Status: *This version of this Rule contains provisions that are prospective.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Explosives (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY RULES OF NORTHERN IRELAND

2015 No. 236

HEALTH AND SAFETY

The Explosives (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2015

Made - - - - 24th April 2015
Coming into operation in accordance with regulation 1(2) and (3)

The Department of Justice ("the Department") is designated for the purpose of section 2(2) of the European Communities Act 1972 ("the 1972 Act")(**1**) in relation to the regulation and control of classification, packaging and labelling of dangerous substances and preparations(**2**); and for measures relating to consumer protection(**3**).

The Department, being the Department concerned(**4**), makes the following Regulations in exercise of powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act(**5**) and Articles 17(1) to (6)(**6**) and 55(2) of, and paragraphs 1(1) and (4), 5, 12(1) and 14(1) of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978(**7**) ("the 1978 Order").

These regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Department expedient for references in these Regulations to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16th December 2008(**8**) on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45EC and amending Regulation (EC) No 1907/2006, to be construed as including references to articles 6(5), 11(3), 12, 14, 18(3)(b), 23, 25 to 29, 35(2) second and third sub-paragraphs and Annexes I to VII of that Regulation as amended from time to time.

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.

(**1**) 1972 c.68
(**2**) S.I. 1976/897
(**3**) S.I. 1993/2661
(**4**) S.I. 1978/1039 (N.I. 9) Article 2(2)
(**5**) 1972 c.68; paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act (c.51)
(**6**) Article 17 shall be read with S.I. 1992/1728 (N.I. 17), Articles 3(2) and 4(2)
(**7**) 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
(**8**) OJ No L353, 31.12.08, p1

PART 1

INTRODUCTION

Citation and commencement

1.—(1) These Regulations may be cited as the Explosives (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2015.

(2) Except as provided by paragraph (3) these Regulations shall come into operation on 1st June 2015.

(3) Regulation 12 shall come into operation on 31st May 2015.

Commencement Information
I1 Reg. 1 in operation at 1.6.2015, see **reg. 1(2)**

Application within the territorial sea

2. Within the territorial sea these Regulations shall apply only to and in relation to the premises and activities to which any of paragraphs 2 to 9 of Schedule 2 applies.

Commencement Information
I2 Reg. 2 in operation at 1.6.2015, see **reg. 1(2)**

Interpretation

3.—(1) In these regulations—

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

"the 2009 Regulations" means the Explosives (Hazard Information and Packaging for supply) Regulations (Northern Ireland) 2009(**9**);

"the CLP Regulation" means Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16th December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, of which Articles 6(5), 11(3), 12, 14, 18(3)(b), 23, 25 to 29, 35(2) second and third paragraphs and Annexes I to VII are to be read as amended from time to time;

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

"competent authority" means the authority or authorities appointed by a Member State for the purpose of carrying out the duties of a competent authority under the CLP Regulation;

"the Department" means the Department of Justice;

"the Department concerned" has the same meaning as in Article 2(2) of the 1978 Order;

"inspector" means a person appointed under Article 21 of the 1978 Order;

"territorial sea" means the territorial sea of the United Kingdom adjacent to Northern Ireland and "within the territorial sea" includes on, over and under it;

"work" shall be construed in accordance with Article 2(4) of the 1978 Order.

(**9**) S.R. 2009/273, as amended by S.R. 2014/47

(2) Expressions used in both—

(a) Part 3 of these Regulations; and

(b) The CLP Regulation,

have the same meaning in these Regulations as they have in the CLP Regulation.

(3) The Interpretation Act (Northern Ireland) 1954(**10**) shall apply to these Regulations as it applies to an Act of the Assembly.

Commencement Information

I3 Reg. 3 in operation at 1.6.2015, see **reg. 1(2)**

PART 2

APPOINTMENT OF COMPETENT AUTHORITIES

Competent authorities

4. For the purposes of Article 43 of the CLP Regulation the competent authority shall be the Department of Justice.

Commencement Information

I4 Reg. 4 in operation at 1.6.2015, see **reg. 1(2)**

PART 3

CLASSIFICATION, LABELLING AND PACKAGING OF SUBSTANCES AND MIXTURES

Application of the 1978 Order

5.—(1) The following provisions of the 1978 Order shall apply to the CLP Regulation as if it were health and safety regulations for the purposes of that Order, except that those Articles shall not apply to duties placed by the CLP Regulation on the competent authority or the Member State—

(a) Articles 20 to 30 (in relation to enforcement);

(b) subject to regulations 9 and 10, Articles 31 to 39 (in relation to offences); and

(c) Article 43(2) in relation to civil liability.

(2) Any function of the Department concerned under any other provision of the 1978 Order in respect of health and safety regulations (including their enforcement) shall be exercisable as if the CLP Regulation were health and safety regulations for the purposes of that Order.

Commencement Information

I5 Reg. 5 in operation at 1.6.2015, see **reg. 1(2)**

(**10**) 1954 c.33 (N.I.)

Allocation of enforcement responsibility

6. Notwithstanding the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999(**11**), the enforcing authority for the CLP Regulation shall be the Department of Justice.

Commencement Information

I6 Reg. 6 in operation at 1.6.2015, see **reg. 1(2)**

PART 4

EXEMPTIONS, PENALTIES, DUE DILIGENCE DEFENCE

Exemptions

7.—(1) A person shall be exempt from compliance with provisions imposing requirements or prohibitions in the CLP Regulation, if that person—

(a) has the benefit of a defence exemption certificate made by the Secretary of State in respect of that provision; or

(b) can demonstrate that the appropriate authorities of another Member State have exempted that person from compliance in the interests of defence.

(2) Schedule 1 (defence exemption certificates) shall have effect.

8.—(1) These Regulations shall not apply to a substance or mixture which is a sample taken by an authority responsible for the enforcement of any requirement of, or prohibition imposed by or under, the CLP Regulation.

(2) In this regulation, "substance" and "mixture" have the same meaning as they have in the CLP Regulation.

Commencement Information

I7 Reg. 7 in operation at 1.6.2015, see **reg. 1(2)**

I8 Reg. 8 in operation at 1.6.2015, see **reg. 1(2)**

Penalties

9. The maximum penalty for an offence under Article 31 of the 1978 Order as applied by these Regulations to the CLP Regulation shall be—

(a) on summary conviction, imprisonment for a term not exceeding three months or a fine not exceeding the statutory minimum, or both; and

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

(**11**) S.R. 1999/90, as amended by S.R. 2000/375, S.R. 2003/33, S.R. 2006/205, S.R. 2006/425, S.R. 2007/31, S.R. 2007/291, S.R. 2009/238 and S.R. 2012/179

Commencement Information
I9 Reg. 9 in operation at 1.6.2015, see **reg. 1(2)**

Due diligence defence

10. In any proceedings for an offence under Article 31(1)(c) of the 1978 Order, as applied by these Regulations to the CLP Regulation, it shall be a defence for the person charged to prove that that person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Commencement Information
I10 Reg. 10 in operation at 1.6.2015, see **reg. 1(2)**

PART 5

REVOCATIONS AND AMENDMENTS

Revocations

11. The following provisions in the 2009 Regulations are revoked—

(a) regulations 4 and 5, 6 to 11 and 13 with effect from 1st June 2015;

(b) except to the extent that they continue to apply for the purposes of enforcing regulation 12 of the 2009 Regulations, regulations 14 to 17, with effect from 1st June 2015; and

(c) regulations 2, 3 and 12 with effect from 1st June 2018.

Commencement Information
I11 Reg. 11 in operation at 1.6.2015, see **reg. 1(2)**

Amendments

12.—(1) After regulation 5 of the 2009 Regulations insert—

"**Advertisements for dangerous preparations**

5A.—(1) Subject to paragraph (2), a person who supplies a dangerous preparation shall not advertise that preparation, or arrange for the production of any such advertisement, unless mention is made in the advertisement of the type of hazard indicated on the label.

(2) Paragraph (1) shall apply only in respect of a dangerous preparation where the advertisement enables a person, otherwise than in the course of a business, to conclude a contract to purchase the dangerous preparation before that person has seen the label relating to the dangerous preparation.

(3) In this regulation "supply" has the same meaning as it has in section 46 of the Consumer Protection Act 1987.

(4) This regulation has effect until 31st May 2017."