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STATUTORY RULES OF NORTHERN IRELAND

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**2001 No. 387**

**The Carriage of Explosives by Rail  
Regulations (Northern Ireland) 2001**

**Part VI**

**Miscellaneous and General**

**Exemption certificates**

**22.**—(1) Subject to paragraph (2), and to any provisions imposed by the Communities in respect of the transport of explosives by rail, the Secretary of State may, by a certificate in writing, exempt—

- (a) any person or class of persons;
- (b) any explosives or class of explosives; or
- (c) any container, package or wagon,

from any or all of the requirements or prohibitions imposed by these Regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by the Secretary of State by a further certificate in writing.

(2) The Secretary of State shall not grant any such exemption unless, having regard to the circumstances of the case and in particular to—

- (a) any conditions which he proposes to attach to the exemption, and
- (b) any other requirements imposed by or under any enactments which apply to the case,

he is satisfied that the environment, the health and safety of persons who are likely to be affected by the exemption and the security of the explosives will not be prejudiced in consequence of it.

(3) The Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt any person from all or any of the requirements or prohibitions imposed by these Regulations in so far as they relate to the carriage of any explosives and any such exemption may be granted subject to the conditions and to a limit of time and may be revoked by the said Secretary of State at any time by a further certificate in writing.

**Defence**

**23.**—(1) In any proceedings for an offence consisting of a contravention of any of the provisions of these Regulations it shall be a defence, subject to paragraphs (2) and (3), for the person charged to prove that—

- (a) the commission of the offence was due to the act or default of another person not being one of his employees (hereinafter called “the other person”); and
- (b) he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.

(2) The person charged shall not, without leave of the court, be entitled to rely upon the defence referred to in paragraph (1) unless, within a period ending seven clear days before the hearing

to determine the mode of trial, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person, as was then in his possession.

(3) Where a contravention of any of the provisions of these Regulations by any person is due to the act or default of some other person, that other person shall be guilty of the offence which would, but for any defence under this regulation available to the first-mentioned person, be constituted by the act or default.

### **International provisions**

**24.**—(1) Where, in relation to the carriage of any explosives, any provision of regulations 3, 5 to 12 or 14 to 15 applies to a matter to which any specified international provision also applies, it shall be sufficient compliance with the provision of the particular regulation if the specified international provision is satisfied in respect of that matter.

(2) For the purposes of paragraph (1), the specified international provision means any provision of—

- (a) ADR;
- (b) the IMDG Code; or
- (c) the Technical Instructions for the Safe Transport of Dangerous Goods by Air, as revised or re-issued from time to time by the International Civil Aviation Organization<sup>(1)</sup>.

### **Repeal**

**25.** Section 35 of the Explosives Act 1875<sup>(2)</sup> (which purports to impose a duty on railway companies which carry explosives to make and publish byelaws in relation to their carriage) is hereby repealed to the extent that it imposes a duty upon every railway company over whose railway any explosives are carried and in this regulation the expression “railway company” has the meaning assigned to it in section 108 of that Act.

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(1) Current edition and supplement (1995–1996): Doc 9284-AN/905

(2) 1875 (38 & 39 Vict. c. 17)