
STATUTORY INSTRUMENTS

2003 No. 1082

The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003

Title, commencement and extent

1. These Regulations may be cited as the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003, extend to Great Britain and come into force on 1st May 2003.

Interpretation

2.—(1) In these Regulations “relevant ammonium nitrate material” means—

- (a) ammonium nitrate in solid form, where its nitrogen content is more than 28% of its weight,
- (b) material in solid form, comprising a mixture of components, one of which is ammonium nitrate, in circumstances where the nitrogen content derived from ammonium nitrate is more than 28% of the material by weight, and
- (c) for so long as any material is treated as relevant ammonium nitrate material by virtue of regulation 9(3), that material,

where the material has a total weight of five hundred kilogrammes or more, but does not include material which is a classified explosive.

(2) In these Regulations—

“batch” means—

- (a) in relation to relevant ammonium nitrate material which is neither imported from outside the European Union nor material which is or has been kept in accordance with regulation 7—
 - (i) the quantity of that material manufactured in a production run without alteration of composition or characteristics, or
 - (ii) in the case where such a production run lasts for more than 92 days, the quantity of the material manufactured—
 - (aa) in the first 92 day period of the run,
 - (bb) in each subsequent 92 day period of the run, and
 - (cc) in any part of the production run after the final such 92 day period;
- (b) in the case of relevant ammonium nitrate material which is imported from outside the European Union and is not and has not been kept in accordance with regulation 7, any quantity of that material consigned to a single importer which is sufficiently homogenous that a 25 kilogramme sample, taken by or in the presence of a sampling body for the purpose of a detonation resistance test, can be regarded as representative of that material; and
- (c) in the case of material which is or has been kept in accordance with regulation 7, the quantity contained in a type of that material as therein described;

“classified explosive” means anything which has been assigned to class 1 in accordance with the Classification and Labelling of Explosives Regulations 1983(1);

“competent laboratory”—

- (a) means a laboratory which has an accreditation under standard ISO 17025 (general requirements for the competence of testing and calibration laboratories) of the International Organisation for Standardisation(2), is based in the European Union, has sufficient equipment, facilities and expertise to conduct a detonation resistance test and is independent from any person having an interest in the outcome of such test, and
- (b) before expiry of the transitional stage also includes a laboratory which has applied for such an accreditation, is awaiting the outcome of its application and otherwise falls within sub-paragraph (a);

“detonation resistance certificate” means the original or a guaranteed copy of a certificate issued by a competent laboratory in the English language relating to a detonation resistance test of a sample of relevant ammonium nitrate material which confirms that the tested sample is resistant to detonation as specified and contains at least the other particulars set out in Schedule 1, and such a certificate is valid so long as it is not treated as invalid in consequence of regulation 8;

“detonation resistance test” means a test carried out by a competent laboratory in accordance with Schedule 2;

“guaranteed copy”, in relation to a detonation resistance certificate, means a copy, certified as a true copy of the original by a person who also certifies that he has no interest in the outcome of the detonation resistance test on which the detonation resistance certificate is based;

“identification document” means a document in the English language which contains at least the particulars set out in Schedule 3;

“production run” means a continuous production run except where—

- (a) the material produced in the run is—
 - (i) of the same type,
 - (ii) of a loose bulk density—
 - (aa) which throughout the run does not fall below the density of any sample from it which is subjected to a detonation resistance test by or on behalf of its manufacturer, or
 - (bb) which throughout the run does not fall below a density of 920 kilogrammes per cubic metre, and
 - (iii) produced and intended to be marketed as a fertiliser, and
- (b) the production process is—
 - (i) certified under standard ISO 9001 (quality management system requirements) of the International Organisation for Standardisation(3), or
 - (ii) before the expiry of the transitional stage, either so certified or in the process of an application for such certification,

in which case it also includes an interrupted production run;

“sampling body” means a body which is accredited under standard ISO 17020 (general criteria for the operation of various types of bodies performing inspection) or ISO 17025 (general

(1) S.I.1983/1140; the relevant amending instrument is S.I. 1999/303.

(2) ISO/IEC 17025:1999. The International Organisation for Standardisation address is 1, rue de Varembe, Case postale 56, CH-1211, Geneva 20, Switzerland.

(3) ISO/IEC 9001:2000.

requirements for the competence of testing and calibration laboratories) of the International Organisation for Standardisation(4), and—

- (a) is not an importer, manufacturer or supplier of relevant ammonium nitrate material,
- (b) is independent of any person with an interest in manufacture of or trading in any such material, and
- (c) has sufficient equipment, facilities and expertise to certify reliably that a sample of relevant ammonium nitrate material of the same specification that has been subjected to a detonation resistance test has been taken from an identifiable batch and is representative of that batch; and

“unique numbered copy”, in relation to a detonation resistance certificate, means a copy of the certificate or of an existing unique numbered copy of the certificate, given by a person supplying relevant ammonium nitrate material to a person who takes delivery of a part or a subdivided part of a batch, to which the supplier has added a unique number and details to indicate the quantity of relevant ammonium nitrate material that is being supplied with that copy.

- (3) For the purposes of these Regulations—
 - (a) a detonation resistance certificate shall be treated as relating to a batch or part batch if it is based on a detonation resistance test carried out on a sample certified by a sampling body as being representative of the batch or part batch;
 - (b) a sample shall be treated as failing a detonation resistance test if the result of the test is that the sample is capable of detonation under the circumstances of such a test; and
 - (c) the transitional stage expires at the start of the 60th day following the day on which these Regulations come into force.

Manufacture of relevant ammonium nitrate material

3.—(1) Subject to regulation 10, no person shall manufacture relevant ammonium nitrate material, unless he maintains arrangements in place to ensure that the requirements of paragraphs (2) to (4) are satisfied.

(2) A sample certified as being a representative sample by a sampling body from each batch of manufactured relevant ammonium nitrate material must be subjected to a detonation resistance test during or as soon as reasonably practicable after manufacture.

(3) Where a representative sample fails a detonation resistance test, or the detonation resistance certificate relating to it ceases to be valid, the manufacturer must—

- (a) as soon as practicable notify the enforcing authority and the Executive of that fact (save to the extent that that fact is within their knowledge), of the measures he will take—
 - (i) to blend the batch with other suitable material so that the resultant material is not relevant ammonium nitrate material and that the risk of detonation is reduced to an insignificant level,
 - (ii) otherwise to reduce the risk of detonation of the batch of relevant ammonium nitrate material concerned to an insignificant level, or
 - (iii) to have another sample taken by a sampling body and subjected to a detonation resistance test,and of the period within which he will take them; and

(4) ISO/IEC 17020:1998 and 17025:1999.

- (b) take those measures within that period or, where any notice has been served by the enforcing authority on the manufacturer requiring alternative measures, a shorter period or both, comply with the requirements in the enforcing authority's notice.
- (4) The manufacturer must ensure that each batch of the material is kept separate and that the detonation resistance certificate clearly identifies the batch to which it relates.
- (5) Any person who manufactures relevant ammonium nitrate material must retain a detonation resistance certificate relating to each batch and keep a record of the details of the manufacture and disposal of the batch for a period of two years after the last date of disposal of relevant ammonium nitrate material from the batch.

Import of relevant ammonium nitrate material

4.—(1) Relevant ammonium nitrate material, subject to regulation 10, shall not be imported into Great Britain from within the European Union unless it is accompanied by a detonation resistance certificate relating to a sample certified as being a representative sample by a sampling body for each batch or part batch.

(2) Relevant ammonium nitrate material shall not be imported into Great Britain from outside the European Union unless—

- (a) the material either comprises a single batch or is divided into clearly identifiable batches;
- (b) it is accompanied by a detonation resistance certificate relating to a sample certified by a sampling body as being a representative sample for each such batch;
- (c) each such detonation resistance certificate has been issued following a detonation resistance test which has been carried out either—
 - (i) not more than 60 days before the arrival of the material in Great Britain, or
 - (ii) not more than $60 + x$ days before the material arrives in Great Britain where x represents an excess caused by circumstances beyond the control of the importer; and
- (d) the importer has sent or caused to be sent, not later than five days before the anticipated date of arrival of the material into Great Britain—
 - (i) a detonation resistance certificate for each batch that is being imported, and
 - (ii) an identification document completed by him relating to the imported material, to the Secretary of State for Environment, Food and Rural Affairs at the Fertiliser Unit, Ergon House, Horseferry Road, London SW1P 2AL, or by electronic communication to 'fertilisers@defra.gsi.gov.uk' acknowledged by that unit.

(3) Relevant ammonium nitrate material shall not be imported into Great Britain unless each batch of relevant ammonium nitrate material imported is kept separate and each detonation resistance certificate clearly identifies the batch to which it relates.

(4) No person shall import relevant ammonium nitrate material into Great Britain otherwise than in accordance with the preceding provisions of this regulation.

(5) A person who imports relevant ammonium nitrate material into Great Britain must keep for a period of two years after the date of import of any batch a record of the details of that batch or part batch, and—

- (a) where the material was imported from outside the European Union, an identification document covering it and a detonation resistance certificate relating to it; and
- (b) where the material was manufactured within the European Union, a detonation resistance certificate relating to it.

Supply of relevant ammonium nitrate material

5.—(1) Subject to regulation 7 and 10, no person shall supply relevant ammonium nitrate material unless—

- (a) he complies with the requirements of paragraphs (2) to (7), as qualified by paragraph (8), of this regulation, and
- (b) if the material is imported, either—
 - (i) it has been imported in accordance with regulation 4 without reliance on regulation 4(2)(c)(ii), or
 - (ii) it has been so imported in reliance on that provision and has a detonation resistance certificate relating to it on the basis of a representative sample taken by a sampling body after the arrival of the material into Great Britain.

(2) If he has imported relevant ammonium nitrate material from outside the European Union and any anticipated particular in any identification document sent in accordance with regulation 4(2)(d)(ii) relating to the material has turned out to be inaccurate, he must, before supplying any of the material to which the document relates to any person, send an updated version of the identification document to the Secretary of State for Environment, Food and Rural Affairs, at the address or by the electronic communication referred to in regulation 4(2)(d), correcting each inaccuracy in its earlier version.

(3) He must ensure that—

- (a) in the case of a whole batch, he is in possession of a valid detonation resistance certificate relating to that batch, and
- (b) in the case of a tested part of a batch, he is in possession of a unique numbered copy of a valid detonation resistance certificate relating to that part,

and that, where the material has been imported from outside the European Union, he has in his possession an identification document relating to it and a copy of any updated version of that document sent under paragraph (2).

(4) He must not supply relevant ammonium nitrate material where it is apparent that the material is contaminated or is in such poor condition that it might reasonably be expected to fail a detonation resistance test.

(5) When he supplies relevant ammonium nitrate material—

- (a) if a person is supplied by him with either—
 - (i) a whole batch of that material, or
 - (ii) a part of a batch which has already been divided into parts before it came under his control,

he must ensure that the batch or part batch is accompanied by either a detonation resistance certificate or unique numbered copy detonation resistance certificate relating to it, and

- (b) if a batch or part batch is divided by him into new parts, he must ensure that each such new part is accompanied by a unique numbered copy detonation resistance certificate issued by him and relating to that new part.

(6) Where he divides a batch or part batch into parts in accordance with paragraph (5)(b) for the purpose of supply he must record—

- (a) details of any unique numbered copy detonation resistance certificates issued by him,
- (b) the quantity of material supplied with each such unique numbered copy, and
- (c) the persons to whom such unique numbered copies are given.

(7) When he supplies relevant ammonium nitrate material he must ensure that each batch or part batch is kept separate, and that each detonation resistance certificate or unique numbered copy relating to that batch or part batch clearly identifies the material to which it relates.

(8) The requirements of paragraphs (5) to (7) shall not apply to the supply of relevant ammonium nitrate material to a final user for use as a fertiliser in packaged form.

(9) A person who supplies relevant ammonium nitrate material must keep for a period of two years after the date of the supply a record of the details of the relevant ammonium nitrate material supplied by him with details of—

- (a) any batch or new part batch which he has supplied,
- (b) any detonation resistance certificate or unique numbered copy detonation resistance certificate which he has supplied (supported by copies of all of them), and
- (c) any identification document, if applicable, and any updated version of such a document, if applicable, relating to that material or any of it (supported by copies of all of them).

Keeping of relevant ammonium nitrate material

6.—(1) Subject to paragraph (2) of this regulation and to regulations 7 and 10, no person shall keep relevant ammonium nitrate material unless he complies with the requirements of paragraphs (3) to (6) of this regulation.

(2) This regulation shall not apply to the keeping of relevant ammonium nitrate material by a person—

- (a) in packaged form for use by him as a fertiliser, or
- (b) for use by him as an explosive on the premises to which it has been delivered by another person who has not contravened these Regulations in relation to the material, or
- (c) only for the purpose of transporting it from one destination to another.

(3) He must not keep any relevant ammonium nitrate material from a batch or part batch that does not have a valid detonation resistance certificate or unique numbered copy which clearly identifies the batch or part batch to which it relates, unless—

- (a) he is the manufacturer of the material and he is arranging for it to be subjected to a detonation resistance test in accordance with regulation 3(2) or taking action relating to it in accordance with regulation 3(3), or
- (b) he is taking action relating to it in accordance with paragraph (4) of this regulation.

(4) Where the detonation resistance certificate relating to it ceases to be valid following a subsequent test in accordance with regulation 8, or where it is apparent to the person keeping the material that it is contaminated or is in such poor condition that it might reasonably be expected to fail a detonation resistance test, that person must—

- (a) as soon as practicable notify the enforcing authority and the Executive of that fact (save to the extent to which that fact is within their knowledge), of the measures he will take—
 - (i) to blend the batch with other suitable material so that the resultant material is not relevant ammonium nitrate material and that the risk of detonation is reduced to an insignificant level, or
 - (ii) otherwise to reduce the risk of detonation of the batch of relevant ammonium nitrate material concerned to an insignificant level, or
 - (iii) to have another sample taken by a sampling body and subjected to a detonation resistance test,

and of the period within which he will take them; and

(b) take those measures within that period or, where any notice has been served by the enforcing authority on him requiring alternative measures, a shorter period or both, comply with the requirements in the enforcing authority's notice.

(5) He must ensure that each batch or part batch of relevant ammonium nitrate material is kept separate and (subject to paragraph (3) of this regulation) has a detonation resistance certificate or unique numbered copy which clearly identifies the batch or part batch to which it relates.

(6) A person who keeps any batch or part batch of relevant ammonium nitrate material must, so far as he is not covered by the obligation in regulation 5(9), keep, for a period of two years after he ceases to keep any of the material, a record of the details of the batch or part batch together with any detonation resistance certificate and a copy of any unique numbered copy relating to it.

Transitional arrangements relating to the keeping and supplying of existing stocks of relevant ammonium nitrate material

7.—(1) A person ("Person A") may continue to keep, and may supply, any relevant ammonium nitrate material that is in his possession at the date when these Regulations come into force, and a person ("Person B") to whom such material has been supplied may keep it so long as—

(a) it is the case that—

(i) the material originates from a batch that is accompanied by an existing detonation resistance certificate where a body has taken or supervised the taking of the sample and a competent laboratory has tested that sample no earlier than 1st February 2003, and

(ii) the body in question would at the time of taking or supervising the taking of the sample have been a sampling body but for the fact that its application to be accredited as indicated in the definition of "sampling body" had not yet been decided, or

(b) the following provisions of this regulation are satisfied.

(2) Person A must—

(a) keep each type of that material separate and clearly identified, and

(b) subject to regulation 9 (4), take a sample no later than the expiry of the transitional stage in accordance with regulation 8 (1) from each type of relevant ammonium nitrate material in his possession and submit each such sample to a detonation resistance test before supplying it to Person B.

(3) When a sample is taken in accordance with paragraph (2)(b) and has been submitted for a detonation resistance test and it is awaiting a result of that test, and Person A supplies material from that type to Person B, Person A must—

(a) no later than the time of supply—

(i) inform Person B that a detonation resistance certificate has not been provided,

(ii) explain that a result from the detonation resistance test is awaited, and

(iii) notify the enforcing authority and the Executive of the fact that the material is not accompanied by such a certificate, and provide the authority and the Executive with full details of the transaction involving the supply;

(b) keep a record of the quantities of the material supplied and the destination of all such supplied material; and

(c) if the sample fails the test, immediately notify both the enforcing authority and Person B that the sample has failed the test,

and where a sample has failed the test, a person keeping material from which the sample has been taken must comply with regulation 6(4)(a) and (b).

(4) Where a sample of material supplied to Person B has been tested in accordance with paragraph (2)(b) and Person A receives confirmation following the test that the material is resistant to detonation, he must send to Person B either a detonation resistance certificate or, where Person A has supplied the material to more than one person, a unique numbered copy relating to the relevant part of that material.

(5) The requirements of paragraphs (3) and (4) shall not apply where Person B receives the relevant ammonium nitrate material in packaged form for end use by him as a fertiliser.

(6) For the purposes of this regulation, relevant ammonium nitrate material is of a type if it is of identical specification and composition.

Taking of samples for the purpose of a detonation resistance test

8.—(1) Where a person keeping relevant ammonium nitrate material has a detonation resistance test performed for the purposes of these Regulations he may either—

- (a) take a sample of the relevant ammonium nitrate material containing not less than 25 kilogrammes of the material from each batch or part batch in the presence of a sampling body and have the sample certified by that body as being representative of that batch, or
- (b) allow such a sample to be taken by a sampling body,

and submit the sample to be subjected to a detonation resistance test by a competent laboratory.

(2) An inspector may at any time carry out a check of relevant ammonium nitrate material by taking one aggregate sample of not less than 75 kilogrammes of the material from any batch or part batch, and then dividing that sample into three approximately equal parts, each containing not less than 25 kilogrammes, and—

- (a) submitting one part to be subjected to a detonation resistance test by a competent laboratory;
- (b) giving a second part to the person regarded by him as the keeper of the material;
- (c) placing a third part in a store which is appropriate to ensure that the third part is maintained in as constant a condition as is reasonably practicable until such time as it may be required to be submitted to a detonation resistance test by a competent laboratory.

(3) Where a detonation resistance test result from the first part taken in accordance with paragraph (2)(a), indicates—

- (a) that it is not resistant to detonation, and
- (b) the result of the test on that batch is at variance with a pre-existing detonation resistance certificate or unique numbered copy,

then the earlier certificate (or, as the case may be, the earlier certificate insofar as it relates to the quantity of material covered by the unique numbered copy) will be treated as invalid in accordance with paragraph (5).

(4) If paragraph (3) applies in relation to a unique numbered copy relating to material originally derived directly or indirectly from a particular batch, then—

- (a) where the inspector is of the opinion that the test result might be likely to be replicated in relation to other relevant ammonium nitrate material from the same batch, he may serve a control notice, that is to say notice on any person whom he considers to be keeping the material in circumstances that regulation 6 applies to him—
 - (i) indicating that he is of that opinion and explaining why;
 - (ii) identifying the batch; and
 - (iii) notifying him of the effect of this regulation in relation to suspect material, that is to say material from the batch which he is so keeping;

- (b) the giving of a control notice shall render invalid the earlier detonation resistance certificate in so far as it relates to the suspect material; and
 - (c) where any person affected by the service of a control notice obtains or has a further detonation resistance certificate in relation to any of the suspect material, that further certificate shall be treated as invalid until he sends the further certificate to the enforcing authority which appointed the inspector under cover of a notification that the further certificate relates to material covered by the control notice.
- (5) The treatment of a certificate under paragraph (3) as invalid shall—
- (a) commence on the giving, by an inspector to the person regarded by the inspector as the keeper of the material in question, of notice of the result of the detonation resistance test under paragraph (3)(a), and
 - (b) continue until the competent laboratory referred to in paragraph (2)(c), following service of a counter-notice (requiring a further detonation resistance test), by the regarded keeper on the enforcing authority which appointed the inspector, within 28 days of service of the notice by the inspector on the regarded keeper, notifies the authority that the material in question would be eligible to be covered by a detonation resistance certificate.
- (6) It shall be the duty of the enforcing authority which appointed the inspector, on receipt of the counter-notice as specified in paragraph (5)(b), to arrange for the third part to be submitted to a detonation resistance test as specified in paragraph (2)(c) as soon as is reasonably practicable, to notify the regarded keeper of where and when and by whom the test is to take place, and to notify the regarded keeper of the results of the test as soon as practicable after it has received those results.

Misdescription of relevant ammonium nitrate material

9.—(1) No person shall—

- (a) import,
- (b) supply, or
- (c) keep (other than a keeper as a final user for use as a fertiliser),

material which, although being relevant ammonium nitrate material, is described for business purposes as containing a lower proportion of nitrogen than would classify it as such.

(2) Where an inspector suspects that any material identified by him might be relevant ammonium nitrate material, but is so described for business purposes, he may take one aggregate sample totalling approximately 3 kilogrammes in weight, which he shall divide into three approximately equal parts of approximately 1 kilogramme each and—

- (a) submit one such part to an agricultural analyst appointed under section 67 to the Agriculture Act 1970(5) for him to carry out a test to determine whether it is an relevant ammonium nitrate material;
- (b) give a second part to the person regarded by him as the keeper of the material; and
- (c) place a third part in a store which is appropriate to ensure that the third part is maintained in as constant a condition as is reasonably practicable until such time as it may be required to be submitted to an independent test under paragraph (3)(b);

and if the part submitted to the agricultural analyst is determined to be relevant ammonium nitrate material then, as specified in paragraph (3), the identified material shall be treated as relevant ammonium nitrate material.

(3) The treatment of material under paragraph (2) as relevant ammonium nitrate material shall—

- (a) subject to paragraph (4) commence on the giving by the inspector, to the person regarded by the inspector as the keeper of the material in question, of notice of the result of the determination, and,
 - (b) continue until the independent tester, following service of a counter-notice (requiring an independent test), by the regarded keeper on the enforcing authority which appointed the inspector, within 28 days of service of the notice by the inspector on the regarded keeper, notifies the authority that he has determined that the third part is not a part of relevant ammonium nitrate material.
- (4) Where—
- (a) a person is, at the date when these Regulations come into force, the keeper, but not the manufacturer, of material that is described for business purposes as indicated in paragraph (1), or
 - (b) where any person receives such material from such a keeper before the expiry of the transitional stage,

and the material is determined before the expiry of the transitional stage on a test under this regulation as being relevant ammonium nitrate material, then the treatment of the material as relevant ammonium nitrate material shall commence immediately following such determination, and the requirements of regulation 7 shall apply with the exception that the sample to be used for a detonation resistance test shall be taken and submitted as soon as reasonably practicable.

- (5) For the purposes of this regulation—
- (a) an “independent tester” is a laboratory accredited under standard ISO 17025 (general requirements for the competence of testing and calibration laboratories) of the International Organisation for Standardisation and based in the European Union which has sufficient equipment, facilities and expertise to conduct the independent test under paragraph (3);
 - (b) a “test” is one involving one or more methods specified in the results of a determination which the person making the determination certifies in his communication of the results of his determination as being fit for the purpose of establishing the percentage of nitrogen derived from ammonium nitrate; and
 - (c) it shall be the duty of the enforcing authority which has appointed the inspector, on receipt of the counter-notice specified in paragraph (3)(b), to arrange for the independent test of the third sample as soon as is reasonably practicable, to notify the regarded keeper of details of where and by whom the test is to take place, and to notify the regarded keeper of the results of the test as soon as practicable after it has received those results.

Exemption for relevant ammonium nitrate material for use other than as a fertiliser

10.—(1) The Executive may, by certificate in writing, grant an exemption to any person from the requirements and prohibitions contained in regulations 3, 4, 5, 6 and 9 apart from any requirement to keep records, if that person has applied for it by notifying the Executive in writing either—

- (a) that any sample of any relevant ammonium nitrate material which he manufactures, imports, supplies or keeps would be unlikely to pass the detonation resistance test, or
 - (b) that any sample of a particular type of relevant ammonium nitrate material which he manufactures, imports, supplies or keeps, as the case may be, would be unlikely to pass the detonation resistance test.
- (2) An exemption granted pursuant to paragraph (1) shall be subject to—
- (a) in a case—

- (i) covered by paragraph (1)(a), the condition that no such relevant ammonium nitrate material shall be supplied or used by him or on his behalf as a fertiliser; and
- (ii) covered by paragraph (1)(b), the condition that the particular type of relevant ammonium nitrate material shall not be supplied or used by him or on his behalf as a fertiliser; and

(b) any other conditions that the Executive may impose.

(3) The Executive may, at any time, by certificate in writing, vary or revoke a certificate granted pursuant to paragraph (1).

(4) The Executive shall keep a record of persons who have been granted an exemption under this regulation.

(5) A person who has applied to the Executive for an exemption as referred to in paragraph (1), and who is awaiting the result of his application, shall be treated as having the benefit of the exemption applied for, subject to the relevant condition referred to in paragraph (2)(a), up to the earlier of the following—

- (a) the date at which the exempting certificate is issued, or
- (b) the expiry of the transitional stage.

Enforcing authorities

11.—(1) Subject to paragraph (4), in England it shall be the duty of the council of a county (or of a district comprised in an area for which there is no county council), a London Borough Council or the Common Council of the City of London to enforce these regulations within their respective areas.

(2) Subject to paragraph (4), in Wales it shall be the duty of each county council and each county borough council constituted under section 3 of the Local Government (Wales) Act 1994⁽⁶⁾ to enforce these regulations within their respective areas.

(3) Subject to paragraph (4), in Scotland it shall be the duty of every council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽⁷⁾ to enforce these regulations within their respective areas.

(4) The Executive shall have responsibility for enforcing compliance by any person with any conditions imposed on him by or under regulation 10(2).

Defence of due diligence

12.—(1) In any proceedings under the Health and Safety at Work etc Act 1974 for an offence for contravention of regulation 4, 5, 6 or 9(1), it shall, subject to paragraphs (2) and (3) below, be a defence for the person charged to prove—

- (a) that the commission of the offence was due to the act or default of a third party; and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) The person charged shall not, without leave of the court, be entitled to rely on the defence referred to in paragraph (1) unless, within a period ending seven clear days—

- (a) before the hearing to determine mode of trial, where the proceedings are in England or Wales;
- (b) before the immediate diet, where the proceedings are summary proceedings in Scotland; or
- (c) before the first diet, where the proceedings are solemn proceedings in Scotland,

⁽⁶⁾ 1994 c. 19.

⁽⁷⁾ 1994 c. 39.

he has served on the person bringing the proceedings a notice in writing giving such information identifying or assisting in the identification of the third party as was then in his possession.

(3) Where a contravention of these Regulations by any person is due to the act or default of the third party, the third party shall be guilty of an offence.

(4) In this Regulation, “third party”, in relation to a person charged with an alleged offence means a person who, at the time of the alleged offence—

- (a) was not an employee of the person charged; and
- (b) was not a contractor engaged by the person charged to carry out on behalf of the person charged the activity to which the charge relates.

Whitty
Parliamentary Under Secretary of State,
Department for Environment, Food and Rural
Affairs

9th April 2003