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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 366**

**The Making Available on the Market and Supervision of  
Transfers of Explosives Regulations (Northern Ireland) 2016**

**PART 1**

**INTRODUCTION**

**Citation and commencement**

1. These Regulations may be cited as the Making Available on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 2016 and shall come into operation on 21st October 2016.

**Interpretation**

2.—(1) In these Regulations—

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

“the 1993 Regulations” means the Placing on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 1993 <sup>M1</sup>;

“accreditation” has the meaning set out in point 10 of Article 2 of RAMS (as amended from time to time);

“accreditation certificate” means a certificate, issued by the United Kingdom Accreditation Service (a company limited by guarantee incorporated in England and Wales under number 03076190) or a national accreditation body in another EEA State, attesting that a conformity assessment body meets the notified body requirements;

“authorised representative” means a person established within an EEA State appointed in accordance with regulation 12(1) who has received a written mandate from the manufacturer to act on the manufacturer's behalf in relation to specified tasks;

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

“Chief Constable” means the Chief Constable of the Police Service of Northern Ireland;

“civil explosive” means an explosive which has been or would be classified in accordance with the United Nations Recommendations as falling within Class 1 but does not include—

- (a) ammunition the acquisition of which is regulated or prohibited by virtue of the Firearms (Northern Ireland) Order 2004 <sup>M2</sup>; or
- (b) any explosive which it is shown is intended for lawful use by the armed forces or the police of any country; or
- (c) a pyrotechnic article;

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

- “civil explosive substance” means an explosive substance in a civil explosive;
- “Class 1” means Class 1 in respect of explosives or the classification of dangerous goods as set out in the United Nations Recommendations;
- “the Commission” means the Commission of the European Union;
- “competent authority” has the meaning given in regulation 4(8)(a);
- “competent national authority” means an authority having responsibility for enforcing the law of an EEA State which implements the Directive;
- “conformity assessment” means the process demonstrating whether the essential safety requirements relating to a civil explosive have been fulfilled;
- “conformity assessment body” means a body that performs conformity assessment activities, including calibration, testing, certification and inspection;
- “the Department” means the Department of Justice;
- “the Directive” means Directive 2014/28/EU of the European Parliament and of the Council on the harmonisation of the laws of the member States relating to the making available on the market and supervision of explosives for civil uses (recast)<sup>M3</sup>;
- “distributor”, in relation to civil explosives, means a person in the supply chain, other than a manufacturer or an importer, who makes a civil explosive available on the market and “distribution” in relation to Part 3 is to be construed accordingly;
- “economic operator” means a manufacturer, authorised representative, importer, distributor or any person who engages in the storage, use, transfer, import, export or trading of civil explosives;
- “enforcing authority” means—
- (d) in relation to Part 2, the Chief Constable;
  - (e) in relation to Part 3, Sub-Parts A and B, the Department of Justice and the market surveillance in relation to that Part by the Department of Justice;
  - (f) in relation to Part 3, Sub-Part C, the Secretary of State;
- “essential safety requirements” means the requirements set out in Schedule 1 (essential safety requirements);
- “EU declaration of conformity” means a declaration of conformity required to be drawn up in accordance with regulation 7(1)(a) (EU declaration of conformity and CE marking);
- “the Executive” means the Health and Safety Executive established under Section 10 of the Health and Safety at Work etc Act 1974<sup>M4</sup>;
- “explosive” means any explosive article or explosive substance which would—
- (g) if packaged for transport, be classified in accordance with the United Nations Recommendations as falling within Class 1; or
  - (h) be classified in accordance with the United Nations Recommendations as—
    - (i) being unduly sensitive or so reactive as to be subject to spontaneous reaction and accordingly too dangerous to transport; and
    - (ii) falling within Class 1,
- but does not include an explosive substance produced as part of a manufacturing process which thereafter reprocesses it in order to produce a substance or preparation which is not an explosive substance;
- “explosive article” means an article containing one or more explosive substances;

“explosive substance” means a substance or preparation, not including a substance or preparation in a solely gaseous form or in the form of vapour, which is—

- (i) capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings; or
- (j) designed to produce an effect by heat, light, sound, gas or smoke, or a combination of these as a result of a non-detonative, self-sustaining, exothermic chemical reaction;

“harmonised standard” has the meaning set out in point 1(c) of Article 2 of Regulation (EU) 1025/2012 of the European Parliament and of the Council on European standardisation<sup>M5</sup> (as amended from time to time);

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

- (k) is established in an EEA State; and
- (l) places a civil explosive from a third country on the market;

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

“manufacture” in relation to civil explosives includes—

- (m) in relation to explosive articles, their repair, modification, disassembly or unmarking;
- (n) in relation to explosive substances, their reprocessing, modification or adaptation,

but it does not include the packing, unpacking, re-packing, labelling or testing of explosives or the division of an amount of explosives stored in bulk into smaller amounts and the placing of those smaller into containers;

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

- (o) manufactures a civil explosive, or has a civil explosive designed or manufactured; and
- (p) markets that civil explosive under that person's name or trade mark or uses it for their own purposes;

“market surveillance authority” means the authority designated by paragraph 2 of Schedule 2, namely the Department of Justice;

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

“notified body requirements” means the requirements set out in Schedule 3 (Notified body requirements);

“place on the market” means the first making available on the market in an EEA state, and related expressions must be construed accordingly;

“RAMS” means Regulation (EC) 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93<sup>M6</sup>;

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

“recipient competent authority document” has the meaning given in regulation 4(8)(b);

“relevant authority” has the meaning given in regulation 4(8)(c);

“relevant conformity assessment procedure” means a conformity assessment procedure referred to in regulation 32 (conformity assessment procedures);

“technical documentation” has the meaning given in regulation 6 (Technical documentation and conformity assessment);

“technical specification” means a document that prescribes technical requirements to be fulfilled by a civil explosive;

“transfer” when used in relation to civil explosives means any physical movement of civil explosives apart from movement within one site and whether or not transferring possession of or property in the civil explosives is involved;

“United Nations Recommendations” means the United Nations Recommendations on the Transport of Dangerous Goods (based on those originally prepared by the United Nations Committee of Experts on the Transport of Dangerous Goods considered by the Economic and Social Committee of Experts at its twenty-third session (Resolution 645G (XXIII) of 26 April 1957) <sup>M7</sup> as revised or reissued from time to time;

“withdraw” when used in relation to a civil explosive, means taking any measure aimed at preventing a civil explosive in the supply chain from being made available on the market and related expressions must be construed accordingly.

(2) Any reference in the definitions in this regulation of “explosive substance” to liquid gas, gaseous form or vapour, means, respectively, liquid, gas, gaseous form or vapour at normal atmospheric temperature and pressure.

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

(4) In Part 3 “risk” means a risk, other than a minimal risk which—

- (a) could arise from lawful and readily predictable human behaviour; and
- (b) may result in—
  - (i) harm to the health or safety of any person;
  - (ii) unintended damage to property; or
  - (iii) unintended harm to the environment.

(5) Until the entry into force of any amendment made to Annex II (technical regulations, standards, testing and certification) to the EEA Agreement by a Decision of the EEA Joint Committee <sup>M8</sup>, inserting a reference to the Directive <sup>M9</sup> into that Annex, references in regulations 2(1) and 4 and Part 3 and its related Schedules to, as the case may be, “an EEA state”, “another EEA State”, “the EEA State”, “other EEA State” or “other EEA States” are to be construed as referring to, respectively, “a member State”, “another member State”, “the member State”, “other member State” and “other member States”.

(6) The Interpretation Act (Northern Ireland) 1954 <sup>M10</sup> shall apply to these Regulations as it applies to an Act of the Assembly.

#### Marginal Citations

- M1** [S.I. 1993 No.488.](#)
- M2** [S.I. 2004 No.702 \(N.I.3\).](#)
- M3** [O.J. L96,29.3.14, p.1.](#)
- M4** [1974 c.37.](#)
- M5** [O.J. L316, 14.11.12, p.12.](#)
- M6** [O.J. L218, 13.8.2008, p.30.](#)
- M7** [Current edition \(1997\): ISBN 92-1-139057 5.](#)
- M8** [The EEA Joint Committee is established by Article 92 of the EEA Agreement.](#)

- M9** Directive 2014/28/EU is a recast of, and replaces, Council Directive 1993/15/EC of 5th April 1993 (OJ No. L121, 15.5.1993, p.20) which applied in relation to the EEA by virtue of Decision No. 7/94 of 21st March 1994 of the EEA Joint Committee amending Protocol 47 and certain Annexes to the EEA Agreement (OJ No. L160, 28.6.1994, p.1). Directive 2014/28/EU is referred to in its heading as being a text with EEA relevance.
- M10** [1954 c.33 \(N.I.\)](#).

## Application

3.—(1) Regulations 4 to 43 do not apply in respect of the transfer of civil explosives to, by or on behalf of, where following the transfer, the explosives are in the possession of—

- (a) inspectors appointed under Article 21 of the 1978 Order exercising their power to take possession of and detain articles or substances under Article 22(2)(i) of that Order as modified by Schedule 2 to these Regulations;
- (b) constables acting in the execution of their duties;
- (c) a person appointed to assist the Police Service of Northern Ireland as mentioned in section 44 of the Police (Northern Ireland) Act 2000 (police support staff) who is duly authorised by the Chief Constable in respect of such transfer or possession;
- (d) customs officers acting in the performance of their functions;
- (e) the Crown in respect of any civil explosives which are intended for use for the purposes of the department of the Secretary of State having responsibility for defence; or
- (f) a person exercising a power of seizure under section 74 of the Explosives Act 1875.

(2) Regulations 4, 5 and 6 of The Identification and Traceability of Explosives Regulations (Northern Ireland) 2013<sup>M11</sup> do not apply to –

- (a) an explosive which is transported and delivered without packaging or in a mobile explosives manufacturing unit for its direct unloading into the blast hole;
- (b) an explosive manufactured at a blasting site that is loaded immediately after being produced;
- (c) fuses, which are cord-like non-detonating igniting devices;
- (d) safety fuses, which consist of a core of fine grained black powder surrounded by a flexible woven fabric with one or more protective outer coverings and which, when ignited, burn at a predetermined rate without any external explosive effect; or
- (e) cap-type primers, which consist of a metal or plastic cap containing a small amount of primary explosive mixture that is readily ignited by impact and which serve as igniting elements in small arms cartridges or in percussion primers for propelling charges.

### Marginal Citations

**M11** [S.R. 2013/48](#).

## PART 2

### AUTHORISATION

#### Authorisation to transfer civil explosives

4.—(1) Before any civil explosives are transferred, the consignee must obtain from the competent authority for the place where the transfer will terminate, a recipient competent authority document which grants approval for the transfer.

(2) No person may consign any civil explosives for carriage to a place outside Northern Ireland unless the approval of the relevant authority has been obtained,

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

(4) No person may carry civil explosives unless the civil explosives are accompanied by the recipient competent authority document required by paragraph (1) or a copy of that document certified by or on behalf of the consignee to be a true copy thereof.

(5) For the purposes of this regulation, any transfer of civil explosives to a place outside the area of the EEA States is treated as a transfer which will terminate at the place where the civil explosives are immediately before leaving the area of the EEA States.

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

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

(8) In this regulation—

(a) “competent authority” means—

(i) in respect of Northern Ireland, the Chief Constable;

(ii) in respect of Great Britain, the Executive; and

(iii) in respect of a place in the territory of an EEA State other than the United Kingdom, the authority whose responsibilities are specified in Article 11 of the Directive;

(b) “recipient competent authority document” means a document issued in accordance with Article 11.2, 11.4 or 11.6 of the Directive by the competent authority of the EEA State in which the transfer will terminate; and

(c) “relevant authority” means—

(i) in respect of a transfer or part of a transfer which takes place within Northern Ireland, the Chief Constable;

(ii) in respect of a transfer or part of a transfer which takes place in Great Britain, the Executive; and

(iii) in respect of a transfer or part of a transfer which takes place in the territory of an EEA State other than the United Kingdom, the competent authority for each place where the transfer takes or is to take place.

## **PART 3**

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

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

##### **MANUFACTURERS**

#### **Design and manufacture in accordance with essential safety requirements**

5. Before placing a civil explosive on the market or using it for their own purposes, a manufacturer must ensure that it has been designed and manufactured in accordance with Schedule 1 (Essential safety requirements).

#### **Technical documentation and conformity assessment**

6. Before placing a civil explosive on the market or using it for their own purposes, a manufacturer must, in respect of that civil explosive—

- (a) have a relevant conformity assessment procedure carried out; and
- (b) draw up the technical documentation referred to—
  - (i) for a civil explosive in respect of which the conformity assessment procedure in regulation 32(a) is being carried out, in point 3(c) of Module B of Annex III to the Directive (as amended from time to time);
  - (ii) for a civil explosive in respect of which the conformity assessment procedure in regulation 32(b) is being carried out, in point 2 of Module G of Annex III to the Directive (as amended from time to time).

#### **EU declaration of conformity and CE marking**

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

- (a) draw up a declaration of conformity in accordance with regulation 33 (EU declaration of conformity); and
  - (b) affix the CE marking in accordance with regulation 34 (CE marking).
- (2) The manufacturer must keep the EU declaration of conformity up to date.
- (3) Where a civil explosive is subject to more than one EU instrument requiring a declaration of conformity to be drawn up, the manufacturer must draw up a single declaration of conformity, which—
- (a) identifies the EU instruments; and
  - (b) includes references to the publication of those EU instruments in the Official Journal of the European Union.

### **Retention of technical documentation and EU declaration of conformity**

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

### **Compliance procedures for series production**

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

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

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

### **Traceability of certain civil explosives excluded from the scope of regulations 4, 5 and 6 of the Identification and Traceability of Explosives Regulations (Northern Ireland) 2013 (ITOER (NI) 2013)**

10.—(1) A manufacturer of a civil explosive which is excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013, by virtue of regulation 3(2), must, before placing such a civil explosive on the market—

- (a) ensure that it bears a type, batch or serial number or other element allowing its identification; and
- (b) indicate on the civil explosive—
  - (i) any of—
    - (aa) the manufacturer's name;
    - (bb) registered trade name; or
    - (cc) registered trade mark; and
  - (ii) a single postal address at which they can be contacted.

(2) Where the small size, shape or design of the civil explosive does not allow the information specified in paragraph (1)(a) to be indicated on it, the manufacturer must ensure that such information is indicated on its packaging or in a document accompanying the civil explosive.

(3) Where it is not possible to indicate the information specified in paragraph (1)(b) on the civil explosive, the manufacturer must indicate that information on the packaging or in a document accompanying the civil explosive.

(4) The contact details referred to in paragraph (1) must be provided in a language which can be easily understood by end-users and the market surveillance authority in the EEA State in which the civil explosive is to be made available to such end-users.

### **Instructions and safety information**

11.—(1) When placing a civil explosive on the market, a manufacturer must ensure that it is accompanied by instructions and safety information in a language which can be easily understood by end-users in the EEA State in which the civil explosive is to be made available to such end-users.

(2) Where the civil explosive is being made available to end-users in the United Kingdom, the language referred to in paragraph (1) which can easily be understood by end-users is English.



(3) The instructions and safety information referred to in paragraph (1) and labelling, must be clear, understandable and intelligible.

#### AUTHORISED REPRESENTATIVES

##### **Appointment of authorised representative by written mandate**

**12.**—(1) A manufacturer may, by written mandate, appoint a person as their authorised representative to perform specified tasks on the manufacturer's behalf.

(2) The mandate must allow the authorised representative to do at least the following in relation to a civil explosive covered by the mandate—

- (a) perform the manufacturer's obligations under regulation 8 (Retention of technical documentation and EU declaration of conformity); and
- (b) perform the manufacturer's obligations under regulation 20 (Provision of information and cooperation).

(3) A manufacturer must not delegate the performance of their functions under regulation 5 (Design and manufacture in accordance with essential safety requirements) and regulation 6 (Technical documentation and conformity assessment) to an authorised representative.

(4) An authorised representative must comply with all the duties imposed on the manufacturer in relation to each obligation under this Part that the authorised representative is appointed by the manufacturer to perform, and accordingly—

- (a) as far as those duties are concerned, references in this Part (except in this regulation) to the manufacturer are to be taken as including a reference to the authorised representative; and
- (b) if the authorised representative contravenes or fails to comply with any of those duties, the authorised representative may be proceeded against as though the authorised representative were the manufacturer.

(5) A manufacturer who has appointed an authorised representative to perform on their behalf an obligation under this Part remains responsible for the proper performance of that obligation.

#### IMPORTERS

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

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

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

**14.**—(1) Before placing a civil explosive on the market, an importer must ensure that—

- (a) a relevant conformity assessment procedure has been carried out by the manufacturer;
- (b) the manufacturer has drawn up the technical documentation;
- (c) the civil explosive—
  - (i) bears the CE marking; and
  - (ii) is accompanied by the required documents; and
- (d) the manufacturer has complied with the requirements, where applicable, set out in regulation 10 (Traceability of certain civil explosives excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013) to the extent not already covered by subparagraph (c)(ii).

(2) In paragraph (1)(c)(ii), “required documents” means any documents that are required to be provided with the civil explosive pursuant to—

- (a) regulation 10(2) and (3) (Traceability of certain civil explosives excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013); and
- (b) regulation 11 (Instructions and safety information).

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

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

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

### **Information identifying importer**

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

- (a) any of—
  - (i) the name;
  - (ii) registered trade name; or
  - (iii) registered trade mark of the importer; and
- (b) a postal address at which the importer can be contacted.

(2) The information specified in paragraph (1) must be in a language which can be easily understood by end-users and the market surveillance authority in the EEA State in which the civil explosive is to be made available to such end-users.

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

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

#### **Modifications etc. (not altering text)**

- C1** [Reg. 16](#) modified (temp.) by S.I. 2019/392, reg. 6 (as inserted (10.9.2019) by [The Product Safety, Metrology and Mutual Recognition Agreement \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/1246), reg. 1(2)(4), **2(3)** (with reg. 18))

### **Instructions and safety information**

**17.**—(1) When placing a civil explosive on the market, an importer must ensure that it is accompanied by instructions and safety information in a language which can be easily understood by end-users in the EEA State in which the civil explosive is to be made available to such end-users.

(2) Where the civil explosive is being made available to end-users in the United Kingdom, the language referred to in paragraph (1) which can be easily understood by end-users is English.

### **Retention of technical documentation and EU declaration of conformity**

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

- (a) keep a copy of the EU declaration of conformity at the disposal of the market surveillance authority; and
- (b) ensure that the technical documentation can be made available to that authority, upon request.

### **MANUFACTURERS AND IMPORTERS**

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

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

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

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

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

### **Provision of information and cooperation**

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

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

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

- (a) evaluate a civil explosive in accordance with paragraph 8 of Schedule 2 (Evaluation of civil explosives presenting a risk);
- (b) eliminate the risks posed by a civil explosive which the manufacturer or importer has placed on the market.

### **DISTRIBUTORS**

### **Duty to act with due care**

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

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

- 22.**—(1) Before making a civil explosive available on the market, a distributor must verify that—
- (a) the civil explosive—
    - (i) bears the CE marking;
    - (ii) is accompanied by the required documents;
    - (iii) is accompanied by instructions and safety information in a language which can be easily understood by end-users in the EEA State in which the civil explosive is to be made available.
  - (b) the manufacturer has complied with the requirements, where applicable, set out in regulation 10 (Traceability of certain civil explosives excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013) to the extent not already covered by sub-paragraph (a)(ii); and
  - (c) the importer has complied with the requirements set out in regulation 16 (Information identifying importer) to the extent not already covered by sub-paragraph (a)(ii).
- (2) In paragraph (1)(a)(ii), “required documents” means the documents that are required to be provided with the civil explosive pursuant to—
- (a) regulation 10(2) and (3) (Traceability of certain civil explosives excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013); and
  - (b) regulation 16(3) (Information identifying importer).

### **Prohibition on making available on the market civil explosives considered not to be in conformity with the essential safety requirements**

- 23.**—(1) Where a distributor considers, or has reason to believe, that a civil explosive is not in conformity with the essential safety requirements, the distributor must not make the civil explosive available on the market.
- (2) Where the civil explosive presents a risk, the distributor must inform the following persons of the risk—
- (a) the manufacturer or the importer; and
  - (b) the market surveillance authority.

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

- 24.**—(1) A distributor who considers, or has reason to believe, that a civil explosive which the distributor has made available on the market is not in conformity with this Part must make sure that the necessary corrective measures are taken to—
- (a) bring that civil explosive into conformity;
  - (b) withdraw the civil explosive; or
  - (c) recall the civil explosive.
- (2) Where the civil explosive presents a risk, the distributor must immediately inform the competent national authorities of any EEA State in which the distributor has made the civil explosive available on the market, of that risk, giving details of—
- (a) the respect in which the civil explosive is considered not to be in conformity with this Part; and
  - (b) any corrective measures taken.

### **Provision of information and cooperation**

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

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

- (a) evaluate a civil explosive in accordance with paragraph 8 of Schedule 2 (Evaluation of civil explosives presenting a risk); and
- (b) eliminate the risks posed by a civil explosive which the distributor has made available on the market.

### **IMPORTERS AND DISTRIBUTORS**

#### **Storage and transport**

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

#### **Cases in which obligations of manufacturers apply to importers and distributors**

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

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

### **ALL ECONOMIC OPERATORS**

#### **Translation of a declaration of conformity**

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

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

#### **Identification of economic operators**

**29.**—(1) This regulation applies in relation to civil explosives excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013 by virtue of regulation 3(2).

(2) An economic operator (“E”) who receives a request from the market surveillance authority before the end of the relevant period, must, within such period as the authority may specify, identify to the market surveillance authority—

- (a) any economic operator who has supplied E with a civil explosive to which this regulation applies; and
  - (b) any economic operator to whom E has supplied a civil explosive to which this regulation applies.
- (3) The relevant period is—

- (a) for information under paragraph (2)(a), a period of 10 years beginning on the day on which E was supplied with the civil explosive;
- (b) for information under paragraph (2)(b), a period of 10 years beginning on the day on which E supplied the civil explosive.

### **Prohibition on improper use of CE marking**

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

- (a) that economic operator is the manufacturer; and
- (b) the conformity of the civil explosive with the essential safety requirements has been demonstrated by a relevant conformity assessment procedure.

(2) An economic operator must not affix to a civil explosive a marking (other than the CE marking) which purports to attest that the civil explosive is in conformity with the essential safety requirements.

(3) An economic operator must not affix to a civil explosive a marking, sign or inscription which is likely to mislead any other person as to the meaning or form of the CE marking.

(4) An economic operator must not affix to a civil explosive any other marking if the visibility, legibility and meaning of the CE marking would be impaired as a result.

## **SUB-PART B: CONFORMITY ASSESSMENT**

### **Presumption of conformity**

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

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

### **Conformity assessment procedures**

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

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

### **EU declaration of conformity**

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

- (a) state that the fulfilment of the essential safety requirements has been demonstrated in respect of the civil explosive;

- (b) contain the elements specified in the relevant modules set out in Annex III to the Directive (as amended from time to time) for the relevant conformity assessment procedure followed in respect of the civil explosive; and
- (c) have the model structure set out in Annex IV to the Directive (as amended from time to time).

### **CE marking**

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

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

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

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

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

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

(5) In the case of a civil explosive—

- (a) manufactured for the manufacturer's own use;
- (b) transported and delivered unpackaged or in a Mobile Explosives Manufacturing Unit for its direct unloading into the blast-hole; or
- (c) manufactured at the blasting site which is loaded immediately after being produced (in situ production),

the CE marking must be affixed to the accompanying documents.

## **SUB-PART C: NOTIFICATION OF CONFORMITY ASSESSMENT BODIES**

### **Notified bodies**

**35.**—(1) For the purposes of this Part, a notified body is a conformity assessment body—

- (a) which has been notified to the European Commission and to the other EEA States—
  - (i) under regulation 36 (Notification); or
  - (ii) by the Secretary of State, before 20th April 2016, in accordance with Article 24 of the Directive (as amended from time to time); and
- (b) in respect of which no objections are raised by the European Commission or the other EEA States—
  - (i) within two weeks of a notification, where an accreditation certificate is issued; or
  - (ii) within two months of a notification, where accreditation is not used.

(2) Paragraph (1) has effect subject to regulation 41 (Changes to notifications).

### **Notification**

**36.**—(1) The Secretary of State must notify to the European Commission and the other EEA States only those conformity assessment bodies that qualify for notification.

(2) A conformity assessment body qualifies for notification if the first and second conditions below are met.

(3) The first condition is that the conformity assessment body makes an application to the Secretary of State for notification and that the application is accompanied by—

- (a) a description of—
  - (i) the conformity assessment activities that the conformity assessment body intends to carry out;
  - (ii) the conformity assessment module for which the conformity assessment body claims to be competent; and
  - (iii) the civil explosive for which the conformity assessment body claims to be competent; and either
- (b) an accreditation certificate; or
- (c) the documentary evidence necessary for the Secretary of State to verify, recognise and regularly monitor the conformity assessment body's compliance with the notified body requirements.

(4) The second condition is that the Secretary of State is satisfied that the conformity assessment body meets the notified body requirements.

(5) For the purposes of paragraph (4), the Secretary of State may accept an accreditation certificate in accordance with paragraph (3)(b) as sufficient evidence that the conformity assessment body meets the notified body requirements.

(6) When deciding whether to notify a conformity assessment body that qualifies for notification to the European Commission and the other EEA States, the Secretary of State may—

- (a) have regard to any other matter which appears to the Secretary of State to be relevant; and
- (b) set conditions that the conformity assessment body must meet.

(7) The Secretary of State must notify to the European Commission of the United Kingdom's procedures for the assessment and notification of conformity assessment bodies, and any changes to those procedures.

### **Presumption of conformity of notified bodies**

**37.**—(1) Where a conformity assessment body demonstrates its conformity with the criteria laid down in a harmonised standard (or part of such a standard), the reference of which has been published in the Official Journal of the European Union, the Secretary of State is to presume that the conformity assessment body meets the notified body requirements covered by that standard (or part of that standard).

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

### **Contents of notification**

**38.** A notification under regulation 36 must include—

- (a) details of—
  - (i) the conformity assessment activities in respect of which the conformity assessment body has made its application for notification;
  - (ii) the conformity assessment module or modules in respect of which the conformity assessment body has made its application for notification; and
  - (iii) the civil explosive in respect of which the conformity assessment body has made its application for notification; and either



- (b) an accreditation certificate; or
- (c) documentary evidence which attests to—
  - (i) the conformity assessment body's competence; and
  - (ii) the arrangements in place to ensure that the conformity assessment body will be monitored regularly and will continue to meet the notified body requirements.

### **Monitoring**

**39.**—(1) The Secretary of State must monitor each notified body with a view to verifying that the notified body—

- (a) continues to meet the notified body requirements;
- (b) meets any conditions set in accordance with regulation 36(6)(b); and
- (c) carries out its functions in accordance with these Regulations.

(2) The Secretary of State must inform the European Commission of the United Kingdom's procedures for the monitoring of notified bodies, and any changes to those procedures.

### **United Kingdom Accreditation Service**

**40.** The Secretary of State may authorise the United Kingdom Accreditation Service (a company limited by guarantee incorporated in England and Wales under number 03076190) to carry out the following activities on behalf of the Secretary of State—

- (a) assessing whether a conformity assessment body meets the notified body requirements; and
- (b) monitoring notified bodies in accordance with regulation 39 (Monitoring).

### **Changes to notifications**

**41.**—(1) Where the Secretary of State determines that a notified body no longer meets a notified body requirement, or that it is failing to fulfil any of its obligations under these Regulations other than conditions set out in accordance with regulation 36(6)(b), the Secretary of State must restrict, suspend or withdraw the body's status as a notified body under regulation 35.

(2) With the consent of a notified body, or where the Secretary of State determines that a notified body no longer meets a condition set in accordance with regulation 36(6)(b), the Secretary of State may restrict, suspend or withdraw the body's status as a notified body under regulation 35.

(3) In deciding what action is required under paragraph (1) or (2), the Secretary of State must have regard to the seriousness of the failure.

(4) Where the Secretary of State takes action under paragraph (1) or (2), the Secretary of State must immediately inform the European Commission and the other EEA States.

(5) Where the Secretary of State has taken action in respect of a notified body under paragraph (1) or (2), or where the notified body has ceased its activity, the notified body must, at the request of the Secretary of State—

- (a) transfer its files relating to the activities it has undertaken as a notified body to another notified body or to the Secretary of State; or
- (b) keep its files relating to the activities it has undertaken as a notified body available for the Secretary of State and the market surveillance authorities for a period of 10 years from the date they were created.

### **Operational obligations of notified bodies**

**42.** When a notified body carries out a relevant conformity assessment procedure, it must do so in accordance with Schedule 4 (operational obligations of notified bodies).

### **Subsidiaries and contractors**

**43.—**(1) Where a notified body subcontracts specific conformity assessment activities, or has such activities carried out by a subsidiary, the activities are only to be treated as having been carried out by a notified body for the purposes of regulation 32 (Conformity assessment procedures) where the conditions in paragraphs (2) and (3) are met.

(2) The notified body must—

- (a) ensure that the subcontractor or subsidiary meets the notified body requirements; and
- (b) inform the Secretary of State accordingly.

(3) The notified body must have obtained the agreement of the client to the use of a subcontractor or subsidiary.

(4) Where a notified body subcontracts specific conformity assessment activities, or has such activities carried out by a subsidiary, the notified body must for a period of at least 10 years, beginning on the day on which the activities are carried out, keep at the disposal of the Secretary of State the documentation concerning—

- (a) the assessment of the qualifications of the subcontractor or the subsidiary; and
- (b) the conformity assessment activities carried out by the subcontractor or subsidiary.

(5) When monitoring a notified body in accordance with regulation 39 (Monitoring), the Secretary of State must treat the notified body as responsible for the tasks performed by a subcontractor or subsidiary, wherever the subcontractor or subsidiary is established.

## **PART 4**

### **ENFORCEMENT OF THE REGULATIONS**

#### **Enforcement in relation to Part 2 and Part 3, market surveillance and further matters**

**44.** Schedule 2, which makes provisions as to—

- (a) enforcement in relation to Part 2 and Part 3 of these Regulations;
- (b) market surveillance in relation to Part 3 of these Regulations;
- (c) compliance, withdrawal and recall notices; and
- (d) a defence of due diligence, appeals against notices and further provisions in relation to enforcement;

has effect.

## PART 5

### TRANSITIONAL PROVISIONS AND REVOCATION

#### Transitional provisions

**45.**—(1) Despite the revocation of the 1993 Regulations by these Regulations, a recipient competent authority document issued under the 1993 Regulations which was valid immediately before the relevant date is deemed to be a valid recipient competent authority document for the purposes of regulation 4 of these Regulations.

(2) Where an application for a recipient competent authority document under the 1993 Regulations has been made to, and received by, the Chief Constable before the relevant date and the application has not been refused or granted by that date, the application is deemed to be an application for a recipient competent authority document under regulation 4 of these Regulations and the provisions of these Regulations apply to the application.

(3) In this regulation—

- (a) “the 1993 Regulations” means the Placing on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 1993 <sup>M12</sup>;
- (b) “recipient competent authority document” has the same meaning as in regulation 4(8)(b); and
- (c) “relevant date” is 21st October 2016.

#### Marginal Citations

**M12** S.I. 1993 No. 488.

#### Revocation

**46.** The 1993 Regulations are revoked from 21st October 2016.

Sealed with the Official Seal of the Department of Justice on 29th September 2016

L.S.

*Claire Sugden*  
Minister of Justice

**Changes to legislation:**

There are currently no known outstanding effects for the The Making Available on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 2016.