

EXPLANATORY MEMORANDUM TO
THE EXPLOSIVES (APPOINTMENT OF AUTHORITIES AND
ENFORCEMENT) (AMENDMENT) (EU EXIT) REGULATIONS
(NORTHERN IRELAND) 2021

S.R. 2021 No. 37

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice (DoJ) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by section 11 of, and paragraph 11M(1) of Part 1C of Schedule 2 to, the European Union (Withdrawal) Act 2018 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Rule will make minor amendments to the Explosives (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2015 (S.R. 2015 No. 236) in order to implement the Northern Ireland/Ireland Protocol in the Withdrawal Agreement (“the Protocol”).

3. Background

Existing EU Law

- 3.1. The Explosives (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2015, provide, in respect of Northern Ireland, for the appointment of competent authorities and the enforcement of Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (“the CLP Regulation”; OJ No. L353, 31.12.08, p.1), in so far as they relate to civil explosives.
- 3.2. The CLP Regulation adopts within the European Community, the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) published by the UN Social and Economic Council. The UN GHS is a result of an international agreement made at the United World Conference on Environment and Development in Rio de Janeiro in 1992, and the World Summit on Sustainable Development in Johannesburg in 2002. It sets out internationally accepted definitions and criteria to identify the hazards of chemicals and to communicate those hazards via labels and safety data sheets. The GHS is a voluntary international agreement and countries may keep national requirements that are not covered by the GHS provided that they do not contradict it. The CLP Regulation requires duty holders to classify, label and package hazardous chemicals before placing them on the market, in accordance with its provisions.
- 3.3. The Protocol requires that the provisions of EU law listed in Annex 2 to the Protocol shall apply to and in the UK in respect of Northern Ireland. The CLP Regulation is listed in Annex 2 to the Protocol. This means that the CLP Regulation will continue to apply in Northern Ireland after the end of the implementation period.

Legislative Context

- 3.4. The Explosives (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2015 had been amended by the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/720) to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union in the event of a no deal. However, in light of the Protocol those no deal amendments were revoked by the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1567).
- 3.5. The Explosives (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2015 must be amended to ensure that they continue to operate effectively in Northern Ireland after the end of the implementation period. This Rule makes minor amendments to ensure that references to “Member State” are replaced with an appropriate term that includes Northern Ireland (only) and any EEA state.

What is being done and why

- 3.6. The relevant EU legislation that will continue to apply in Northern Ireland at the end of the implementation period is listed in Annex 2 to the Protocol and includes the CLP Regulation.
- 3.7. The purpose of this Statutory Rule is to assist in ensuring that the UK/NI meets its international obligations under the Protocol by allowing for the proper implementation of the CLP Regulation in Northern Ireland after the end of the implementation period.
- 3.8. The Rule amends the Explosives (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2015 so that the Protocol will be implemented in Northern Ireland in respect of the CLP Regulation. These amendments will ensure that the CLP Regulation can operate effectively within the existing legal framework, while ensuring Protocol obligations are met.
- 3.9. The Rule does not make any policy changes beyond the intent of ensuring the continued operability of the existing legislation.

4. Consultation

- 4.1. No consultation has been carried out as it is not a requirement of the EU (Withdrawal) Act 2018. The Regulations do not make any policy changes beyond the intent of ensuring the continued operability of the legislation.

5. Equality Impact

- 5.1. The Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified.

6. Regulatory Impact

- 6.1. A full Impact Assessment has not been prepared for this Statutory Rule because the impacts are expected to be low level for business.

7. Financial Implications

- 7.1. There is no, or no significant, impact on business, charities or voluntary bodies.
- 7.2. There is no, or no significant, impact on the public sector.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department has considered the matter of Convention rights and is satisfied that there are no matters of concern.

9. EU Implications

- 9.1. This Statutory Rule is made using powers in the European Union (Withdrawal) Act 2018 in order to implement the Northern Ireland/Ireland Protocol in the Withdrawal Agreement (“the Protocol”). The rule makes minor amendments to ensure the existing legislative framework continues to operate effectively in conjunction with the Withdrawal Agreement.

10. Parity or Replicatory Measure

- 10.1. There are no equivalent Great Britain Regulations due to differences arising as a result of the implementation of the Protocol. In Great Britain, the CLP Regulation will be retained direct EU legislation at the end of the implementation period, and will form part of their domestic law. Amendments to the CLP Regulation will come into force to address legislative inoperabilities and deficiencies in relation to the UK’s exit from the EU, and will extend only to Great Britain. Those amendments can be found in the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/720) as amended by the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1567).

11. Additional Information

- 11.1. Not applicable.

Department of Justice

12 February 2021