

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

Enforcement powers, market surveillance and designation of market surveillance authority

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

Changes to legislation: *There are currently no known outstanding effects for the The Making Available on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 2016, PART 1. (See end of Document for details)*

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

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

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

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

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

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

Evaluation of civil explosives presenting a risk

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

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

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

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

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

EU safeguarding procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Enforcement action in respect of formal non-compliance

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

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

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

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

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

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

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, PART 1. (See end of Document for details)*

Restrictive measures

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

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

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, PART 1.