STATUTORY INSTRUMENTS

2016 No. 315

HEALTH AND SAFETY

The Explosives Regulations 2014 (Amendment) Regulations 2016

Made - - - -	*8th March 2016*
Laid before Parliament	*10th March 2016*
Coming into force - -	*20th April 2016*

The Secretary of State is a Minister designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) 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 20thApril 2016.

(**1**) S.I. 1993/2661, to which there are amendments not relevant to these Regulations.
(**2**) 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(**3**) apply by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013(**4**).

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

PART 2

AMENDMENT

Amendment of the Explosives Regulations 2014

3. The Explosives Regulations 2014(**5**) 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;";

(**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;

(**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

(**8**) OJ No. L 218, 13.8.2008, p. 30.

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;"; and

(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.

(**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.