STATUTORY RULES OF NORTHERN IRELAND

2016 No. 366

HEALTH AND SAFETY

The Making Available on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 2016

Made - - - - 29th September 2016

Coming into operation 21st October 2016

The Department of Justice ("the Department") is designated for the purposes of section 2(2) of the European Communities Act 1972 ("the 1972 Act") [F1] 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 1972 Act and it appears to the Department that it is expedient for certain references to provisions of the EU instruments to be construed as a reference to those provisions as amended from time to time.

The Department, being the Department concerned [F2]makes the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act [F3] and Articles 17(1) to (6) [F4] and 55(2) of, and paragraphs 1(1) and (4), 5 and 14(1) of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978 ("the 1978 Order") [F5].

In accordance with Article 46(1) of the 1978 Order it has consulted with the Health and Safety Executive for Northern Ireland and such bodies as appeared to be appropriate.

F1 1972 c.68.

F2 S.I. 1978/1039 (N.I. 9), **Article 2(2)**.

F3 1972 c.68; paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51), and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

F4 Article 17 shall be read with S.I. 1992/1728 (N.I. 17), **Articles 3(2)** and 4(2).

F5 S.I. 1978/1039 (N.I. 9); the general purposes of Part II referred to in Article 17(1) were extended by S.I. 1992/1728 (N.I. 17), **Articles 3(1)** and 4(1). Article 55(2) was amended by S.I. 1998/2795 (N.I. 18), **Article 6(1)** and Schedule 1, paragraph 19.

PART 1

INTRODUCTION

Citation and commencement

1. These Regulations may be cited as the Making Available on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 2016 and shall come into operation on 21st October 2016.

Interpretation

2.—(1) In these Regulations—

"the 1978 Order" means the Health and Safety at Work (Northern Ireland) Order 1978;

"the 1993 Regulations" means the Placing on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 1993 [F6];

"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:

"authorised representative" means a person established within an EEA State appointed in accordance with regulation 12(1) who has received a written mandate from the manufacturer to act on the manufacturer's behalf in relation to specified tasks;

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

"Chief Constable" means the Chief Constable of the Police Service of Northern Ireland;

"civil explosive" means an explosive which has been or would be classified in accordance with the United Nations Recommendations as falling within Class 1 but does not include—

(a) ammunition the acquisition of which is regulated or prohibited by virtue of the Firearms (Northern Ireland) Order 2004 [F7]; or

(b) any explosive which it is shown is intended for lawful use by the armed forces or the police of any country; or

(c) a pyrotechnic article;

"civil explosive article" means an article containing one or more civil explosive substances;

"civil explosive substance" means an explosive substance in a civil explosive;

"Class 1" means Class 1 in respect of explosives or the classification of dangerous goods as set out in the United Nations Recommendations;

"the Commission" means the Commission of the European Union;

"competent authority" has the meaning given in regulation 4(8)(a);

"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;

"conformity assessment body" means a body that performs conformity assessment activities, including calibration, testing, certification and inspection;

"the Department" means the Department of Justice;

"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)([F8];

"distributor", in relation to civil explosives, means a person in the supply chain, other than a manufacturer or an importer, who makes a civil explosive available on the market and "distribution" in relation to Part 3 is to be construed accordingly;

"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" means—

(d) in relation to Part 2, the Chief Constable;

(e) in relation to Part 3,Sub-Parts A and B, the Department of Justice and the market surveillance in relation to that Part by the Department of Justice;

(f) in relation to Part 3, Sub-Part C, the Secretary of State;

"essential safety requirements" means the requirements set out in Schedule 1 (essential safety requirements);

"EU declaration of conformity" means a declaration of conformity required to be drawn up in accordance with regulation 7(1)(a) (EU declaration of conformity and CE marking);

"the Executive" means the Health and Safety Executive established under Section 10 of the Health and Safety at Work etc Act 1974 [F9];

"explosive" means any explosive article or explosive substance which would—

(g) if packaged for transport, be classified in accordance with the United Nations Recommendations as falling within Class 1; or

(h) be classified in accordance with the United Nations Recommendations as—

  (i) being unduly sensitive or so reactive as to be subject to spontaneous reaction and accordingly too dangerous to transport; and

  (ii) falling within Class 1,

but does not include an explosive substance produced as part of a manufacturing process which thereafter reprocesses it in order to produce a substance or preparation which is not an explosive substance;

"explosive article" means an article containing one or more explosive substances;

"explosive substance" means a substance or preparation, not including a substance or preparation in a solely gaseous form or in the form of vapour, which is—

(i) capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings; or

(j) designed to produce an effect by heat, light, sound, gas or smoke, or a combination of these as a result of a non-detonative, self-sustaining, exothermic chemical reaction;

"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 [F10] (as amended from time to time);

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

(k) is established in an EEA State; and

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

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

"manufacture" in relation to civil explosives includes—

(m) in relation to explosive articles, their repair, modification, disassembly or unmarking;

(n) in relation to explosive substances, their reprocessing, modification or adaptation,

but it does not include the packing, unpacking, re-packing, labelling or testing of explosives or the division of an amount of explosives stored in bulk into smaller amounts and the placing of those smaller into containers;

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

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

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

"market surveillance authority" means the authority designated by paragraph 2 of Schedule 2, namely the Department of Justice;

"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;

"notified body requirements" means the requirements set out in Schedule 3 (Notified body requirements);

"place on the market" means the first making available on the market in an EEA state, and related expressions must be construed accordingly;

"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[F11];

"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;

"recipient competent authority document" has the meaning given in regulation 4(8)(b);

"relevant authority" has the meaning given in regulation 4(8)(c);

"relevant conformity assessment procedure" means a conformity assessment procedure referred to in regulation 32 (conformity assessment procedures);

"technical documentation" has the meaning given in regulation 6 (Technical documentation and conformity assessment);

"technical specification" means a document that prescribes technical requirements to be fulfilled by a civil explosive;

"transfer" when used in relation to civil explosives means any physical movement of civil explosives apart from movement within one site and whether or not transferring possession of or property in the civil explosives is involved;

"United Nations Recommendations" means the United Nations Recommendations on the Transport of Dangerous Goods (based on those originally prepared by the United Nations Committee of Experts on the Transport of Dangerous Goods considered by the Economic and

Social Committee of Experts at its twenty-third session (Resolution 645G (XXIII) of 26 April 1957) [F12] as revised or reissued from time to time;

"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.

(2) Any reference in the definitions in this regulation of "explosive substance" to liquid gas, gaseous form or vapour, means, respectively, liquid, gas, gaseous form or vapour at normal atmospheric temperature and pressure.

(3) Any reference in these Regulations to a numbered Annex is a reference to the Directive so numbered.

(4) In Part 3 "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.

(5) 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 [F13], inserting a reference to the Directive [F14] into that Annex, references in regulations 2(1) and 4 and Part 3 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".

(6) The Interpretation Act (Northern Ireland) 1954 [F15] shall apply to these Regulations as it applies to an Act of the Assembly.

F6 S.I. 1993 No.488.
F7 S.I. 2004 No.702 (N.I.3).
F8 O.J. L96,29.3.14, p.1.
F9 1974 c.37.
F10 O.J. L316, 14.11.12, p.12.
F11 O.J. L218, 13.8.2008, p.30.
F12 Current edition (1997): ISBN 92-1-139057 5.
F13 The EEA Joint Committee is established by Article 92 of the EEA Agreement.
F14 Directive 2014/28/EU is a recast of, and replaces, Council Directive 1993/15/EC of 5th April 1993 (OJ No. L121, 15.5.1993, 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.
F15 1954 c.33 (N.I.).

Application

3.—(1) Regulations 4 to 43 do not apply in respect of the transfer of civil explosives to, by or on behalf of, where following the transfer, the explosives are in the possession of—

(a) inspectors appointed under Article 21 of the 1978 Order exercising their power to take possession of and detain articles or substances under Article 22(2)(i) of that Order as modified by Schedule 2 to these Regulations;