STATUTORY RULES OF NORTHERN IRELAND

2013 No. 48

HEALTH AND SAFETY

The Identification and Traceability of Explosives Regulations (Northern Ireland) 2013

Made - - - - 28th February 2013

Laid before Parliament 7th March 2013

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by Articles 17(1), (2), (3)(c), (4)(b) and (5)(a)(**1**) and 55(2) of, and paragraphs 1(1) and (4), 2(2), 5(1), 14(1) and 15 of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978(**2**)("the 1978 Order"), as applied and modified, in relation to explosives, by Article 53 of the 1978 Order(**3**). In accordance with Article 46(1)(**4**) of the 1978 Order, as so applied and modified, the Secretary of State has consulted with the Health and Safety Executive for Northern Ireland and such other bodies as appear to the Secretary of State to be appropriate.

Citation and commencement

1.—(1) These Regulations may be cited as the Identification and Traceability of Explosives Regulations (Northern Ireland) 2013 and, except as provided in paragraph (2), come into force on 5th April 2013.

(2) Regulations 4(7) and 6, and regulation 8 to the extent that it relates to regulations 4(7) and 6, come into force on 5th April 2015.

Interpretation

2.—(1) In these Regulations—

(**1**) Article 17 of S.I. 1978/1039 must be read with Articles 3(2) and 4(2) of S.I. 1992/1728 (N.I. 17).

(**2**) S.I. 1978/1039 (N.I. 9). The general purposes of Part 2 of S.I. 1978/1039, referred to in Article 17(1) of that Order, were extended by Articles 3(1) and 4(1) of S.I. 1992/1728 (N.I. 17) to cover certain activities relating to offshore installations and pipe-lines.

(**3**) Article 53 was repealed by paragraph 3(3) of Schedule 12 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976) but with a saving in paragraph 4(1)(b) to enable the Secretary of State to make regulations under the 1978 Order for purposes connected with any reserved matter falling within paragraph 12 or 20 of Schedule 3 to the Northern Ireland Act 1998 (c. 47). The security of explosives, including the identification and traceability of explosives, is a reserved matter by virtue of paragraph 12(2) of Schedule 3 to the Northern Ireland Act 1998.

(**4**) Article 46(1) was amended by S.I. 1998/2795 (N.I. 18).

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

"distributor" means a person in the supply chain, other than a manufacturer or an importer, who makes an explosive available on the market and "distributes" and "distribution" are to be construed accordingly;

"explosive" means an explosive article or substance which has been classified in accordance with the UN Recommendations as falling within Class 1;

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

"explosive substance" means—

(a) a solid or liquid substance, or

(b) a mixture of solid or liquid substances or both,

which is 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 which is designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as a result of non-detonative, self-sustaining, exothermic chemical reactions;

"manufacture" includes—

(a) in relation to explosive articles, their repair, modification, disassembly or unmaking; and

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

"site", in relation to a site within Northern Ireland, means the whole area under the control of the same person and, for these purposes—

(a) all places adjoining each other under the control of the same person are treated as a whole area; and

(b) two or more areas under the control of the same person separated only by a road, railway or inland waterway are treated as a whole area;

"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;

and

"UN 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 26th April 1957))(**5**) as revised or reissued from time to time.

(2) In these Regulations, any reference to acquiring an explosive means acquiring possession of, or property in, such explosive.

(3) Where an explosive is transported (including being loaded or unloaded and during breaks which are reasonably incidental to completing the journey within a reasonable length of time), the explosive is not to be treated as being kept or acquired by a person who has possession of it only by reason of being—

(a) a carrier;

(b) a person engaged in the work of loading or unloading; or

(c) the occupier of a place it passes through while on the journey.

(**5**) Current edition (1997): ISBN 92-1-139057 5.

General application

3.—(1) These Regulations apply to every explosive except the following—

(a) ammunition the acquisition of which is regulated or prohibited by virtue of the Firearms (Northern Ireland) Order 2004(**6**);

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

(c) a pyrotechnic article;

(d) an explosive which is transported and delivered without packaging or in a mobile explosives manufacturing unit for its direct unloading into the blast-hole;

(e) an explosive which is used immediately at the place of manufacture;

(f) fuses, which are cord-like non-detonating igniting devices;

(g) safety fuses, which consist of a core of fine grained black powder surrounded by a flexible woven fabric with one or more protective outer coverings and which, when ignited, burn at a predetermined rate without any external explosive effect; and

(h) cap-type primers, which consist of a metal or plastic cap containing a small amount of primary explosive mixture that is readily ignited by impact and which serve as igniting elements in small arms cartridges or in percussion primers for propelling charges.

(2) In this regulation—

(a) "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; and

(b) "pyrotechnic article" means any article containing explosive substances or an explosive mixture of substances designed to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions.

Unique identification

4.—(1) Subject to paragraphs (3) and (4), any person who manufactures an explosive must, as soon as is practicable after that manufacture and before the explosive may be moved away from the site where it is manufactured—

(a) mark each explosive item in respect of the explosive with a unique identification in accordance with Schedule 2;

(b) where an associated label in respect of that marking is required by that Schedule, attach the label in accordance with those requirements; and

(c) where a passive inert electronic tag or associated tag is to be applied in respect of that marking, place that tag in accordance with the applicable provisions of that Schedule.

(2) The unique identification must—

(a) comprise the components described in Schedule 1; and

(b) be marked on or firmly affixed to the explosive item concerned in a way which ensures that it is durable and clearly legible.

(3) Paragraph (1) does not apply where the explosive is manufactured for export and is marked with an identification in accordance with the requirements of the importing country for allowing traceability of the explosive.

(**6**) S.I. 2004/702 (N.I. 3).

(4) Where an explosive is subject to a further manufacturing process after its original manufacture, the manufacturer must mark each explosive item in respect of the explosive subjected to that further process, with a new unique identification only if the original unique identification is no longer marked in the way that paragraph (2)(b) requires and any new marking so required must be done as soon as is practicable after that further process and before the explosive may be moved away from the site where it is manufactured.

(5) Subject to paragraph (6), a person who imports an explosive into Northern Ireland must, as soon as is practicable after import and before acquisition of the explosive by another person —

(a) mark each explosive item in respect of the explosive with a unique identification in accordance with Schedule 2;

(b) where an associated label in respect of that marking is required by that Schedule, attach the label in accordance with those requirements; and

(c) where a passive inert electronic tag or associated tag is to be applied in respect of that marking, place that tag in accordance with the applicable provisions of that Schedule.

(6) Paragraph (5) does not apply where the explosive items are marked with a unique identification before importation.

(7) Where a distributor repackages an explosive, the distributor must ensure that—

(a) the explosive items in respect of the explosive have the unique identification marked on or affixed to them in accordance with Schedule 2;

(b) where an associated label in respect of that marking is required by that Schedule, the label is attached in accordance with those requirements; and

(c) where a passive inert electronic tag or associated tag is applied in respect of that marking, that tag is placed in accordance with the applicable provisions of that Schedule.

(8) In this regulation, "explosive item" means an explosive article, a container containing an explosive substance or each smallest packaging unit containing explosive.

Attribution of manufacturing site codes

5.—(1) This regulation applies for the purposes of the attribution of a three digit code (referred to in this regulation as the "code") to a site where explosives are manufactured, which is unique to that site and is a component of the unique identification described in Schedule 1.

(2) For each site within Northern Ireland at which explosives are manufactured —

(a) the manufacturer must apply to the Secretary of State to attribute a code for the site; and

(b) the Secretary of State must attribute the code and inform the manufacturer accordingly.

(3) For the purposes of the attribution of a code to a site where explosives are manufactured in a country that is not an EEA State(**7**)—

(a) paragraph (4) applies where the manufacturer is established in an EEA State and the place of import of the explosive is Northern Ireland;

(b) paragraph (5) applies where the manufacturer is not established in an EEA State and the place of import of the explosive is Northern Ireland; and

(c) paragraph (6) applies where the manufacturer is established in Northern Ireland and the place of import of the explosive is either Great Britain or an EEA State other than the United Kingdom.

(4) Where this paragraph applies—

(**7**) Directive 2008/43/EC applies in relation to the EEA by virtue of Decision No. 119/2010 of the EEA Joint Committee: OJ No. L 58, 10.11.2010, p.76.

(a) in the case where the manufacturer is established in Northern Ireland—

(i) the manufacturer must apply to the Secretary of State to attribute a code for the site where the explosives are manufactured; and

(ii) the Secretary of State must attribute the code and inform the manufacturer accordingly; and

(b) in the case where the manufacturer is established in Great Britain or an EEA State other than the United Kingdom—

(i) the Secretary of State must attribute a code for the site where the explosives are manufactured when it receives a request from the manufacturer to do so; and

(ii) the Secretary of State must inform the manufacturer accordingly.

(5) Where this paragraph applies—

(a) the importer must apply to the Secretary of State to attribute a code for the site where the explosives are manufactured; and

(b) the Secretary of State must attribute the code and inform the importer accordingly.

(6) Where this paragraph applies, the manufacturer must apply to—

(a) the Health and Safety Executive, where the place of import of the explosive is Great Britain; or

(b) the national authority of the EEA State of import of the explosive,

for the Health and Safety Executive or that national authority, as the case may be, to attribute a code for the site where the explosives are manufactured.

Records

6.—(1) Subject to paragraph (2), a person (referred to in this regulation as "person A") who manufactures, imports, distributes, acquires or keeps any explosive must, in respect of any explosive manufactured in, or imported into, Northern Ireland on or after 5th April 2015, keep a record in respect of that explosive containing the information referred to in paragraph (3).

(2) The duty imposed by paragraph (1) does not apply to—

(a) an employee of person A acting in the course of person A's business, where the manufacture, importation, distribution, acquisition or keeping of explosives concerned is that business or a part of it; or

(b) individuals who acquire any explosive, otherwise than in connection with their work, solely for their own personal use.

(3) The information referred to in paragraph (1) is—

(a) the means of identifying and describing the explosive, including—

(i) its type; and

(ii) the unique identification in relation to the explosive;

(b) the location of the explosive while it is in the possession of person A;

(c) the name and address of any person to whom the explosive is transferred; and

(d) whether, while in the possession of person A, the explosive has been—

(i) subjected to a further manufacturing process after its original manufacture;

(ii) used;

(iii) transferred to another person; or

(iv) destroyed,