

SCHEDULE 12

Regulation 45

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

1. This Schedule applies in relation to the enforcement of—
 - (a) regulation 8, to the extent that it is made under section 2(2) of the European Communities Act 1972⁽¹⁾, by the Executive or the ONR; and
 - (b) Part 13 by the Executive.
2. In relation to the enforcement of the provisions referred to in paragraph 1—
 - (a) sections 19 to 28, 33 to 35, 38, 39, 41 and 42 of, and Schedule 3A to, the 1974 Act apply as provided in paragraph 3; and
 - (b) sections 36(1) and (2) and 37 of the 1974 Act apply in relation to offences under section 33 of the 1974 Act as applied by paragraph (a) and the modifications specified in paragraph 3.
3. 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 1974 Act mentioned in paragraph 2 apply as if—
 - (a) any reference to the relevant statutory provisions were a reference to—
 - (i) those provisions modified by this paragraph; and
 - (ii) regulation 8 and Part 13 of these Regulations;
 - (b) any reference to an enforcing authority or a responsible enforcing authority were a reference to the Executive or the ONR, as the case may be;
 - (c) any reference to the field of responsibility, however expressed were omitted;
 - (d) in section 20—
 - (i) subsection 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 be unlawfully acquired, used or dealt in;
 - (ii) the reference in subsection (2)(i) to “the preceding paragraph” included also a reference to subsection (2)(h) as modified by this paragraph;
 - (iii) subsection (3) were omitted;
 - (iv) the reference to subsection (2)(h) in subsections (4) and (5) included also a reference to subsection (2)(h) as modified by this paragraph; and
 - (v) the reference to subsection (2)(i) in subsection (6) included also a reference to subsection (2)(i) as modified by this paragraph;
 - (e) section 22 permitted an inspector to serve a prohibition notice, in addition to the circumstances specified in that section, in any case where—
 - (i) a manufacturer, or any person acting as agent for the manufacturer, or, failing them, the person responsible for placing the explosives on the market, has failed to comply with the requirements of regulation 42 in relation to the CE marking; and
 - (ii) the manufacturer, agent or the person responsible for placing the explosives on the market, as the case may be, has been served with a notice under paragraph 4 of this Schedule or an improvement notice under section 21 of the 1974 Act in respect of

(1) 1972 c. 69; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and by the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule.

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

that failure and has continued to fail to comply after the period for remedying the contravention specified in the respective notice;

- (f) subsections (3), (4) and (6) of section 23 were omitted;
- (g) in section 33 —
 - (i) in subsection (1) —
 - (aa) paragraphs (a), (b) and (d) were omitted;
 - (bb) in paragraph (c), any reference to health and safety regulations were a reference to regulation 8 and Part 13; and
 - (ii) subsection (3) were omitted; and
- (h) in section 34 —
 - (i) paragraphs (a) and (b) of subsection (1) were omitted; and
 - (ii) in subsection (3), the reference to six months were a reference to twelve months.

Civil explosives which do not satisfy the requirements of regulation 39(1)(a) and (b)

4. Where it is satisfied that the CE marking has been affixed to civil explosives but that the civil explosives do not satisfy the requirements of sub-paragraphs (a) and (b) of paragraph (1) of regulation 39, the Executive may serve notice in writing requiring the person on whom it is served to take such measures as are necessary to ensure that the civil explosives do satisfy the requirements of those sub-paragraphs.

5. Where it is satisfied that civil explosives in respect of which a notice has been served in accordance with paragraph 4 continue not to satisfy the requirements of sub-paragraphs (a) and (b) of paragraph (1) of regulation 39, the Executive may serve notice in writing requiring the person on whom it is served to take such measures as are necessary to ensure the civil explosives are withdrawn from the market.

Explosives which may compromise safety when used for their intended purpose

6. Where it is satisfied that civil explosives to which the CE marking has been affixed may compromise safety when being used for their intended purpose, the Executive may serve notice in writing requiring the person on whom it is served to take such measures as are necessary to ensure the civil explosives are withdrawn from the market.

Supplementary provisions

- 7. A notice referred to in paragraph 4 or 5 may be served on—
 - (a) the manufacturer of the civil explosives or any person acting as agent for the manufacturer; or, failing them,
 - (b) the person responsible for placing the civil explosives on the market.
- 8. A notice referred to in paragraph 6 may be served on any person the Executive has reasonable grounds for believing is in a position to take the measures specified in the notice.
- 9. A notice referred to in paragraphs 4 to 6—
 - (a) must specify measures to be taken under the notice,
 - (b) may be subject to conditions, and
 - (c) must—
 - (i) have immediate effect; or

(ii) allow such time for compliance as the Executive specifies in the notice.