

1993 No. 488

HEALTH AND SAFETY

**The Placing on the Market and Supervision of Transfers
of Explosives Regulations (Northern Ireland) 1993***Made 17th December 1993**Coming into operation—*

<i>The whole regulations except regulations 4 to 7 and 12 and except regulation 8 in respect of transfers mentioned in regulation 1(3)</i>	<i>31st January 1994</i>
<i>Regulation 8 in respect of transfers mentioned in regulation 1(3)</i>	<i>26th September 1994</i>
<i>Regulations 4 to 7 and 12</i>	<i>1st January 1995</i>

To be laid before Parliament

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The Secretary of State, being a Minister designated(a) for the purpose of section 2(2) of the European Communities Act 1972(b) in relation to the placing on the market, transfer and safety of explosives for civil use, in the exercise of the powers conferred on him by the said section 2(2), and in pursuance of Articles 17(1), (2), (3)(a) and (b), (4) and (5)(b), and 55(2) of, and paragraphs 1(1)(b), (3) and (4), 2(1), 3(1), 5(1) and 15 of Schedule 3 to the Health and Safety at Work (Northern Ireland) Order 1978(c) as applied and modified by Article 53 of that Order and after consulting, in accordance with Article 46 of that Order as so applied and modified, the Health and Safety Agency for Northern Ireland and such other bodies as appeared to him to be appropriate, hereby makes the following Regulations:—

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Placing on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 1993.

(2) Subject to paragraph (3) and (4), these Regulations shall come into operation on 31st January 1994.

(3) In respect of transfers which take place wholly within the United Kingdom or which terminate outside the United Kingdom, regulation 8 shall come into operation on 26th September 1994.

(4) Regulations 4 to 7 and 12 shall come into operation on 1st January 1995.

(5) These Regulations shall not extend to Great Britain.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1972 Act” means the European Communities Act 1972;

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

“the 1991 Regulations” means the Classification and Labelling of Explosives Regulations (Northern Ireland) 1991(d);

“CE marking” means the marking referred to in regulation 7(4);

(a) The European Communities (Designation) (No. 3) Order 1993 (S.I. 1993/2661)

(b) 1972 c. 68

(c) S.I. 1978/1039 (N.I. 9)

(d) S.R. 1991 No. 516

“Civil Uses Directive” means 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(a);

“Commission” means the Commission of the European Communities;

“essential safety requirements” means the requirements listed in Schedule 1;

“Executive” means the Health and Safety Executive established under Section 10 of the Health and Safety at Work etc Act 1974(b);

“explosives” means explosive articles or explosive substances which have been assigned on classification in accordance with the 1991 Regulations to Class 1;

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

“explosive substance” means—

(a) a solid or liquid substance, or

(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;

“harmonised standard” means a text setting out technical specifications adopted by the European Committee for Standardisation (CEN) under a mandate from the Commission in accordance with Council Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations(c), and of which the reference number is published in the Official Journal of the European Communities;

“notified body” means a body notified to the Commission by a member State pursuant to Article 6.2 of the Civil Uses Directive.

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

Application

3.—(1) Subject to paragraph (2), these Regulations shall apply to all explosives.

(2) Regulations 4 to 8 shall not apply to—

(a) ammunition the acquisition of which is regulated or prohibited by virtue of the Firearms Orders 1981 to 1992(d); or

(a) O.J. No. L121, 15.5.93, p. 20

(b) 1974 c. 37: sections 15 and 50 were amended by the Employment Protection Act 1975 (c. 71), Schedule 15, paragraphs 6 and 16 respectively

(c) O.J. No. L109, 26.4.83, p. 8: the Directive was last amended by Commission Decision 90/230/EEC (O.J. No. L380, 31.12.90, p. 13)

(d) S.I. 1981/155 (N.I. 2) as extended by S.I. 1983/1899 (N.I. 20) and amended by S.I. 1989/1338 (N.I. 10) and S.I. 1992 No. 3267

- (b) any explosives which it is shown are intended for lawful use by the armed forces or police or of any country; or
 - (c) a pyrotechnic article; or
 - (d) an explosive which is used immediately at the place of manufacture; or
 - (e) an explosive article intended for use as a life saving device in a motor vehicle.
- (3) Regulations 4 to 8 shall not apply in respect of the transfer of explosives to, by or on behalf of—
- (a) any Explosives Inspectors appointed under Section 53 of the Explosives Act 1875(a); or
 - (b) a constable acting in the execution of his duties; or
 - (c) a person employed by the Police Authority for Northern Ireland, in their capacity as such so far as these provisions relate to the transfer of explosives; or
 - (d) a customs officer acting in the performance of his duties; or
 - (e) the Crown in respect of any explosives which—
 - (i) are in premises occupied by or on behalf of the Crown, or
 - (ii) are intended for the purposes of the Secretary of State having responsibility for defence; or
 - (f) the Executive.

Placing on the market of explosives

- 4.—(1) No person shall place any explosives on the market unless—
- (a) the explosives satisfy such of the essential safety requirements as apply to those explosives; and
 - (b) the conformity of the explosives to the requirements of these Regulations has been attested in accordance with regulation 5; and
 - (c) the CE marking has been affixed to the explosives in accordance with regulation 7.
- (2) For the purposes of paragraph (1), explosives shall be treated as satisfying the essential safety requirements if they conform to any relevant national standard.
- (3) For the purposes of this regulation, “national standard” means a standard of a member State—
- (a) which transposes a relevant harmonised standard; and
 - (b) the reference number of which has been published by that member State pursuant to Article 4.1 of the Civil Uses Directive.
- (4) For the purpose of this regulation, explosives are placed on the market when they are first supplied or made available to any person with a view to their distribution or use within the Communities, or are imported, except with a view to re-export, from outside the Communities, and “place on the market” shall be construed accordingly.

(a) 1875 c. 17

Conformity attestation

5. For the purposes of regulation 4(1)(b), the procedure for attesting conformity of explosives to the requirements of these Regulations shall be—

- (a) EC type examination (Module B) referred to in Annex II(1), together with—
 - (i) type conformity (Module C) referred to in Annex II(2), or
 - (ii) production quality assurance (Module D) referred to in Annex II(3), or
 - (iii) product quality assurance (Module E) referred to in Annex II(4), or
 - (iv) product verification (Module F) referred to in Annex II(5); or
- (b) unit verification (Module G) referred to in Annex II(6).

Notified bodies

6.—(1) The Secretary of State may from time to time appoint in writing such qualified bodies as he thinks fit to be notified bodies for the purposes of these Regulations.

(2) An appointment under this regulation may relate to all or any description or class of explosives, may be subject to conditions or to limit of time, and may be revoked in writing at any time.

(3) For the purposes of this regulation a body is qualified if it meets the criteria set out in Annex III (minimum criteria to be taken into account by member States for the notification of bodies) or if it meets the assessment criteria laid down by a relevant harmonised standard.

(4) The Secretary of State shall—

- (a) notify the Commission and the other member States of any body appointed under this regulation;
- (b) revoke the appointment of any such body if it appears to the Secretary of State that that body is no longer qualified; and
- (c) notify the Commission and the other member States of the revocation of any such appointment.

(5) A body appointed by the Secretary of State under this regulation, after agreeing with the applicant any fee in respect of the work to be undertaken by it, shall perform the functions of a notified body under the Civil Uses Directive.

CE marking

7.—(1) For the purposes of regulation 4(1)(c), the CE marking is properly affixed if—

- (a) it is visible, easily legible and indelible; and
- (b) it is of a durable nature such that it will remain visible, easily legible and indelible during normal transport or storage; and
- (c) it is affixed either—
 - (i) to the explosives themselves, or, where that is not practicable,

(ii) to an identification plate which is attached to the explosives and which is so designed as to make its re-use impossible, or, where neither of the above is practicable,

(iii) to the packaging of the explosives; and

(d) in the case of explosives which are subject to any Community Directive other than the Civil Uses Directive, the requirements imposed by virtue of that other Directive have also been complied with in respect of those explosives.

(2) No person shall affix to any explosives the CE marking or any marking or inscription which is liable to be confused with the CE marking except by properly affixing the CE marking to explosives which satisfy the requirements of sub-paragraphs (a) and (b) of paragraph (1) of regulation 4.

(3) Parts I and III of Schedule 2 shall have effect with respect to any explosives to which the CE marking has been affixed but which do not satisfy the requirements of sub-paragraphs (a) and (b) of paragraph (1) of regulation 4.

(4) The CE marking shall be in the form shown in Schedule 3.

Transfer of explosives

8.—(1) Before any explosives are transferred, the consignee shall 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 shall consign any explosives for carriage to a place outside Northern Ireland unless the approval of the relevant authority has been obtained.

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

(4) No person shall carry explosives unless the 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 explosives to a place outside the Communities shall be treated as a transfer which will terminate at the place where the explosives are immediately before leaving the Communities.

(6) The consignee of any explosives shall retain the recipient competent authority document or a copy thereof for a period of 3 years from the completion of the transfer.

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

(8) In this regulation—

“competent authority” means—

- (a) in respect of Northern Ireland, the Chief Constable; and
- (b) in respect of Great Britain, the Executive; and
- (c) in respect of a place in the territory of a member State other than the United Kingdom, the authority whose responsibilities are specified in Article 9 of the Civil Uses Directive;

“recipient competent authority document” means a document issued in accordance with Article 9.3, 9.5 or 9.6 of the Civil Uses Directive by the competent authority of the member State in which the transfer will terminate;

“relevant authority” means—

- (a) in respect of a transfer or part of a transfer which takes place within Northern Ireland, the Chief Constable; and
- (b) in respect of a transfer or part of a transfer which takes place in Great Britain, the Executive; and
- (c) in respect of a transfer or part of a transfer which takes place in the territory of a member State other than the United Kingdom, the competent authority for each place where the transfer takes or is to take place;

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

Enforcement

9.—(1) Notwithstanding the provisions of the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1993(a), the Secretary of State shall be the enforcing authority for these Regulations.

(2) An inspector appointed under Article 21 of the 1978 Order may seize and detain in accordance with section 74 of the Explosives Act 1875 any explosives which he has reasonable cause to believe will be unlawfully acquired, used or dealt in.

(3) Parts II and III of Schedule 2 shall have effect with respect to any explosives to which the CE marking has been affixed but which may compromise safety when used for their intended purpose.

(4) Insofar as any provision of Regulations 4 to 12 is made under section 2(2) of the 1972 Act—

- (a) the provisions of the 1978 Order which relate to the approval of codes of practice and their use in criminal proceedings, enforcement and offences shall apply to that provision as if that provision had been made under Article 17 of that Order; and
- (b) breach of a duty imposed by that provision shall confer a right of action in civil proceedings, insofar as that breach of duty causes damage.

(a) S.R. 1993 No 147

Exemption certificates

10.—(1) Subject to paragraph (2) below, the Secretary of State may, by certificate in writing, exempt any person or class of persons or any activity or class of activities from any requirement imposed by these Regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time.

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

he is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced because of it, that the security of explosives will not be prejudiced and that any provision imposed by the Communities in respect of the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses will be satisfied.

Modifications

11. The Explosives Act 1875(a) shall be modified to the extent set out in Schedule 4.

Saving

12. Until 31st December 2002, it shall be sufficient compliance with regulation 4 if any explosives comply with any requirement of the relevant statutory provisions to which they would have been subject on 31st December 1994.

Revocations

13. Order in Council (No. 10) dated 27th November 1875(b) and Order in Council (No. 10A) dated 26th June 1884(c) are revoked.

Northern Ireland Office
17th December 1993

P. B. B. Mayhew
One of Her Majesty's Principal
Secretaries of State

(a) 1875 c. 17

(b) Rev. VII p. 40

(c) Rev. VII p. 41

Essential Safety Requirements**I. General requirements**

1. Each 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 including until such time as it is used.
2. Each explosive must attain the performance characteristics specified by the manufacturer in order to ensure maximum safety and reliability.
3. Each 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.

II. Special requirements

1. As a minimum, the following information and properties — where appropriate — must be considered. Each explosive should be tested under realistic conditions. If this is not possible in a laboratory, the tests should be carried out in the conditions in which the explosive is to be used.
 - (a) Construction and characteristic properties, including chemical composition, degree of blending and, where appropriate, dimensions and grain size distribution.
 - (b) The physical and chemical stability of the 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 explosive.
 - (f) Resistance of the 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 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 explosive as a whole.
 - (h) The suitability of the explosive for use in hazardous environments (eg environment endangered by firedamp, hot masses, etc) if it is intended to be used under such conditions.
 - (i) Safety features intended to prevent untimely or inadvertent initiation or ignition.
 - (j) The correct loading and functioning of the explosive when used for its intended purpose.
 - (k) Suitable instructions and, where necessary, markings in respect of safe handling, storage, use and disposal in the official language or languages of the recipient member State.

- (l) The ability of the explosive, its covering 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 explosive.
2. The various groups of explosives must at least also comply with the following requirements:
- A. Blasting explosives
 - (a) 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 shall be checked.
 - (b) Blasting explosives in cartridge form must transmit the detonation safely and reliably from one end of the train of cartridges to the other.
 - (c) The gases 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, igniter cords and shock tubes
 - (a) The covering of detonating cords, safety fuses and igniter cords must be of adequate mechanical strength and adequately protect the explosive filling when exposed to normal mechanical stress.
 - (b) The parameters for the burning times of safety fuses must be indicated and must be reliably set.
 - (c) 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
 - (a) Detonators must reliably initiate the detonation of the blasting explosives which are intended to be used with them under all foreseeable conditions of use.
 - (b) Relays must be capable of being reliably initiated.
 - (c) The initiation capability must not be adversely affected by humidity.
 - (d) 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.
 - (e) The electrical characteristics of electric detonators must be indicated on the packaging (eg no-fire current, resistance, etc).
 - (f) 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
 - (a) These materials must not detonate when used for their intended purpose.
 - (b) Propellants where necessary (eg those based on nitrocellulose) must be stabilised against decomposition.

- (c) Solid rocket propellants, when in compressed or cast form, must not contain any unintentional fissures or gas bubbles which dangerously affect their functioning.

Provisions Relating to Explosives to which the CE Marking has been Affixed

PART I

EXPLOSIVES WHICH DO NOT SATISFY THE REQUIREMENTS OF REGULATION 4(1)(a)
AND (b)

1. Where it is satisfied that the CE marking has been affixed to explosives but that the explosives do not satisfy the requirements of sub-paragraphs (a) and (b) of paragraph (1) of regulation 4, the Secretary of State may serve notice in writing requiring the person on whom it is served to take such measures as are necessary to ensure that the explosives do satisfy the requirements of the said sub-paragraphs.
2. Where he is satisfied that explosives in respect of which a notice has been served in accordance with paragraph 1 of this Schedule continue not to satisfy the requirements of sub-paragraphs (a) and (b) of paragraph (1) of regulation 4, the Secretary of State may serve notice in writing requiring the person on whom it is served to take such measures as are necessary to ensure the explosives are withdrawn from the market.

PART II

EXPLOSIVES WHICH MAY COMPROMISE SAFETY WHEN USED FOR THEIR INTENDED
PURPOSE

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

PART III

SUPPLEMENTARY PROVISIONS

4. A notice referred to in Part I of this Schedule may be served on—
 - (a) the manufacturer of the explosives or any person acting as agent for the manufacturer; or, failing them
 - (b) the person responsible for placing the explosives on the market.
5. A notice referred to in Part II of this Schedule may be served on any person the Secretary of State has reasonable grounds for believing is in a position to take the measures specified in the notice.
6. A notice referred to in this Schedule may specify measures to be taken under the notice, may be subject to conditions and may have immediate effect or may allow such time for compliance as the Secretary of State specifies in the notice.

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Conformity Marking

The CE conformity marking shall consist of the initials "CE" taking the following form:



The marking may be reduced or enlarged but the proportions given in the above drawing must be respected.

Modifications

THE EXPLOSIVES ACT 1875

1. Except as it applies to acetylene by virtue of Order in Council (No. 30) dated 2nd February 1937^(a), section 40 of the Explosives Act 1875^(b) is modified by substituting the following sub-sections for sub-section (9)—

“(9) No person shall supply any explosive (other than gunpowder) unless the explosive—

- (a) conforms in composition, character and quality to the description of the explosive in a list signed by an inspector appointed by the Health and Safety Executive and duly authorised for that purpose, corresponding to the name of that explosive as shown in such list and in “List of Authorised Explosives” issued by the Health and Safety Executive^(c), such list and List as revised or re-issued from time to time; and
- (b) has been classified in accordance with any Order in Council made under section 106 of this Act and for the time being in force which defines, for the purposes of this Act, the composition, quality and character of any explosive^(d).

(10) The Secretary of State shall ensure that any explosive which satisfies the requirements of sub-paragraphs (a) to (c) of regulation 4(1) of the Placing on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 1993^(e) is classified in accordance with any Order in Council made under section 106 of this Act and included in the list and in “List of Authorised Explosives” mentioned in sub-section (9)(a) of this section.

(11) In sub-section (9) of this section, “supply” shall be construed in accordance with section 46 of the Consumer Protection Act 1987^(f).

(a) S.R. & O., 1937/54

(b) 1875 c. 17

(c) The list current when these Regulations are made is “List of Authorised Explosives 1992”, ISBN 0 11 886396 7, published by H.M.S.O.

(d) The Orders in force at the date of making these Regulations are Order in Council (No. 1) dated 5th August 1875 (Rev. VII p. 1) and Order in Council (No. 1B) dated 11th April 1913 (S.R. & O. 1913/481)

(e) S.I. 1993/488

(f) 1987 c. 43

EXPLANATORY NOTE

(This note is not part of the Regulations.)

1. These Regulations make provision with respect to the placing on the market and the supervision of transfers (defined in regulation 8) of explosives. They come into operation as provided in regulation 1.

2. The Regulations implement, as respects Northern Ireland, Council Directive 93/15/EEC on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses (OJ No. L121, 15.5.93, p. 20), so far as the Directive requires implementation by legislation, except for Article 10.

3. The Regulations apply to all explosives as defined in regulation 2, subject to exceptions specified in regulation 3.

4. Regulation 4 prohibits any person from placing any explosives on the market unless they satisfy essential safety requirements (set out in Schedule 1), have been subject to conformity attestation procedure in accordance with regulation 5, and have had the CE marking (described in Schedule 3) affixed to them in accordance with regulation 7.

5. Regulation 6 makes provision in connection with the appointment by the Secretary of State of notified bodies for the purposes of the attestation procedure.

6. Regulation 8 establishes a system for the supervision of transfers of explosives. Before any 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 Communities where the transfer will terminate.

7. There are provisions as to the keeping of records in connection with transfers in regulation 8(6).

8. Regulation 9 and Schedule 2 make provision for enforcement. By virtue of regulation 8(7) transfers which are not in accordance with regulation 8 and which constitute importation will be prohibited.

9. Regulation 10 empowers the Secretary of State to grant exemptions from the Regulations subject to the conditions set out in that regulation.

10. Provisions of the Explosives Act 1875 (c. 17) are modified as specified in Schedule 4. Orders in Council which have been replaced by these Regulations are revoked as specified in regulation 13.