

SCHEDULE 1

Regulation 13

THE SCHEDULE TO BE SUBSTITUTED FOR SCHEDULE
12 TO THE EXPLOSIVES REGULATIONS 2014

“SCHEDULE 12

Regulation 80

ENFORCEMENT POWERS IN RESPECT OF TRANSFERS, AND THE PLACING ON THE MARKET, OF CIVIL EXPLOSIVES, MARKET SURVEILLANCE, COMPLIANCE, WITHDRAWAL AND RECALL NOTICES, DEFENCE OF DUE DILIGENCE, APPEALS AGAINST NOTICES AND FURTHER PROVISIONS IN RELATION TO ENFORCEMENT

PART 1

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

Enforcement powers, market surveillance and designation of market surveillance authority

1. This Part applies in relation to—
 - (a) the enforcement of regulation 8 by the Executive or the ONR(1); and
 - (b) the enforcement of Part 13, and market surveillance in relation to that Part by the Executive.
2. In Great Britain, the Executive is designated as the market surveillance authority for the purposes of the Directive and RAMS in respect of civil explosives.
3. In its enforcement of Part 13, the Executive must enforce RAMS in respect of its application to civil explosives.
4. When enforcing Part 13, the enforcing authority must exercise its powers in a manner which is consistent with—
 - (a) paragraph 8 (evaluation of civil explosives presenting a risk);
 - (b) paragraph 9 (enforcement action in respect of civil explosives which are not in conformity and which present a risk);
 - (c) paragraph 10 (EU safeguard procedure);
 - (d) paragraph 11 (enforcement action in respect of civil explosives which are in conformity, but present a risk);
 - (e) paragraph 12 (enforcement action in respect of formal non-compliance); and
 - (f) paragraph 13 (restrictive measures).
5. Subject to paragraph 7, and to the extent that they would not otherwise do so in the case of regulation 8, the provisions of the 1974 Act(2) referred to in paragraph 6 apply to regulation 8 and Part 13 for the purposes of their enforcement as if that regulation and that Part were health and safety regulations for the purposes of that Act.

(1) The “ONR” is defined in regulation 2(1) of the Explosives Regulations 2014 (S.I. 2014/1638 as meaning the Office for Nuclear Regulation. The ONR is established by section 77 of the Energy Act 2013 (c. 32).

(2) Regulation 2(1) of the Explosives Regulations 2014 (S.I. 2014/1638) defines “the 1974 Act” as the Health and Safety at Work etc. Act 1974 (c. 37).

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6. In relation to the enforcement of the provisions referred to in paragraph 1—
- (a) sections 19 to 28, 33 to 35, 38, 39, 41 42 and 46 of, and Schedule 3A to, the 1974 Act apply as provided in paragraph 7; and
 - (b) sections 36(1) and (2) and 37 of the 1974 Act apply in relation to offences under section 33 of the 1974 Act as applied by paragraph (a) and the modifications specified in paragraph 7.

7.—(1) For the purposes of the enforcement of the provisions referred to in paragraph 1, and in respect of any related proceedings for a contravention of any of those provisions, the provisions of the 1974 Act mentioned in paragraph 6 apply as if—

- (a) any reference to the relevant statutory provisions in those provisions were a reference to—
 - (i) those provisions as modified by this paragraph; and
 - (ii) regulation 8 and Part 13 of these Regulations;
- (b) references to “risk” were references to “risk” within the meaning of regulation 2(12);
- (c) in section 19—
 - (i) in subsection (1)—
 - (aa) “Every enforcing authority” were a reference to the Executive or the ONR, as the case may be; and
 - (ab) “within its field of responsibility” were omitted;
 - (ii) in subsection (2), paragraph (b) were omitted; and
 - (iii) in subsection (3)—
 - (aa) “the enforcing authority” were a reference to the Executive or the ONR, as the case may be; and
 - (ab) “which appointed him” were omitted;
- (d) in section 20—
 - (i) in subsection (1), “within the field of responsibility of the enforcing authority which appointed him” were omitted;
 - (ii) in subsection 2(c)(i), “his (the inspector’s) enforcing authority” were a reference to the Executive or the ONR, as the case may be;
 - (iii) in subsection 2(h), the reference to any article or substance which appears to an inspector to have caused or to be likely to cause danger to health or safety included a reference to any civil explosive item which an inspector has reasonable cause to believe will contravene the relevant statutory provisions, present a risk or be unlawfully acquired, used or dealt in;
 - (iv) in subsection (2)(i), the reference to “the preceding paragraph” included a reference to subsection (2)(h) as modified by this paragraph;
 - (v) subsection (3) were omitted;
 - (vi) in subsections (4) and (5), the reference to subsection (2)(h) included a reference to subsection (2)(h) as modified by this paragraph; and
 - (vii) in subsection (6), the reference to subsection (2)(i) included a reference to subsection (2)(i) as modified by this paragraph;
- (e) in section 21—
 - (i) before paragraph (a), there were inserted—
 - “(za) is making available on the market a civil explosive which presents a risk;”;

- (ii) after “specifying the”, there was inserted “risk, or”; and
- (iii) after “requiring that person to”, there were inserted “address the risk or”;
- (f) in section 22, as well as permitting an inspector to serve a prohibition notice in the circumstances specified in subsection (2), it permitted an inspector to serve a prohibition notice on a person if, as regards any activities to which the section applies, the inspector is of the opinion that, as carried on or likely to be carried on by or under the control of that person, the activities involve or, as the case may be, will involve a risk or a contravention of any of the relevant statutory provisions (as referred to in this paragraph);
- (g) in section 23, subsections (3), (4) and (6) were omitted;
- (h) in section 25A, in subsection (1)—
 - (aa) “an enforcing authority” were a reference to the Executive or the ONR, as the case may be; and
 - (ab) before “inspector” where it first appears, there were inserted “an”;
- (i) in section 26—
 - (aa) “the enforcing authority” were a reference to the Executive or the ONR, as the case may be; and
 - (ab) “which appointed him” were omitted;
- (j) in section 27, in subsection (1)—
 - (i) paragraph (b) were omitted; and
 - (ii) “or, as the case may be, to the enforcing authority in question” were omitted;
- (k) in section 27A, in subsection (2)—
 - (i) for “an enforcing authority” there were substituted “the Executive”; and
 - (ii) the words from “, other than the Office for Nuclear Regulation” to the end were omitted;
- (l) in section 28—
 - (i) in subsection (1)(a)—
 - (aa) “, other than the Office for Nuclear Regulation (or an inspector appointed by it),” were omitted; and
 - (bb) “, by virtue of section 43A(6) below” were omitted;
 - (ii) in subsection (3)(a), “or any enforcing authority” were omitted;
 - (iii) in subsection (4)—
 - (aa) “or an enforcing authority” were omitted; and
 - (bb) “, (including in the case of an enforcing authority, any inspector appointed by it)” were omitted;
 - (iv) in subsection (5)(a), “or the purposes of the enforcing authority in question in connection with the relevant statutory provisions” were omitted;
 - (v) in subsection (7)—
 - (aa) “14(4)(a) or” were omitted; and
 - (bb) for paragraph (b), there were substituted—
 - “(b) for the purposes of any legal proceedings or for the purposes of a report of any such proceedings;”;
 - (vi) subsection (9B) were omitted;

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- (m) in section 33—
 - (i) in subsection (1), paragraphs (a), (b) and (d) were omitted; and
 - (ii) subsection (2) has effect subject to a subsection (2A) as follows—
 - “(2) The maximum penalty for an offence under this section involving a contravention of Part 13 of the Explosives Regulations 2014 (S.I. 2014/1638) is—
 - (a) on summary conviction—
 - (i) in England and Wales, imprisonment for a term not exceeding three months or a fine, or both;
 - (ii) in Scotland, imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both; and
 - (b) on conviction on indictment, imprisonment for a term not exceeding two years, or a fine, or both.”;
 - (iii) subsection (3) were omitted;
- (n) in section 34—
 - (i) in subsection (1)—
 - (aa) paragraphs (a) and (b) were omitted;
 - (bb) for the words from “and it appears” to the end, there were substituted—
 - “and it appears from the investigation or, in a case falling within paragraph (d), from the proceedings at the inquiry, that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject-matter of the investigation or inquiry, summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within three months of the conclusion of the investigation or inquiry.”; and
 - (ii) in subsection (3)—
 - (aa) the reference to six months were a reference to twelve months; and
 - (ab) “a responsible enforcing authority”, “an enforcing authority” and “the enforcing authority” were each, respectively, a reference to the Executive or the ONR, as the case may be;
 - (iii) in subsection (4)—
 - (aa) the reference to “the designer, manufacturer, importer or supplier of any thing” were a reference to an economic operator within the meaning of regulation 2(1); and
 - (bb) “and in that subsection” to the end were omitted; and
 - (iv) subsection (6) were omitted;
- (o) in section 35, “any enforcing authority” were a reference to the Executive or the ONR, as the case may be;
- (p) in section 39—
 - (aa) “the enforcing authority” were a reference to the Executive or the ONR, as the case may be; and
 - (ab) “which appointed him” were omitted; and
- (q) in section 42, the reference in subsection (3A) to “an explosive article or substance” were a reference to a civil explosive article or substance within the meaning of regulation 33(8).”.

(2) The provisions of the 1974 Act referred to in paragraph 6, except sections 19 and 20, do not apply in relation to the performance of the functions of the Secretary of State under Sub-Part C of Part 13 or the functions under that Part of a notified body which is a public body performing its functions on behalf of the Crown.

Evaluation of civil explosives presenting a risk

8. 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

9.—(1) Where, in the course of the evaluation referred to in paragraph 8, 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), the Secretary of State must inform the European Commission and the other EEA 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 EEA 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—

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- (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.
- (10) For the purposes of sub-paragraph (5), “take appropriate measures” includes the Executive making arrangements with the competent national authority for Northern Ireland as to measures referred to in that sub-paragraph being taken there by that authority.

EU safeguarding procedure

- 10.**—(1) Where another EEA 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 EEA 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 EEA 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 EEA state initiating the procedure.
- (3) Where a measure taken by another EEA 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 EEA 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 9 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.

(8) For the purposes of sub-paragraph (4), “take the necessary measures” includes the Executive making arrangements with the competent national authority for Northern Ireland as to measures referred to in that sub-paragraph being taken there.

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

11.—(1) Where, having carried out an evaluation under paragraph 8, 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 EEA 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 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.

Enforcement action in respect of formal non-compliance

12.—(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

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- (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 in relation to Part 13 of these Regulations, or take any other enforcement action in relation to that Part, 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

13. 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

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

Compliance notice

15.—(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 paragraph (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

- 16.**—(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 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

- 17.**—(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—

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- (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 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.

Compliance with a withdrawal or recall notice

18.—(1) A person must not contravene any requirement or prohibition imposed by a withdrawal or recall notice served pursuant to this Part (including any such notice as varied by the Executive or on appeal).

(2) The provisions of section 33(1)(c) of the 1974 Act apply to sub-paragraph (1) for the purposes of its enforcement as if it were health and safety regulations for the purposes of that Act.

(3) The maximum penalty for an offence under section 33(1)(c) of the 1974 Act, as applied by sub-paragraph (2), is determined in accordance with sub-paragraph (4).

(4) The penalty referred to in sub-paragraph (3) is—

(a) on summary conviction—

(i) in England and Wales, imprisonment for a term not exceeding three months or a fine, or both;

(ii) in Scotland, imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both; and

(b) on conviction on indictment, imprisonment for a term not exceeding two years, or a fine, or both.

Interpretation

19. In this Part, “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

DEFENCE OF DUE DILIGENCE, APPEALS AGAINST NOTICES AND FURTHER PROVISIONS IN RELATION TO ENFORCEMENT

Defence of due diligence

20.—(1) Subject to paragraphs (2) and (4), in proceedings for an offence under section 33(1)(c) of the 1974 Act involving a contravention of Part 13 or paragraph 18, it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—

(a) served a notice in accordance with paragraph (3); or

(b) obtained the leave of the court.

(3) The notice must—

(a) give any information in P’s possession which identifies or assists in identifying the person who—

(i) committed the act or default; or

(ii) supplied the information on which P relied; and

(b) be served on the person bringing the proceedings not less than 7 clear days before—

(i) in England and Wales, the hearing of the proceedings;

(ii) in Scotland, the trial diet.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied upon the information, having regard in particular—

(a) to the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and

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(b) to whether P had any reason to disbelieve the information.

(5) In this regulation, “third party allegation” means an allegation that the commission of the offence was due—

- (a) to the act or default of another person; or
- (b) to reliance on information supplied by another person.

Service of a compliance, withdrawal or recall notice or a defence of due diligence notice

21.—(1) Section 46 of the 1974 Act applies to the service of—

- (a) a compliance, withdrawal or recall notice served by the Executive as it applies to notices served under that Act on a person other than an inspector appointed under section 19 of that Act; and
- (b) a notice served by a person under paragraph 20 as it applies to notices served under that Act on an inspector appointed under section 19 of that Act.

Action by enforcing authority

22.—(1) The Executive may itself take action which an economic operator could have been required to take by a notice served under or by virtue of Parts 1 or 2 of this Schedule where the conditions for serving such a notice are met and either—

- (a) the Executive has been unable to identify any economic operator on whom to serve such a notice; or
- (b) the economic operator on whom such a notice has been served has failed to comply with it.

(2) If the Executive has taken action as a result of the condition in paragraph (1)(b) being met, the Executive may recover from the economic operator, as a civil debt, any costs or expenses reasonably incurred by the Executive in taking the action.

(3) A civil debt recoverable under paragraph (2) may be recovered summarily in England and Wales by way of a complaint pursuant to section 58 of the Magistrates’ Courts Act 1980⁽³⁾.

Appeals against notices

23.—(1) An application for an order to vary or set aside the terms of a notice served under Part 2 of this Schedule may be made to the appropriate court—

- (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 served under Part 2 of this Schedule if satisfied—

- (a) that the civil explosive to which that notice relates is in conformity with Part 13 and does not present a risk; or
- (b) that the enforcing authority failed to comply with paragraph 4 when serving the notice.

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

(3) 1980 c. 43; subsection (2)(a) of section 58 was repealed by the Crime and Courts Act 2013 (c. 22), Schedule 10, Part 2, paragraphs 39 and 40.

(5) In this paragraph, the “appropriate court” is to be determined in accordance with paragraph 24 (appropriate court for appeals against notices).

Appropriate court for appeals against notices

24.—(1) In England and Wales, the appropriate court for the purposes of paragraph 23 is—

- (a) the court in which proceedings have been brought for an offence in relation to the civil explosive under section 33 of the 1974 Act;
- (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 Part 1 of this Schedule; or
- (c) in any other case, a magistrates’ court.

(2) In Scotland, the appropriate court for the purposes of paragraph 23 is—

- (a) the sheriff of a sheriffdom in which the person making the appeal resides or has a registered or principal office; or
- (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 Part 1 of this Schedule.

(3) A person aggrieved by an order made by a magistrates’ court in England and Wales pursuant to an application under paragraph 23, 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.”

SCHEDULE 2

Regulation 14

THE SCHEDULES TO BE INSERTED AFTER SCHEDULE 14 TO THE EXPLOSIVES REGULATIONS 2014

“SCHEDULE 15

Regulation 2(1)

NOTIFIED BODY REQUIREMENTS

1. A conformity assessment body must be established in the United Kingdom and have legal personality.

2. A conformity assessment body must be a third party body independent of the organisation or the civil explosive it assesses.

3.—(1) A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities must not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of civil explosives, nor the representative of any of those parties.

(2) Sub-paragraph (1) does not preclude the use of civil explosives that are necessary for the operations of the conformity assessment body or the use of civil explosives for personal purposes.

4. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities must not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of civil explosives, or represent the parties engaged in those activities.

5. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities must not engage in activity that may conflict with

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their independence of judgement or integrity in relation to conformity assessment activities for which they are notified (including consultancy services).

6. A conformity assessment body must ensure that the activities of its subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.

7. A conformity assessment body and its personnel must carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and must be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in those activities.

8. A conformity assessment body must be capable of carrying out all of the conformity assessment activities in relation to which it has been, or is to be, notified, whether those activities are carried out by the conformity assessment body itself or on its behalf and under its responsibility.

9. A conformity assessment body must have at its disposal—

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment activities;
- (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency and the ability of reproduction of those procedures, and have appropriate policies and procedures in place that distinguish between tasks it carries out as a notified body and other activities;
- (c) procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the process.

10. A conformity assessment body must have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and must have access to the necessary equipment or facilities.

11. The personnel responsible for carrying out conformity assessment activities must have—

- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
- (b) satisfactory knowledge of the requirements of the assessments which the personnel carry out and adequate authority to carry out those assessments;
- (c) appropriate knowledge and understanding of the essential safety requirements, of the applicable harmonised standards and of the Directive and Part 13 of these Regulations;
- (d) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.

12. A conformity assessment body must be able to demonstrate the impartiality of its top level management and the personnel responsible for carrying out the conformity assessment activities.

13. The remuneration of the top level management and the personnel responsible for carrying out the conformity assessment activities must not depend on the number of assessments carried out or on the results of those assessments.

14. A conformity assessment body must have, and must satisfy the Secretary of State that it has, adequate civil liability insurance in respect of its activities.

15. A conformity assessment body must ensure that its personnel observe professional secrecy with regard to all information obtained in carrying out their tasks in accordance with these Regulations and that proprietary rights are protected.

16. Paragraph 15 does not prevent the personnel from providing information to the Secretary of State or the enforcing authority in respect of Part 13 of these Regulations.

17. A conformity assessment body must participate in, or ensure that its personnel who are responsible for carrying out the conformity assessment activities are informed of, the relevant standardisation activities and the activities of any notified body coordination group established under the Directive and must apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

SCHEDULE 16

Regulation 76

OPERATIONAL OBLIGATIONS OF NOTIFIED BODIES

1. A notified body must carry out conformity assessments in accordance with the relevant conformity assessment procedures.

2. A notified body must carry out conformity assessments in a proportionate manner, avoiding unnecessary burdens on economic operators.

3. A notified body must perform its activities taking due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

4. A notified body must respect the degree of rigour and the level of protection required to ensure that the civil explosive is in conformity with the requirements of Part 13 of these Regulations.

5. Where a notified body finds that essential safety requirements or corresponding harmonised standards or other technical specifications have not been met by a manufacturer, it must require the manufacturer to take appropriate corrective measures and must not issue a certificate of conformity or grant an approval.

6. Where, in the course of the monitoring of conformity following the issue of a certificate or grant of an approval, a notified body finds that a civil explosive is no longer in conformity with the essential safety requirements, it must require the manufacturer to take appropriate corrective measures and must suspend or withdraw the certificate of conformity or approval (if necessary).

7. Where the notified body has required a manufacturer to take corrective measures and the manufacturer has failed to take such measures, or those measures have not had the required effect, the notified body must restrict, suspend or withdraw any certificate of conformity or approval.

8. Paragraph 9 applies where a notified body is minded to—

- (a) refuse to issue a certificate of conformity or grant an approval;
- (b) restrict, suspend or withdraw a certificate of conformity or approval.

9. Where this paragraph applies, the notified body must—

- (a) give the person applying for the certificate or approval, or the person to whom the certificate or approval was given, a notice in writing giving reasons and specifying the date on which the refusal, restriction, suspension or withdrawal is intended to take effect;
- (b) give the person applying for the certificate or approval, or the person to whom the certificate or approval was given, an opportunity to make representations within a reasonable period from the date of the notice; and
- (c) take account of any such representations before taking its decision.

10. A notified body must inform the Secretary of State of—

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- (a) any refusal, restriction, suspension or withdrawal of a certificate of conformity or approval;
- (b) any circumstances affecting the scope of, or conditions for, notification under regulation 70 (notification);
- (c) any request for information which it has received from the enforcing authority in respect of Part 13 regarding conformity assessment activities; and
- (d) on request, conformity assessment activities performed within the scope of its notification under regulation 70 and any other activity performed, including cross-border activities and subcontracting.

11. A notified body must make provision in its contracts with its clients enabling such clients to appeal against a decision—

- (a) to refuse to issue a certificate of conformity or grant an approval; or
- (b) to restrict, suspend or withdraw a certificate of conformity or approval.

12. A notified body must provide other bodies notified under the Directive carrying out similar conformity assessment activities covering the same civil explosives with relevant information on issues relating to negative and, on request, positive conformity assessment results.

13. A notified body must participate in the work of any notified body coordination group established under the Directive, directly or by means of its designated representatives.”