

## SCHEDULE 2

### 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

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

- (a) any reference to the relevant statutory provisions in those provisions were a reference to—
  - (i) those provisions as modified by this paragraph; and
  - (ii) Part 2 and Part 3 of these Regulations;
- (b) references to “risk” were references to “risk” within the meaning of regulation 2(4) of these Regulations;
- (c) in Article 21—
  - (i) in paragraph (1)—
    - (aa) “Every enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
    - (bb) “within its field of responsibility” were omitted;
  - (ii) in paragraph (2), sub-paragraph (b) were omitted; and
  - (iii) in paragraph (3)—
    - (aa) “the enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
    - (bb) “which appointed him” were omitted;
- (d) in Article 22—
  - (i) in paragraph (1), “within the field of responsibility of the enforcing authority which appointed him” were omitted;
  - (ii) in paragraph 2(c)(i), “his (the inspector's) enforcing authority” were a reference to the Department or the Chief Constable, as the case may be;
  - (iii) in paragraph 2(h), the reference to any article or substance which appears to an inspector to have caused or to be likely to cause danger to health or safety included a reference to any civil explosive item which an inspector has reasonable cause to believe will contravene the relevant statutory provisions, present a risk or be unlawfully acquired, used or dealt in;
  - (iv) in paragraph (2)(i), the reference to “sub-paragraph (h)” included a reference to paragraph (2)(h) as modified by this paragraph;
  - (v) paragraph (3) were omitted;
  - (vi) in paragraphs (4) and (5), the reference to paragraph (2)(h) included a reference to paragraph (2)(h) as modified by this paragraph; and

**Changes to legislation:** There are currently no known outstanding effects for the *The Making Available on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 2016, Paragraph 7.* (See end of Document for details)

- (vii) in paragraph (6), the reference to paragraph (2)(i) included a reference to paragraph (2)(i) as modified by this paragraph;
- (e) in Article 23—
  - (i) before sub-paragraph (a), there were inserted—
    - “(za) is making available on the market a civil explosive which presents a risk;”;
  - (ii) in sub-paragraph (b)(ii) after “specifying the”, there was inserted “ risk, or ”; and
  - (iii) in sub-paragraph (b)(iv) after “requiring that person to”, there were inserted “ address the risk or ”;
- (f) in Article 24, as well as permitting an inspector to serve a prohibition notice in the circumstance specified in paragraph (2), it permitted an inspector to serve a prohibition notice on a person if, as regards any activities to the article applies, the inspector is of the opinion that, as carried on or likely to be carried on by or under the control of that person, the activities involve or, as the case may be, will involve a risk or a contravention of any of the relevant statutory provisions (as referred to in this paragraph);
- (g) in Article 25, paragraphs (3), (4) and (6) were omitted;
- (h) in Article 27A, in paragraph (1)—
  - (aa) “an enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
  - (bb) before “inspector” where it first appears, there were inserted “an”;
- (i) in Article 28—
  - (aa) “the enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
  - (bb) “which appointed him” were omitted;
- (j) in Article 29, in paragraph (1)—
  - (i) sub-paragraph (b) were omitted; and
  - (ii) “or, as the case may be, to the enforcing authority in question” were omitted;
- (k) in Article 29A, in paragraph (2) for “an enforcing authority” there were substituted “ the Department ”;
- (l) in Article 30—
  - (i) in paragraph (3)(a), “or any enforcing authority” were omitted;
  - (ii) in paragraph (4)—
    - (aa) “or an enforcing authority” were omitted; and
    - (bb) “, (including in the case of an enforcing authority, any inspector appointed by it)” were omitted;
  - (iii) in paragraph (5)(a), “or for the purposes of the enforcing authority in question in connection with the relevant statutory provisions” were omitted;
  - (iv) in paragraph (6)—
    - (aa) “16(4)(a) or” were omitted; and
    - (bb) for sub-paragraph (b), there were substituted—
      - “(b) for the purposes of any legal proceedings or for the purposes of a report of any such proceedings;”;
- (m) in Article 31—

- (i) in paragraph (1) sub-paragraphs (a), (b) and (d) were omitted; and
- (ii) paragraph (2) has effect subject to paragraph (2A) as follows—
  - “(2A) The maximum penalty for an offence under this article involving a contravention of Part 3 of the Making Available on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 2016 is—
    - (a) on summary conviction, imprisonment for a term not exceeding three months or a fine not exceeding the statutory minimum, or both;
    - (b) on conviction on indictment, imprisonment for a term not exceeding two years, or a fine, or both”;
- (iii) paragraph (3) were omitted;
- (n) in Article 32—
  - (i) in paragraph (1)—
    - (aa) sub-paragraphs (a) and (b) were omitted;
    - (bb) for the words from “and it appears” to the end, there were substituted “and it appears from the investigation or, in a case falling within sub-paragraph (d), from the proceedings at the inquiry, that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject-matter of the investigation or inquiry, summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within three months of the conclusion of the intervention or inquiry.”; and
  - (ii) in paragraph (3)—
    - (aa) the reference to six months were a reference to twelve months; and
    - (bb) “a responsible enforcing authority”, “an enforcing authority” and “the enforcing authority” were each respectively, a reference to the Department or the Chief Constable, as the case may be”; and
  - (iii) in paragraph (4)—
    - (aa) the reference to “the designer, manufacturer, importer or supplier of any thing” were a reference to an economic operator within the meaning of regulation 2(1); and
    - (bb) “and in that paragraph” to the end were omitted;
- (o) in Article 33, for “any enforcing authority” there were a reference to the Department or the Chief Constable, as the case may be;
- (p) in Article 36—
  - (aa) “the enforcing authority” were a reference to the Department or the Chief Constable, as the case may be; and
  - (bb) “which appointed him” were omitted; and
- (q) in Article 39, the reference in paragraph (3A) to “an explosive article or substance” were a reference to a civil explosive article or a civil explosive substance within the meaning of regulation 2(1).

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

**Changes to legislation:**

There are currently no known outstanding effects for the The Making Available on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 2016, Paragraph 7.