

2015 No. 236

HEALTH AND SAFETY

**The Explosives (Appointment of Authorities and Enforcement)
Regulations (Northern Ireland) 2015**

Made - - - - *24th April 2015*

*Coming into operation in accordance with regulation 1(2)
and (3)*

The Department of Justice (“the Department”) is designated for the purpose of section 2(2) of the European Communities Act 1972 (“the 1972 Act”)(a) in relation to the regulation and control of classification, packaging and labelling of dangerous substances and preparations(b); and for measures relating to consumer protection(c).

The Department, being the Department concerned(d), makes the following Regulations in exercise of powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act(e) and Articles 17(1) to (6)(f) and 55(2) of, and paragraphs 1(1) and (4), 5, 12(1) and 14(1) of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978(g) (“the 1978 Order”).

These regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Department expedient for references in these Regulations to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16th December 2008(h) on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45EC and amending Regulation (EC) No 1907/2006, to be construed as including references to articles 6(5), 11(3), 12, 14, 18(3)(b), 23, 25 to 29, 35(2) second and third sub-paragraphs and Annexes I to VII of that Regulation as amended from time to time.

In accordance with Article 46(1) of the 1978 Order it has consulted with the Health and Safety Executive for Northern Ireland and such bodies as appeared to be appropriate.

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- (a) 1972 c.68
(b) S.I. 1976/897
(c) S.I. 1993/2661
(d) S.I. 1978/1039 (N.I. 9) Article 2(2)
(e) 1972 c.68; paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act (c.51)
(f) Article 17 shall be read with S.I. 1992/1728 (N.I. 17), Articles 3(2) and 4(2)
(g) S.I. 1978/1039 (N.I. 9); the general purposes of Part II referred to in Article 17(1) were extended by S.I. 1992/1728 (N.I. 17), Articles 3(1) and 4(1). Article 55(2) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraph 19
(h) OJ No L353, 31.12.08, p1

PART 1

INTRODUCTION

Citation and commencement

1.—(1) These Regulations may be cited as the Explosives (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2015.

(2) Except as provided by paragraph (3) these Regulations shall come into operation on 1st June 2015.

(3) Regulation 12 shall come into operation on 31st May 2015.

Application within the territorial sea

2. Within the territorial sea these Regulations shall apply only to and in relation to the premises and activities to which any of paragraphs 2 to 9 of Schedule 2 applies.

Interpretation

3.—(1) In these regulations—

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

“the 2009 Regulations” means the Explosives (Hazard Information and Packaging for supply) Regulations (Northern Ireland) 2009(a);

“the CLP Regulation” means Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16th December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, of which Articles 6(5), 11(3), 12, 14, 18(3)(b), 23, 25 to 29, 35(2) second and third paragraphs and Annexes I to VII are to be read as amended from time to time;

“the Commission” means the commission of the European Union;

“competent authority” means the authority or authorities appointed by a Member State for the purpose of carrying out the duties of a competent authority under the CLP Regulation;

“the Department” means the Department of Justice;

“the Department concerned” has the same meaning as in Article 2(2) of the 1978 Order;

“inspector” means a person appointed under Article 21 of the 1978 Order;

“territorial sea” means the territorial sea of the United Kingdom adjacent to Northern Ireland and “within the territorial sea” includes on, over and under it;

“work” shall be construed in accordance with Article 2(4) of the 1978 Order.

(2) Expressions used in both—

(a) Part 3 of these Regulations; and

(b) The CLP Regulation,

have the same meaning in these Regulations as they have in the CLP Regulation.

(3) The Interpretation Act (Northern Ireland) 1954(b) shall apply to these Regulations as it applies to an Act of the Assembly.

(a) S.R. 2009/273, as amended by S.R. 2014/47

(b) 1954 c.33 (N.I.)

PART 2

APPOINTMENT OF COMPETENT AUTHORITIES

Competent authorities

4. For the purposes of Article 43 of the CLP Regulation the competent authority shall be the Department of Justice.

PART 3

CLASSIFICATION, LABELLING AND PACKAGING OF SUBSTANCES AND MIXTURES

Application of the 1978 Order

5.—(1) The following provisions of the 1978 Order shall apply to the CLP Regulation as if it were health and safety regulations for the purposes of that Order, except that those Articles shall not apply to duties placed by the CLP Regulation on the competent authority or the Member State—

- (a) Articles 20 to 30 (in relation to enforcement);
- (b) subject to regulations 9 and 10, Articles 31 to 39 (in relation to offences); and
- (c) Article 43(2) in relation to civil liability.

(2) Any function of the Department concerned under any other provision of the 1978 Order in respect of health and safety regulations (including their enforcement) shall be exercisable as if the CLP Regulation were health and safety regulations for the purposes of that Order.

Allocation of enforcement responsibility

6. Notwithstanding the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999(a), the enforcing authority for the CLP Regulation shall be the Department of Justice.

PART 4

EXEMPTIONS, PENALTIES, DUE DILIGENCE DEFENCE

Exemptions

7.—(1) A person shall be exempt from compliance with provisions imposing requirements or prohibitions in the CLP Regulation, if that person—

- (a) has the benefit of a defence exemption certificate made by the Secretary of State in respect of that provision; or
- (b) can demonstrate that the appropriate authorities of another Member State have exempted that person from compliance in the interests of defence.

(2) Schedule 1 (defence exemption certificates) shall have effect.

8.—(1) These Regulations shall not apply to a substance or mixture which is a sample taken by an authority responsible for the enforcement of any requirement of, or prohibition imposed by or under, the CLP Regulation.

(a) S.R. 1999/90, as amended by S.R. 2000/375, S.R. 2003/33, S.R. 2006/205, S.R. 2006/425, S.R. 2007/31, S.R. 2007/291, S.R. 2009/238 and S.R. 2012/179

(2) In this regulation, “substance” and “mixture” have the same meaning as they have in the CLP Regulation.

Penalties

9. The maximum penalty for an offence under Article 31 of the 1978 Order as applied by these Regulations to the CLP Regulation shall be—

- (a) on summary conviction, imprisonment for a term not exceeding three months or a fine not exceeding the statutory minimum, or both; and
- (b) on conviction on indictment, imprisonment for a term not exceeding two years, or a fine or both.

Due diligence defence

10. In any proceedings for an offence under Article 31(1)(c) of the 1978 Order, as applied by these Regulations to the CLP Regulation, it shall be a defence for the person charged to prove that that person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

PART 5

REVOCATIONS AND AMENDMENTS

Revocations

11. The following provisions in the 2009 Regulations are revoked—

- (a) regulations 4 and 5, 6 to 11 and 13 with effect from 1st June 2015;
- (b) except to the extent that they continue to apply for the purposes of enforcing regulation 12 of the 2009 Regulations, regulations 14 to 17, with effect from 1st June 2015; and
- (c) regulations 2, 3 and 12 with effect from 1st June 2018.

Amendments

12.—(1) After regulation 5 of the 2009 Regulations insert—

“Advertisements for dangerous preparations

5A.—(1) Subject to paragraph (2), a person who supplies a dangerous preparation shall not advertise that preparation, or arrange for the production of any such advertisement, unless mention is made in the advertisement of the type of hazard indicated on the label.

(2) Paragraph (1) shall apply only in respect of a dangerous preparation where the advertisement enables a person, otherwise than in the course of a business, to conclude a contract to purchase the dangerous preparation before that person has seen the label relating to the dangerous preparation.

(3) In this regulation “supply” has the same meaning as it has in section 46 of the Consumer Protection Act 1987.

(4) This regulation has effect until 31st May 2017.”

(2) After regulation 14(1) insert—

“(1A) The maximum penalty for an offence under this regulation is—

- (a) on summary conviction, 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.”

Sealed with the Official Seal of the Department of Justice on 24th April 2015.



David Ford
Minister of Justice

SCHEDULE 1

Regulation 7(2)

Defence Exemption Certificates

1. The Secretary of State may decide that it is necessary in the interests of defence for a person to be exempt from compliance with a requirement or prohibition in the CLP Regulation.
2. The Secretary of State may decide to apply the exemption—
 - (a) to a person, including the Secretary of State, or a category of persons;
 - (b) to one or more requirement or prohibition at the same time;
 - (c) prospectively;
 - (d) for a limited or unlimited period;
 - (e) generally or to a particular case;
 - (f) subject to such limitations and conditions as the Secretary of State sees fit.
3. A decision by the Secretary of State to apply the exemption must be evidenced in writing by a certificate.
4. A certificate—
 - (a) must contain sufficient particulars of the persons to whom, and the matters to which, it relates; and
 - (b) may be varied or revoked in writing.
5. The Secretary of State may provide to a person who has the benefit of a certificate—
 - (a) the certificate;
 - (b) a copy of it; or
 - (c) a copy of a relevant extract of the certificate.
6. A person who claims the benefit of a certificate must produce to the person listed in paragraph 7, when reasonably requested to do so—
 - (a) the certificate;
 - (b) a copy of it made by the Secretary of State; or
 - (c) a copy made by the Secretary of State of a relevant extract of the certificate.
7. The persons referred to in paragraph 6 are—
 - (a) an enforcing authority;
 - (b) a competent authority;
 - (c) the equivalent of an enforcing authority of another Member State;

(d) the European Chemicals Agency.

8. Unless the contrary is proved—

- (a) the certificate;
- (b) a copy of it made by the Secretary of State; or
- (c) a copy made by the Secretary of State of a relevant extract of the certificate,

is conclusive evidence of the matters to which it relates.

9. A person who fails to comply with paragraph 6 shall not be exempt from compliance with a requirement or prohibition in the CLP Regulation in the interests of defence.

SCHEDULE 2

Regulation 2

Premises and Activities within the Territorial Sea

1.—(1) In this Schedule—

“activity” includes a diving project and standing a vessel by;

“designated area” means any area designated by Order under section 1(7) of the Continental Shelf Act(a) and “within a designated area” includes over and under it;

“diving project” has the meaning assigned to it by regulation 2(1) of the Diving at Work Regulations (Northern Ireland) 2005(b) save that it includes an activity in which a person takes part as a diver wearing an atmospheric pressure suit and without breathing in air or other gas at a pressure greater than atmospheric pressure;

“gas importation and storage zone” has the meaning assigned to it by section 1(5) of the Energy Act(c);

“offshore installation” shall be construed in accordance with paragraph 2(2) and (3);

“supplementary unit” means a fixed or floating structure, other than a vessel, for providing energy, information or substances to an offshore installation;

“vessel” includes a hovercraft and any floating structure which is capable of being navigated.

(2) For the purposes of this Schedule, any structures and devices on top of a well shall be treated as forming part of the well.

(3) Any reference in this Schedule to premises and activities includes a reference to any person, article or substance on those premises or engaged in, or, as the case may be, used or for use in connection with any such activity, but does not include a reference to an aircraft which is airborne.

Offshore installations

2.—(1) This paragraph shall apply to a designated area or gas importation and storage zone to and in relation to—

- (a) any offshore installation and any activity on it;
- (b) any activity in connection with, or any activity immediately preparatory to an activity in connection with, an offshore installation, whether carried on from the installation itself, in or from a vessel or in any manner, other than an activity falling within sub-paragraph (4);
- (c) a diving project involving—
 - (i) the survey and preparation of the sea bed for an offshore installation;

(a) 1964 c.29; section 1 was amended by the Oil and Gas (Enterprise) Act 1982 (1982 c.23), section 37 and Schedule 3, paragraph 1

(b) S.R. 2005/45, as amended by S.R. 2007/247

(c) 2008 c.32

- (ii) the survey and restoration of the sea bed consequent on the removal of an offshore installation.

(2) Subject to sub-paragraph (3), in this paragraph “offshore installation” means a structure which is, or is to be, or has been, used while standing or stationed in water, or on the foreshore or other land intermittently covered with water—

- (a) for the exploitation, or exploration with a view to exploitation, of mineral resources by means of a well;
- (b) for undertaking activities falling within paragraph 6(2);
- (c) for the conveyance of things by means of a pipe;
- (d) for undertaking activities that involve mechanically entering the pressure containment boundary of a well; or
- (e) primarily for the provision of accommodation for persons who work on or from a structure falling within any of the provisions of heads (a) to (d),

together with any supplementary unit which is ordinarily connected to it, and all the connections.

(3) Any reference in sub-paragraph (2) to a structure or supplementary unit does not include—

- (a) a structure which is connected by dry land by a permanent structure providing access at all time and for all purposes;
- (b) a well;
- (c) a mobile structure which has been taken out of use and is not yet being moved with a view to its being used for any of the purposes specified in sub-paragraph (2);
- (d) any part of a pipeline; and
- (e) a structure falling within paragraph 8(c).

(4) Subject to sub-paragraph (5), the following activities fall within this paragraph—

- (a) transporting, towing or navigating an installation;
- (b) any of the following activities carried on in or from a vessel—
 - (i) giving assistance in the event of an emergency;
 - (ii) training in relation to the giving of assistance in the event of an emergency;
 - (iii) testing equipment for use in giving assistance in the event of an emergency;
 - (iv) putting or maintaining a vessel on stand-by ready for an activity referred to in any of sub-heads (i) to (iii).

(5) Sub-paragraph (4)(b) does not apply in respect of a vessel in or from which an activity is carried on in connection with, or any activity that is immediately preparatory to an activity in connection with, an offshore installation other than an activity falling within sub-paragraph (4)(b).

Wells

3.—(1) Subject to sub-paragraph (2), this paragraph applies to and in relation to—

- (a) a well and any activity in connection with it; and
- (b) an activity which is immediately preparatory to any activity in head (a).

(2) Sub-paragraph (1) includes keeping a vessel on station for the purpose of working on a well but otherwise does not include navigation or an activity connected with navigation.

Pipelines

4.—(1) This paragraph applies to and in relation to—

- (a) any pipeline;
- (b) any pipeline works;
- (c) the following activities in connection with pipeline works—

- (i) the loading, unloading, fuelling or provisioning of a vessel;
- (ii) the loading, unloading, fuelling, repair and maintenance of an aircraft on a vessel, being in either case a vessel which is engaged in pipeline works; or
- (iii) the moving, supporting, laying or retrieving of anchors attached to a pipe-laying vessel including the supervision of those activities and giving of instruction on connection with them.

(2) In this paragraph—

“pipeline” means a pipe or system of pipes for the conveyance of any thing, together with—

- (a) any apparatus for inducing or facilitating the flow of any thing through, or through part of, the pipe or system;
- (b) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system;
- (c) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system;
- (d) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in heads (a) to (c);
- (e) apparatus for the transmission of information for the operation of the pipe or system;
- (f) apparatus for the cathodic protection of the pipe or system; and
- (g) a structure used or to be used solely for the support of a part of the pipe or system;

but not including a pipeline of which no initial or terminal point is situated in the United Kingdom, within the territorial sea adjacent to the United Kingdom, or within a designated area;

“pipeline works” means—

- (a) assembling or placing a pipeline or length of pipeline including the provision of internal or external protection for it;
- (b) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipeline or length of pipeline;
- (c) changing the position of or dismantling or removing a pipeline or length of pipeline;
- (d) opening the bed of the sea for the purposes of the works mentioned in heads (a) to (c), and tunnelling or boring for those purposes;
- (e) any activities incidental to the activities described in heads (a) to (d);
- (f) a diving project in connection with any of the works mentioned in heads (a) to (e) or for the purpose of determining whether a place is suitable as part of the site of a proposed pipeline and the carrying out of surveying operations for settling the route of a proposed pipeline.

Mines

5.—(1) This paragraph applies to and in relation to a mine within the territorial sea or extending beyond it, and any activity in connection with it, while it is being worked.

(2) In this paragraph “mine” has the same meaning as in the Mines Act (Northern Ireland) 1969^(a).

Gas importation and storage

6.—(1) Subject to sub-paragraph (3), this paragraph applies within a gas importation and storage zone to and in relation to any activities connected with or immediately preparatory to the activities set out in sub-paragraph (2).

(a) 1969 c. 6 (N.I.)

- (2) The activities are—
- (a) the unloading of gas to an installation or pipeline;
 - (b) the storage of gas, whether temporary or permanent, in or under the shore or bed of any water;
 - (c) the conversion of any natural feature for the purpose of storing gas, whether temporarily or permanently;
 - (d) the recovery of gas stored;
 - (e) exploration with a view to, or in connection with, the carrying on of activities within heads (a) to (d).

(3) Sub-paragraph (1) does not apply to an activity falling within sub-paragraph (2) if the provisions of this Schedule apply to or in relation to that activity by virtue of paragraph 2(1).

(4) In this paragraph—

“gas” means any substance which is gaseous at a temperature of 15°C and a pressure of 101.325kPa (1013.25 mb); and

“installation” includes any floating structure or device maintained on a station by whatever means.

(5) For the purposes of sub-paragraphs (2) to (4), references to gas include any substance which consists wholly or mainly of gas.

Production of energy from water or wind

7.—(1) This paragraph applies within a renewable energy zone to and in relation to any energy structures or activities connected with or preparatory to—

- (a) the exploitation of those areas for the production of energy from water or wind;
- (b) the exploration of such areas with a view to, or in connection with, the production of energy from water or wind; or
- (c) the operation of a cable for transmitting electricity from an energy structure.

(2) In this paragraph—

“energy structure” means a fixed or floating structure or machine, other than a vessel, which is, or is to be, or has been, used for producing energy from water or wind; and

“renewable energy zone” has the meaning given by section 84(4) of the Energy Act 2004(a) and “within a renewable energy zone” includes over and under it.

Underground coal gasification

8. This paragraph applies within a designated area to and in relation to—

- (a) underground coal gasification and any activity in connection with it;
- (b) any activity which is immediately preparatory to any activity in sub-paragraph (a); and
- (c) any fixed or floating structure which is, or is to be, or has been, used in connection with the carrying on of activities within sub-paragraphs (a) and (b).

Other activities

9.—(1) Subject to sub-paragraph (2), this paragraph applies to and in relation to—

- (a) the construction, reconstruction, alteration, repair, maintenance, cleaning, use, operation, demolition and dismantling of any building, or other structure, not being in any case a vessel, or any preparation for such activity;

(a) 2004 c.20

- (b) the transfer of people or goods between a vessel or aircraft and a structure (including a building) mentioned in head (a);
 - (c) the loading, unloading, fuelling or provisioning of a vessel;
 - (d) a diving project;
 - (e) the laying, installation, inspection, maintenance, operation, recovery or repair of a cable;
 - (f) the construction, reconstruction, finishing, refitting, repair, maintenance, cleaning or breaking up of a vessel except when carried out by the master or any officer or member of the crew of that vessel;
 - (g) the maintaining on a station of a vessel which would be an offshore installation were it not a structure to which paragraph 2(3)(c) applies;
 - (h) the transfer of people or goods between a vessel or aircraft and a structure mentioned in head (g).
- (2) This paragraph does not apply—
- (a) to a case where paragraph 2, 3, 4, 5, 6, 7 or 8 applies; or
 - (b) to vessels which are registered outside the United Kingdom and are on passage through the territorial sea.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations, in respect of Northern Ireland, provide for the appointment of competent authorities in relation to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures (“the CLP Regulation”, (OJ No. L353, 31.12.08, p.1)).

These Regulations also provide for the enforcement, in respect of Northern Ireland, of the CLP Regulation.

The CLP Regulation replaces Council Directive 67/548/EEC (OJ No L196 16.08.67, p.1) and Council Directive 1999/45/EC (OJ No L200 30.07.99, p.1). The main purpose of the CLP Regulation is to adopt within the European Community the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) published by the UN Social and Economic Council (Fourth Revised Edition ISBN-978-92-1-117042-9). The UN GHS is a result of an international agreement made at the United World Conference on Environment and Development in Rio de Janeiro in 1992, and the World Summit on Sustainable Development in Johannesburg in 2002. It sets out internationally accepted definitions and criteria to identify the hazards of chemicals and to communicate those hazards via labels and safety data sheets. The GHS is a voluntary international agreement and countries may keep national requirements that are not covered by the GHS provided that they do not contradict it. The CLP Regulation requires dutyholders to classify, label and package hazardous chemicals before placing them on the market in accordance with its provisions.

Provision is made for the coming into operation of the Regulations and to extend the application of the Regulations outside Northern Ireland in regulation 2 and Schedule 2.

Most of the terms and expressions used in these Regulations are defined in regulation 3.

Regulation 4 provides that the Department of Justice is designated as the competent authority in relation to the CLP Regulation.

Regulation 5 makes provision for the enforcement of the CLP Regulation by applying enforcement and penalty provisions of the 1978 Order to the CLP Regulation as if it were health and safety regulations for the purposes of the 1978 Order.

Regulation 6 provides that the CLP Regulation is enforced by the Department of Justice.

Regulation 7 and Schedule 1 make provision for defence exemption certificates in respect of requirements and prohibitions contained in the CLP Regulation.

Regulation 8 disapplies the provisions for these Regulations where an enforcing authority takes a sample of a substance or mixture for enforcement purposes.

Regulation 9 sets out the penalties that apply for an offence under Article 31 of the 1978 Order, as applied to these Regulations and the CLP Regulation by provisions in these Regulations.

Regulation 10 provides for a defence of due diligence in any proceedings for an offence in respect of a breach of these Regulations and the CLP Regulation.

Regulation 11 revokes provisions in the 2009 Regulations on two dates so that domestic provisions which implemented Council Directive 67/548/EEC and Council Directive 1999/45/EC are revoked in accordance with time periods for the transition to the CLP Regulation.

Regulation 12 amends the 2009 Regulations by making provision for the advertising of dangerous preparations and bring penalties in line with the European Communities Act 1972. These amendments will have effect from 31st May 2015 until the 2009 Regulations are revoked in accordance with Regulation 11.

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