

SCHEDULE 1

Reg 5

ESSENTIAL SAFETY REQUIREMENTS

(This Schedule reproduces, with minor modifications, the provision of Annex II to the Directive)

PART 1

GENERAL REQUIREMENTS

1. Each civil explosive must be designed, manufactured and supplied in such a way as to present a minimal risk to the safety of human life and health, and to prevent damage to property and the environment under normal, foreseeable conditions, in particular as regards the safety rules and standard practices until such time as it is used.
2. Each civil explosive must attain the performance characteristics specified by the manufacturer in order to ensure maximum safety and reliability.
3. Each civil explosive must be designed and manufactured in such a way that when appropriate techniques are employed it can be disposed of in a manner which minimises effects on the environment.

PART 2

SPECIAL REQUIREMENTS

4. As a minimum, the following information and properties – where appropriate – must be considered or tested. Each civil explosive should be tested under realistic conditions. If this is not possible in a laboratory, the test should be carried out in the conditions in which the civil explosive is to be used.
 - (a) Design and characteristic properties, including chemical composition, degree of homogeneity and, where appropriate, dimensions and grain size distribution.
 - (b) The physical and chemical stability of the civil explosive in all environmental conditions to which it may be exposed.
 - (c) Sensitiveness to impact and friction.
 - (d) Compatibility of all components as regards their physical and chemical stability.
 - (e) The chemical purity of the civil explosive.
 - (f) Resistance of the civil explosive against influence of water where it is intended to be used in humid or wet conditions and where its safety or reliability may be adversely affected by water.
 - (g) Resistance to low and high temperatures, where the civil explosive is intended to be kept or used at such temperatures and its safety or reliability may be adversely affected by cooling or heating of a component or of the civil explosive as a whole.
 - (h) The suitability of the civil explosive for use in hazardous environments (e.g. firedamp atmospheres, hot masses, etc.) if it is intended to be under such conditions.
 - (i) Safety features intended to prevent untimely or inadvertent initiation or ignition.
 - (j) The correct loading and functioning of the civil explosive when used for its intended purpose.

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- (k) Suitable instructions and, where necessary, markings in respect of safe handling, storage, use and disposal.
 - (l) The ability of the civil explosive, its wrapping or other components to withstand deterioration during storage until the “use by” date specified by the manufacturer.
 - (m) Specification of all devices and accessories needed for reliable and safe functioning of the civil explosive.
5. The various groups of civil explosives must at least also comply with the following requirements:
- (a) Blasting Explosives
 - (i) The proposed method of initiation must ensure safe, reliable and complete detonation or deflagration as appropriate, of the blasting explosive. In the particular case of black powder, it is the capacity as regards deflagration which is to be checked.
 - (ii) Blasting explosives in cartridge form must transmit the detonation safely and reliably from one end of the train of cartridges to the other.
 - (iii) The fumes produced by blasting explosives intended for underground use may contain carbon monoxide, nitrous gases, other gases, vapours or airborne solid residues only in quantities which do not impair health under normal operating conditions.
 - (b) Detonating cords, safety fuses, other fuses and shock tubes
 - (i) The covering of detonating cords, safety fuses, other fuses and shock tubes must be of adequate mechanical strength and adequately protect the explosive filling when exposed to normal mechanical stress.
 - (ii) The parameters for the burning times of safety fuses must be indicated and must be reliably set.
 - (iii) Detonating cords must be capable of being reliably initiated, be of sufficient initiation capability and comply with requirements as regards storage even in particular climatic conditions.
 - (c) Detonators (including delay detonators) and relays
 - (i) Detonators must reliably initiate the detonation of the blasting explosives which are intended to be used with them under all foreseeable conditions of use.
 - (ii) Delay connectors for detonating cords must be reliably initiated.
 - (iii) The initiation capability must not be adversely affected by humidity.
 - (iv) The delay times of delay detonators must be sufficiently uniform to ensure that the probability of overlapping of the delay times of adjacent time steps is insignificant.
 - (v) The electrical characteristics of electrical detonators must be indicated on the packaging (e.g. no-fire current, resistance, etc.).
 - (vi) The wires of electric detonators must be of sufficient insulation and mechanical strength including the solidity of the link to the detonator, taking account of their intended use.
 - (d) Propellants and rocket propellants
 - (i) These materials must not detonate when used for their intended purpose.
 - (ii) Propellants where necessary (e.g. those based on nitrocellulose) must be stabilised against decomposition.
 - (iii) Solid rocket propellants, when in compressed or cast form, must not contain any unintentional fissures or gas bubbles which dangerously affect their functioning.

SCHEDULE 2

Reg 44

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

PART 1

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

Enforcement powers, market surveillance and designation of market surveillance authority

1. This Part applies in relation to—
 - (a) the enforcement of Part 2 of these Regulations by the Chief Constable; and
 - (b) the enforcement of Sub-Parts A and B of Part 3 of these Regulations, and market surveillance in relation to that Part, by the Department and
 - (c) the enforcement of Sub-Part C of Part 3 of these Regulations by the Secretary of State.
2. In Northern Ireland, the Department is designated as the market surveillance authority for the purposes of the Directive and RAMS in respect of civil explosives.
3. In its enforcement of Sub-Parts A and B of Part 3, the Department must enforce RAMS in respect of its application to civil explosives.
4. When enforcing Part 3, the enforcing authority must exercise its powers in a manner which is consistent with—
 - (a) paragraph 8 (Evaluation of civil explosives presenting a risk);
 - (b) paragraph 9 (Enforcement action in respect of civil explosives which are not in conformity and which present a risk);
 - (c) paragraph 10 (EU safeguard procedure);
 - (d) paragraph 11 (Enforcement action in respect of civil explosives which are in conformity, but present a risk);
 - (e) paragraph 12 (Enforcement action in respect of formal non-compliance); and
 - (f) paragraph 13 (Restrictive measures).
5. Subject to paragraph 7, and to the extent that they would not otherwise do so in the case of Part 2, the provisions of the 1978 Order referred to in paragraph 6 apply to Part 2 and Part 3 of these Regulations for the purposes of their enforcement as if Part 2 and Part 3 of these Regulations were health and safety regulations for the purposes of that Order.
6. In relation to the enforcement of the provisions referred to in paragraph 1—
 - (a) Articles 21 to 33, 35, 36, 38 and 39 of, and Schedule 3A to, the 1978 Order apply as provided in paragraph 7; and
 - (b) Articles 34(1) and (2) and 34A of the 1978 Order apply in relation to offences under Article 31 of the 1978 Order as applied by sub-paragraph (a) and the modifications specified in paragraph 7.

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. (See end of Document for details)*

7.—(1) For the purposes of the enforcement of the provisions referred to in paragraph 1, and in respect of any related proceedings for a contravention of any of those provisions, the provisions of the 1978 Order mentioned in paragraph 6 apply as if—

- (a) any reference to the relevant statutory provisions in those provisions were a reference to—
 - (i) those provisions as modified by this paragraph; and
 - (ii) Part 2 and Part 3 of these Regulations;
- (b) references to “risk” were references to “risk” within the meaning of regulation 2(4) of these Regulations;
- (c) in Article 21—
 - (i) in paragraph (1)—
 - (aa) “Every enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
 - (bb) “within its field of responsibility” were omitted;
 - (ii) in paragraph (2), sub-paragraph (b) were omitted; and
 - (iii) in paragraph (3)—
 - (aa) “the enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
 - (bb) “which appointed him” were omitted;
- (d) in Article 22—
 - (i) in paragraph (1), “within the field of responsibility of the enforcing authority which appointed him” were omitted;
 - (ii) in paragraph 2(c)(i), “his (the inspector's) enforcing authority” were a reference to the Department or the Chief Constable, as the case may be;
 - (iii) in paragraph 2(h), the reference to any article or substance which appears to an inspector to have caused or to be likely to cause danger to health or safety included a reference to any civil explosive item which an inspector has reasonable cause to believe will contravene the relevant statutory provisions, present a risk or be unlawfully acquired, used or dealt in;
 - (iv) in paragraph (2)(i), the reference to “sub-paragraph (h)” included a reference to paragraph (2)(h) as modified by this paragraph;
 - (v) paragraph (3) were omitted;
 - (vi) in paragraphs (4) and (5), the reference to paragraph (2)(h) included a reference to paragraph (2)(h) as modified by this paragraph; and
 - (vii) in paragraph (6), the reference to paragraph (2)(i) included a reference to paragraph (2)(i) as modified by this paragraph;
- (e) in Article 23—
 - (i) before sub-paragraph (a), there were inserted—
 - “(za) is making available on the market a civil explosive which presents a risk;”;
 - (ii) in sub-paragraph (b)(ii) after “specifying the”, there was inserted “ risk, or ”; and
 - (iii) in sub-paragraph (b)(iv) after “requiring that person to”, there were inserted “ address the risk or ”;
- (f) in Article 24, as well as permitting an inspector to serve a prohibition notice in the circumstance specified in paragraph (2), it permitted an inspector to serve a prohibition

notice on a person if, as regards any activities to the article applies, the inspector is of the opinion that, as carried on or likely to be carried on by or under the control of that person, the activities involve or, as the case may be, will involve a risk or a contravention of any of the relevant statutory provisions (as referred to in this paragraph);

- (g) in Article 25, paragraphs (3), (4) and (6) were omitted;
- (h) in Article 27A, in paragraph (1)—
 - (aa) “an enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
 - (bb) before “inspector” where it first appears, there were inserted “an”;
- (i) in Article 28—
 - (aa) “the enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
 - (bb) “which appointed him” were omitted;
- (j) in Article 29, in paragraph (1)—
 - (i) sub-paragraph (b) were omitted; and
 - (ii) “or, as the case may be, to the enforcing authority in question” were omitted;
- (k) in Article 29A, in paragraph (2) for “an enforcing authority” there were substituted “ the Department ”;
- (l) in Article 30—
 - (i) in paragraph (3)(a), “or any enforcing authority” were omitted;
 - (ii) in paragraph (4)—
 - (aa) “or an enforcing authority” were omitted; and
 - (bb) “, (including in the case of an enforcing authority, any inspector appointed by it)” were omitted;
 - (iii) in paragraph (5)(a), “or for the purposes of the enforcing authority in question in connection with the relevant statutory provisions” were omitted;
 - (iv) in paragraph (6)—
 - (aa) “16(4)(a) or” were omitted; and
 - (bb) for sub-paragraph (b), there were substituted—
 - “(b) for the purposes of any legal proceedings or for the purposes of a report of any such proceedings;”;
- (m) in Article 31—
 - (i) in paragraph (1) sub-paragraphs (a), (b) and (d) were omitted; and
 - (ii) paragraph (2) has effect subject to paragraph (2A) as follows—
 - “(2A) The maximum penalty for an offence under this article involving a contravention of Part 3 of the Making Available on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 2016 is—
 - (a) on summary conviction, imprisonment for a term not exceeding three months or a fine not exceeding the statutory minimum, or both;
 - (b) on conviction on indictment, imprisonment for a term not exceeding two years, or a fine, or both”;
 - (iii) paragraph (3) were omitted;
- (n) in Article 32—

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- (i) in paragraph (1)—
 - (aa) sub-paragraphs (a) and (b) were omitted;
 - (bb) for the words from “ and it appears” to the end, there were substituted “ and it appears from the investigation or, in a case falling within sub-paragraph (d), from the proceedings at the inquiry, that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject-matter of the investigation or inquiry, summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within three months of the conclusion of the intervention or inquiry. ”; and
- (ii) in paragraph (3)—
 - (aa) the reference to six months were a reference to twelve months; and
 - (bb) “a responsible enforcing authority”, “an enforcing authority” and “the enforcing authority” were each respectively, a reference to the Department or the Chief Constable, as the case may be”; and
- (iii) in paragraph (4)—
 - (aa) the reference to “the designer, manufacturer, importer or supplier of any thing” were a reference to an economic operator within the meaning of regulation 2(1); and
 - (bb) “and in that paragraph” to the end were omitted;
- (o) in Article 33, for “any enforcing authority” there were a reference to the Department or the Chief Constable, as the case may be;
- (p) in Article 36—
 - (aa) “the enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
 - (bb) “which appointed him” were omitted; and
- (q) in Article 39, the reference in paragraph (3A) to “an explosive article or substance” were a reference to a civil explosive article or a civil explosive substance within the meaning of regulation 2(1).

(2) The provisions of the 1978 Order referred to in paragraph 6, except Articles 21 and 22, do not apply in relation to the performance of the functions of the Secretary of State under Sub-Part C of Part 3 or the functions under that Part of a notified body which is a public body performing its functions on behalf of the Crown.

Evaluation of civil explosives presenting a risk

8. Where the Department has sufficient reason to believe that a civil explosive presents a risk, the Department must carry out an evaluation in relation to the civil explosive covering the relevant requirements of Part 3 of these Regulations applying in respect of that civil explosive.

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

9.—(1) Where, in the course of the evaluation referred to in paragraph 8, the Department finds that the civil explosive is not in conformity with Part 3 of these Regulations, it must, without delay, require a relevant economic operator to—

- (a) take appropriate corrective actions to bring the civil explosive into conformity with those requirements within a prescribed period;

- (b) withdraw the civil explosive within a prescribed period; or
 - (c) recall the civil explosive within a prescribed period.
- (2) The Department must inform the notified body which carried out the conformity assessment procedure in respect of the civil explosive of—
- (a) the respect in which the civil explosive is not in conformity with Part 3; and
 - (b) the actions which the Department is requiring the relevant economic operator to take.
- (3) Where the Department considers that the lack of conformity referred to in sub-paragraph (1) is not restricted to the United Kingdom, it must notify the Secretary of State of—
- (a) the results of the evaluation; and
 - (b) the actions which it has required the economic operator to take.
- (4) Where the Secretary of State receives a notice under sub-paragraph (3), the Secretary of State must inform the European Commission and the other EEA States of—
- (a) the results of the evaluation; and
 - (b) the actions which the Department has required the economic operator to take.
- (5) Where the relevant economic operator does not take adequate corrective action within the prescribed period, the Department must take appropriate measures to—
- (a) prohibit or restrict the civil explosive being made available on the market in the United Kingdom;
 - (b) withdraw the civil explosive from the United Kingdom market; or
 - (c) recall the civil explosive.
- (6) Where the Department takes measures under sub-paragraph (5), it must notify the Secretary of State of those measures without delay.
- (7) Where the Secretary of State receives a notice under sub-paragraph (6), the Secretary of State must notify the European Commission and the other EEA States of those measures without delay.
- (8) The notices in sub-paragraphs (6) and (7) must include details about the civil explosive and, in particular—
- (a) the data necessary for the identification of the civil explosive which is not in conformity with Part 3;
 - (b) the origin of the civil explosive;
 - (c) the nature of the lack of conformity alleged and the risk involved;
 - (d) the nature and duration of the measures taken;
 - (e) the arguments put forward by the relevant economic operator; and
 - (f) whether the lack of conformity is due to either of the following—
 - (i) failure of the civil explosive to meet requirements relating to a risk;
 - (ii) shortcomings in the harmonised standards referred to in regulation 31 (Presumption of conformity) conferring a presumption of conformity.
- (9) In this paragraph, “prescribed period” means a period which is—
- (a) prescribed by the Department; and
 - (b) reasonable and commensurate with the nature of the risk presented by the civil explosive.
- (10) For the purposes of sub-paragraph (5), “take appropriate measures” includes the Department making arrangements with the competent national authority for Great Britain as to measures referred to in that sub-paragraph being taken there by that authority.

EU safeguarding procedures

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

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

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

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

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

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

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

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

(7) If a measure taken by the Department pursuant to paragraph 9 is considered unjustified by the European Commission under Article 43(1) of the Directive (as amended from time to time) the Department must withdraw that measure.

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

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

11.—(1) Where, having carried out an evaluation under paragraph 8, the Department finds that although a civil explosive is in conformity with Part 3 of these Regulations it presents a risk, the Department must require a relevant economic operator to take appropriate measures to—

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

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

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

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

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

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

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

Enforcement action in respect of formal non-compliance

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

- (a) the CE marking—
 - (i) has not been affixed; or
 - (ii) has been affixed otherwise than in accordance with regulations 30 (Prohibition on improper use of CE marking) and 34 (CE marking);
- (b) where a notified body is involved in the production control phase for the civil explosive, the identification number of the notified body—
 - (i) has not been affixed; or
 - (ii) has been affixed otherwise than in accordance with regulation 34 (CE marking);
- (c) the EU declaration of conformity—
 - (i) has not been drawn up; or
 - (ii) has been drawn up otherwise than in accordance with regulations 7 (EU declaration of conformity and CE marking) and 33 (EU declaration of conformity);
- (d) the technical documentation is either not available or not complete;
- (e) the following information that is required in respect of the civil explosive is absent, false or incomplete—
 - (i) the information specified in regulation 10 (Traceability of certain civil explosives excluded from the scope of regulations 4, 5 and 6 of ITOER (NI) 2013);
 - (ii) the information specified in regulation 16 (Information identifying importer); or
- (f) any other administrative requirement imposed on the manufacturer or importer under Part 3 has not been fulfilled.

(2) Until the specified period has elapsed, the Department must not commence proceedings in relation to Part 3 of these Regulations, or take any other enforcement action in relation to that Part, against the relevant economic operator in respect of the non-compliance concerned.

(3) Where the non-compliance referred to in sub-paragraph (1) persists, the Department must take the appropriate measures to—

- (a) restrict or prohibit the civil explosive being made available on the market;
- (b) ensure that the civil explosive is withdrawn; or
- (c) ensure that the civil explosive is recalled.

(4) This paragraph does not apply where a civil explosive presents a risk.

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Restrictive measures

13.—(1) When enforcing Part 3, the Department must comply with the requirements of Article 21 of RAMS (as amended from time to time) in relation to any measure to—

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

PART 2

COMPLIANCE, WITHDRAWAL AND RECALL NOTICES

Compliance, withdrawal and recall notices

14. In addition to the powers available to the Department under Part 1 of this Schedule for enforcing Part 3 of these Regulations, the Department may use the powers set out in this Part.

Compliance notice

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

(2) A compliance notice must—

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

(3) A compliance notice may include directions as to the measures to be taken by the economic operator to secure compliance, including different ways of securing compliance.

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

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

Withdrawal notice

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

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

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

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

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

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

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

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

Recall notice

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

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

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

(3) A recall notice may—

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

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

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

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

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

- (a) whether there is non-compliance; and

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(b) whether the issue of a recall notice would be proportionate.

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

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

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

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

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

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

Compliance with a withdrawal or recall notice

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

(2) The provisions of Article 31(1)(c) of the 1978 Order apply to sub-paragraph (1) for the purposes of its enforcement as if it were health and safety regulations for the purposes of that Order.

(3) The maximum penalty for an offence under Article 31(1)(c) of the 1978 Order, as applied by sub-paragraph (2), is determined in accordance with sub-paragraph (4).

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

- (a) on summary conviction, 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.

Interpretation

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

- (a) presents a risk; or
- (b) is not in conformity with Part 3 of these Regulations or RAMS in its application to civil explosives.

PART 3

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

Defence of due diligence

20.—(1) Subject to sub-paragraphs (2) and (4), in proceedings for an offence under Article 31(1)(c) of the 1978 Order involving a contravention of Part 3 or paragraph 18, it is a defence for a person

(“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

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

- (a) served a notice in accordance with sub-paragraph (3); or
- (b) obtained the leave of the court.

(3) The notice must—

- (a) give any information on P's possession which identifies or assists in identifying the person who—
 - (i) committed the act or default; or
 - (ii) supplied the information on which P relied; and
- (b) be served on the person bringing the proceedings not less than seven clear days before the hearing of the proceedings.

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

- (a) to the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether P had any reason to believe the information.

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

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

Service of documents

21. Any document required or authorised by these Regulations to be served on a person may be served by—

- (a) delivering it to that person in person;
- (b) leaving it at that person's proper address; or
- (c) sending it by post or electronic means to that person's proper address.

(2) In the case of a body corporate, a document may be served on a director of that body.

(3) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.

(4) For the purposes of this paragraph, “proper address” means—

- (a) in the case of a body corporate or its director—
 - (i) the registered or principal office of that body; or
 - (ii) the email address of the secretary or clerk of that body;
- (b) in the case of a partnership, a partner or person having control or management of the partnership business—
 - (i) the principal office of the partnership; or
 - (ii) the email address of the partner or person having that control or management;
- (c) in any other case, a person's last known address, which includes an email address.

(5) If a person to be served with a document has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept service, that address shall also be treated as that person's proper address.

Action by enforcing authority

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

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

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

(3) A civil debt recoverable under sub-paragraph (2) may be recovered summarily by way of a complaint pursuant to Article 62 of the Magistrates' Court (Northern Ireland) Order 1981 ^{M1}.

Marginal Citations

M1 [S.I. 1981 No. 1675](#) (N.I. 26).

Appeals against notices

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

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

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

(3) The appropriate court may only make an order setting aside a notice served under Part 2 of this Schedule if satisfied—

- (a) that the civil explosive to which that notice relates is in conformity with Part 3 and does not present a risk; or
- (b) that the enforcing authority failed to comply with paragraph 4 when serving the notice.

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

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

Appropriate court for appeals against notices

24.—(1) The appropriate court for the purposes of paragraph 23 is—

- (a) the court in which proceedings have been brought for an offence in relation to the civil explosive under Article 31 (Offences) of the 1978 Order;
- (b) an industrial tribunal seized of appeal proceedings against a notice which relates to the civil explosive and which had been served under or by virtue of Part 1 of this Schedule; or

(c) in any other case, a magistrates' court.

(2) A person aggrieved by an order made by a magistrates' court pursuant to an application under paragraph 23, or by a decision of such a court not to make such an order, may appeal against that order or decision to the Crown Court.

SCHEDULE 3

Reg 2(1)

NOTIFIED BODY REQUIREMENTS

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

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

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

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

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

5. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities must not engage in activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified (including consultancy services).

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

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

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

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

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment activities;
- (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency and the ability of reproduction of those procedures, and have appropriate policies and procedures in place that distinguish between tasks it carries out as a notified body and other activities;

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. (See end of Document for details)*

- (c) procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the process.
10. A conformity assessment body must have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and must have access to the necessary equipment or facilities.
11. The personnel responsible for carrying out conformity assessment activities must have—
- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
 - (b) satisfactory knowledge of the requirements of the assessments which the personnel carry out and adequate authority to carry out those assessments;
 - (c) appropriate knowledge and understanding of the essential safety requirements, of the applicable harmonised standards and of the Directive and of these Regulations;
 - (d) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.
12. A conformity assessment body must be able to demonstrate the impartiality of its top level management and the personnel responsible for carrying out the conformity assessment activities.
13. The remuneration of the top level management and the personnel responsible for carrying out the conformity assessment activities must not depend on the number of assessments carried out or on the results of those activities.
14. A conformity assessment body must have, and must satisfy the Secretary of State that it has, adequate civil liability insurance in respect of its activities.
15. A conformity assessment body must ensure that its personnel observe professional secrecy with regard to all information obtained in carrying out their tasks in accordance with these Regulations and that proprietary rights are protected.
16. Paragraph 15 does not prevent the personnel from providing information to the Secretary of State or the enforcing authority in respect of Part 3 of these Regulations.
17. A conformity assessment body must participate in, or ensure that its personnel who are responsible for carrying out the conformity assessment activities are informed of, the relevant standardisation activities and the activities of any notified body coordination group established under the Directive and must apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

SCHEDULE 4

Reg 42

OPERATIONAL OBLIGATIONS OF NOTIFIED BODIES

1. A notified body must carry out conformity assessments in accordance with the relevant conformity assessment procedures.
2. A notified body must carry out conformity assessments in a proportionate manner, avoiding unnecessary burdens on economic operators.
3. A notified body must perform its activities taking due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

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

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

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

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

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

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

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

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

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

- (a) any refusal, restriction, suspension or withdrawal of a certificate of conformity or approval;
- (b) any circumstances affecting the scope of, or conditions for, notification under regulation 36 (notification);
- (c) any request for information which it has received from the enforcing authority in respect of Part 3 regarding conformity assessment activities; and
- (d) on request, conformity assessment activities performed within the scope of its notification under regulation 10 and any other activity performed, including cross-border activities and subcontracting.

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

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

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

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

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.