schedule 2;
- (b) where an associated label in respect of that marking is required by that Schedule, attach the label in accordance with those requirements; and
- (c) where a passive inert electronic tag or associated tag is to be applied in respect of that marking, place that tag in accordance with the applicable provisions of that Schedule.

(6) An importer who, pursuant to paragraph (5), is to mark the explosive items with a unique identification and apply any labels and tags referred to in that paragraph shall apply measures to ensure, so far as is reasonably practicable, the security and safekeeping of the explosive while it is awaiting that marking or the application of any of those labels and tags.

(7) Paragraph (5) shall not apply where the explosive items are marked with a unique identification before importation.

(a) S.I. 2001/2127, amended by S.I. 2009/1750.

- (8) Where a distributor repackages an explosive, the distributor shall ensure that—
- (a) the explosive items in respect of the explosive have the unique identification marked on or affixed to them in accordance with Schedule 2;
 - (b) where an associated label in respect of that marking is required by that Schedule, the label is attached in accordance with those requirements; and
 - (c) where a passive inert electronic tag or associated tag is applied in respect of that marking, that tag is placed in accordance with the applicable provisions of that Schedule.
- (9) In this regulation, “explosive item” means an explosive article, a container containing an explosive substance or each smallest packaging unit containing explosive.

Attribution of manufacturing site codes

5.—(1) This regulation applies for the purposes of the attribution of a three digit code (referred to in this regulation as the “code”) to a site where explosives are manufactured, which is unique to that site and is a component of the unique identification described in Schedule 1.

- (2) For each site within Great Britain at which explosives are manufactured —
- (a) the manufacturer shall apply to the Executive for it to attribute a code for the site; and
 - (b) the Executive shall attribute the code and inform the manufacturer accordingly.
- (3) For the purposes of the attribution of a code to a site where explosives are manufactured in a country that is not a member State —
- (a) paragraph (4) applies where the manufacturer is established in a member State and the place of import of the explosive is Great Britain;
 - (b) paragraph (5) applies where the manufacturer is not established in a member State and the place of import of the explosive is Great Britain; and
 - (c) paragraph (6) applies where the manufacturer is established in Great Britain and the place of import of the explosive is either Northern Ireland or a member State other than the United Kingdom.
- (4) Where this paragraph applies —
- (a) in the case where the manufacturer is established in Great Britain —
 - (i) the manufacturer shall apply to the Executive for it to attribute a code for the site where the explosives are manufactured; and
 - (ii) the Executive shall attribute the code and inform the manufacturer accordingly; and
 - (b) in the case where the manufacturer is established in Northern Ireland or a member State other than the United Kingdom —
 - (i) the Executive shall attribute a code for the site where the explosives are manufactured when it receives a request from the manufacturer to do so; and
 - (ii) the Executive shall inform the manufacturer accordingly.
- (5) Where this paragraph applies —
- (a) the importer shall apply to the Executive for it to attribute a code for the site where the explosives are manufactured; and
 - (b) the Executive shall attribute the code and inform the importer accordingly.
- (6) Where this paragraph applies, the manufacturer shall apply to —
- (a) the Secretary of State for Northern Ireland, where the place of import of the explosive is Northern Ireland; or
 - (b) the national authority of the member State of import of the explosive, for that Secretary of State or that national authority, as the case may be, to attribute a code for the site where the explosives are manufactured.

Records

6.—(1) Subject to paragraph (2), a person (referred to in this regulation as “that person”) who manufactures, imports, distributes, acquires or keeps any explosive shall, in respect of any explosive manufactured in, or imported into, Great Britain on or after 5th April 2012, keep a record in respect of that explosive containing the information referred to in paragraph (3).

(2) The duty imposed by paragraph (1) shall not apply to —

- (a) an employee of that person acting in the course of that person’s business, where the manufacture, importation, distribution, acquisition or keeping of explosives concerned is that business or a part of it; or
- (b) individuals who acquire any explosive, otherwise than in connection with their work, solely for their own personal use.

(3) The information referred to in paragraph (1) is —

- (a) the means of identifying and describing the explosive, including —
 - (i) its type; and
 - (ii) the unique identification in relation to the explosive;
- (b) the location of the explosive while it is in the possession of that person;
- (c) the name and address of any person to whom the explosive is transferred;
- (d) the name of any employee of that person to whom the explosive is given to use; and
- (e) whether the explosive has been subjected to a further manufacturing process after its original manufacture, used, transferred or destroyed while in the possession of that person and the date of any such further manufacturing process, use, transfer or destruction.

(4) The record of that information shall be kept up to date as necessary by that person.

(5) The system applied by that person for collecting the information shall be tested by that person at regular intervals to ensure its effectiveness and the quality of the information recorded.

(6) That person shall keep the record for a period of ten years from the date when the explosive concerned was used, transferred or destroyed.

(7) The record shall be protected by that person against accidental or malicious damage or destruction.

(8) That person shall provide the enforcing authority with —

- (a) information as to the origin and location of each explosive to which the record relates, where the enforcing authority requests it; and
- (b) the name of an employee or other person who would be able to provide them with that information at any time and the details necessary for that authority to be able to contact that individual.

(9) Where a business of that person which manufactures, imports, distributes, acquires or keeps explosives is to cease to trade, that person shall notify the enforcing authority of that fact and provide any record still required to be kept pursuant to paragraph (6) to that authority, who shall keep that record for the remainder of the period referred to in that paragraph.

Enforcement

7.—(1) The Executive shall be the enforcing authority for —

- (a) regulation 5, to the extent that it imposes requirements on manufacturers of explosives who are established within Great Britain and importers of explosives into Great Britain; and
- (b) subject to paragraph (2), the remainder of these Regulations as they apply within Great Britain and as they apply to any area outside Great Britain.

(2) The enforcing authority for regulations 4 and 6 at a site —

- (a) in relation to which a person holds a licence granted under regulation 13 of the 2005 Regulations by the chief officer of police for the area in which the site is situated; or
 - (b) in relation to which a person is registered under regulation 11 of the 2005 Regulations by the chief officer of police for the area in which the site is situated,
- shall be that chief officer of police.

(3) For the purposes of this regulation —

“the 2005 Regulations” means the Manufacture and Storage of Explosives Regulations 2005(a);

“chief officer of police” —

- (a) in relation to England and Wales, has the same meaning as in section 101(1) of the Police Act 1996(b); and
- (b) in relation to Scotland, means the person appointed to the office of chief constable pursuant to section 4 of the Police (Scotland) Act 1967(c).

Home Office
25th March 2010

West of Spithead
Parliamentary Under Secretary of State

SCHEDULE 1

Regulation 4(2)(a)

Unique identification for explosives

1. Subject to paragraph 2, the unique identification shall comprise —

- (a) a part which can be read by a human being containing the following —
 - (i) the name of the manufacturer;
 - (ii) an alphanumeric code containing —
 - (aa) two letters identifying the member State (place of production or import onto the EU market);
 - (bb) three digits identifying the site of manufacture; and
 - (cc) the unique product code and logistical information designed by the manufacturer; and
- (b) a part which can be read electronically in barcode or matrix code format, or both, which relates directly to the alphanumeric identification code.

2. For articles too small to affix the unique product code and logistical information designed by the manufacturer, the information under sub-paragraphs (a)(ii)(aa) and (ii)(bb) and (b) of paragraph 1 shall be sufficient for the purposes of the unique identification.

(a) S.I. 2005/1082, to which there are amendments not relevant to these Regulations.

(b) 1996 c. 15.

(c) 1967 c. 77; section 4(3) is repealed by sections 146(4) and 237(1) of, and Schedule 29 to, the Local Government (Scotland) Act 1973 (c. 65).

Methods of marking or affixing the unique identification to explosives

Cartridged explosives and explosives in sacks

1. For a cartridged explosive and any explosive in sacks —
 - (a) the unique identification shall be on an adhesive label attached to, or be directly printed on, each cartridge or sack;
 - (b) an associated label shall be placed on each case of cartridges; and
 - (c) in addition, a passive inert electronic tag may be attached to each cartridge or sack and an associated electronic tag attached to each case of cartridges.

Packaged two-component explosives

2. For a packaged two-component explosive, the unique identification shall be on an adhesive label attached to, or be directly printed on, each smallest packaging unit containing the two components.

Plain detonators and fuses

3. For plain detonators or fuses —
 - (a) the unique identification shall be on an adhesive label attached to, or be directly printed or stamped on, the detonator shell;
 - (b) an associated label shall be placed on each case of detonators or fuses; and
 - (c) in addition, a passive inert electronic tag may be attached to each detonator and an associated tag attached to each case of detonators.

Electric, non-electric and electronic detonators

4. For electric, non-electric and electronic detonators —
 - (a) the unique identification shall —
 - (i) be on an adhesive label attached to the wires or tube; or
 - (ii) be on an adhesive label attached to, or be directly printed or stamped on, the detonator shell;
 - (b) an associated label shall be placed on each case of detonators; and
 - (c) in addition, a passive inert electronic tag may be attached to each detonator and an associated tag attached to each case of detonators.

Primers and boosters

5. For primers and boosters —
 - (a) the unique identification shall be on an adhesive label attached to, or be directly printed on, the primer or booster;
 - (b) an associated label shall be placed on each case of primers or boosters; and
 - (c) in addition, a passive inert electronic tag may be attached to each primer or booster and an associated tag attached to each case of primers or boosters.

Detonating cords and safety fuses

6. For detonating cords and safety fuses —

- (a) the unique identification shall be on an adhesive label attached to, or be directly printed on, the bobbin;
- (b) the unique identification shall be marked every five meters on either the external envelope of the cord or fuse or the plastic extruded inner layer immediately under the exterior fibre of the cord or fuse;
- (c) an associated label shall be placed on each case of detonating cord or fuse; and
- (d) in addition, a passive inert electronic tag may be inserted within the cord and an associated tag attached to each case of cord or fuse.

Cans, boxes and drums containing explosives

7. For cans, boxes and drums containing any explosive —

- (a) the unique identification shall be on an adhesive label attached to, or be directly printed on, the can, box or drum containing the explosive; and
- (b) in addition, a passive inert electronic tag may be attached to each can, box and drum.

General

8. Where adhesive detachable copies of the labels referred to in paragraphs 1 to 7 are attached to the explosive article, container or each smallest packaging unit concerned for use by other persons, those copies shall be clearly marked as copies of the original.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations implement, as regards Great Britain, Commission Directive 2008/43/EC setting up, pursuant to Council Directive 93/15/EC^(a), a system for the identification and traceability of explosives for civil uses^(b) (“the 2008 Directive”). The Regulations impose requirements with respect to the marking of explosives with a unique identification and will come into force on 5th April 2012.

2. Certain explosives, such as ammunition and explosives intended for the lawful use by the armed forces or the police, are excluded from the scope of the Regulations. The Regulations apply outside Great Britain to the acquisition or keeping of explosives on premises to which specified provisions of the Health and Safety at Work etc. Act 1974 apply by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2001 (S.I. 2001/2127) in the same way that those specified provisions apply to the acquisition or keeping of explosives in Great Britain (regulation 3).

3. Regulation 4 imposes requirements on manufacturers, importers and distributors of explosives as to the marking of the explosives with a unique identification. The matters which go to form the unique identification are set out in Schedule 1. These include the name of the manufacturer, a three digit code for the site of manufacture, a unique product code and a part which can be read electronically in barcode or matrix code format. The methods of marking or affixing the unique identification to explosives are set out in Schedule 2.

4. Manufacturers of explosives are to apply to the Health and Safety Executive (“the Executive”) for the attribution of a three digit code for their manufacturing site. Importers of explosives which are manufactured in a country which is not a member State are to apply to the Executive for a three digit code for the site of manufacture (regulation 5).

(a) OJ L 121, 15.5.1993, p.20, amended by Regulation (EC) NO. 1882/2003 of the European Parliament and the Council (OJ L 284, 31.10.2003, p. 1).

(b) OJ L 94, 5.4.2008, p.8.

5. Regulation 6 imposes record keeping requirements on persons who manufacture, import, distribute, acquire or keep any explosive, with exceptions for employees and individuals acquiring explosives for personal use. The information to be kept includes the unique identification for the explosive and its location while in the possession of the person keeping the record.

6. Regulation 7 makes provision as to the enforcement of the Regulations. The enforcement of the Regulations is mainly given to the Executive, but the chief officer of police is to enforce regulations 4 and 6 at a site in relation to which the chief officer of police has granted a licence to store explosives or has registered a person in relation to the storage of explosives.

7. A full impact assessment of the effect of this instrument will have on the costs of business and the voluntary sector is available from the Health and Safety Executive, Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS and is annexed to the Explanatory Memorandum which is available alongside the instrument on the Office of Public Sector Information's website. A copy of the transposition note in relation to the implementation of the 2008 Directive can be obtained from the Health and Safety Executive, International Branch, at the same address. Copies of these documents have been placed in the Library of each House of Parliament.

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STATUTORY INSTRUMENTS

2010 No. 1004

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Regulations 2010**

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