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STATUTORY INSTRUMENTS

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**2016 No. 315**

**HEALTH AND SAFETY**

**The Explosives Regulations 2014  
(Amendment) Regulations 2016**

<i>Made</i>	- - - -	<i>8th March 2016</i>
<i>Laid before Parliament</i>		<i>10th March 2016</i>
<i>Coming into force</i>	- -	<i>20th April 2016</i>

The Secretary of State is a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the placing on the market, transfer and safety of explosives for civil use.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for certain references to provisions of EU instruments to be construed as a reference to those provisions as amended from time to time.

The Secretary of State makes these Regulations under section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

**PART 1**

**INTRODUCTION**

**Citation and commencement**

1. These Regulations may be cited as the Explosives Regulations 2014 (Amendment) Regulations 2016 and come into force on 20th April 2016.

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<sup>(1)</sup> S.I. 1993/2661, to which there are amendments not relevant to these Regulations.

<sup>(2)</sup> 1972 c.68; section 2(2) and paragraph 1A of Schedule 2 were amended by the Legislative and Regulatory Reform Act 2006 (c. 51), sections 27(1)(a) and 28 respectively and by the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule.

### **Application outside Great Britain and extent**

2.—(1) These Regulations apply outside Great Britain as sections 1 to 59 and 80 to 82 of the Health and Safety at Work etc. Act 1974<sup>(3)</sup> apply by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013<sup>(4)</sup>.

(2) These Regulations do not extend to Northern Ireland.

## **PART 2**

### **AMENDMENT**

#### **Amendment of the Explosives Regulations 2014**

3. The Explosives Regulations 2014<sup>(5)</sup> are amended as follows.

4. In regulation 2 (interpretation)—

(a) in paragraph (1) —

(i) after the definition of “the 2005 Regulations” insert—

““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;”;

(ii) after the definition of “authorised defence site” insert—

““authorised representative” means a person established within an EEA state who has received a written mandate from the manufacturer to act on the manufacturer’s behalf in relation to specified tasks;”;

(iii) for the definition of “the CE marking” substitute—

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

(iv) in the definition of “civil explosive”—

(aa) insert “or” after “any country;”;

(bb) omit “and” after “pyrotechnic article;” and

(cc) omit “an explosive which is used immediately at the place of manufacture;”;

(v) omit the definition of “the Civil Uses Directive”;

(vi) after the definition of “the Commission” insert—

““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;”;

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(3) 1974 c. 37.

(4) S.I. 2013/240.

(5) S.I. 2014/1638, amended by S.I. 2014/3248.

“conformity assessment body” means a person who performs conformity assessment activities, including calibration, testing, certification and inspection;”;

(vii) after the definition of “desensitised explosive” insert—

““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)(6);”;

(viii) for the definition of “distributor”, substitute—

““distributor” means a person in the supply chain, other than a manufacturer or an importer, who makes a civil explosive available on the market and “distributes” in relation to Part 11 and “distribution” in relation to Part 13 are to be construed accordingly”;

(ix) after the definition of “distributor” insert—

““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”, in relation to Part 13, means the Executive;

“essential safety requirements” means the requirements set out in Schedule 9 (essential safety requirements);

“EU declaration of conformity” means a declaration of conformity required to be drawn up in accordance with regulation 41 (EU declaration of conformity and CE marking);”;

(x) for the definition of “harmonised standard” substitute—

““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(7), as amended from time to time;”;

(xi) after the definition of “holder” insert—

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

(a) is established in an EEA state; and

(b) places a civil explosive from a third country on the market;”;

(xii) after the definition of “local authority” insert—

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

(xiii) after the definition of “manufacture” insert—

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

(a) manufactures a civil explosive, or has a civil explosive designed or manufactured; and

(b) markets that civil explosive under that person’s name or trade mark or uses it for their own purposes;

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(6) OJNo. L 96, 29.3.2014, p. 1.

(7) OJ No. L 316, 14.11.2012, p. 12.

- “market surveillance authority” means the Executive”;
- (xiv) after the definition of “mine” insert—
- ““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;”;
- (xv) after the definition “new nuclear build site” insert—
- ““notified body requirements” means the requirements set out in Schedule 15 (notified body requirements);”;
- (xvi) after the definition of “percussion caps” insert—
- ““place on the market” means the first making available on the market in an EEA state, and related expressions must be construed accordingly;”;
- (xvii) after the definition of “pyrotechnic substance” insert—
- ““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(8);
- “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;”;
- (xviii) after the definition of “recipient competent authority document” insert—
- ““relevant conformity assessment procedure” means a conformity assessment procedure referred to in regulation 66 (conformity assessment procedures);”;
- (xix) after the definition of “substance” insert—
- ““technical documentation” has the meaning given in regulation 40(b) (technical documentation and conformity assessment);
- “technical specification” means a document that prescribes technical requirements to be fulfilled by a civil explosive;”;
- and
- (xx) after the definition of “wholly-owned subsidiary” insert—
- ““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.”; and
- (b) after paragraph (11), insert—
- “(12) In Part 13, “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.
- (13) 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(9), inserting a reference to the Directive(10) into that Annex, references in regulations 2(1) and 8 and Part 13 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”.”.

5. In regulation 3 (application and extent)—
  - (a) for paragraph (4), substitute—

“(4) Subject to the following provisions of this regulation, these Regulations apply—

    - (a) within Great Britain, and
    - (b) except for regulations 4, 5, 31 and 32, outside Great Britain as sections 1 to 59 and 80 to 82 of the 1974 Act apply by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) order 2013(11).”;
  - (b) in paragraph (14), for “39 to 42” substitute “39 to 77”;
  - (c) in paragraph (15), after sub-paragraph (a), insert—

“(aa) an explosive manufactured at a blasting site that is loaded immediately after being produced;”;
  - (d) omit paragraphs (16) to (18).
6. In regulation 8 (authorisation to transfer civil explosives), in paragraph (9)—
  - (a) in sub-paragraph (a)(ii), for “Article 9 of the Civil Uses Directive” substitute “Article 11 of the Directive”; and
  - (b) in sub-paragraph (b), for “Article 9.3, 9.5 or 9.6 of the Civil Uses Directive” substitute “Article 11.2, 11.4 or 11.6 of the Directive”.
7. For Part 13 (placing on the market of civil explosives), substitute—

## “PART 13

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

**39.** 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 the essential safety requirements.

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(9) The EEA Joint Committee is established by Article 92 of the EEA Agreement.

(10) Directive 2014/28/EU is a recast of, and replaces, Council Directive 1993/15/EC of 5th April 1993 (OJ No. L121, 15.5.93, 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.

(11) S.I. 2013/240.

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

**40.** 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 66(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 66(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**

**41.—**(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 67 (EU declaration of conformity); and
- (b) affix the CE marking in accordance with regulation 68 (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**

**42.** 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**

**43.—**(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 33, 34 and 36**

**44.**—(1) A manufacturer of a civil explosive which is excluded from the scope of regulations 33, 34 and 36 by virtue of regulation 3(15), 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;
    - (ab) registered trade name; or
    - (ac) 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 competent national authority in the EEA state in which the civil explosive is to be made available to such end-users.

### **Instructions and safety information**

**45.**—(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) When the civil explosive is being made available to end-users in the United Kingdom, the language which can easily be understood by end-users is English.

(3) The instructions and safety information, as well as any labelling, must be clear and understandable.

### **AUTHORISED REPRESENTATIVES**

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

**46.**—(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 42 (retention of technical documentation and EU declaration of conformity); and
- (b) perform the manufacturer’s obligations under regulation 54 (provision of information and cooperation).

(3) A manufacturer must not delegate the performance of their functions under regulation 39 (design and manufacture in accordance with essential safety requirements) and regulation 40 (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**

**47.** 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**

**48.—**(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 44 (traceability of certain civil explosives excluded from the scope of regulations 33, 34 and 36) to the extent not already covered by sub-paragraph (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 44(2) and (3); and
- (b) regulation 45.

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

**49.—**(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**

**50.**—(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 competent national 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.

#### **Instructions and safety information**

**51.**—(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 which can be easily understood by end-users is English.

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

**52.** 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**

**53.**—(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 market surveillance authority, and the competent national authorities of any other 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**

**54.**—(1) A manufacturer or importer must, further to a reasoned request from the market surveillance 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 the market surveillance authority, cooperate with the authority on any action taken to—

- (a) evaluate a civil explosive in accordance with paragraph 8 of Schedule 12 (evaluation of civil explosive 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**

**55.** 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**

**56.**—(1) Before making a civil explosive available on the market, the 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 44 (traceability of certain civil explosives excluded from the scope of regulations 33, 34 and 36) to the extent not already covered by sub-paragraph (a)(ii); and
- (c) the importer has complied with the requirements set out in regulation 50 (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 44(2) and (3); and
- (b) regulation 50(3).

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

57.—(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**

58.—(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 market surveillance authority, and the competent national authorities of the other EEA states 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**

59.—(1) A distributor must, further to a reasoned request from the enforcing 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 the enforcing authority, cooperate with the authority on any action taken to—

- (a) evaluate a civil explosive in accordance with paragraph 8 of Schedule 12 (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**

60. Each importer and distributor must ensure that, while a civil explosive is 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**

**61.** 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 trademark; 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 declaration of conformity**

**62.**—(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**

**63.**—(1) This regulation applies in relation to civil explosives excluded from the scope of regulations 33, 34 and 36 by virtue of regulation 3(15).

(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**

**64.**—(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**

**65.**—(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**

**66.** 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 carried out by a notified body (Module B), and, at the choice of the manufacturer, one 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**

**67.** 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 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**

**68.**—(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,

the CE marking must be affixed to the accompanying documents.

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

##### **Notified bodies**

- 69.**—(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 70 (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 used; or
    - (ii) within two months of a notification, where accreditation is not used.
- (2) Paragraph (1) has effect subject to regulation 75 (changes to notifications).

##### **Notification**

- 70.**—(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 inform 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**

- 71.—(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**

72. A notification under regulation 70 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 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**

- 73.—(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 70(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**

74. 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 73.

#### **Changes to notifications**

75.—(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 in accordance with regulation 70(6)(b), the Secretary of State must restrict, suspend or withdraw the body's status as a notified body under regulation 69.

(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 70(6)(b), the Secretary of State may restrict, suspend or withdraw the body's status as a notified body under regulation 69.

(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 a 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 authority for a period of ten years from the date they were created.

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

76. When a notified body carries out a relevant conformity assessment procedure, it must do so in accordance with Schedule 16 (operational obligations of notified bodies).

#### **Subsidiaries and contractors**

77.—(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 66 (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 73, 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.”.

8. In Part 14—

- (a) re-number regulations 43 and 44 as, respectively, regulations 78 and 79; and
- (b) for regulation 45 and its chapeau, substitute—

**“Enforcement in relation to regulation 8 and Part 13, market surveillance and further matters**

80. Schedule 12, which makes provision as to—

- (a) enforcement in relation to regulation 8 and Part 13;
- (b) market surveillance in relation to that Part;
- (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.”.

9. In Part 15—

- (a) re-number regulation 46 as regulation 81 and, in paragraph (4) of that regulation, for “and 38 to 42” substitute “, 38 and Part 13”; and
- (b) re-number regulations 47, 48 and 49 as, respectively, regulations 82, 83 and 84.

10. In Schedule 9 (essential safety requirements)—

- (a) in the bracketed passage after the Schedule heading, for “Annex I to the Civil Uses Directive”, substitute “Annex II to the Directive”;
- (b) in paragraph 4(k), omit “in the official language or languages of the recipient EEA state”; and
- (c) in paragraph (i) of paragraph 5(b), for “and other fuses” substitute “, other fuses and shock tubes”.

11. Schedule 10 (conformity marking) is omitted.

12. In Schedule 11, in paragraph 15, for sub-paragraph (1), substitute—  
“(1) The Executive is the enforcing authority for regulation 8, Part 13 and paragraph 18 of Schedule 12.”.
13. For Schedule 12, substitute the schedule contained in Schedule 1 to these Regulations.
14. After Schedule 14, insert Schedules 15 and 16 which are contained in Schedule 2 to these Regulations.

## PART 3

### Transitional provisions and consequential amendment

#### Transitional provisions

- 15.—(1) Nothing in these Regulations prevents the making available on the market of a civil explosive which—
- (a) complies with the requirements of Part 13 of the Explosives Regulations 2014(12) (“the 2014 Regulations”) as that Part had effect before its amendment by these Regulations; and
  - (b) was placed on the market before 20<sup>th</sup> April 2016.
- (2) Nothing in these Regulations affects the validity or operation of a recipient competent authority document which was issued by a competent authority before the commencement of these Regulations.
- (3) In paragraph (2), “recipient competent authority document” and “competent authority” have the meanings they are given by regulation 8(9) of the 2014 Regulations as that provision had effect before its amendment by these Regulations.

#### Consequential amendment

16. In regulation 33(2)(e)(ii) of the Dangerous Substances in Harbour Areas Regulations 1987(13) (application of Part IX), for “regulation 47(1)” substitute “regulation 82(1)”.

Signed by authority of the Secretary of State for Work and Pensions

8th March 2016

*Justin Tomlinson*  
Parliamentary Under Secretary of State,  
Department for Work and Pensions

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(12) S.I. 2014/1638.

(13) S.I. 1987/37, amended by S.I. 2005/1082 and 2014/1638.

SCHEDULE 1

Regulation 13

THE SCHEDULE TO BE SUBSTITUTED FOR SCHEDULE  
12 TO THE EXPLOSIVES REGULATIONS 2014

“SCHEDULE 12

Regulation 80

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 regulation 8 by the Executive or the ONR(14); and
  - (b) the enforcement of Part 13, and market surveillance in relation to that Part by the Executive.
2. In Great Britain, the Executive 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 Part 13, the Executive must enforce RAMS in respect of its application to civil explosives.
4. When enforcing Part 13, 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 regulation 8, the provisions of the 1974 Act(15) referred to in paragraph 6 apply to regulation 8 and Part 13 for the purposes of their enforcement as if that regulation and that Part were health and safety regulations for the purposes of that Act.

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(14) The “ONR” is defined in regulation 2(1) of the Explosives Regulations 2014 (S.I. 2014/1638 as meaning the Office for Nuclear Regulation. The ONR is established by section 77 of the Energy Act 2013 (c. 32).

(15) Regulation 2(1) of the Explosives Regulations 2014 (S.I. 2014/1638) defines “the 1974 Act” as the Health and Safety at Work etc. Act 1974 (c. 37).

6. In relation to the enforcement of the provisions referred to in paragraph 1—
- (a) sections 19 to 28, 33 to 35, 38, 39, 41 42 and 46 of, and Schedule 3A to, the 1974 Act apply as provided in paragraph 7; and
  - (b) sections 36(1) and (2) and 37 of the 1974 Act apply in relation to offences under section 33 of the 1974 Act as applied by paragraph (a) and the modifications specified in paragraph 7.

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 1974 Act 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) regulation 8 and Part 13 of these Regulations;
- (b) references to “risk” were references to “risk” within the meaning of regulation 2(12);
- (c) in section 19—
  - (i) in subsection (1)—
    - (aa) “Every enforcing authority” were a reference to the Executive or the ONR, as the case may be; and
    - (ab) “within its field of responsibility” were omitted;
  - (ii) in subsection (2), paragraph (b) were omitted; and
  - (iii) in subsection (3)—
    - (aa) “the enforcing authority” were a reference to the Executive or the ONR, as the case may be; and
    - (ab) “which appointed him” were omitted;
- (d) in section 20—
  - (i) in subsection (1), “within the field of responsibility of the enforcing authority which appointed him” were omitted;
  - (ii) in subsection 2(c)(i), “his (the inspector’s) enforcing authority” were a reference to the Executive or the ONR, as the case may be;
  - (iii) in subsection 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 subsection (2)(i), the reference to “the preceding paragraph” included a reference to subsection (2)(h) as modified by this paragraph;
  - (v) subsection (3) were omitted;
  - (vi) in subsections (4) and (5), the reference to subsection (2)(h) included a reference to subsection (2)(h) as modified by this paragraph; and
  - (vii) in subsection (6), the reference to subsection (2)(i) included a reference to subsection (2)(i) as modified by this paragraph;
- (e) in section 21—
  - (i) before paragraph (a), there were inserted—
    - “(za) is making available on the market a civil explosive which presents a risk;”;

- (ii) after “specifying the”, there was inserted “risk, or”; and
- (iii) after “requiring that person to”, there were inserted “address the risk or”;
- (f) in section 22, as well as permitting an inspector to serve a prohibition notice in the circumstances specified in subsection (2), it permitted an inspector to serve a prohibition notice on a person if, as regards any activities to which the section 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 section 23, subsections (3), (4) and (6) were omitted;
- (h) in section 25A, in subsection (1)—
  - (aa) “an enforcing authority” were a reference to the Executive or the ONR, as the case may be; and
  - (ab) before “inspector” where it first appears, there were inserted “an”;
- (i) in section 26—
  - (aa) “the enforcing authority” were a reference to the Executive or the ONR, as the case may be; and
  - (ab) “which appointed him” were omitted;
- (j) in section 27, in subsection (1)—
  - (i) paragraph (b) were omitted; and
  - (ii) “or, as the case may be, to the enforcing authority in question” were omitted;
- (k) in section 27A, in subsection (2)—
  - (i) for “an enforcing authority” there were substituted “the Executive”; and
  - (ii) the words from “, other than the Office for Nuclear Regulation” to the end were omitted;
- (l) in section 28—
  - (i) in subsection (1)(a)—
    - (aa) “, other than the Office for Nuclear Regulation (or an inspector appointed by it),” were omitted; and
    - (bb) “, by virtue of section 43A(6) below” were omitted;
  - (ii) in subsection (3)(a), “or any enforcing authority” were omitted;
  - (iii) in subsection (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;
  - (iv) in subsection (5)(a), “or the purposes of the enforcing authority in question in connection with the relevant statutory provisions” were omitted;
  - (v) in subsection (7)—
    - (aa) “14(4)(a) or” were omitted; and
    - (bb) for paragraph (b), there were substituted—
      - “(b) for the purposes of any legal proceedings or for the purposes of a report of any such proceedings;”;
  - (vi) subsection (9B) were omitted;

- (m) in section 33—
  - (i) in subsection (1), paragraphs (a), (b) and (d) were omitted; and
  - (ii) subsection (2) has effect subject to a subsection (2A) as follows—
    - “(2) The maximum penalty for an offence under this section involving a contravention of Part 13 of the Explosives Regulations 2014 (S.I. 2014/1638) is—
      - (a) on summary conviction—
        - (i) in England and Wales, imprisonment for a term not exceeding three months or a fine, or both;
        - (ii) in Scotland, imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both; and
      - (b) on conviction on indictment, imprisonment for a term not exceeding two years, or a fine, or both.”;
    - (iii) subsection (3) were omitted;
- (n) in section 34—
  - (i) in subsection (1)—
    - (aa) 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 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 investigation or inquiry.”; and
  - (ii) in subsection (3)—
    - (aa) the reference to six months were a reference to twelve months; and
    - (ab) “a responsible enforcing authority”, “an enforcing authority” and “the enforcing authority” were each, respectively, a reference to the Executive or the ONR, as the case may be;
  - (iii) in subsection (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 subsection” to the end were omitted; and
  - (iv) subsection (6) were omitted;
- (o) in section 35, “any enforcing authority” were a reference to the Executive or the ONR, as the case may be;
- (p) in section 39—
  - (aa) “the enforcing authority” were a reference to the Executive or the ONR, as the case may be; and
  - (ab) “which appointed him” were omitted; and
- (q) in section 42, the reference in subsection (3A) to “an explosive article or substance” were a reference to a civil explosive article or substance within the meaning of regulation 33(8).”.

(2) The provisions of the 1974 Act referred to in paragraph 6, except sections 19 and 20, do not apply in relation to the performance of the functions of the Secretary of State under Sub-Part C of Part 13 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 Executive has sufficient reason to believe that a civil explosive presents a risk, the Executive must carry out an evaluation in relation to the civil explosive covering the relevant requirements of Part 13 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 Executive finds that the civil explosive is not in conformity with Part 13, 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 Executive 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 13; and
- (b) the actions which the Executive is requiring the relevant economic operator to take.

(3) Where the Executive 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 Executive has required the economic operator to take.

(5) Where the relevant economic operator does not take adequate corrective action within the prescribed period, the Executive 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 Executive 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 13;
  - (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 65 (presumption of conformity) conferring a presumption of conformity.
- (9) In this paragraph, “prescribed period” means a period which is—
- (a) prescribed by the Executive; 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 Executive making arrangements with the competent national authority for Northern Ireland as to measures referred to in that sub-paragraph being taken there by that authority.

#### **EU safeguarding procedure**

- 10.**—(1) Where another EEA state has initiated the procedure under Article 42 of the Directive, as amended from time to time, the Executive must, without delay, inform the Secretary of State of—
- (a) any measures taken by the Executive in respect of the civil explosive; and
  - (b) any additional information which the Executive 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 Executive in respect of the civil explosive;
  - (b) any additional information which the Executive 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 Executive 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 Executive must take the necessary measures to ensure that the civil explosive is withdrawn from the United Kingdom market.
- (5) Where the Executive 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 Executive 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 Executive must withdraw that measure.

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

**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 Executive finds that, although a civil explosive is in conformity with Part 13 it presents a risk, the Executive 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 Executive 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 Executive.

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

- (a) prescribed by the Executive; 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 Executive 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 64 (prohibition on improper use of CE marking) and 68 (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 68;
- (c) the EU declaration of conformity—
  - (i) has not been drawn up; or

- (ii) has been drawn up otherwise than in accordance with regulations 41 (EU declaration of conformity and CE marking) and 67 (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 44 (traceability of civil explosives to which regulations 33, 34 and 36 do not apply);
    - (ii) the information specified in regulation 50 (information identifying importer); or
  - (f) any other administrative requirement imposed on the manufacturer or importer under Part 13 has not been fulfilled.
- (2) Until the specified period has elapsed, the Executive must not commence proceedings in relation to Part 13 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 Executive must take 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.

### **Restrictive measures**

- 13.** When enforcing Part 13, the Executive 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 Executive under Part 1 of this Schedule for enforcing Part 13, the Executive may use the powers set out in this Part.

#### **Compliance notice**

- 15.—**(1) The Executive may serve a compliance notice on a relevant economic operator in respect of a civil explosive if the Executive 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 Executive 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 Executive may revoke or vary a compliance notice by serving a notification on the economic operator.
- (5) The Executive 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 Executive may serve a withdrawal notice on a relevant economic operator in respect of a civil explosive if the Executive 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 Executive.
- (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 Executive informed of the whereabouts of any civil explosive referred to in the notice.
- (5) A consent given by the Executive pursuant to a withdrawal notice may impose such conditions on the making available on the market as the Executive considers appropriate.
- (6) Subject to sub-paragraph (7), the Executive may revoke or vary a withdrawal notice by serving a notification on the economic operator.
- (7) The Executive 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 Executive may serve a recall notice on a relevant economic operator in respect of a civil explosive if the Executive 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 Executive 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 Executive 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 Executive has given not less than 10 days' notice to the relevant economic operator of its intention to serve such a notice; and
  - (d) the Executive has taken account of any advice obtained under sub-paragraph (6).
- (6) A relevant economic operator which has received notice from the Executive of an intention to serve a recall notice may at any time prior to the service of the recall notice require the Executive to seek the advice of such person as the Institute determines on the questions of—
- (a) whether there is non-compliance; and
  - (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 Executive, urgent action.
- (8) Where a relevant economic operator requires the Executive 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 Executive.
- (9) In this regulation, "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 Executive may require the relevant economic operator to keep the Executive 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 Executive may revoke or vary a recall notice by serving a notification on the economic operator.
- (12) The Executive 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 Executive or on appeal).

(2) The provisions of section 33(1)(c) of the 1974 Act apply to sub-paragraph (1) for the purposes of its enforcement as if it were health and safety regulations for the purposes of that Act.

(3) The maximum penalty for an offence under section 33(1)(c) of the 1974 Act, 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—

(i) in England and Wales, imprisonment for a term not exceeding three months or a fine, or both;

(ii) in Scotland, imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both; and

(b) on conviction on indictment, imprisonment for a term not exceeding two years, or a fine, or both.

### **Interpretation**

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

(a) presents a risk; or

(b) is not in conformity with Part 13 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 paragraphs (2) and (4), in proceedings for an offence under section 33(1)(c) of the 1974 Act involving a contravention of Part 13 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 paragraph (1) which involves a third party allegation unless P has—

(a) served a notice in accordance with paragraph (3); or

(b) obtained the leave of the court.

(3) The notice must—

(a) give any information in 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 7 clear days before—

(i) in England and Wales, the hearing of the proceedings;

(ii) in Scotland, the trial diet.

(4) P may not rely on a defence under 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 disbelieve the information.

(5) In this regulation, “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 a compliance, withdrawal or recall notice or a defence of due diligence notice**

**21.**—(1) Section 46 of the 1974 Act applies to the service of—

- (a) a compliance, withdrawal or recall notice served by the Executive as it applies to notices served under that Act on a person other than an inspector appointed under section 19 of that Act; and
- (b) a notice served by a person under paragraph 20 as it applies to notices served under that Act on an inspector appointed under section 19 of that Act.

#### **Action by enforcing authority**

**22.**—(1) The Executive 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 Executive 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 Executive has taken action as a result of the condition in paragraph (1)(b) being met, the Executive may recover from the economic operator, as a civil debt, any costs or expenses reasonably incurred by the Executive in taking the action.

(3) A civil debt recoverable under paragraph (2) may be recovered summarily in England and Wales by way of a complaint pursuant to section 58 of the Magistrates’ Courts Act 1980<sup>(16)</sup>.

#### **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 13 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 served by virtue of Part 2 of this Schedule, the appropriate court may vary the terms of the notice as it considers appropriate.

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<sup>(16)</sup> 1980 c. 43; subsection (2)(a) of section 58 was repealed by the Crime and Courts Act 2013 (c. 22), Schedule 10, Part 2, paragraphs 39 and 40.

(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) In England and Wales, 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 section 33 of the 1974 Act;
- (b) an employment tribunal seized of appeal proceedings against a notice which relates to the civil explosive and which has been served under or by virtue of Part 1 of this Schedule; or
- (c) in any other case, a magistrates’ court.

(2) In Scotland, the appropriate court for the purposes of paragraph 23 is—

- (a) the sheriff of a sheriffdom in which the person making the appeal resides or has a registered or principal office; or
- (b) an employment tribunal seized of appeal proceedings against a notice which relates to the civil explosive and which has been served under or by virtue of Part 1 of this Schedule.

(3) A person aggrieved by an order made by a magistrates’ court in England and Wales 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 2

Regulation 14

### THE SCHEDULES TO BE INSERTED AFTER SCHEDULE 14 TO THE EXPLOSIVES REGULATIONS 2014

#### “SCHEDULE 15

Regulation 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 civil 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 civil explosives, nor the representative of any of those parties.

(2) Sub-paragraph (1) does not preclude the use of civil explosives that are necessary for the operations of the conformity assessment body or the use of civil 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 civil 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 is to be, notified, whether those activities 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;
- (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 Part 13 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 assessments.

**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 13 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 16

Regulation 76

### 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 civil explosive is in conformity with the requirements of Part 13 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 a civil 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 or 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 70 (notification);
- (c) any request for information which it has received from the enforcing authority in respect of Part 13 regarding conformity assessment activities; and
- (d) on request, conformity assessment activities performed within the scope of its notification under regulation 70 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.”

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

**1.** These Regulations implement, as regards Great Britain, [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) (“the Directive”).

**2.** The Directive repeals and replaces Council [Directive 93/15/EEC](#) on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses(**17**) (“the repealed Directive”) as amended by Regulation ([EC](#)) No 1882/2003 of the European Parliament and of the Council of 29th September 2003(**18**), Regulation ([EC](#)) No 219/2009 of the European Parliament and of the Council of 11th March 2009(**19**) and Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25th October 2012(**20**).

**3.** The repealed Directive was first implemented as respects Great Britain by the Placing on the Market and Supervision of Transfers of Explosives Regulations 1993(**21**) (“the 1993 Regulations”). Those Regulations were revoked by the consolidating Explosives Regulations 2014(**22**) (“the 2014 Regulations”), which included provisions replacing the 1993 Regulations in Part 13 of the 2014 Regulations. Part 13 is now substituted by these Regulations and is for implementing the Directive.

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(17) OJ No. L121, 15.5.1993, p.20.

(18) OJ No. L 284, 31.10.2003, p. 1.

(19) OJ No. L 87, 31.3.2009 p. 109.

(20) OJ No. L 316, 14.11.2012, p. 12.

(21) [S.I. 1993/2714](#).

(22) [S.I. 2014/2714](#), to which there are amendments not relevant to these Regulations.

4. Part 2 of these Regulations includes the amendments to the 2014 Regulations. The main amendments are the definitions added to regulation 2 of those Regulations, including a revised definition of “civil explosive” (regulation 4), the substituted Part 13 (regulation 7) and the related substitution of Schedule 12 for enforcement and market surveillance (regulation 13) and the addition of two Schedules concerning notified bodies (regulation 14).

5. The substituted Part 13 makes provision in relation to “economic operators” (for which a definition is added to regulation 2(1) of the 2014 Regulations), conformity assessment and notification of conformity assessment bodies. Duties are imposed on manufacturers, importers and distributors of civil explosives. Provision is made as to the appointment in writing of authorised representatives by manufacturers who may then perform certain tasks on the manufacturer’s behalf. For manufacturers the duties include ensuring that a civil explosive has been designed and manufactured in accordance with the essential safety requirements set out in Schedule 9 to the 2014 Regulations, having a relevant conformity assessment procedure carried out before the civil explosive is placed on the market and affixing the CE marking.

6. For importers the obligations include ensuring that they are not placing on the market civil explosives which are not in conformity with the essential safety requirements, checking that the manufacturer has carried out a relevant conformity assessment procedure and indicating on the civil explosive the address, name, registered trade name or trade mark of the importer.

7. The obligations on distributors include acting with due care to ensure that civil explosives are in conformity with Part 13 and checking that the civil explosives bear the CE marking.

8. Sub-Part C of the substituted Part 13 sets out provisions concerning the bodies which can carry out conformity assessment procedures under the 2014 Regulations.

9. The substituted Schedule 12 makes provision as to enforcement and market surveillance and related matters. The Health and Safety Executive is designated as the market surveillance authority for Great Britain in respect of civil explosives. The enforcement powers of the Health and Safety Executive include being able to serve compliance, withdrawal or recall notices.

10. Regulation 14 of these Regulations inserts Schedules 15 and 16 into the 2014 Regulations which set out, respectively, notified body requirements and operational obligations of notified bodies.

11. Part 3 provides for transitional provisions and a consequential amendment.

12. A transposition note and full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector are available from the Health and Safety Executive, Redgrave Court, Merton Road, Merseyside, L20 7HS and are also published with the Explanatory Memorandum alongside these Regulations on [www.legislation.gov.uk](http://www.legislation.gov.uk). Copies of these documents are available in the libraries of both Houses of Parliament.