

EXPLANATORY MEMORANDUM TO
THE IDENTIFICATION AND TRACEABILITY OF EXPLOSIVES (AMENDMENT)
(NORTHERN IRELAND) REGULATIONS 2012

2012 No. 123

1. This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument amends the existing Identification and Traceability of Explosives Regulations (Northern Ireland) 2010, S.I. 2010/143 (the 2010 Regulations), which are due to come into force on 5th April 2012. The purpose is to extend the coming into force date to 5th April 2013 and to insert in accordance with government policy, a provision requiring the Secretary of State to review the operation and effect of the 2010 Regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 The 2010 Regulations transpose for Northern Ireland Commission Directive [2008/43/EC](#) of 4th April 2008 *setting up, pursuant to Council Directive [93/15/EEC](#), a system for the identification and traceability of explosives for civil uses* (the 2008 Directive) aimed at preventing the misuse and theft of civil use explosives (e.g. for blasting at quarries) and assisting authorities in tracing the origin of lost or stolen explosives.

4.2 The 2008/43/EC Directive required that the national provisions to implement it be in place by 5th April 2009 and be effective from 5th April 2012.

4.3 On 22nd February 2012 Commission Directive [2012/4/EU](#) amending Directive 2008/43/EC was adopted. This changed the date for most of the requirements of 2008/43/EC to be effective to 5th April 2013, and for some to 5th April 2015. While it also introduces some other amendments to the measures required, this instrument relates solely to a changed date for coming into force of the 2010 Regulations. In doing so it partially implements the changes effected by the 2012/4/EU.

4.4 The Transposition Note is at Appendix 1.

4.5 The Regulations are made under the Health and Safety at Work (Northern Ireland) Order 1978 (SI. 1978/1039 (N.I.9)). The aim, in particular, is to control the keeping and use of explosive or highly flammable or otherwise dangerous substances, and to prevent the unlawful acquisition, possession and use of such substances.

4.6 The Commission Directives 2008/43/EC and 2012/4/EU are made in exercise of the Commission's own delegated powers under Council Directive 93/15/EEC. Neither has therefore been subject to scrutiny by the Parliamentary Committees.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1.1 The 2012/4/EU Directive amends the 2008/43/EC Directive. It extends the dates by which the national provisions for most measures must apply to 5th April 2013 and for the repackaging, data collection and record keeping provisions to 5th April 2015. It also makes some changes to the requirements for record keeping and marking of small items, and exempts from its requirements some items of explosives which present a low risk.
- 7.1.2 If the 2010 Regulations are allowed to come into force on the 5 April 2012 this would unnecessarily gold-plate the 2008/43/EC Directive, as amended by the 2012/4/EU Directive. The gold-plating arises because GB businesses would be placed at a competitive disadvantage, being required to comply with measures one year ahead of the rest of Europe, and with requirements that will be relaxed elsewhere.
- 7.1.3 This instrument extends the date by which the 2010 Regulations will apply to 5th April 2013, to ensure that the implementing measures for the 2008 Directive do not come into force before they are now required to. This instrument also inserts a review clause into the 2010 Regulations; in compliance with government policy for a statutory duty on Ministers to periodically review Regulations.
- 7.1.4 A further set of Regulations is being prepared that will fully implement the changes made by the 2012/4/EU Directive (see below).
- 7.1.5 Because the change will not require those in the sector to do anything different the only action required is to ensure that they are provided with information (see guidance at para 9.1 below).

Consolidation

- 7.2 This is the first amendment to the 2010 Regulations and introduces minor changes. Consolidation for this purpose is not necessary. In due course, we will put forward proposals for new Regulations that will introduce measures to implement in full the amendments required by the 2012/4/EU Directive. These will revoke the 2010 and 2012 Regulations.

8. Consultation outcome

- 8.1 The Northern Ireland Office and the Health and Safety Executive carried out a limited consultation exercise on the change made by this instrument. The Directive 2012/4/EU which prompted the change was published 10 days before the latest date on which this instrument could be laid prior to the 5th April 2012. There was insufficient time post-publication for formal consultation.
- 8.2 The UK's negotiating position on the proposed Directive was developed in response to the views of the industry and they have been informally consulted throughout the process. In February 2012 the proposed Directive had progressed through European scrutiny to a point where there was some certainty it would be adopted, and that a change to the coming into force date would be needed before 5th April 2012. The

Northern Ireland Office carried out a limited consultation solely on the change to the coming into force date.

9. Guidance

The Northern Ireland Office will explain the changed implementation date on the Northern Ireland Office website and will work with the Health and Safety Executive on the issuing of guidance.

10. Impact

- 10.1 The impact on civil society organisations is expected to be minimal.
- 10.2 Public sector organisations, especially the Health and Safety Executive and the Police are affected as regulators, and they and other public sector organisations that use explosives for civil uses (ie not the military or police) will be affected, but the impact is expected to be minimal.
- 10.3 A full impact assessment is attached to this memorandum and will be published alongside the explanatory memorandum on www.legislation.gov.uk.

11 Regulating small business

Whilst some end users are small firms there are no aspects of the regulatory changes that will especially impact them. This is also the case of micro-businesses. The Government's policy to exempt micro-businesses from new regulation does not apply in this instance as the UK legislative changes implement European legislation without gold-plating.

12 Monitoring & review

The instrument includes a provision for periodical Ministerial review of the 2010 Regulations, and for the first report of this review to be published before 5th April 2018.

13. Contact

Gavin Halliday at the Northern Ireland Office (Tel: 02890527947) or email: Gavin.Halliday@nio.x.gsi.gov.uk can answer any queries regarding the instrument.

Appendix 1

TRANSPOSITION NOTE

Transposition note for the partial implementation of Articles 1(4) and 2(1) of Commission Directive 2012/4/EU of 22 February 2012 amending Directive 2008/43/EC of 4 April 2008 *setting up pursuant to Council Directive 93/15/EEC, a system for the identification and traceability of explosives for civil uses*. Directive 2008/43/EC is transposed in Northern Ireland by the Identification and Traceability of Explosives Regulations (Northern Ireland) 2010.

The Identification and Traceability of Explosives (Amendment) (Northern Ireland) Regulations 2012 (this instrument) does what is necessary to implement only the following part of Articles 1(4) and 2(1) of the 2012/4/EU Directive:

Article	Purpose	Implementation	Responsibility
1(4)	Amends Article 15(1) of the 2008/43/EC Directive by providing that the provisions of that Directive are to apply from 5 th April 2013, save that the provisions of Articles 3(6), 13 and 14 of that Directive are to apply from 5 th April 2015.	Regulation 3(2) partially.	Secretary of State.
2(1)	States the date, 5 th April 2013, by which Member States will apply the provisions of the national laws, regulations and administrative provisions necessary to comply with the 2012/4/EU Directive.	Regulation 3(2) partially.	Secretary of State.

Title: The Identification & Traceability of Explosives (Amendment) Regulations 2012 & The Identification & Traceability of Explosives (Amendment) (NI) Regulations 2012 IA No: Lead department or agency: Health and Safety Executive (DWP) Other departments or agencies:	Impact Assessment (IA)			
	Date: 16/02/2012			
	Stage: Final			
	Source of intervention: EU			
	Type of measure: Secondary legislation			
	Contact for enquiries: Anna Bliss anna.bliss@hse.gsi.gov.uk & Gavin Halliday Gavin.Halliday@nio.x.gsi.gov.uk			
Summary: Intervention and Options				RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£0.07m	£0.07m	£-0.035m	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?
Directive 2008/43/EC (concerning the traceability of explosives) is due to be amended in February 2012 by the European Council, to make changes which reduce the requirements relating to marking of small items and delay the coming into force date. The UK legislation implementing the 2008 Directive is the Identification and Traceability of Explosives Regulations 2010, currently with a coming into force date of 5th April 2012. UK businesses will be placed at a competitive disadvantage and prematurely burdened by duties (some of which are to be relaxed by the amending Directive) if the existing Regulations come into force on 5th April 2012.

What are the policy objectives and the intended effects?
1. Promote proportionate safety and security in the supply of explosives for civil uses.
2. Ensure UK businesses that manufacture and supply explosives for civil uses are not put at a competitive disadvantage.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
1. Do nothing.
2. Use non-legislative means (NLM) to implement the changes.
3. Amend the coming into force date only of ITOER from April 2012 to April 2013. **PREFERRED OPTION**
The RPC previously reviewed an impact assessment where it was thought that the full amending Directive could be transposed into UK law in time for April 2012. Due to protracted consideration of the proposal in Europe it is now apparent that this will not be possible. We are proposing a fast-track change only to the coming into force date, which will prevent the implementation for UK businesses of all the requirements. This change is not significant and not controversial. The relevant businesses have been kept informed of the EU negotiations and are positively seeking this amendment. Once the amending Directive is adopted, new UK consolidated regulations will be proposed and subject to full consultation. Other options would place requirements on UK businesses ahead of all other EU member states and include requirements which would subsequently be relaxed (some of which are also impractical).

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/2013					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: Nil		Non-traded: Nil

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ **Hugo Swire** _____ Date: 15th March 2012

Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2012	Time Period Years 2	Net Benefit (Present Value (PV)) (£m)		
			Low: Nil	High: Nil	Best Estimate: Nil

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Nil	Nil	Nil
High	Nil	Nil	Nil
Best Estimate	Nil	Nil	Nil

Description and scale of key monetised costs by 'main affected groups'

Option 1 is the baseline case and so there are no costs associated with this option. The costs of intervention are shown for options 2 and 3 below.

Other key non-monetised costs by 'main affected groups'

N/a

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Nil	Nil	Nil
High	Nil	Nil	Nil
Best Estimate	Nil	Nil	Nil

Description and scale of key monetised benefits by 'main affected groups'

Option 1 is the baseline case and so there are no benefits associated with this option. The benefits of intervention are shown for options 2 and 3 below.

Other key non-monetised benefits by 'main affected groups'

N/a

Key assumptions/sensitivities/risks

N/a

Discount rate (%)

3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: Nil	In scope of OIOO?	Measure qualifies as
Costs: Nil	Yes	OUT
Benefits: Nil		
Net: Nil		

Summary: Analysis & Evidence

Policy Option 2

Description: Use non-legislative means (NLM) to implement the change

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2012	Time Period Years 2	Net Benefit (Present Value (PV)) (£m)		
			Low: Nil	High: Nil	Best Estimate: 0.063

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.01	0	0.01

Description and scale of key monetised costs by 'main affected groups'

Familiarisation costs for NLM implementation are greater than those for familiarisation with legislation as businesses need to understand the concept of NLM e.g., its legal status etc, (~£5K).

The development of NLM would require industry input with attendant costs to industry (~£5K).

Other key non-monetised costs by 'main affected groups'

1. The EC indicates that it does not accept NLM as being appropriate for the implementation of binding European legislation and may infract the UK on grounds of non-implementation with attendant costs.
2. UK has a well-deserved reputation for being at the forefront of counter-terrorist measures and this would be comprehensively undermined by being seen to deconstruct fundamental legislative measures that contribute to explosives security and underpin the fight against terrorism.
3. Delay to implementation of ITOER across Europe could have some negative impact on health and safety outcomes.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Nil	0.037	0.073

Description and scale of key monetised benefits by 'main affected groups'

If UK is prepared to risk infraction for non-transposition because implementation by NLM is not accepted by the European Commission (EC) then theoretically NLM could deliver the same benefits as legislation (see summary box on next page). The statutory burden would reduce by the use of NLM but to trade internationally, UK businesses would still need to comply with the same requirements as will exist in other countries' legislation implementing the Directive.

Other key non-monetised benefits by 'main affected groups'

Reduction in the stock of regulations

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

1. NLM would not be legally enforceable and is therefore unsuitable for implementation of European legislation.
2. The reputational damage to UK must be heavily weighted against NLM as the ramifications of moving away from legislation on security matters, especially those which implement international legislation will all be adverse although scale and consequences cannot be meaningfully calculated in full without requiring disproportionate efforts.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m: Nil	In scope of OIOO?	Measure qualifies as
Costs: 0.005	Yes	OUT
Benefits: 0.037		
Net: 0.032		

Summary: Analysis & Evidence

Policy Option 3

Description: Amend legislation using a set of amending regulations

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2012	Time Period Years 2	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0.07

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.003	Nil	0.003

Description and scale of key monetised costs by 'main affected groups'

Costs of familiarisation with changes to legislation will be insignificant as the changes are minor and relatively simple. Industry are familiar with the issues involved due to the relatively recent consultation on the original regulations in 2009 and the level of industry involvement in the development of the proposed changes to the Directive (estimated to be around £3k).

Other key non-monetised costs by 'main affected groups'

In the absence of any amending Directive, this will not comply with Directive 2008/43/EC and therefore gives rise to the risk of infraction. However, it is believed this is minimised for this option because the amendments to the Directive which have already been agreed delay implementation to 2013 and beyond. New consolidating regulations will be drafted once the amending EC Directive has been finalised, and the original ITOER and the amending regulations will be repealed. The delay in implementation of ITOER across Europe could have some negative impact on health and safety outcomes.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Nil
High	Optional	Optional	Nil
Best Estimate	Nil	0.037	0.073

Description and scale of key monetised benefits by 'main affected groups'

Introducing short amending regulations to delay the date of implementation of ITOER from April 2012 to April 2013 will mean that manufacturers, importers and other duty holders will not face the unnecessary burden of one year's ongoing costs while the EU amending Directive is published. This will buy the UK some time so that once the Directive is published new consolidating regulations can be drafted and the original ITOER IA and the amending regulations will be repealed,

Other key non-monetised benefits by 'main affected groups'

The UK's reputation of being at the forefront of counter terrorism and security will be maintained.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

This IA just considers the impact of deferring the date of ITOER. The costs and benefits of the proposed short amending regulation have been assessed over a two year appraisal period which captures the total cost savings of the intervention, including annual and one off cost savings. After the period of two years, the costs to industry revert to the baseline and there are no further savings. Any costs / benefits from the amending Directive will be considered in a separate impact assessment and subject to full consultation. We anticipate that these will include additional benefits, such as the exemption for small items from requirements to individually mark items.

BUSINESS ASSESSMENT (Option3)

Direct impact on business (Equivalent Annual) £m: Nil	In scope of OIOO?	Measure qualifies as
Costs: 0.001	Yes	OUT
Benefits: 0.037		
Net: 0.036		

Evidence Base

Problem under consideration

1. This Impact Assessment concerns amendments to the UK legislation transposing European Commission Directive 2008/43/EC on the Identification and Traceability of Explosives for Civil Uses. The Directive requires that most explosives for civil uses are uniquely identified and can be traced from the production site through the supply chain to the final user. The purpose is to prevent misuse and theft, and to assist authorities to trace the origin of lost or stolen explosives when necessary.
2. The main duties in the 2008/43/EC Directive are:
 - Product identification – that explosives manufactured in, or imported into a member state are uniquely marked with an alphanumeric code and barcode;
 - Record keeping – that all undertakings involved in the manufacture, import, transfer or use of the explosives:
 - record their involvement in the movement of the explosives and keep these records for 10 years; and
 - provide the responsible authorities with contact details so that information in their records can be accessed at any time necessary.
3. GB and Northern Ireland (NI) implemented the Directive through the Identification and Traceability of Explosives Regulations 2010 (ITOER) and the Identification and Traceability of Explosives Regulations (Northern Ireland) 2010 respectively. For ease of reference, where ITOER is used throughout this assessment it covers both sets of regulations. In order to comply with staged transposition deadlines in the Directive, the Regulations had to be in place by 2010 and to come into force in April 2012.
4. Industry has sought changes to the Directive because:
 - A computerised recording system for use across the EU is being developed, but has encountered practical difficulties. Therefore, the intended means of implementing the requirements relating to record keeping will not be ready in time.
 - It is in practice impossible to mark small items with the amount of information required to be marked.
 - Some items are very low risk (eg fuses) and the measures required to identify and track them is disproportionate.
5. The UK has supported the Commission's proposed amendments to the Directive to resolve these issues. In particular, the proposal to delay the coming into force dates for the requirements for product identification until 2013 and for record keeping until 2015.
6. However, the negotiations in Europe also involved consideration of issues relating to the Directive's requirements on Member States to publish correlation tables of the implementing legislation. This introduced delay, and the Directive will not be adopted before February 2012.
7. Ideally we would have the amending Directive in place in time for a proposal which would make all the amendments to ITOER required to implement the Directive. In October 2011, the RPC considered an Impact Assessment¹ which considered amendments to ITOER to align with the then proposed amendments to the Directive on the basis that if agreed we would be able to implement changes in the UK in time. However, the extended negotiation in Europe means this is not now possible.

¹ The impact assessment submitted in October 2011 was judged to be fit for purpose by the RPC, opinion dated 19th October 2011.

8. We are therefore proposing to introduce fast-track amending regulations, changing only the coming into force date of ITOER from April 2012 to April 2013. This prevents the coming into force of the all requirements currently in ITOER until the earliest new implementation date. Once the amending Directive is published, the UK will propose new consolidated regulations making all the necessary changes, for which a full impact assessment (based on the one prepared in October 2011) will be available and subject to full consultation.

Rationale for intervention

9. Government intervention is necessary as UK implementing regulations are due to come into force in April 2012 unless amended, prematurely subjecting businesses to legislative requirements – “gold-plating”. Legislative intervention is necessary as:
 - The Identification and Traceability of Explosives Regulations 2010 are due to introduce requirements for marking and tracing explosives. Non-legislative means cannot prevent this, and would place UK businesses in a potentially untenable position as the requirements are in some aspects impracticable. They are entitled to legal clarity about what was required.
 - The European Commission (EC) have indicated that they do not consider that implementation of a binding Directive by non-legislative means is adequate as there is no legal sanction for non-compliance.
10. The advantage of using an amending regulation solely to delay the coming into force date by one year is that in itself it is not a significant or controversial change and therefore is suitable for fast-tracking.
11. Once the proposed amended Directive is published by the EU, we will prepare consolidated regulations to transpose both Directives in line with the Government’s published Guiding Principles for EU legislation and to be subject to full scrutiny and consultation.

Policy objectives

12. The policy objectives are to:
 - Promote the proportionate safety and security in the supply of explosives for civil uses.
 - Ensure UK businesses that manufacture and supply explosives for civil uses are not put at a competitive disadvantage.

Description of options considered (including do nothing)

13. We have assumed that the amending Directive is adopted. We have considered three options:
 - Option 1 - Do nothing.
 - Option 2 - Use non-legislative means (NLM) to implement the changes.
 - Option 3 - Amend the coming into force date only of ITOER from April 2012 to April 2013.

Against five factors:

- (a) Time – deadline for some changes to be in place to avoid "gold-plating" by early implementation of EU measures.
- (b) Legal – compliance with European legislation.
- (c) Reputation – UK's international reputation on security.
- (d) Cost of change – costs associated with transitional and consultative arrangements for businesses.

- (e) Burden on business – ongoing costs of compliance for business compared with the potential cost savings that intervention might deliver.

Option 1

14. This option would result in “gold-plating”, as the current coming into force date for ITOER is one year before the amended date. If no further action is taken it would eventually lead to infraction for non-implementation of the Directive (probably in January 2013). This option would also result in the UK’s reputation for being at the forefront of counter-terrorism and security being adversely impacted.

Option 2

15. Would involve setting up an interim system to allow UK businesses to continue operating the systems they currently use even though the requirements in law had changed. To provide businesses with some legal certainty about their position this would probably involve the issuing of exemption certificates or some other form of assurance by the regulator. There would therefore be administrative burdens and familiarisation costs. This option would probably damage the UK’s reputation in international explosives security.
16. A useful comparison is available where we replaced some of the requirements in the current Classification and Labelling of Explosives Regulations 1983 with a non-statutory, industry-developed and owned code of practice (no EC Directive applied). We found that industry needed to spend more effort on familiarising themselves with the concept than they had with previous amending legislation. This familiarisation cost was a one off and was justified as it established an ongoing scheme. In this case we will need shortly to change the legislation to comply with European requirements and therefore the familiarisation costs are not justified.
17. More fundamentally, the EC indicates that it does not currently accept that NLM effectively meets the requirement to implement binding European legislation. Therefore, this option has high-risks associated with it of the EC taking action against the UK for non-transposition with attendant legal costs and potential fines.

Option 3

18. We would normally seek to avoid introducing amending Regulations, when we know that we will need to change the Regulations again a year later. However, any other option puts UK business at an unnecessary competitive disadvantage. This option meets the non-monetised requirements (factors a, b and c), minimises the costs of change (d) and maximises cost savings to business as early as possible (e). We assume that delay in introducing ITOER may have some adverse health and safety effects. However, these will be small, given that the tracing system will also not be in place across Europe and this amendment is to existing legislation that has not yet come into force. This option delivers the greatest net benefit to business.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

19. Costs and benefits have been quantified and monetised where possible and these can be found in the summary sheets. There is inherently some level of uncertainty about the future impacts of any change in a policy or system. Therefore, it is necessary for a number of assumptions to be made, which are also listed in the summary sheets and described below.
20. On examination of the cost profile to industry, it has been observed that the cost savings only occur in the period during which the coming into force date of the regulations is delayed, (in years 2012 and 2013 for both manufacturers and end users). In other words, the costs only differ to the baseline profile during 2012 and 2013. Thus an appraisal period

of 2 years has been used to assess the costs and benefits of the proposed amendments. This is in line with the RPC Opinion on the IA referred to in foot note 1.

21. This short appraisal period is appropriate because the benefit of delaying implementation of the Directive will be experienced in years 2012 and 2013 only. Any longer term benefits beyond this will not be captured by this impact assessment – for instance the cost savings from not having to mark small items. These savings will not be achieved in the selected appraisal period (as it is being proposed that ITOER should not apply to any duty holders during this period). Such savings related to the marking of small items will be analysed when the new consolidating regulations are drafted once the EU Directive is finalised. However, initial thoughts from the first draft of the Impact Assessment to quantify the impact of the proposed Directive were that the impact would be very small as the items to be exempted from individual marking (primers, non-electric detonators and detonation cord of less than 7.5mm diameter) are not at all commonly used in quarry and mine blasting.

Option 1

22. Being the baseline case there are no costs or benefits associated with this option. The costs and benefits of 'doing nothing' are reflected in the benefits and costs of option 2 and 3. The costs and benefits of option 1 are therefore assumed to be zero for comparison purposes.

Option 2

Benefits

23. Cost savings to business - It is estimated that industry would respond to the NLM in a similar manner to legislative means, and so would delay implementing the requirements of the directive from 2012 to 2013.
24. The value of the cost savings expected with such delays are estimated to be around £73 thousand in the year over which implementation is delayed and the first year that the Directive applies. This cost saving comprises savings from diverting the one off capital costs from the first year to the second year (which have a lower present value in year two due to the time value of money and society's preference for money in the present over the future). The savings also include the annual compliance costs which will not be incurred in the first year, and so will be saved in full from the total costs. These cost saving calculations are described in more detail under option 3 below.
25. Other benefits – An additional benefit of non-legislative means is that it will contribute to the government's objectives on better regulation, and will reduce the overall stock of regulations.

Costs

26. Costs to business
It is estimated that there will be one off costs to industry to familiarise themselves with the concept of NLM as well as the actual changes in the legislation. There are estimated to be approximately 250 quarries and mines (see paragraph 33 for explanation) and 1 manufacturer of explosives, who would need to familiarise themselves. Also, there are other companies such as importers and distributors who may need to keep records. It is difficult to identify the number of such companies precisely as it is dependant on the supply chain involved, therefore we have adopted an assumption of approximately 25 such companies. We assumed a functional manager² would spend around half an hour to

² Based on ASHE, 2010, SOC:113 Functional Manager at £27.78 / hour, grossed up by 30% to reflect non-wage labour costs

familiarise with the NLM concept and the changes, per each company. This gives an estimated familiarisation cost of approximately £5 thousand.

27. There will also be costs to industry to input to the development of the non-legislative measures, e.g. producing guidance, which are expected to require similar amount of engagement from the same companies, thus resulting in similar costs as familiarisation, estimated to be around £5 thousand.
28. The total one-off costs under Option 2 are therefore expected to be in the order of £10 thousand.
29. There will of course also be costs to HSE of implementing NLM. On the grounds of proportionality, these costs to HSE have not been quantified as they are not expected to be significant. Neither are they expected to be influential in the decision making between options; for both NLM and amending regulations, the costs to HSE are expected to be of the same order.
30. Health and Safety costs
The original IA for ITOER explained that the EU Directive on the labelling and traceability of explosives was intended by the EU to reduce the risk of a terrorist attack such as the Madrid bombings which involved the use of stolen commercial explosives. It was suggested that the measure could assist in the investigation of both terrorist and non terrorist criminal activities involving explosives. However, the UK IA stated that due to the complex causality between the effect of the Directive and the frequency of events, the low frequency of such events and the lack of reliable data on costs, the benefits of the directive could not be quantified. It is not therefore possible to quantify the effect that the delay in ITOER by one year might have on health and safety outcomes.
31. The present value of the net cost savings to industry of option 2 is estimated to be around £63 thousand

Option 3

Benefits

32. Cost savings to business: The unit costs to manufacturers and importers from the IA for the original ITOER³ have been used. These have been confirmed through personal interview within the last couple of months as being reasonable estimates by the sole manufacturer in the UK. Also, no responses from consultees questioned these costs in that IA. However, since that IA there has been considerable contraction in both the manufacture of explosives that fall within the remit of the Regulations and in the size of the end user industrial sectors. There has also been an increase in the use of explosives that are exempted from the requirements of the Directive.
33. The total costs of ITOER (see reference in footnote 3) were originally estimated to be between £3.7million and £3.8million over the original appraisal period. These baseline costs of ITOER have been recalculated as around £1.4million, based on the known industry changes since the IA was completed. These updated costs have been used as the comparison for estimating the potential cost savings from delaying the date the regulations come into force. N.B. It is assumed that familiarisation costs with the original ITOER (£10 thousand for manufacturers and between £20 thousand and £110 thousand for end users) will have already been incurred, i.e. they are sunk costs. Thus, when

³ Final Impact Assessment of European Community Directive on the Identification and Traceability of Explosives for civil uses, p. 6 (hard copy available at HSE)

estimating the cost savings as a result of deferring the date the regulations come into force, these sunk costs of familiarisation have been removed from the baseline. There will still be familiarisation costs to industry associated with the amended regulations, and these have been calculated for both option 2 and 3 in this IA, see paragraphs 25 – 27 and 44.

Costs of ITOER to manufacturers and importers

34. The costs for a basic labelling and recording system for a single production line producing 1000 tonnes of explosive per year have been estimated by the only company in the UK now manufacturing relevant explosives to be as follows:

One-off setup and capital costs (per line)
Label printer with software £1.5 thousand,
3 hand-held scanners £7.5 thousand,
1 x PC £0.5 thousand,
1 x Database £15 thousand
Total £24.5thousand

Ongoing annual costs (per line)
Consumables £2thousand
Maintenance Contracts £3thousand
Equipment replacement costs £3thousand (replacement of hardware every 3 yrs)
Labour costs £11thousand
Total £19thousand

35. The labour costs are for the work involved in scanning product barcodes during the production and dispatch process, and in maintaining records and administering the information system. This is estimated at 5 person hours per day (i.e. approximately 1000 hours per year per line). Wage costs are estimated at £11 per hour⁴.
36. The sole UK manufacturer has two lines producing cartridged explosives and a single line producing detonators. One-off costs to the manufacturer (excluding original familiarisation costs which will have already been incurred) are therefore likely to be of the order of around £74 thousand in total. Operating costs are estimated as £57 thousand per year in total. However, some economies of scale may be possible once the systems are up and running although these cannot be sensibly costed at this time.
37. It is proposed that one-off set-up costs and annual costs will be deferred from 2012 to 2013. Thus, there will effectively be a saving of one whole year's worth of annual costs for duty holders in the year 2012, plus some small saving from deferring the one off set up costs by one year (due to the time preference for money, so costs in the future are worth less than they are in the present). The present value of these cost savings has been estimated to be around £60 thousand.
38. There are only a few importers of explosives from outside the EU into the UK and these tend to be involved with specialised explosives used in off-shore gas and oil production. They have indicated that their suppliers will mark explosives prior to entry to the UK so it is not anticipated that importers will need to mark products.

Costs of ITOER Record-Keeping by end users

39. Based on figures provided by a major quarry trade association and HSE information on mines, there are approximately 1100 quarries and mines in the GB and 200 in NI. Of these, about 400 in GB and 100 in NI use explosives. Owing to the explosives security regime in NI no quarries there should need to keep records under ITOER as they do not

4. Based on ASHE, 2010, SOC:913 Elementary Process Plant Occupations at £8.39/hour grossed up by 30% to reflect non-wage labour costs

store explosives. Of sites in GB, it is estimated that about 250 sites will use/store explosives subject to these Regulations.

40. Record-keeping is already required under other explosives legislation so what ITOER will require is merely adding the recording of an identification code to an existing process. The incorporation of logistical information designed by the explosives industry in the identification code is intended to facilitate simpler stock-monitoring at stores. There are now fewer sites in total than there were at the time of the original IA for ITEOR and numbers of those that remain now use explosives that do not fall within the remit of the original Directive. It is considered that allowing 5 hours annually per site storing explosives requiring ITOER record-keeping is reasonable. This gives total annual ITOER record-keeping costs of £14 thousand (250 sites, 5 hours work per site at £11 per hour⁵).
41. The cost savings resulting from delaying the coming into force by one year will be one year's worth of annual costs, as estimated in the original ITOER IA. The value of these cost savings is estimated to be around £14 thousand.
42. Total value of cost savings to the industry from amending the regulations and deferring the date of coming into force is estimated to be around £73 thousand.
43. Other benefits- it is thought that amending the regulations to avoid gold plating and in due course to align with the amended Directive will help to maintain the UK's reputation of being at the forefront of counter terrorism and security will be maintained.

Costs

44. Costs to Business: The familiarisation costs relating to the changes are not likely to be significant. The sole UK manufacturer is well sighted on the changes as are the majority of end users. Accordingly, familiarisation with the amendments is anticipated as requiring about 15 minutes. It is calculated that familiarisation costs will be between £2 thousand and £3 thousand (200 - 300 sites, 15 minutes per site, £36 per hour⁶- the assumptions are the same as under the Option 2, see paragraph 26).
 45. It is not expected that there will be costs to industry of responding to the consultation as the intention is to restrict the consultation to a targeted letter to the affected parties.
 46. Total one off costs to industry are expected to be around £3 thousand
 47. On the grounds of proportionality, the costs to HSE of amending the regulations have not been quantified as they are not expected to be significant. Neither are they expected to be influential in the decision making between options; for both NLM and amending regulations, the costs to HSE are expected to be of the same order.
- Health and Safety Costs
48. As noted in paragraph 30 the delay in implementing ITOER could have some negative impact on health and safety outcomes. However, due to the complex causality between ITOER and the reduction in the risk of terrorist incidents, the expected benefit of ITOER could not be quantified in the original IA. Thus, it is not possible to quantify the effect that a delay to the implementation of ITOER might have.
 49. The value of the quantified net cost savings to industry under option 3 is therefore estimated to be around £70 thousand

⁵ Based on ASHE, 2010, SOC:913 Elementary Process Plant Occupations at £8.39/hour grossed up by 30% to reflect non-wage labour costs.

⁶ Based on ASHE, 2010, SOC:113 Functional Manager at £27.78/hour, grossed up by 30% to reflect non-wage labour costs.

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

50. Cost savings of £0.035m (EAC) from amending ITOER can be claimed as an OUT, as per Government guidance on this matter, as the amendments will avoid the gold plating that would otherwise result in the 'do-nothing' option. According to the most up to date version of the One In, One Out Methodology: "Outs can be derived from the stock of existing EU regulations. This includes the following: Where the UK's implementation of existing EU regulations is revised to remove gold-plating." Unit cost estimates from the original ITOER IA have been relied on, given that these were consulted on in 2009 and have recently been validated with industry and updated for the most current understanding of the industry composition. Given that the annual cost savings over the appraisal period are expected to be relatively small, this approach is considered to be proportionate.
51. Unlike the previous IA for amendment regulations to ITOER, it is proposed that these amendments will be restricted to delaying the date of implementation by one year, and so there will not be an impact to the UK for any other reason than delaying the implementation date. In the future, when the amended Directive is published, the UK will draft new consolidating regulations once the amending EC Directive has been finalised, along with an accompanying impact assessment, and the original ITOER and the amending regulation will be repealed.

Risks and assumptions

52. General assumptions:
- Costs and benefits are assessed over just 2 years being the period over which the cost savings will be experienced. Annual costs will be saved in the first year (2012) and there will also be a saving associated with postponing the one off set up costs for manufacturers until the second year, (2013), given the time value of money and that costs today are valued more highly than costs in the future. The period beyond the first two years has been examined and the cost profile to duty holders reverts to the baseline. Thus, a time period of 2 years is sufficient to capture the impact of this amendment.
 - 3.5% is used as the discount rate⁷ for costs and cost savings, in line with the HM Treasury Green Book⁹ guidance.
 - Wage data is taken from the Office for National Statistics' Annual Survey of Hours and Earnings (ASHE) 2010⁸.
 - The price base year is 2011.

Wider impacts (consider the impacts of your proposals, the questions on pages 16 to 18 of the IA Toolkit are useful prompts. Document any relevant impact here and by attaching any relevant specific impact analysis (e.g. SME and equalities) in the annexes to this template)

53. There are no wider impacts expected. The following explains in more detail why this is the case for two specific potential impacts of note:
54. Competition Assessment Impact Test
The proposed changes shall not impact on competition within the economy. They ensure UK business is not placed at a competitive disadvantage, where requirements apply equally to all firms manufacturing or supplying explosives within the EU.
55. Small Firms Impact Test

⁷ The 'discount rate' is a tool used to convert all costs and benefits to 'present values' i.e. their equivalents in today's terms.

⁸ Available online: <http://www.statistics.gov.uk/statbase/Product.asp?vlnk=1951>

Whilst some end users are small firms there are no aspects of the regulatory changes that will especially impact them. This is also the case of micro-businesses. The micro-business exemption does not apply in this instance as the UK legislative changes implement European legislation without gold-plating.

Summary and preferred option with description of implementation plan.

56. Directive 2008/43/EC (concerning the traceability of explosives) is due to be amended in February 2012 by the European Council, to make changes which reduce the requirements relating to marking of small items and delay the coming into force date. The UK legislation implementing the 2008 Directive is the Identification and Traceability of Explosives Regulations 2010, currently with a coming into force date of 5th April 2012. UK businesses will be placed at a competitive disadvantage and prematurely burdened by duties (some of which are to be revoked by the amending Directive) if the existing Regulations come into force on 5th April 2012.
57. The preferred option is Option 3, amending only the coming into force date for the Identification and Traceability of Explosives Regulations 2010 using a simple set of fast-tracked amending regulations. This will delay the implementation of the Directive for a period of 1 year. When the amending Directive has been formally adopted (expected February/March 2012) we will put forward proposals for consolidating regulations⁹, following the usual full scrutiny process.
58. As we are proposing a fast-track process¹⁰ we do not intend to consult on this proposal. However, the amendment affects only certain businesses within the explosives sector with whom HSE has established good communications, e.g. through their online Explosives Legislative Review (ELR) community, which has almost 300 members right across the sector. Businesses in the sector are already aware of the European negotiations and have lobbied for the changes proposed in the amending Directive, including the proposed delay to the coming into force date.
59. HSE will email members of the community to provide brief explanatory information about what the delay to coming into force means. HSE will also publish this information on its website and through relevant sector journals.

⁹ ITOER 2010 and this amending regulation will be repealed.

¹⁰ This approach is part of the new streamlined clearance options for deregulatory measures, which was cleared by the Reducing Regulation Committee on 10th October 2011.