

2016 No.

HEALTH AND SAFETY

**The Explosives Regulations 2014 (Amendment) Regulations
2016**

<i>Made</i>	- - - -	<i>March 2016</i>
<i>Laid before Parliament</i>		<i>March 2016</i>
<i>Coming into force</i>	- -	<i>April 2016</i>

The Secretary of State is a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to market surveillance and the placing on the market, transfer and safety of explosives for civil use.

It appears to the Secretary of State that it is expedient for certain references to provisions of EU instruments to be construed as a reference to those provisions as amended from time to time.

The Secretary of State makes these Regulations —

- (a) under section 2(2) of the European Communities Act 1972;
- (b) in exercise of the powers conferred by sections 15(1), (2), (3)(a) and (c), (4), (5), (6)(b) and (9), 18(2)(za) and (a), 43(2), (4), (5) and (6), 80(1) and 82(3)(a) of, and paragraphs 1(1), (2), (3) and (4), 2, 3, 4, 5, 6(1), 7, 12, 15(1), 16, 18 and 20 of Schedule 3 to, the Health and Safety at Work etc. Act 1974^(c) (“the 1974 Act”).

The Secretary of State makes these Regulations, so far as made in exercise of the powers cited in paragraph (b), for the purpose of giving effect without modifications to proposals submitted to him

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- (a) S.I. 2009/3214, to which there are amendments not relevant to these Regulations, for market surveillance and S.I. 1993/2661, to which there are amendments not relevant to these Regulations, for the placing on the market, transfer and safety of explosives for civil use.
- (b) 1972 c.68; 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.
- (c) 1974 c. 37; section 15 was amended by Employment Protection Act 1975 (c. 71), Schedule 15, paragraph 6, the Criminal Law Act 1977 (c. 45), Schedule 12, the Offshore Safety Act 1992 (c. 15), section 4, the Health and Safety (Offences) Act 2008 (c. 20), Schedules 3 and 4, the Energy Act 2013 (c. 32), Schedule 12, paragraph 5, S.I. 2002/794 and S.I. 2008/960. There are other amendments to section 15 not relevant to these Regulations. Section 18(2) was amended by the Energy Act 2013, Schedule 12, paragraph 6. Section 43(6) was substituted by the Employment Protection Act 1975, Schedule 15, paragraph 12 and amended by S.I. 2002/794. Paragraph 2 of Schedule 3 was amended by the Customs and Excise Management Act 1979 (c. 2), Schedule 4, paragraph 12.

by the Health and Safety Executive under section 11(3)(a) of the 1974 Act after carrying out consultations in accordance with section 50(3) of the 1974 Act(b).

PART 1

INTRODUCTION

Citation and commencement

1. These Regulations may be cited as the Explosives Regulations 2014 (Amendment) Regulations 2016 and come into force on 20th April 2016.

Application outside Great Britain and extent

2.—(1) These Regulations apply outside Great Britain as sections 1 to 59 and 80 to 82 of the Health and Safety at Work etc. Act 1974(c) apply by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013(d).

(2) These Regulations do not extend to Northern Ireland.

PART 2

AMENDMENT

Amendment of the Explosives Regulations 2014

3. The Explosives Regulations 2014(e) are amended as follows.

4. In regulation 2 (interpretation) —

(a) in paragraph (1) —

(i) after the definition of “authorised defence site” insert —

““authorised representative” means a person established within the EU who has received a written mandate from the manufacturer to act on the manufacturer’s behalf in relation to specified tasks;”;

(ii) for the definition of “the CE marking” substitute —

““CE marking” means a marking which takes the form set out Annex II of RAMS (as amended from time to time);”;

(iii) after the definition of “the Commission” insert —

““compliance notice” means the notice referred to in paragraph 14 of Schedule 12;

“conformity assessment” means the process demonstrating whether the essential safety requirements relating to a civil explosive have been fulfilled;”;

“conformity assessment body” means a person that performs conformity assessment activities, including calibration, testing, certification and inspection;”;

(iv) for the definition of “Civil Uses Directive” substitute —

(a) Section 11 was substituted by S.I. 2008/960 and amended by the Energy Act 2013 (c.32), Schedule 12, paragraph 2.

(b) Section 50(3) was amended by the Employment Protection Act 1975 (c. 71), Schedule 15, paragraph 16(3), the Health and Social Care Act 2012 (c. 7), Schedule 7, paragraphs 4 and 6, the Energy Act 2013 (c. 32), Schedule 12, paragraph 11 and S.I. 2008/960.

(c) 1974 c. 37.

(d) S.I. 2013/240.

(e) S.I. 2014/1638, amended by S.I. 2015/ .

““the Directive” means Directive 2014/28/EU of the European Parliament and of the Council on the harmonisation of the laws of the member States relating to the making available on the market and supervision of explosives for civil uses (recast)(a);”;

(v) after the definition of “distributor” insert —

““economic operator” means a manufacturer, authorised representative, importer, distributor or any person who engages in the storage, use, transfer, import, export or trading of civil explosives;

“essential safety requirements” means the requirements set out in Schedule 9 (essential safety requirements);

“EU declaration of conformity” means a declaration of conformity required to be drawn up in accordance with regulation 41 (EU declaration of conformity and CE marking);”;

(vi) for the definition of “harmonised standard” substitute —

““harmonised standard” has the meaning set out in point 1(c) of Article 2 of Regulation (EU) 1025/2012 of the European Parliament and of the Council on European standardisation(b), as amended from time to time;”;

(vii) after the definition of “holder” insert —

““importer”, in relation to civil explosives, means any person who—

(a) is established within the EU; and

(b) places a civil explosive from a third country on the EU market;”;

(viii) after the definition of “local authority” insert —

““make available on the market” means any supply for distribution, consumption or use on the EU market in the course of a commercial activity, whether in return for payment or free of charge, and related expressions must be construed accordingly;”;

(ix) after the definition of “manufacture” insert —

““manufacturer”, in relation to civil explosives, means a person who—

(a) manufactures a civil explosive, or has a civil explosive designed or manufactured; and

(b) markets that civil explosive under that person’s name or trade mark;

“market surveillance authority” means the authority designated by paragraph 3 of Schedule 12, namely, the Executive”;”

(x) after the definition of “mine” insert —

““mobile explosives manufacturing unit” means a moveable unit, whether mounted on a vehicle or not, for manufacturing and charging explosives from dangerous goods that are not explosives, with the unit consisting of various tanks, bulk containers and related equipment.”;

(xi) after the definition of “percussion caps” insert —

““place on the market” means the first making available on the EU market, and related expressions must be construed accordingly;”;

(xii) after the definition of “pyrotechnic article” insert —

““RAMS” means Regulation (EC) 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93(c);

“recall” means taking any measure aimed at achieving the return of a civil explosive that has already been made available to the end-user and related expressions must be construed accordingly;”;

(a) OJ L 96, 29.3.2014, p. 1.

(b) OJ L 316, 14.11.2012, p. 12.

(c) OJ L 218, 13.8.2008, p. 30.

- (xiii) after the definition of “recipient competent authority document” insert —
“relevant conformity assessment procedure” means a conformity assessment procedure referred to in regulation 66 (conformity assessment procedures);”;
 - (xiv) after the definition of “substance” insert —
““technical documentation” has the meaning given in regulation 40 (technical documentation and conformity assessment);”;
 - (xv) after the definition of “wholly-owned subsidiary” insert —
““withdraw”, when used in relation to a civil explosive, means taking any measure aimed at preventing a civil explosive in the supply chain from being made available on the market and related expressions must be construed accordingly;”;
 - (b) after paragraph (11), insert —
“(12) In Part 13, “risk” means a risk to —
 - (a) the health or safety of persons;
 - (b) property; or
 - (c) the environment.”.
5. In regulation 3 (application and extent) —
- (a) in paragraph (14), for “42” substitute “69”; and
 - (b) omit paragraph (16).
6. In regulation 8 (authorisation to transfer explosives), in paragraph (9) —
- (a) in sub-paragraph (a)(ii), for “Article 9 of the Civil Uses Directive” substitute “Article 11 of the Directive”; and
 - (b) in sub-paragraph (b), for “Article 9.3, 9.5 or 9.6 of the Civil Uses Directive” substitute “Article 11.3, 11.4 or 11.6 of the Directive”.
7. For Part 13 (placing on the market of civil explosives), substitute —

“PART 13

SUB-PART A: MAKING AVAILABLE ON THE MARKET – OBLIGATIONS OF ECONOMIC OPERATORS, SUB-PART B: CONFORMITY ASSESSMENT BODIES, SUB-PART C: NOTIFICATION OF CONFORMITY ASSESSMENT BODIES

SUB-PART A: MAKING AVAILABLE ON THE MARKET – OBLIGATIONS OF ECONOMIC OPERATORS

MANUFACTURERS

Design and manufacture in accordance with essential safety requirements

39. Before placing a civil explosive on the market [or using it for their own purposes], a manufacturer must ensure that it has been designed and manufactured in accordance with the essential safety requirements.

Technical documentation and conformity assessment

40. Before placing a civil explosive on the market, a manufacturer must, in respect of that civil explosive —

- (a) have a relevant conformity assessment procedure carried out; and
- (b) draw up the technical documentation referred to —

- (i) for a civil explosive in respect of which the conformity assessment procedure in regulation 66(a) is being carried out, in point 3(c) of Module B of Annex III to the Directive as amended from time to time;
- (ii) for a civil explosive in respect of which the conformity assessment procedure in regulation 66(b) is being carried out, in point 2 of Module G of Annex III to the Directive as amended from time to time.

EU declaration of conformity and CE marking

41.—(1) Where the conformity of a civil explosive with the essential safety requirements has been demonstrated by a relevant conformity assessment procedure, the manufacturer must, before placing the civil explosive on the market or using it for their own purposes —

- (a) draw up a declaration of conformity in accordance with regulation 67 (EU declaration of conformity); and
- (b) affix the CE marking in accordance with regulation 68 (CE marking).

(2) The manufacturer must keep the EU declaration of conformity up to date.

(3) Where a civil explosive is subject to more than one EU instrument requiring a declaration of conformity to be drawn up, the manufacturer must draw up a single declaration of conformity, which —

- (a) identifies the EU instruments; and
- (b) includes references to the publication of those EU instruments in the Official Journal of the European Union.

Retention of technical documentation and EU declaration of conformity

42. A manufacturer must keep the technical documentation and the EU declaration of conformity drawn up in respect of a civil explosive for a period of 10 years beginning on the day on which the civil explosive is placed on the market.

Compliance procedures for series production

43.—(1) A manufacturer of civil explosives which are manufactured by series production must ensure that, before placing such a civil explosive on the market, procedures are in place to ensure that any civil explosive so manufactured will be in conformity with this Part.

(2) In doing so, the manufacturer must take adequate account of —

- (a) any change in the design or characteristics of the civil explosive; and
- (b) any change in a harmonised standard or in another technical specification by reference to which the EU declaration of conformity was drawn up.

(3) In this regulation, “technical specification” means a document that prescribes technical requirements to be fulfilled by a civil explosive.

Traceability of civil explosives to which regulations 33, 34 and 36 do not apply

44.—(1) A manufacturer of a civil explosive to which regulations 33, 34 and 36 do not apply, must, before placing such civil explosive on the market —

- (a) ensure that it bears a type, batch or serial number or other matter allowing its identification, or
- (b) where the small size, shape or design of the civil explosive does not allow the information specified in sub-paragraph (a) to be indicated on the civil explosive, ensure that such information is indicated on its packaging or in a document accompanying the civil explosive; and

- (c) indicate on the civil explosive the manufacturer's name, registered trade name or trade mark and a single postal address at which they can be contacted, or
- (d) where it is not possible to indicate the information specified in sub-paragraph (c) on the civil explosive, indicate that information on the packaging or in a document accompanying the civil explosive.

(2) The contact details referred to in paragraph (1) must be provided in English, where the civil explosive is to be made available to end-users in the United Kingdom or, where the civil explosive is to be made available to end-users in other member States, in a language which can be easily understood by end-users and market surveillance authorities in that member State.

Instructions and safety information

45.—(1) When placing a civil explosive on the market, a manufacturer must ensure that it is accompanied by instructions and safety information in English, where the civil explosive is to be made available to end-users in the United Kingdom or, where the civil explosive is to be made available to end-users in other member States, in a language which can be easily understood by end-users in that member State.

(3) The instructions and safety information, as well as any labelling, must be clear, understandable and intelligible.

AUTHORISED REPRESENTATIVES

Appointment of authorised representative by written mandate

46.—(1) Where, by written mandate, a manufacturer appoints an authorised representative, the authorised representative must perform the tasks specified in the mandate.

- (2) The mandate must at least allow the authorised representative to do the following —
 - (a) keep the EU declaration of conformity and the technical documentation at the disposal of the market surveillance authority for a period of 10 years beginning on the day on which the civil explosive is placed on the market;
 - (b) further to a reasoned request from the enforcing authority, provide that authority with the information and documentation necessary to demonstrate that the civil explosive is in conformity with this Part; and
 - (c) cooperate with the competent national authorities, at their request, on any action taken to eliminate the risks posed by civil explosives covered by the authorised representative's mandate.

IMPORTERS

Prohibition on placing on the market civil explosives which are not in conformity

47. An importer must not place a civil explosive on the market unless it is in conformity with the essential safety requirements.

Requirements which must be satisfied before an importer places a civil explosive on the market

- 48.**—(1) Before placing a civil explosive on the market, an importer must ensure that—
 - (a) a relevant conformity assessment procedure has been carried out by the manufacturer;
 - (b) the manufacturer has drawn up the technical documentation;

- (c) the civil explosive —
 - (i) bears the CE marking; and
 - (ii) is accompanied by the required documents; and
- (d) the manufacturer has complied with the requirements, where applicable, set out in regulation 44 (traceability of civil explosives to which regulations 33, 34 and 36 do not apply).

(2) In paragraph (1)(c)(ii), “required documents” means any documents that are required to be provided with the civil explosive pursuant to regulation 44(1)(b) and (d).

Prohibition on placing on the market civil explosives considered not to be in conformity with the essential safety requirements

49.—(1) Where an importer considers, or has reason to believe, that a civil explosive is not in conformity with the essential safety requirements, the importer must not place the civil explosive on the market.

(2) Where the civil explosive presents a risk, the importer must inform the manufacturer and the market surveillance authority of that risk.

Information identifying importer

50.—(1) Before placing a civil explosive on the market, an importer must indicate on the civil explosive —

- (a) the name, registered trade name or registered trade mark of the importer; and
- (b) a postal address at which the importer can be contacted.

(2) The information specified in paragraph (1) must be in English, where the civil explosive is to be made available to end-users in the United Kingdom or, where the civil explosive is to be made available to end-users in other member States, in a language which can be easily understood by end-users and the market surveillance authority in that member State.

(3) Where it is not possible to indicate the information specified in paragraph (1) on the civil explosive, the importer must indicate that information—

- (a) on the packaging; or
- (b) in a document accompanying the civil explosive.

Instructions and safety information

51. When placing a civil explosive on the market, an importer must ensure that it is accompanied by instructions and safety information —

- (a) in English, where the civil explosive is to be made available to end-users in the United Kingdom, or
- (b) where the civil explosive is to be made available to end-users in other member States/EEA states, in a language which can be easily understood by end-users in that member State/EEA State.

Retention of technical documentation and EU declaration of conformity

52. An importer must, for a period of 10 years beginning on the day on which the civil explosive is placed on the market—

- (a) keep a copy of the EU declaration of conformity at the disposal of the market surveillance authority; and

- (b) ensure that the technical documentation can be made available to the market surveillance authority, upon request by that authority.

MANUFACTURERS AND IMPORTERS

Duty to take action in respect of civil explosives placed on the market which are considered not to be in conformity

53.—(1) A manufacturer or importer who considers, or has reason to believe, that a civil explosive which they have placed on the market is not in conformity with this Part must immediately take the corrective measures necessary to—

- (a) bring the civil explosive into conformity;
- (b) withdraw the civil explosive; or
- (c) recall the civil explosive.

(2) Where the civil explosive presents a risk, the manufacturer or importer must immediately inform the market surveillance authority, and the competent national authorities of any other member State in which the manufacturer or importer made the civil explosive available on the market, of the risk, giving details of—

- (a) the respect in which the civil explosive is considered not to be in conformity with this Part; and
- (b) any corrective measures taken.

Provision of information and cooperation

54.—(1) A manufacturer or importer must, further to a reasoned request from the market surveillance authority, provide the market surveillance authority with the information and documentation necessary to demonstrate that the civil explosive is in conformity with this Part —

- (a) in paper or electronic form; and
- (b) in a language which can be easily understood by the authority.

(2) A manufacturer or importer must, at the request of the market surveillance authority, cooperate with the authority on any action taken to—

- (a) evaluate a civil explosive in accordance with paragraph 7 of Schedule 13 (evaluation of civil explosive presenting a risk);
- (b) eliminate the risks posed by a civil explosive which the manufacturer or importer has placed on the market.

DISTRIBUTORS

Duty to act with due care

55. When making a civil explosive available on the market, a distributor must act with due care to ensure that it is in conformity with this Part.

Requirements which must be satisfied before a distributor makes a civil explosive available on the market

56.—(1) Before making a civil explosive article available on the market, the distributor must verify that—

- (a) the civil explosive—
 - (i) bears the CE marking;
 - (ii) is accompanied by the required documents;

- (iii) is accompanied by instructions and safety information —
 - (aa) in English, where the civil explosive is to be made available to end-users in the United Kingdom, or
 - (bb) where the civil explosive is to be made available to end-users in other member States, in a language which can be easily understood by end-users in that member State;
 - (b) the manufacturer has complied with the requirements, where applicable, set out in regulation 44 (traceability of civil explosives to which regulations 33, 34 and 36 do not apply);
 - (c) the importer has complied with the requirements set out in regulation 50 (information identifying importer).
- (2) In paragraph (1)(a)(ii), “required documents” means the documents that are required to be provided with the civil explosive pursuant to—
- (a) regulation 44(1)(b) and (d);
 - (b) regulation 50(3)(b).

Prohibition on making available on the market where civil explosive considered not to be in conformity with the essential safety requirements

57.—(1) Where a distributor considers, or has reason to believe, that a civil explosive is not in conformity with the essential safety requirements, the distributor must not make the civil explosive available on the market.

(2) Where the civil explosive presents a risk, the distributor must inform the following persons of the risk—

- (a) the manufacturer or the importer; and
- (b) the market surveillance authority.

Duty to take action in respect of civil explosives made available on the market which are not in conformity

58.—(1) A distributor who considers, or has reason to believe, that a civil explosive which the distributor has made available on the market is not in conformity with this Part must make sure that the necessary corrective measures are taken to—

- (a) bring that civil explosive into conformity;
- (b) withdraw the civil explosive; or
- (c) recall the civil explosive.

(2) Where the civil explosive presents a risk, the distributor must immediately inform the market surveillance authority, and the competent national authorities of the other member States in which the distributor has made the civil explosive article available on the market, of that risk, giving details of—

- (a) the respect in which the civil explosive is considered not to be in conformity with this Part; and
- (b) any corrective measures taken.

Provision of information and cooperation

59.—(1) A distributor must, further to a reasoned request from an enforcing authority, provide the authority with the information and documentation, in paper or electronic form, necessary to demonstrate that the civil explosive is in conformity with this Part.

(2) A distributor must, at the request of the enforcing authority, cooperate with the authority on any action taken to—

- (a) evaluate a civil explosive in accordance with paragraph 7 of Schedule 13 (evaluation of civil explosives presenting a risk); and
- (b) eliminate the risks posed by a civil explosive which the distributor has made available on the market.

IMPORTERS AND DISTRIBUTORS

Storage and transport

60. Each importer and distributor must ensure that, while a civil explosive is under their responsibility, its storage or transport conditions do not jeopardise its conformity with the essential safety requirements.

Cases in which obligations of manufacturers apply to importers and distributors

61. An economic operator who would, but for this regulation, be considered an importer or distributor (in either case referred to as “A”), is to be considered a manufacturer for the purposes of this Part and is subject to the obligations of a manufacturer under this Part, where A —

- (a) places a civil explosive on the market under A’s own name or trademark; or
- (b) modifies a civil explosive already placed on the market in such a way that it may affect whether the civil explosive is in conformity with this Part.

ALL ECONOMIC OPERATORS

Translation of declaration of conformity

62.—(1) Before making a civil explosive available on the market, an economic operator must ensure that the EU declaration of conformity is prepared in, or translated into, the language required by the member State in which it is to be made available on the market.

(2) Where the civil explosive is to be made available on the market in the United Kingdom, the language required is English.

Identification of economic operators

63.—(1) For civil explosives to which the requirements of regulations 33, 34 and 36 do not apply, an economic operator (“E”) must, on request, identify the following to the market surveillance authority—

- (a) any economic operator who has supplied E with a civil explosive; and
 - (b) any economic operator to whom E has supplied a civil explosive.
- (2) E must be able to present the information referred to —
- (a) in paragraph (1)(a), for a period of 10 years beginning on the day on which E was supplied with the civil explosive;
 - (b) in paragraph (1)(b), for a period of 10 years beginning on the day on which E supplied the civil explosive.

Prohibition on improper use of CE marking

64.—(1) An economic operator must not affix the CE marking to a civil explosive unless—

- (a) that economic operator is the manufacturer or an authorised representative mandated in writing by the manufacturer to do so; and

- (b) the conformity of the civil explosive with the essential safety requirements has been demonstrated by a relevant conformity assessment procedure.
- (2) An economic operator must not affix a marking to a civil explosive —
 - (a) which is not the CE marking; but
 - (b) which purports to attest that the civil explosive satisfies the essential safety requirements.
- (3) An economic operator must not affix to a civil explosive a marking, sign or inscription which is likely to mislead any other person as to the meaning or form of the CE marking.
- (4) An economic operator must not affix to a civil explosive any other marking if the visibility, legibility and meaning of the CE marking would be impaired as a result.

SUB-PART B: CONFORMITY ASSESSMENT

Presumption of conformity

65. A civil explosive which is in conformity with a harmonised standard, or part of such a standard, the reference to which has been published in the Official Journal of the European Union is to be presumed to be in conformity with the essential safety requirements covered by that standard or that part of that standard.

- (2) The presumption in paragraph (1) is rebuttable.

Conformity assessment procedures

66. For the assessment of conformity of a civil explosive, the manufacturer must follow one of the following procedures referred to in Annex III to the Directive as amended from time to time —

- (a) EU-type examination (Module B), and, at the choice of the manufacturer, one of the following procedures —
 - (i) conformity to type based on internal production control plus supervised product checks at random intervals (Module C2);
 - (ii) conformity to type based on quality assurance of the production process (Module D);
 - (iii) conformity to type based on product quality assurance (Module E);
 - (iv) conformity to type based on product verification (Module F);
- (b) conformity based on unit verification (Module G).

EU declaration of conformity

67. The EU declaration of conformity for a civil explosive must —

- (a) state that the fulfilment of the essential safety requirements has been demonstrated in respect of the civil explosive;
- (b) contain the elements specified in Annex III to the Directive, as amended from time to time, for the relevant conformity assessment procedure followed in respect of the civil explosive; and
- (c) have the model structure set out in Annex IV to the Directive, as amended from time to time.

CE marking

68.—(1) The CE marking must be affixed visibly, legibly and indelibly to the civil explosive.

(2) Where it is not possible or warranted, on account of the nature of the civil explosive, to affix the CE marking in accordance with paragraph (1), the CE marking must be affixed to —

- (a) the packaging; and
- (b) the accompanying documents.

(3) The CE marking must be followed by the identification number of the notified body which carried out the relevant conformity assessment procedure for the civil explosive, where that body is involved in the production control phase.

(4) The identification number of the notified body must be affixed—

- (a) by the notified body itself; or
- (b) under the instructions of the notified body, by the manufacturer or the manufacturer's authorised representative.

(5) In the case of explosives —

- (a) manufactured for the manufacturer's own use;
- (b) transported and delivered unpackaged or in a mobile explosives manufacturing unit for their direct unloading into the blast-hole; or
- (c) manufactured at the blasting site which are loaded immediately after being produced,

the CE marking must be affixed to the accompanying documents.

SUB-PART C: NOTIFICATION OF CONFORMITY ASSESSMENT BODIES

Notified bodies

69.—(1) ”

8.—(1) In Part 14 —

- (a) re-number regulations 43 and 44 as, respectively, regulations [] and [] [insert whatever the numbers are after Part 13B]; and
- (b) for regulation 45 and its chapeau, substitute —

“Enforcement in relation to regulation 8 and Part 13, market surveillance and ancillary matters

45. Schedule 12, which makes provision as to —

- (a) enforcement in relation to regulation 8 and Part 13;
- (b) market surveillance in relation to that Part; and
- (c) appeals;

has effect.”.

9.—(1) In Part 15 —

- (a) re-number regulation 46 as regulation [];
- (b) in paragraph (4) of that regulation 46, for “and 38 to 42” substitute “, 38 and Part 13”;
- (c) re-number regulations 47, 48 and 49 as, respectively, regulations [], [] and [].

10. In Schedule 9 (essential safety requirements) —

- (a) in the bracketed passage after the Schedule heading, omit “Civil Uses”;
 - (b) in paragraph 4(k), omit “in the official language or languages of the recipient EEA state”;
- and

- (c) in paragraph (i) of paragraph 5(b), for “and other fuses” substitute “, other fuses and shock tubes”.

11. Schedule 10 (conformity marking) is omitted.

12. In Schedule 11, in paragraph 15—

- (a) in sub-paragraph (1), for “is the enforcing authority for”, substitute “must enforce”; and
- (b) in sub-paragraph (2), for “is the enforcing authority for”, substitute “must enforce”.

13.—(1) Schedule 12 is amended as follows.

(2) For the heading and paragraphs 1 to 2, substitute —

**“ENFORCEMENT POWERS IN RESPECT OF TRANSFERS,
AND THE PLACING ON THE MARKET, OF CIVIL
EXPLOSIVES, MARKET SURVEILLANCE AND ANCILLARY
MATTERS**

PART 1

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

Enforcement and designation of market surveillance authority

- 1.** This Part applies in relation to the enforcement of —
 - (a) regulation 8 by the Executive or the ONR; and
 - (b) Part 13 by the Executive.
 - 2.** In its enforcement of Part 13, the Executive must enforce RAMS in respect of its application to civil explosives.
 - 3.** In Great Britain, the Executive is designated as the market surveillance authority in respect of civil explosives.
 - 4.** Subject to paragraph 6, and to the extent that they would not otherwise do so, the provisions of the 1974 Act referred to in paragraph 5 apply to regulation 8 and Part 13 as if regulation 8 and Part 13 were health and safety regulations for the purposes of that Act.”.
- (3) Re-number paragraph 2 as paragraph 5 and, in that paragraph—
- (a) for “and 42” substitute “42 and 46”; and
 - (b) for the reference to “paragraph 3” in both places it appears, substitute “paragraph 6”.
- (4) Re-number paragraph 3 as paragraph 6, and in that paragraph —
- (a) for the reference to “paragraph 2”, substitute “paragraph 5”;
 - (b) in sub-paragraph (g) —
 - (i) in paragraph (i)(bb), omit “and” at the end; and
 - (ii) after paragraph (i)(bb), insert —

“(cc) in paragraph (g), the reference to “notice” included a reference to a notice under Part 2 of Schedule 13, other than a compliance notice; and
”;
 - (iii) in paragraph (ii), omit “and”;
 - (c) at the end of sub-paragraph (h), add “; and”;
 - (d) after sub-paragraph (h), insert—

“(i) in section 46, any reference to sending a notice by post included a reference to sending a notice by electronic means.”.

(5) For paragraphs 4 to 9, substitute —

“Evaluation of civil explosives presenting a risk

7.—(1) Where the Executive has sufficient reason to believe that a civil explosive presents a risk, the Executive must carry out an evaluation in relation to the civil explosive covering the relevant requirements of Part 13 applying in respect of that civil explosive.

Enforcement action in respect of civil explosives which are not in conformity and which present a risk

8.—(1) Where, in the course of the evaluation referred to in paragraph 7, the Executive finds that the civil explosive is not in conformity with Part 13, it must, without delay, require a relevant economic operator to—

- (a) take appropriate corrective actions to bring the civil explosive into conformity with those requirements within a prescribed period;
- (b) withdraw the civil explosive within a prescribed period; or
- (c) recall the civil explosive within a prescribed period.

(2) The Executive must inform the notified body which carried out the conformity assessment procedure in respect of the civil explosive of—

- (a) the respect in which the civil explosive is not in conformity with Part 13; and
- (b) the actions which the Executive is requiring the relevant economic operator to take.

(3) Where the Executive considers that the lack of conformity referred to in sub-paragraph (1) is not restricted to the United Kingdom, it must notify the Secretary of State of —

- (a) the results of the evaluation; and
- (b) the actions which it has required the economic operator to take.

(4) Where the Secretary of State receives a notice under sub-paragraph (3), or otherwise considers that the lack of conformity referred to in paragraph (1) is not restricted to the United Kingdom, the Secretary of State must inform the European Commission and the other member States of—

- (a) the results of the evaluation; and
- (b) the actions which the Executive has required the economic operator to take.

(5) Where the relevant economic operator does not take adequate corrective action within the prescribed period, the Executive must take appropriate measures to—

- (a) prohibit or restrict the civil explosive being made available on the market in the United Kingdom;
- (b) withdraw the civil explosive from the United Kingdom market; or
- (c) recall the civil explosive.

(6) Where the Executive takes measures under sub-paragraph (5), it must notify the Secretary of State of those measures without delay.

(7) Where the Secretary of State receives a notice under sub-paragraph (6), the Secretary of State must notify the European Commission and the other member States of those measures without delay.

(8) The notices in sub-paragraphs (6) and (7) must include details about the civil explosive and, in particular—

- (a) the data necessary for the identification of the civil explosive which is not in conformity with Part 13;
 - (b) the origin of the civil explosive;
 - (c) the nature of the lack of conformity alleged and the risk involved;
 - (d) the nature and duration of the measures taken;
 - (e) the arguments put forward by the relevant economic operator; and
 - (f) whether the lack of conformity is due to either of the following—
 - (i) failure of the civil explosive to meet requirements relating to a risk;
 - (ii) shortcomings in the harmonised standards referred to in regulation 65 (presumption of conformity) conferring a presumption of conformity.
- (9) In this paragraph, “prescribed period” means a period which is—
- (a) prescribed by the Executive; and
 - (b) reasonable and commensurate with the nature of the risk presented by the civil explosive.

EU safeguarding procedure

9.—(1) Where another member State has initiated the procedure under Article 42 of the Directive (as amended from time to time), the Executive must, without delay, inform the Secretary of State of—

- (a) any measures taken by the Executive in respect of the civil explosive; and
- (b) any additional information which the Executive has at its disposal relating to the lack of conformity of the civil explosive.

(2) Where another member State has initiated the procedure under Article 42 of the Directive, as amended from time to time, the Secretary of State must, without delay, inform the European Commission and the other member States of—

- (a) any measures taken by the Executive in respect of the civil explosive;
- (b) any additional information which the Executive has at its disposal relating to the lack of conformity of the civil explosive; and
- (c) any objections that the Secretary of State may have to the measure taken by the member State initiating the procedure.

(3) Where a measure taken by another member State in respect of a civil explosive is considered justified under Article 42(7) of the Directive, as amended from time to time, the Executive must ensure that appropriate measures, such as withdrawal, are taken in respect of the civil explosive without delay.

(4) Where a measure taken by another member State in respect of a civil explosive is considered justified by the European Commission under Article 43(1) of the Directive, as amended from time to time, the Executive must take the necessary measures to ensure that the civil explosive is withdrawn from the United Kingdom market.

(5) Where the Executive has taken action under sub-paragraph (3) or (4), it must inform the Secretary of State.

(6) Where the Secretary of State receives a notice under sub-paragraph (5), the Secretary of State must inform the European Commission of the action taken.

(7) If a measure taken by the Executive pursuant to paragraph 7 is considered unjustified by the European Commission under Article 43(1) of the Directive, as amended from time to time, the Executive must withdraw that measure.

Enforcement action in respect of civil explosives which are in conformity, but present a risk

10.—(1) Where, having carried out an evaluation under regulation 56, the Executive finds that although a civil explosive is in conformity with Part 13, it presents a risk, the Executive must require a relevant economic operator to take appropriate measures to—

- (a) ensure that the civil explosive concerned, when placed on the market, no longer presents a risk;
- (b) withdraw the civil explosive within a prescribed period; or
- (c) recall the civil explosive within a prescribed period.

(2) Where the Executive takes measures under sub-paragraph (1), it must notify the Secretary of State immediately.

(3) Where the Secretary of State receives a notice under sub-paragraph (2), the Secretary of State must notify the European Commission and the other member States immediately.

(4) The notices referred to in sub-paragraphs (2) and (3) must include details about the civil explosive and, in particular—

- (a) the data necessary for the identification of the civil explosive concerned;
- (b) the origin and the supply chain of the civil explosive;
- (c) the nature of the risk involved; and
- (d) the nature and duration of the measures taken by the Executive.

(5) In this regulation, “prescribed period” means a period which is—

- (a) prescribed by the Executive; and
- (b) reasonable and commensurate with the nature of the risk presented by the civil explosive.

Enforcement action in respect of formal non-compliance

11.—(1) Where the Executive makes one of the following findings relating to a civil explosive, it must require a relevant economic operator to put an end to the non-compliance concerned within a specified period—

- (a) the CE marking—
 - (i) has not been affixed; or
 - (ii) has been affixed otherwise than in accordance with regulations 64 (prohibition on improper use of CE marking) and 68 (CE marking);
- (b) where a notified body is involved in the production control phase for the civil explosive, the identification number of the notified body—
 - (i) has not been affixed; or
 - (ii) has been affixed otherwise than in accordance with regulation 68;
- (c) the EU declaration of conformity—
 - (i) has not been drawn up; or
 - (ii) has been drawn up otherwise than in accordance with regulations 41 (EU declaration of conformity and CE marking) and 67 (EU declaration of conformity);
- (d) the technical documentation is either not available or not complete;
- (e) the following information that is required in respect of the civil explosive is absent, false or incomplete—
 - (i) the information specified in regulation 44 (traceability of civil explosives to which regulations 33, 34 and 36 do not apply);

- (ii) the information specified in regulation 50 (information identifying importer);
or
 - (f) any other administrative requirement imposed on the manufacturer or importer under Part 13 has not been fulfilled.
- (2) Until the specified period has elapsed, the Executive must not commence proceedings under these Regulations, or take any other enforcement action under these Regulations, against the relevant economic operator in respect of the non-compliance concerned.
- (3) Where the non-compliance referred to in sub-paragraph (1) persists, the Executive must take appropriate measures to—
- (a) restrict or prohibit the civil explosive being made available on the market;
 - (b) ensure that the civil explosive is withdrawn; or
 - (c) ensure that the civil explosive is recalled.
- (4) This paragraph does not apply where a civil explosive presents a risk.

Restrictive measures

- 12.**—(1) When enforcing Part 13, the Executive must comply with the requirements of Article 21 of RAMS, as amended from time to time, in relation to any measure to—
- (a) prohibit or restrict a civil explosive being made available on the market;
 - (b) withdraw a civil explosive; or
 - (c) recall a civil explosive.

PART 2

COMPLIANCE, WITHDRAWAL AND RECALL NOTICES

Compliance, withdrawal and recall notices

13. In addition to the powers available to the Executive under Part 1 of this Schedule, the Executive may use the powers set out in this Part.

Compliance notice

14.—(1) The Executive may serve a compliance notice on a relevant economic operator in respect of a civil explosive if the Executive has reasonable grounds for believing that there is non-compliance.

- (2) A compliance notice must—
- (a) require the relevant economic operator on which it is served to—
 - (i) end the non-compliance within such period as may be specified in the notice;
or
 - (ii) provide evidence, within such period as may be specified in the notice, demonstrating to the satisfaction of the Executive that the non-compliance has not in fact occurred; and
 - (b) warn the economic operator that, if the non-compliance persists or if satisfactory evidence has not been produced under sub-paragraph (2)(a) within the period specified in the notice, further action may be taken in respect of the civil explosive or any civil explosive of the same type made available on the market by that relevant economic operator.
- (3) A compliance notice may include directions as to the measures to be taken by the economic operator to secure compliance, including different ways of securing compliance.

(4) Subject to sub-paragraph (5), the Executive may revoke or vary a compliance notice by serving a notification on the economic operator.

(5) The Executive may not vary a compliance notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

Withdrawal notice

15.—(1) The Executive may serve a withdrawal notice on a relevant economic operator in respect of a civil explosive if the Executive has reasonable grounds for believing that—

- (a) the civil explosive article has been made available on the market; and
- (b) there is non-compliance.

(2) A withdrawal notice must prohibit the relevant economic operator from making the civil explosive available on the market without the consent of the Executive.

(3) A withdrawal notice may require the relevant economic operator to take action to alert end-users to any risk presented by the civil explosive.

(4) A withdrawal notice may require the relevant economic operator to keep the Executive informed of the whereabouts of any civil explosive referred to in the notice.

(5) A consent given by the Executive pursuant to a withdrawal notice, may impose such conditions on the making available on the market as the Executive considers appropriate.

(6) Subject to sub-paragraph (7), the Executive may revoke or vary a withdrawal notice by serving a notification on the economic operator.

(7) The Executive may not vary a withdrawal notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

Recall notice

16.—(1) The Executive may serve a recall notice on a relevant economic operator in respect of a civil explosive if the Executive has reasonable grounds for believing that—

- (a) the civil explosive has been made available to end-users; and
- (b) there is non-compliance.

(2) A recall notice must require the relevant economic operator to use reasonable endeavours to organise the return of the civil explosive from end-users to the relevant economic operator or another person specified in the notice.

(3) A recall notice may—

- (a) require the recall to be effected in accordance with a code of practice;
- (b) require the relevant economic operator to—
 - (i) contact end-users in order to inform them of the recall, to the extent that it is practicable to do so;
 - (ii) publish a notice in such form and such manner as is likely to bring to the attention of end-users any risk the civil explosive poses and the fact of the recall; or
 - (iii) make arrangements for the collection or return of the civil explosive from end-users or its disposal; or
- (c) impose such additional requirements on the relevant economic operator as are reasonable and practicable with a view to achieving the return of the civil explosive.

(4) In determining what requirements to include in a recall notice, the Executive must take into consideration the need to encourage distributors and end-users to contribute to its implementation.

(5) A recall notice may only be issued by the Executive where—

- (a) other action which it may require under or by virtue of Part 13 or this Schedule would not suffice to address the non-compliance;
- (b) the action being undertaken by the relevant economic operator is unsatisfactory or insufficient to address the non-compliance;
- (c) the Executive has given not less than 10 days' notice to the relevant economic operator of its intention to serve such a notice; and
- (d) the Executive has taken account of any advice obtained under sub-paragraph (6).

(6) A relevant economic operator which has received notice from the Executive of an intention to serve a recall notice may at any time prior to the service of the recall notice require the Executive to seek the advice of such person as the Institute determines on the questions of—

- (a) whether there is non-compliance; and
- (b) whether the issue of a recall notice would be proportionate.

(7) Sub-paragraphs (5)(b), (c) and (d) do not apply in the case of a civil explosive presenting a serious risk requiring, in the view of the Executive, urgent action.

(8) Where a relevant economic operator requires the Executive to seek advice under sub-paragraph (6), that relevant economic operator is to be responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the Executive.

(9) In this regulation, “Institute” means the charitable organisation with the registered number 803725 and known as the Chartered Institute of Arbitrators.

(10) A recall notice served by the Executive may require the relevant economic operator to keep the Executive informed of the whereabouts of a civil explosive to which the recall notice relates, so far as the relevant economic operator is able to do so.

(11) Subject to sub-paragraph (12), the Executive may revoke or vary a recall notice by serving a notification on the economic operator.

(12) The Executive may not vary a recall notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

Interpretation

19. In this Schedule, “non-compliance” means that a civil explosive —

- (a) presents a risk; or
- (b) is not in conformity with Part 13 or RAMS in its application to civil explosives.

PART 3

ANCILLARY MATTERS

Appeals against notices

17.—(1) An application for an order to vary or set aside the terms of a notice referred to in Part 2 this Schedule may be made—

- (a) by the economic operator on whom the notice has been served; and
- (b) in the case of a notice other than a recall notice, by a person having an interest in the civil explosive in respect of which the notice has been served.

(2) An application must be made before the end of the period of 21 days beginning with the day on which the notice was served.

(3) The appropriate court may only make an order setting aside a notice referred to in Part 2 of this Schedule if satisfied that the civil explosive to which that notice relates is in conformity with Part 13.

(4) On an application to vary the terms of a notice referred to in Part 2 of this Schedule, the appropriate court may vary the terms of the notice as it considers appropriate.

(5) In this paragraph, the “appropriate court” is to be determined in accordance with paragraph 18 (appropriate court for appeals against notices).

Appropriate court for appeals against notices

18.—(1) In England and Wales, the appropriate court for the purposes of paragraph 17 is—

- (a) the court in which proceedings have been brought for an offence in relation to the civil explosive—
 - (i) involving a contravention of any provision of Part 13; or
 - (ii) involving a contravention of any requirement or prohibition of a notice, other than a compliance notice, served under or by virtue of paragraphs 4 to 6 of Part 1 of this Schedule or otherwise under the 1974 Act for the purpose of enforcing Part 13;
- (b) an employment tribunal seized of appeal proceedings against a notice which relates to the civil explosive and which has been served under or by virtue of paragraphs 4 to 6 of Part 1 of this Schedule or otherwise under the 1974 Act for the purpose of enforcing Part 13; or
- (c) in any other case, a magistrates’ court.

(2) In Scotland, the appropriate court for the purposes of regulation 70 is—

- (a) the sheriff of a sheriff court district in which a notice has been served on an economic operator under or by virtue of paragraphs 4 to 6 of Part 1 of this Schedule or otherwise under the 1974 Act for the purpose of enforcing Part 13;
- (b) an employment tribunal seized of appeal proceedings against a notice which relates to the civil explosive and which has been served under or by virtue of paragraphs 4 to 6 of Part 1 of this Schedule or otherwise under the 1974 Act for the purpose of enforcing Part 13.

(3) A person aggrieved by an order made by a magistrates’ court in England and Wales pursuant to an application under paragraph 17, or by a decision of such a court not to make such an order, may appeal against that order or decision to the Crown Court.”.

Consequential amendments

14.—(1)

Signatory text

Address
Date

Name
Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

1.