



STATUTORY INSTRUMENTS.

**S.I. No. 423 of 2016**



EUROPEAN UNION (MAKING AVAILABLE ON THE MARKET AND  
SUPERVISION OF EXPLOSIVES FOR CIVIL USES) REGULATIONS  
2016

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I, FRANCES FITZGERALD, Minister for Justice and Equality, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2014/28/EU of the European Parliament and of the Council<sup>1</sup>, hereby make the following regulations:

PART 1

GENERAL PROVISIONS

*Citation and commencement*

1. (1) These Regulations may be cited as the European Union (Making Available on the Market and Supervision of Explosives for Civil Uses) Regulations 2016.

(2) Subject to Regulation 46, these Regulations come into operation on 1 September 2016.

*Interpretation*

2. (1) In these Regulations—

“Act of 1875” means the Explosives Act 1875 (38 & 39 Vict., c. 17);

“appeal panel” means a panel established by the Minister under Regulation 21;

“appropriate court” means—

- (a) in a case in which the estimated market value of the explosives concerned does not exceed €15,000, or such other amount as may stand specified for the time being by law as that court’s jurisdiction in tort, the District Court,
- (b) in a case in which the estimated market value of the explosives concerned exceeds €15,000 but does not exceed €75,000, or such other amount as may stand specified for the time being by law as that court’s jurisdiction in tort, the Circuit Court, and
- (c) in a case in which the estimated market value of the explosives concerned exceeds €75,000, the High Court;

<sup>1</sup>OJ No. L 96, 29.3.2014, p. 1

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 5th August, 2016.*

“authorised officer” means a person appointed under Regulation 38;

“authorised representative” means a person appointed by a manufacturer under Regulation 6(1);

“competent authority” means—

(a) in relation to the State, the Minister, and

(b) in relation to another Member State, the competent authority, under the Directive, of that state;

“consignee” means an economic operator in the State to whom explosives are, or are to be, transferred under Part 5;

“designated officer” means a member of the Garda Síochána, an officer of customs or a Government inspector of explosives;

“Directive” means Directive 2014/28/EU of the European Parliament and of the Council<sup>1</sup>;

“EC Regulation” means Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008<sup>2</sup>;

“Government inspector of explosives” means a person appointed under section 53 of the Act of 1875;

“importation” means importation into the State from a place outside the Union;

“internal transfer” means a transfer of explosives within the State;

“Intra-Community transfer of explosives document” means the document set out in the Annex to Commission Decision 2004/388/EC of 15 April 2004<sup>3</sup>, amended by Commission Decision 2010/347/EU of 19 June 2010<sup>4</sup>, issued by a relevant recipient competent authority;

“market surveillance authority” means the Minister;

“Minister” means the Minister for Justice and Equality;

“notified body” means a body notified to the European Commission that has been granted notification—

(a) under Regulation 16, or

(b) by another Member State in accordance with the Directive;

“notifying authority” means the Minister;

<sup>2</sup>OJ No. L 218, 13.8.2008, p. 30

<sup>3</sup>OJ No. L 120, 24.4.2004, p. 43

<sup>4</sup>OJ No. L 155, 22.6.2010, p. 54

“officer of customs” has the same meaning as it has in section 2 of the Customs Act 2015 (No. 18 of 2015);

“recipient competent authority” means—

- (a) in the case of a transfer into the State from another Member State, the Minister,
- (b) in the case of the importation of explosives, the Minister,
- (c) in the case of a transfer through the State, the Minister, and
- (d) in the case of an internal transfer, the superintendent of the district in which the internal transfer will terminate or a member of the Garda Síochána in such district not below the rank of inspector acting on such superintendent’s behalf;

“Regulations of 2009” means the European Communities (System for the Identification and Traceability of Explosives for Civil Uses) Regulations 2009 (S.I. No. 133 of 2009);

“transfer document” means—

- (a) in the case of a transfer into the State from another Member State, an Intra-Community transfer of explosives document,
- (b) in the case of the importation of explosives, an importation licence issued under the Act of 1875,
- (c) in the case of a transfer through the State, an Intra-Community transfer of explosives document,
- (d) in the case of an internal transfer, a document issued by the superintendent of the district in which the internal transfer will terminate or a member of the Garda Síochána in such district not below the rank of inspector acting on such superintendent’s behalf, and
- (e) in the case of a transfer from the State to another Member State, an Intra-Community transfer of explosives document;

“Union” means the European Union;

“used for their own purposes”, in relation to explosives used by a manufacturer, does not include used by the manufacturer in research and development, trials, education, experiments, incorporation into a formulation or article, disposal or extraction for disposal.

(2) A word or expression which is used in these Regulations and which is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

*Application*

3. (1) These Regulations apply, subject to paragraph (2), to all explosives.
- (2) These Regulations do not apply to:
- (a) explosives, including ammunition, intended for use by the Defence Forces or the Garda Síochána;
  - (b) pyrotechnic articles to which the European Union (Making Available on the Market of Pyrotechnic Articles) Regulations 2015 (S.I. No. 174 of 2015) apply;
  - (c) ammunition, the acquisition, possession or transfer of which is regulated or prohibited under the European Communities (Acquisition and Possession of Weapons and Ammunition) Regulations 1993 (S.I. No. 362 of 1993).
- (3) The provisions of these Regulations are in addition to, and not in substitution for, the provisions of:
- (a) the Act of 1875;
  - (b) the Carriage of Dangerous Goods by Road Act 1998 (No. 43 of 1998);
  - (c) the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005).
- (4) Part 5 shall not apply in respect of the transfer of explosives to, by or on behalf of, or where explosives are in the possession of:
- (a) a designated officer acting in the execution of his or her duties;
  - (b) a person exercising a power of seizure under section 74 of the Act of 1875;
  - (c) an explosive ordnance disposal officer of the Permanent Defence Forces acting in aid of the civil power;
  - (d) an authorised officer acting in the execution of his or her duties.

*Making available on market of explosives*

4. A person shall not make available on the market any explosives unless the explosives—
- (a) satisfy the essential safety requirements set out in Schedule 1,
  - (b) have been the subject of a conformity assessment procedure set out in paragraph (a) or (b) of Regulation 12;
  - (c) have been submitted to a notified body for a conformity assessment under Regulation 19,



- (d) have passed the conformity assessment referred to in paragraph (a) or (b) of Regulation 12,
- (e) have an EU declaration of conformity drawn up in respect of them in accordance with Regulation 13,
- (f) have affixed to them the CE marking in accordance with Regulation 14 and Article 30 of the EC Regulation,
- (g) bear a unique identification in accordance with the Regulations of 2009, and
- (h) when properly stored and used for their intended purpose, do not endanger the health and safety of persons.

## PART 2

### OBLIGATIONS OF ECONOMIC OPERATORS

#### *Obligations of manufacturers*

5. (1) A manufacturer shall ensure that explosives placed on the market or used for their own purposes have been designed and manufactured to comply with the essential safety requirements set out in Schedule 1.

(2) Before placing explosives on the market or using them for their own purposes, the manufacturer of the explosives shall:

- (a) follow one of the conformity assessment procedures set out in paragraph (a) or (b) of Regulation 12 in respect of the explosives and draw up the technical documentation referred to in Annex III to the Directive;
- (b) submit the explosives to a notified body for a conformity assessment under Regulation 19;
- (c) where compliance by the explosives with the applicable requirements has been demonstrated by an assessment referred to in paragraph (b), draw up an EU declaration of conformity in accordance with Regulation 13;
- (d) affix a CE marking to the explosives in accordance with Regulation 14 and Article 30 of the EC Regulation;
- (e) ensure that procedures are in place for series production to remain in conformity with these Regulations, having regard to any changes in explosives design or characteristics and changes in the harmonised standards or in other technical specifications;
- (f) ensure that explosives to which the Regulations of 2009 apply bear a unique identification in accordance with those Regulations;
- (g) ensure that explosives to which the Regulations of 2009 do not apply:

- (i) bear a type, batch or serial number or other element allowing their identification, or, where the small size, shape or design of the explosives does not allow it, that such information as is required under these Regulations or the Directive is provided on its packaging or on a document accompanying the explosives;
  - (ii) bear the manufacturer's name, registered trade name or registered trade mark and the postal address at which the manufacturer can be contacted or, where that is not possible, that the aforementioned information shall be on its packaging or in a document accompanying the explosives and that the address shall, in a language that is easily understood by end-users and the market surveillance authority within the meaning of these Regulations and, the market surveillance authority, under the Directive, of each Member State in which the explosives are to be made available to end-users, provide a single point at which the manufacturer can be contacted;
- (h) ensure that the explosives are accompanied by instructions and safety information in the English language that is expressed in a manner that is clear, understandable and intelligible;
- (i) ensure that any labelling that accompanies the explosives is in language that is clear, understandable and intelligible.
- (3) After placing explosives on the market, the manufacturer of the explosives shall:
- (a) immediately take any corrective measures necessary to bring into conformity with these Regulations explosives that the manufacturer has reason to believe are not in conformity with these Regulations, including withdrawing them, or recalling them, if appropriate;
  - (b) where the explosives present a risk, inform the relevant competent authority of the Member State in which the explosives were made available on the market to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken;
  - (c) at the request of the competent authority of the State or other Member State, provide such authority, in paper or electronic form and in a language which can be easily understood by such authority, with all the information and documentation necessary to demonstrate the conformity of the explosives with these Regulations;
  - (d) co-operate with the competent authority of the State or other Member State concerned, at the request of such an authority, on any action taken to eliminate the risk posed by explosives which they have placed on the market;

- (e) retain the technical documentation referred to in Annex III to the Directive and the EU declaration of conformity for 10 years after the explosives have been placed on the market.

*Authorised representatives*

6. (1) Subject to paragraph (2), a manufacturer may appoint in writing a person to be an authorised representative of the manufacturer, to perform such functions as the manufacturer may confer for the purposes of compliance by the manufacturer with the obligations specified in Regulation 5.

(2) The functions referred to in paragraph (1)—

- (a) shall include the functions specified in subparagraphs (c) to (e) of Regulation 5(3), and
- (b) shall not include the functions specified in paragraphs (1) and (2)(a) of Regulation 5.

*Obligations of importers*

7. (1) An importer shall not place explosives on the market unless the explosives are in compliance with these Regulations.

(2) Before placing explosives on the market, an importer shall ensure that the appropriate conformity assessment procedure set out in paragraph (a) or (b) of Regulation 12 has been followed in respect of the explosives concerned by the manufacturer.

(3) Before placing explosives on the market an importer shall ensure that—

- (a) the manufacturer of the explosives has drawn up the technical documentation referred to in Annex III to the Directive,
- (b) the explosives bear the CE marking and are accompanied by such documents as are required under these Regulations or the Directive, and
- (c) the manufacturer of the explosives has complied with the requirements set out in subparagraphs (f) and (g) of Regulation 5(2).

(4) Where an importer considers, or has reason to believe, that explosives are not in conformity with the essential safety requirements set out in Schedule 1, the importer shall not place the explosives on the market until they have been brought into conformity with these Regulations.

(5) Subject to paragraph (7), an importer shall ensure that the explosives bear—

- (a) the importer's name, registered trade name or registered trade mark, and
- (b) a postal address at which the importer can be contacted.

(6) The information referred to in paragraph (5) shall be in a language that can be easily understood by end-users and the market surveillance authority within the meaning of these Regulations and, the market surveillance authority, under the Directive, of each Member State in which the explosives are to be made available to end-users.

(7) Where it is not possible to provide the information specified in paragraph (5) on the explosives, an importer shall provide the information—

(a) on the packaging, or

(b) in a document accompanying the explosives.

(8) An importer shall ensure that explosives are accompanied by instructions and safety information in the English language that is expressed in a manner that is clear, understandable and intelligible.

(9) An importer shall ensure that, while explosives are under his or her responsibility, their storage or transport conditions do not jeopardise their compliance with the essential safety requirements set out in Schedule 1.

(10) An importer who considers, or has reason to believe, that explosives which the importer placed on the market are not in conformity with these Regulations shall ensure that the corrective measures necessary to bring those explosives into conformity with these Regulations, to withdraw them or to recall them, are taken immediately.

(11) Where explosives present a risk, an importer shall immediately inform the manufacturer concerned and the competent authority of the State, and in relation to every other Member State in which the importer made the explosives available on the market, to that effect.

(12) Where paragraph (11) applies, an importer shall immediately provide to the competent authority of the State and of every other Member State concerned, details, in particular of the non-compliance and of any corrective measures taken.

(13) An importer shall, for 10 years after explosives have been placed on the market—

(a) keep a copy of the EU declaration of conformity in respect of the explosives at the disposal of the relevant competent authority, and

(b) ensure that the technical documentation referred to in Annex III to the Directive in respect of the explosives can, at the request of the relevant competent authority, be made available to that authority.

(14) An importer shall, at the request of the competent authority of the State or another Member State, provide such authority, in paper or electronic form and in a language which can be easily understood by such authority, with all

the information and documentation necessary to demonstrate the conformity of explosives with these Regulations.

(15) An importer shall co-operate with the competent authority of the State or another Member State, at the request of any such authority, on any action taken to eliminate the risks posed by explosives.

*Obligations of distributors*

8. (1) A distributor shall not make explosives available on the market without acting with due care in relation to the requirements of these Regulations.

(2) Before making explosives available on the market, a distributor shall verify that—

(a) the explosives—

(i) bear the CE marking,

(ii) are accompanied by such documents as are required under these Regulations or the Directive, and

(iii) are accompanied by instructions and safety information in a language which can be easily understood by end-users in the Member State in which the explosives are to be made available on the market,

(b) the manufacturer has complied with the requirements set out in subparagraphs (f) and (g) of Regulation 5(2), and

(c) where applicable, the importer has complied with the requirements set out in paragraphs (5) to (8) of Regulation 7.

(3) Where a distributor considers, or has reason to believe, that explosives are not in conformity with the essential safety requirements set out in Schedule 1, the distributor—

(a) shall not make the explosives available on the market until they have been brought into conformity with those requirements, and

(b) where the explosives present a risk, shall inform the manufacturer or the importer as well as the competent authority of the State to that effect.

(4) A distributor shall ensure that, while explosives are under the responsibility of the distributor, their storage and transport conditions do not jeopardise their compliance with the essential safety requirements set out in Schedule 1.

(5) A distributor who considers, or has reason to believe, that explosives that the distributor has made available on the market are not in conformity with these Regulations shall ensure that the corrective measures necessary to bring

those explosives into conformity with these Regulations, to withdraw them or recall them, are taken immediately.

(6) Where explosives present a risk, a distributor shall immediately inform the competent authority of the State and of every other Member State in which the distributor made the explosives available on the market, to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.

(7) A distributor shall, at the request of the competent authority of the State or other Member State concerned, provide such authority, in paper or electronic form and in a language which can be easily understood by such authority, with all the information and documentation necessary to demonstrate the conformity of explosives with these Regulations.

(8) A distributor shall co-operate with the competent authority of the State or other Member State concerned, at the request of any such authority, on any action taken to eliminate the risks posed by explosives which they have made available on the market.

*Cases in which obligations of manufacturers apply to importers and distributors*

9. An importer or distributor shall be considered a manufacturer for the purposes of these Regulations and he or she shall be subject to the obligations of a manufacturer under Regulation 5 where he or she—

- (a) places explosives on the market under his or her name or trademark, or
- (b) modifies explosives already placed on the market in such a way that compliance with the requirements of these Regulations may be affected.

*Identification of economic operators*

10. (1) As regards explosives to which the Regulations of 2009 do not apply, an economic operator shall, at the request of the market surveillance authority within the meaning of these Regulations and, the market surveillance authority, under the Directive, of each Member State in which the explosives are to be made available to end-users, identify to the authority concerned any other economic operator—

- (a) who has supplied the economic operator with such explosives, or
- (b) to whom the economic operator has supplied such explosives.

(2) An economic operator, even if the economic operator has ceased trading, shall retain the information referred to in paragraph (1) in relation to the explosives concerned for a period of 10 years after the economic operator has been supplied with the explosives or, as the case may be, supplied the explosives.

## PART 3

## CONFORMITY OF EXPLOSIVES

*Presumption of conformity of explosives*

11. Explosives that are in conformity with a harmonised standard (or part of such a standard) the reference to which has been published in the Official Journal of the Union shall be presumed to be in conformity with the essential safety requirements set out in Schedule 1 covered by that standard or part thereof.

*Conformity assessment procedures*

12. A manufacturer shall, for the assessment of conformity of explosives, follow one of the following conformity assessment procedures, referred to in Annex III to the Directive, in respect of the explosives concerned:

- (a) EU-type examination (module B) and, at the choice of the manufacturer—
  - (i) conformity to type based on internal production control plus supervised product checks at random intervals (module C2),
  - (ii) conformity to type based on quality assurance of the production process (module D),
  - (iii) conformity to type based on product quality assurance (module E), or
  - (iv) conformity to type based on product verification (module F);
- (b) conformity based on unit verification (module G).

*EU declaration of conformity*

13. (1) An EU declaration of conformity for explosives shall—
- (a) state that the fulfilment of the essential safety requirements set out in Schedule 1 has been demonstrated in respect of the explosives,
  - (b) be in the form set out in Schedule 2,
  - (c) contain the elements specified in the relevant modules referred to in Annex III to the Directive for the relevant conformity assessment procedure followed in respect of the explosives,
  - (d) be continuously updated, and
  - (e) be translated into the language or languages required by the Member State in which the explosives are placed or made available on the market.
- (2) Where explosives are subject to more than one European act requiring an EU declaration of conformity, a single EU declaration of conformity, which

shall contain the identification of the European acts concerned including their publication references, shall be drawn up in respect of all such European acts.

(3) Where a manufacturer draws up an EU declaration of conformity, the manufacturer shall assume responsibility for the compliance of the explosives with the requirements laid down in these Regulations.

(4) In this Regulation “European act” means—

(a) a provision of the treaties governing the Union, or

(b) an act adopted by an institution of the Union, an institution of the European Communities or any other body competent under those treaties.

*Rules and conditions for affixing CE marking and other markings*

14. (1) Subject to paragraphs (2) and (6), the CE marking shall be affixed by the manufacturer, in a manner that ensures that the marking is visible, legible and indelible, to explosives before the explosives are placed on the market.

(2) Where it is not possible or warranted, on account of the nature of the explosives, to affix the CE marking in accordance with paragraph (1), the CE marking shall be affixed by the manufacturer to—

(a) the packaging, and

(b) the accompanying documents.

(3) Where a notified body is involved in the production control phase, the CE marking shall be followed by the identification number of the notified body.

(4) The identification number of the notified body shall be affixed—

(a) by the notified body itself, or

(b) under the instructions of the notified body, by the manufacturer or his or her authorised representative.

(5) The CE marking and, where applicable, the identification number of the notified body may be followed by any other mark indicating a special risk or use.

(6) Where explosives—

(a) are manufactured for own use,

(b) are transported and delivered unpackaged or in mobile explosives manufacturing units for direct unloading into a blast hole, or

(c) are manufactured at a blasting site and are loaded immediately after being produced,



the CE marking shall be affixed by the manufacturer to the documents accompanying the explosives.

(7) A person shall not affix to any explosives, packaging thereof or accompanying documentation a marking or inscription that may lead to confusion as to the meaning and form of the CE marking.

(8) A person shall not affix a CE marking to explosives, packaging thereof or accompanying documentation in a manner that is in contravention of this Regulation.

(9) A person shall not affix a CE marking to explosives that are not in conformity with these Regulations or to packaging of, or documentation accompanying, explosives that are not in conformity with these Regulations.

(10) The obligations imposed on a manufacturer under this Regulation are in addition to, and not in substitution for, any other obligation regarding the marking of explosives that is imposed on the manufacturer by or under any other enactment or rule of law.

(11) In this Regulation “enactment” has the same meaning as it has in the Interpretation Act 2005 (No. 23 of 2005).

#### PART 4

#### NOTIFICATION AND OPERATIONAL OBLIGATIONS OF NOTIFIED BODIES

##### *Designation of Minister as notifying authority*

15. The Minister is designated as the notifying authority in the State for the purposes of Article 25 of the Directive and these Regulations.

##### *Notification of notified bodies*

16. (1) The notifying authority may grant notification to a conformity assessment body where—

- (a) the conformity assessment body has made an application to the notifying authority in accordance with Article 31 of the Directive, and
- (b) the notifying authority is satisfied that the conformity assessment body meets the requirements set out in Article 28 of the Directive.

(2) The Irish National Accreditation Board shall carry out the following activities on behalf of the notifying authority—

- (a) the setting up and carrying out of the necessary procedures for the assessment and accreditation of conformity assessment bodies, and
- (b) the monitoring of notified bodies, including their compliance with Articles 28 and 30 of the Directive.

(3) Where a notified body subcontracts, or a subsidiary of the notified body undertakes, a task connected with a conformity assessment, the notified body shall ensure that the subcontractor or subsidiary, as the case may be, complies with Articles 28 and 30 of the Directive.

(4) Subject to Article 32(5) of the Directive, a notified body may perform the functions of a notified body under these Regulations.

*Refusal to grant notification*

17. (1) Where the notifying authority proposes to refuse to grant a notification to a conformity assessment body that has made an application to the notifying authority under Regulation 16(1)(a), the notifying authority shall, by notice in writing to the conformity assessment body, inform the body concerned of its proposal and the reasons for it.

(2) A notice under paragraph (1) shall state that the conformity assessment body may, not later than 14 days after the service of the notice on the body concerned, make representations in writing to the notifying authority in relation to the reasons for the proposal as set out in the notice.

(3) Where, after consideration of representations (if any) made to the notifying authority in accordance with paragraph (2), the notifying authority makes a decision to refuse to grant a notification to a conformity assessment body, the notifying authority shall inform the body concerned in writing of the decision and the reasons for the decision.

*Suspension or revocation of notification*

18. (1) Subject to paragraphs (2) to (5), where the notifying authority has ascertained or has been informed that a notified body no longer meets the requirements laid down in Article 28 of the Directive or that a notified body is failing to fulfil its obligations under Article 36 or 38 of the Directive or this Part, the notifying authority may suspend or revoke the notification granted to the notified body, as appropriate.

(2) Where the notifying authority proposes under paragraph (1) to suspend or revoke a notification granted to a notified body, the notifying authority shall, by notice in writing to the notified body, inform the body concerned of its proposal and the reasons for it.

(3) A notice under paragraph (2) shall state that the notified body may, not later than 14 days after the service of the notice on the body concerned, make representations in writing to the notifying authority in relation to the reasons for the proposal as set out in the notice.

(4) Where, after consideration of representations (if any) made to the notifying authority in accordance with paragraph (3), the notifying authority considers that notification granted to a notified body should be suspended or revoked, as the case may be, the notifying authority shall suspend or revoke, the notification, as the case may be, by notice in writing to the body concerned from such date as the notifying authority considers appropriate and as is specified in the notice

which shall not be earlier than the end of the period under paragraph (5) within which an appeal may be brought.

(5) A notified body whose notification has been suspended or revoked, as the case may be, under paragraph (4), may appeal the suspension or revocation to an appeal panel established under Regulation 21, not later than 21 days, or such longer period as the notifying authority may, for good and sufficient reason, determine, after service on the body concerned of the notice under paragraph (4).

(6) The suspension or revocation, as the case may be, under paragraph (4) of a notification shall take effect—

(a) where—

- (i) no appeal is made under paragraph (5), or
- (ii) an appeal under paragraph (5) is made and the appeal has been withdrawn or abandoned,

on the date specified in the notice under paragraph (4), or

(b) where an appeal, other than an appeal referred to in paragraph (a)(ii), is made, on a date specified by the appeal panel.

*Operational obligations of notified bodies*

19. (1) A manufacturer may request a notified body to carry out a conformity assessment of the procedure followed by the manufacturer under paragraph (a) or (b), as the case may be, of Regulation 12 in respect of explosives.

(2) A request under paragraph (1) shall be accompanied by such fee as may be charged under Regulation 23.

(3) A notified body may, on receipt of a request made in accordance with paragraphs (1) and (2), carry out a conformity assessment of the procedure referred to in paragraph (1).

(4) A notified body shall carry out a conformity assessment of the procedures concerned in accordance with the conformity assessment procedure provided for in Article 36(2) of, and Annex III to, the Directive.

(5) Where a notified body finds that the essential safety requirements set out in Schedule 1, corresponding harmonised standards or other technical specifications have been met by a manufacturer, it shall issue a certificate of conformity.

(6) Subject to paragraphs (7) to (10), where a notified body finds that the essential safety requirements set out in Schedule 1, corresponding harmonised standards or other technical specifications have not been met by a manufacturer, it shall require the manufacturer to take appropriate corrective measures and shall not issue a certificate of conformity.

(7) Where a notified body proposes to refuse under paragraph (6) to issue a certificate of conformity, the notified body shall, by notice in writing to the manufacturer concerned, inform the manufacturer of its proposal and the reasons for it.

(8) A notice under paragraph (7) shall state that the manufacturer may, not later than 14 days after the service of the notice on the manufacturer, make representations in writing to the notified body in relation to the reasons for the proposal as set out in the notice.

(9) Where, after consideration of representations (if any) made to the notified body in accordance with paragraph (8), the notified body considers that a certificate of conformity should not be issued, the notified body shall refuse to issue such certificate by notice in writing to the manufacturer from such date as the notified body considers appropriate and as is specified in the notice which shall not be earlier than the end of the period under paragraph (10) within which an appeal may be brought.

(10) A manufacturer that has been refused a certificate of conformity under paragraph (9) may appeal the refusal to an appeal panel established under Regulation 21, not later than 21 days, or such longer period as the notified body may, for good and sufficient reason, determine, after service on the manufacturer concerned of the notice under paragraph (9).

*Monitoring of conformity by notified bodies*

20. (1) Where, in the course of monitoring the conformity of explosives following the issue, under Regulation 19(5), of a certificate of conformity in relation to the explosives concerned, a notified body finds that such explosives no longer comply with these Regulations, it shall, by notice in writing to the manufacturer concerned, require the manufacturer to take appropriate corrective measures.

(2) Subject to paragraphs (3) to (6), where corrective measures under paragraph (1) are not taken by the manufacturer or do not have the required effect, the notified body concerned may suspend or revoke a certificate of conformity issued, under Regulation 19(5), to the manufacturer.

(3) Where a notified body proposes under paragraph (2) to suspend or revoke a certificate of conformity, it shall, by notice in writing to the manufacturer concerned, inform the manufacturer of its proposal and the reasons for the proposal as set out in the notice.

(4) A notice under paragraph (3) shall state that the manufacturer may, not later than 14 days after the service of the notice on the manufacturer, make representations in writing to the notified body in relation to the reasons for its proposal.

(5) Where, after consideration of representations (if any) made to the notified body in accordance with paragraph (4), the notified body considers that the certificate of conformity issued to the manufacturer should be suspended or revoked, as the case may be, the notified body shall suspend or revoke, as the

case may be, the certificate by notice in writing to the manufacturer concerned from such date as the notified body considers appropriate and as is specified in the notice which shall not be earlier than the end of the period under paragraph (6) within which an appeal may be brought.

(6) A manufacturer whose certificate of conformity has been suspended or revoked, as the case may be, under paragraph (5), may appeal the suspension or revocation to an appeal panel established under Regulation 21, not later than 21 days, or such longer period as the notified body may, for good and sufficient reason, determine, after service on the body concerned of the notice under paragraph (5).

(7) The suspension or revocation, as the case may be, under paragraph (5) of a certificate of conformity shall take effect—

(a) where—

(i) no appeal is made under paragraph (6), or

(ii) an appeal under paragraph (6) is made and the appeal has been withdrawn or abandoned,

on the date specified in the notice under paragraph (5), or

(b) where an appeal, other than an appeal referred to in paragraph (a)(ii), is made, on a date specified by the appeal panel.

#### *Appeal panel*

21. (1) This Regulation applies to—

(a) a notified body whose notification is suspended or revoked under Regulation 18(4) by the notifying authority,

(b) a manufacturer who is refused a certificate of conformity under Regulation 19(9) by a notified body, and

(c) a manufacturer whose certificate of conformity issued by a notified body is suspended or revoked under Regulation 20(5) by the notified body concerned.

(2) The Minister shall, upon a request in writing from a person to whom this Regulation applies who is aggrieved by a decision referred to in subparagraph (a), (b) or (c) of paragraph (1), establish a panel (“appeal panel”) to consider an appeal by that person against the decision concerned.

(3) The Minister may establish more than one appeal panel to consider one or more appeals.

(4) An appeal panel shall consist of at least 3 but not more than 5 persons appointed by the Minister, one of whom shall be designated by the Minister to be the chairperson of the panel.

- (5) An appeal panel shall determine its own procedure.
- (6) Upon appeal—
  - (a) under Regulation 18(5), an appeal panel may—
    - (i) affirm or vary the suspension or revocation, as the case may be, or
    - (ii) quash the decision of the notifying authority and direct the notifying authority, for stated reasons, to reconsider its decision,
  - (b) under Regulation 19(10), an appeal panel may—
    - (i) affirm the decision of the notified body, or
    - (ii) quash the decision of the notified body and direct the notified body, for stated reasons, to reconsider its decision,or
  - (c) under Regulation 20(6), the appeal panel may—
    - (i) affirm or vary the suspension or revocation, as the case may be, or
    - (ii) quash the decision of the notified body and direct the notified body, for stated reasons, to reconsider its decision.
- (7) An appeal panel shall notify the person who made the request under paragraph (2) of its determination under subparagraph (a), (b) or (c), as the case may be, of paragraph (6).
- (8) The notifying authority or a notified body, as the case may be, shall comply with a determination of an appeal panel under this Regulation.
- (9) A party to an appeal under this Regulation may, not later than 21 days after service on the party concerned of the determination of the appeal panel, appeal that determination to the High Court on a specified question of law.
- (10) A decision of the High Court under this Regulation shall be final, save that, by leave of the court an appeal from the decision shall lie to the Court of Appeal on a specified question of law.
- (11) All expenses reasonably incurred by the notifying authority or a notified body under this Regulation in relation to an appeal before an appeal panel, the High Court or the Court of Appeal, as the case may be, shall be borne by the appellant where the appeal panel, the High Court or the Court of Appeal, as the case may be, affirms the decision of the notifying authority or notified body concerned.
- (12) The notifying authority or notified body concerned, as the case may be, may recover the expenses referred to in paragraph (11) as a simple contract debt in any court of competent jurisdiction.

*Information obligation on notified bodies*

22. (1) A notified body shall inform the notifying authority of the matters specified in Article 38(1) of the Directive.

(2) Notified bodies shall provide other notified bodies carrying out similar conformity assessment activities covering the same explosives with relevant information on issues relating to negative and, at the request of such other notified bodies, positive conformity assessment results.

*Fees*

23. (1) A notified body may charge fees in connection with or incidental to carrying out conformity assessment procedures.

(2) The fees charged under paragraph (1) shall not exceed the sum of the following:

- (a) the costs incurred or to be incurred by the notified body in carrying out conformity assessment procedures;
- (b) an amount of profit which is reasonable in the circumstances, having regard to the character and extent of the work done by the body on behalf of the manufacturer who has submitted the explosives for the assessment of conformity, and the commercial rate normally charged on account of profit for that work or similar work.

(3) The power in paragraph (1) includes the power to require the payment of fees in advance of carrying out the work requested by the manufacturer.

(4) The fees charged under paragraph (1) shall be recoverable, from the person by whom the fee is payable, as a simple contract debt in any court of competent jurisdiction.

## PART 5

## SECURITY PROVISIONS

*Transfer of explosives*

24. (1) Explosives shall not be transferred other than in accordance with this Part.

(2) A consignee shall, prior to a transfer to him or her of explosives, obtain approval under Regulation 25 from the recipient competent authority for the transfer.

(3) Where a transfer terminates in the State and involves a movement of explosives from a Member State to the State, whether or not through a third Member State (in this Regulation referred to as a “transit Member State”), the economic operator with responsibility for the transfer shall, prior to the transfer, notify the competent authorities of the Member State of departure and of every transit Member State to which the transfer relates, of the transfer and shall obtain the approval of each such authority for the transfer.

(4) Where a transfer involves a movement of explosives through the State but does not terminate in the State, the economic operator with responsibility for the transfer through the State shall, prior to the transfer, notify the Minister of the transfer through the State and shall obtain the approval under Regulation 25 of the Minister for such transfer.

(5) Before a transfer from the State, the consignor shall—

- (a) notify the Minister of the transfer from the State and obtain the approval under Regulation 25 of the Minister for such transfer,
- (b) transmit to the Minister all the information that the Minister requests that is relevant to the transfer, and
- (c) transmit to the competent authority of every transit Member State to which the transfer relates all the information that such authorities request that is relevant to the transfer.

(6) In this Regulation “consignor” means an economic operator in the State who transfers, or proposes to transfer, explosives under this Part.

*Application for approval*

25. (1) An economic operator who is seeking approval for a transfer from a recipient competent authority shall apply, in accordance with this Part, to the recipient competent authority concerned for approval for the transfer.

(2) A recipient competent authority that receives an application from an economic operator under paragraph (1) in relation to a transfer may, subject to this Part, grant approval for the transfer to the economic operator concerned.

(3) Where a recipient competent authority makes a decision to grant approval under paragraph (2) it shall, as soon as practicable thereafter, grant the approval concerned in the form of a transfer document.

*Assessment of necessity for special security requirements*

26. (1) A recipient competent authority shall make a determination as to whether a transfer, in relation to which an application under Regulation 25(1) is made to it, requires special supervision in order to comply with special security requirements in the State or any part of the State.

(2) In making a determination under paragraph (1), a recipient competent authority shall have regard to—

- (a) the nature, type and quantity of explosives to be transferred,
- (b) whether the transfer is of a nature of a transfer that is commonly undertaken,
- (c) the location in the State where the transfer is to start and finish,



- (d) any security features that are on the vehicle to which the transfer relates, and
- (e) any other matter that the recipient competent authority considers relevant to the maintenance of security in the State.

(3) Where a recipient competent authority makes a determination under paragraph (1)—

- (a) that a transfer requires special supervision in order to comply with special security requirements in the State or any part of the State, Regulation 27 shall apply, or
- (b) that a transfer does not require special supervision in order to comply with special security requirements in the State or any part of the State, Regulation 28 shall apply.

*Determination special security requirements necessary*

27. (1) Where a determination under Regulation 26(3)(a) is made in relation to a transfer, the recipient competent authority concerned shall, prior to approving or refusing the transfer under Regulation 25, require an economic operator to provide to the authority concerned the following information:

- (a) the names and addresses of the economic operators concerned;
- (b) the number and quantity of the explosives;
- (c) a full description of the explosives and the means of their identification, including the United Nations identification number concerned;
- (d) in the case of explosives that are to be placed on the market, information on the compliance with the conditions for placing on the market;
- (e) the means of transfer and the itinerary of the explosives;
- (f) the expected date of departure and arrival of the explosives;
- (g) where relevant, the precise points of the entry to and exit from the State, and other Member States, of the explosives;
- (h) all such additional information as the authority concerned may reasonably require for the performance of its functions under these Regulations.

(2) An economic operator shall comply with the requirements made of it by a recipient competent authority under this Regulation.

(3) A recipient competent authority that is provided with the information specified in subparagraphs (a) to (h) of paragraph (1) may refuse an application under Regulation 25 unless it is satisfied that the special supervision required in

order to comply with special security requirements in the State or any part of the State will occur in relation to the transfer concerned.

*Determination special security requirements unnecessary*

28. Where a determination under Regulation 26(3)(b) is made in relation to a transfer, the recipient competent authority concerned may, subject to Regulation 29, grant approval for the transfer for a fixed period.

*Grounds upon which approval may be refused*

29. (1) A recipient competent authority may refuse to grant approval for a transfer—

(a) other than a transfer to which Regulation 24(4) applies, to an economic operator who is a consignee where it has reason to believe that the consignee does not have legal authority to acquire the explosives or the licences or authorisations required by law to engage in the manufacture, storage, use, import, export, transfer or trade of the explosives, as the case may be,

(b) to any economic operator where Regulation 27 applies and—

(i) the recipient competent authority has reason to believe that the conditions under which the transfer is to take place do not comply with special security requirements that are determined, under Regulation 26(3)(a), to be necessary for the transfer, or

(ii) the economic operator concerned fails or refuses to provide the information specified in subparagraphs (a) to (h) of paragraph (1) of Regulation 27,

and

(c) to which Regulation 24(4) applies—

(i) where Regulation 27 applies and the economic operator with responsibility for the transfer fails or refuses to provide to the Minister the information specified in subparagraphs (a) to (h) of paragraph (1) of Regulation 27,

(ii) where the Minister has reason to believe that the conditions under which the transfer through the State is to take place do not comply with the security requirements of the State, or

(iii) where the economic operator concerned fails or refuses to transmit to the Minister all the information in relation to the transfer that he or she has requested from the economic operator.

(2) The Minister may refuse to grant approval for a transfer to which Regulation 24(5) applies where the economic operator concerned fails or refuses to transmit to the Minister all the information in relation to the transfer that the Minister has requested from the economic operator.

*Review of approval for transfer for fixed period*

30. (1) A recipient competent authority may at any time review an approval granted by the recipient competent authority under Regulation 28 and, if it appears to the authority concerned that there are good grounds for doing so, that authority may, subject to paragraphs (2) and (5), revoke or suspend the approval.

(2) Where a recipient competent authority proposes under paragraph (1) to revoke or suspend an approval, as the case may be, the authority concerned shall, unless paragraph (5) applies, by notice in writing to the consignee concerned, inform the consignee of its proposal and the reasons for it.

(3) A notice under paragraph (2) shall state that the consignee may, not later than 14 days after the date on which the notice is served, make representations in writing to the recipient competent authority in relation to the reasons for its proposal.

(4) Where, after consideration of representations (if any) made to the recipient competent authority in accordance with paragraph (3), the recipient competent authority considers that the approval should be revoked or suspended, as the case may be, the recipient competent authority shall revoke or suspend, as the case may be, the approval and shall, by notice in writing, inform the consignee of its decision and the reasons for it.

(5) Where circumstances of urgency giving rise to the need for the immediate revocation or suspension of the approval render it impracticable to inform a consignee in writing of a recipient competent authority's reasons for a proposed revocation or suspension of an approval under this Regulation, the authority shall inform the consignee in writing of the authority's reasons for the revocation or suspension, as the case may be, as soon as practicable.

*Transfer document*

31. (1) Where approval for a transfer to which Regulation 26(3)(a) applies is granted, the transfer document shall contain the information provided by the economic operator concerned under subparagraphs (a) to (g) of paragraph (1) of Regulation 27.

(2) Where approval for a transfer to which Regulation 26(3)(b) applies is granted, the transfer document shall refer to that approval.

(3) A carrier who carries out a transfer shall ensure that during the transfer—

(a) the explosives are at all times accompanied by the transfer document, and

(b) the transfer document is produced at the request of the relevant competent authority or designated officer.

(4) After a transfer, an economic operator with responsibility for a transfer shall—

- (a) retain a copy of the transfer document to which the transfer relates for a period of 10 years, and
- (b) produce the document referred to in paragraph (a) at the request of a designated officer or the recipient competent authority for examination by the officer or authority concerned.

(5) In this Regulation “carrier” means, in relation to the transfer of explosives under this Part—

- (a) the person who has the management of the vehicle in which the explosives are transferred, or
- (b) if no person satisfies the requirement of paragraph (a), the person in control of the vehicle.

*Licence or authorisation*

32. (1) An economic operator or an employee of the economic operator acting on behalf of the economic operator shall not manufacture, store, use, import, export, transfer or trade explosives unless the economic operator is in possession of a licence or authorisation entitling the economic operator to engage in the manufacture, storage, use, importation, exportation, transfer or trade of explosives, as the case may be.

(2) Where the Minister issues a licence or authorisation referred to in paragraph (1) to an economic operator for the manufacture of explosives, the Minister shall check that the economic operator is capable of complying with the technical commitments that such economic operator assumes.

*Seizure by designated officer*

33. (1) A designated officer may seize explosives if there is evidence that the explosives have been or will be—

- (a) acquired, used or dealt in without legal authority, or
- (b) transferred otherwise than in accordance with this Part.

(2) Where explosives are seized under paragraph (1), the explosives concerned may be destroyed or otherwise disposed of by such person and in such manner and at such time and place as the designated officer may direct, and the costs of such seizure and disposal may be charged to the economic operator concerned, the manager of the premises or place where the explosives were found or the person having lawful possession of the explosives at the time of their seizure.

(3) In this Regulation “disposed of” includes (at the expense of the economic operator concerned or the manager of the premises or place where the explosives were found or the person having lawful possession of the explosives at the time of their seizure) any manner of disposal which in the opinion of the designated officer will least endanger the public.

(4) A designated officer, when taking a measure referred to in paragraph (1), shall notify the person concerned in writing, setting out—

- (a) the reasons for the seizure and disposal of the explosives concerned, and
- (b) the person concerned's right of appeal under Regulation 43.

## PART 6

### UNION MARKET SURVEILLANCE AND CONTROL OF EXPLOSIVES ENTERING UNION MARKET

#### *Union market surveillance and control of explosives entering Union market*

34. A person shall not place explosives on the market unless, when properly stored and used for their intended purpose, they do not endanger the health and safety of persons.

#### *Procedure for dealing with explosives presenting risk at national level*

35. (1) Where the market surveillance authority has sufficient reasons to believe that explosives present a risk to the health or safety of persons or to property or the environment, it shall carry out an evaluation in relation to the explosives concerned covering all relevant requirements laid down in these Regulations.

(2) Where the market surveillance authority carries out an evaluation under paragraph (1), the economic operator concerned shall co-operate as necessary with the market surveillance authority.

(3) In the course of an evaluation under paragraph (1), the market surveillance authority may, subject to Regulation 41, make any or all of the following findings:

- (a) that the CE marking has not been affixed to the explosives, packaging thereof or accompanying documentation;
- (b) that the CE marking has been affixed to the explosives, packaging thereof or accompanying documentation in contravention of Regulation 14 or of Article 30 of the EC Regulation;
- (c) that the identification number of the notified body, where that body is involved in the production control phase, has been affixed in contravention of Regulation 14, or has not been affixed;
- (d) that the EU declaration of conformity has not been drawn up in respect of the explosives;
- (e) that the EU declaration of conformity has not been drawn up in accordance with these Regulations or the Directive;

- (f) that technical documentation referred to in Annex III to the Directive is either not available or incomplete;
- (g) that the information referred to in subparagraphs (f) and (g) of Regulation 5(2) or Regulations 7(5) to (8) is absent, false or incomplete;
- (h) that any other administrative requirement provided for in Regulation 5, 6 or 7 is not fulfilled;
- (i) that any other requirement laid down by these Regulations has not been fulfilled.

(4) Where the market surveillance authority makes a finding referred to in any of the subparagraphs (a) to (i) of paragraph (3), the authority shall without delay, and subject to Regulation 41, by notification, require the economic operator concerned—

- (a) to take within such period as may be specified in the notification all corrective actions to bring the explosives into compliance with the requirements of these Regulations, and
- (b) to withdraw the explosives from the market or to recall them within such reasonable period, commensurate with the nature of the risk, as the market surveillance authority may specify in the notification.

(5) Article 21 of the EC Regulation shall apply to the measures referred to in paragraph (4).

(6) An economic operator shall comply with the requirements of a notification under paragraph (4) unless and until it is annulled under Regulation 43.

(7) Where an economic operator does not comply with the requirements of the notification under paragraph (4) within the period specified in that notification, the market surveillance authority shall take all appropriate provisional measures to prohibit or restrict the explosives being made available on the market in the State, to withdraw the explosives from that market or to recall them.

(8) An economic operator shall comply with any measures taken under paragraph (7).

*Risk to health or safety of persons or to safety of property or environment from explosives in compliance with Regulations*

36. (1) Where, having carried out an evaluation under Regulation 35(1), the market surveillance authority finds that, although the explosives concerned are in compliance with these Regulations, they present a risk to the health or safety of persons or to the safety of property or the environment, the authority shall, subject to Regulation 41, by notification in writing to the economic operator concerned, direct the economic operator to do either or both of the following—

- (a) take all appropriate measures to ensure that the explosives concerned, when placed on the market, no longer present the risk, and
- (b) withdraw the explosives from the market or recall them within such reasonable period, commensurate with the nature of the risk, as the authority may specify in the notification.

(2) A person on whom a notification under paragraph (1) is served shall ensure that the corrective action specified in the notification is taken in respect of the explosives concerned that the person made available on the market.

## PART 7

### INSPECTIONS AND SURVEILLANCE

#### *Inspections and surveillance*

37. (1) The market surveillance authority shall carry out inspections of explosives where appropriate—

- (a) on their entry into the State (where the State is their place of entry into the Union) for the purpose of assessing compliance by the explosives concerned with these Regulations, and
- (b) at the storage and manufacturing sites of the explosives concerned for the purposes of confirming such storage and manufacture is carried out in accordance with the Act of 1875.

(2) The market surveillance authority shall organise and carry out market surveillance of explosives to which these Regulations apply that are made available on the market, taking due account of the presumption referred to in Regulation 11 of the conformity of products bearing a CE marking.

#### *Authorised officers*

38. (1) The market surveillance authority may appoint such and so many persons as it thinks fit to be authorised officers for the purposes of ensuring compliance with these Regulations.

(2) A person appointed to be an authorised officer under this Regulation shall, on his or her appointment, be furnished with a warrant of his or her appointment and, when exercising a power conferred by these Regulations shall, if requested by any person affected, produce such warrant or a copy thereof to that person for inspection.

(3) The appointment of a person as an authorised officer under this Regulation ceases—

- (a) on the revocation of the appointment by the market surveillance authority,
- (b) in a case where the appointment is for a specified period, on the expiration of that period, or

- (c) on the resignation of the person from the appointment.
- (4) Subject to paragraph (7), an authorised officer may, for the purpose of ensuring that these Regulations and the Directive are being complied with—
- (a) at all reasonable times enter any place, at which there are reasonable grounds to believe that explosives to which these Regulations apply are being or have been manufactured, distributed, supplied or placed on the market or that records relating to the explosives are kept, and search and inspect the place and any explosives or records found therein,
  - (b) secure for later inspection any place or part thereof in which such explosives or records are kept or there are reasonable grounds for believing that such explosives or records are kept,
  - (c) inspect, and take copies of, any books, records or other documents (including books, records or documents stored in non-legible form), or extracts therefrom, that he or she finds in the course of his or her inspection,
  - (d) remove any such books, records or other documents from such place and retain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under these Regulations,
  - (e) require any person at such place, including the owner or person in charge of such place, to give the officer such information and assistance as the officer may reasonably require for the purposes of his or her functions under these Regulations,
  - (f) require any person in charge of, or employed in, such place to produce to the officer such books, documents or other records (and in the case of documents or records stored in non-legible form, a legible reproduction thereof), or extracts therefrom, that are in that person's possession or procurement, or under that person's control, as he or she may reasonably require for the purposes of his or her functions under these Regulations,
  - (g) require any person at such place to answer such questions as the officer may ask relating to any matter under these Regulations and to make a declaration of the truth of the answers to those questions,
  - (h) examine with regard to any matter under these Regulations any person, following the officer's having cautioned the person that the person is not obliged to say anything unless he or she wishes to do so but that whatever he or she says will be taken down in writing and may be given in evidence,
  - (i) as regards any explosives or any article or substance used in the manufacture of explosives the officer finds in any place, require any person



in charge of such place or any person who appears to the officer to be in possession of the explosives or the article or substance to supply without payment, for test, examination or analysis sufficient samples thereof,

- (j) cause any explosives or any article or substance used in the manufacture of explosives found in any place which appear to the officer to have caused or to be likely to cause danger to safety or health, to be dismantled or subjected to any process or test (but not so as to damage or destroy them unless this is in the circumstances necessary for the purposes of these Regulations) and where an officer proposes to exercise this power in the case of explosives or an article or substance used in the manufacture of explosives found at or in any place, the officer shall, if so requested by a person who at the time is present at and has responsibilities in relation to that place, and if it is practicable and safe to do so, cause anything which is to be done by virtue of that power to be done in the presence of that person,
- (k) in relation to any explosives or any article or substance used in the manufacture of explosives found at any place in accordance with subparagraph (j), remove them and retain them for so long as is necessary for all or any of the following purposes, namely:
  - (i) to examine or arrange for the examination of them and do to them anything which he or she has power to do under subparagraph (j);
  - (ii) to ensure that they are not tampered with before the examination of them is completed;
  - (iii) to ensure that they are available for use as evidence in any proceedings,

and

- (l) examine any procedure connected with the manufacture of explosives.

(5) Before exercising the power conferred by subparagraph (j) or (k) of paragraph (4) in the case of any explosives or article or substance used in the manufacture of explosives, an authorised officer shall, in so far as it is reasonably practicable to do so, consult such persons as appear to him or her to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he or she proposes to do under the power concerned.

(6) Where, under the power conferred by subparagraph (j) or (k) of paragraph (4), an authorised officer takes possession of any explosives, or any article or substance used in the manufacture of explosives, found at any place, the officer shall, if it is practicable for him or her to do so, take a sample thereof and give to a responsible person at such place a portion of the sample marked in a manner sufficient to identify it.

(7) When performing a function under these Regulations, an authorised officer may, subject to any warrant under paragraph (9), be accompanied by such number of other authorised officers or members of the Garda Síochána as he or she considers appropriate.

(8) An authorised officer shall not enter a dwelling, other than—

- (a) with the consent of the occupier, or
- (b) pursuant to a warrant under paragraph (9).

(9) Upon the sworn information of an authorised officer, a judge of the District Court may—

- (a) if satisfied that there are reasonable grounds for believing that information, books, records or other documents required by an authorised officer under these Regulations are held at any dwelling, or
- (b) if satisfied that there are reasonable grounds for believing that there are, in any dwelling, explosives which an authorised officer requires to inspect for the purposes of these Regulations or the Directive,

issue a warrant authorising a named authorised officer, accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times, before the expiration of one month from the date of issue of the warrant, to enter the dwelling (if necessary by using reasonable force) and exercise the powers of an authorised officer under this Regulation.

(10) An application under paragraph (9) shall be made to a judge of the District Court assigned to the District Court district in which the dwelling is situated.

(11) A person shall not—

- (a) obstruct or interfere with an authorised officer or a member of the Garda Síochána in the course of the exercise by him or her of a power conferred on him or her by this Regulation, including a warrant under paragraph (9), or impede the exercise by the person or member, as the case may be, of such power, or
- (b) fail or refuse to comply with a requirement of an authorised officer or member of the Garda Síochána pursuant to subparagraph (e), (f), (g) or (i) of paragraph (4), or in purported compliance with such requirement give information or make a declaration to the inspector or member that he or she knows to be false or misleading in any material respect.

(12) Where an authorised officer believes, upon reasonable grounds, that a person has committed an offence under Regulation 45(1) consisting of a contravention of subparagraph (a) or (b) of paragraph (11), the authorised officer may request the person to provide the authorised officer with the person's name and

the address at which the person ordinarily resides and the person shall comply with that request.

(13) A statement or admission made by a person pursuant to a requirement under subparagraph (e), (g) or (h) of paragraph (4) shall not be admissible as evidence in proceedings brought against the person for an offence (other than an offence under Regulation 45(1) consisting of a contravention of subparagraph (a) or (b) of paragraph (11) or paragraph (12)).

(14) In this Regulation “place” shall have the same meaning as it has in section 29 of the Offences Against the State Act 1939 (No. 13 of 1939).

*Forfeiture orders*

39. (1) The market surveillance authority may apply to the District Court for an order (in this Regulation referred to as a “forfeiture order”) for the forfeiture to the market surveillance authority of any explosives to which these Regulations apply on the grounds that the explosives, when properly stored and used for their intended purpose, endanger the health and safety of persons.

(2) An application under this Regulation shall be made to a judge of the District Court assigned to the District Court district in which the person against whom the forfeiture order is sought ordinarily resides or carries on business.

(3) Any forfeiture order may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

(4) Any explosives the subject of a forfeiture order may be seized on behalf of the market surveillance authority by an authorised officer.

(5) Where the District Court makes a forfeiture order, the order may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

(6) Subject to paragraphs (7) and (11), where any explosives are forfeited under a forfeiture order they shall be destroyed in accordance with such directions as the District Court may give.

(7) On making a forfeiture order the District Court may, if it considers it appropriate to do so, direct that the explosives to which the order relates shall (instead of being destroyed) be released to such person and on such conditions as the court may specify.

(8) The District Court shall not order explosives to be forfeited under this Regulation if a person claiming to be the owner of them or otherwise interested in them applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

(9) Any person aggrieved by the making of a forfeiture order or by a decision of the District Court not to make such an order, may appeal against that order or decision to the Circuit Court.

(10) An appeal under paragraph (9) shall be made to a judge of the circuit in which the forfeiture order was made or refused or the circuit in which the appellant ordinarily resides or carries on business.

(11) Where an appeal is made under paragraph (9), the appellant may make an application to the court to delay the coming into force of the order pending the determination of any appeal.

(12) A party to an appeal under this Regulation may, not later than 21 days after the determination, appeal that determination to the High Court on a specified question of law.

(13) A decision of the High Court under this Regulation shall be final, save that, by leave of the court an appeal from the decision shall lie to the Court of Appeal on a specified question of law.

*Seizure and disposal of unsafe explosives*

40. (1) Notwithstanding Regulations 33(1), 39 and 43 any explosives that appear to an authorised officer to have deteriorated, or to be unsafe, or to be a danger to persons or property may be seized and destroyed or otherwise disposed of by such person and in such manner and at such time and place as the authorised officer may direct, and the costs of such seizure and disposal may be charged to the economic operator concerned, the manager of the premises or place where the explosives were found or the person having lawful possession of the explosives at the time of their seizure.

(2) In this Regulation “disposed of” includes (at the expense of the economic operator concerned or the manager of the premises or place where the explosives were found or the person having lawful possession of the explosives at the time of their seizure) any manner of disposal which in the opinion of the authorised officer will least endanger the public, and includes—

- (a) the surrender of the explosives to a member of the Garda Síochána, or to any other competent agency or organisation for their destruction, or
- (b) the certified return of the explosives to the economic operator who manufactured, imported, distributed or supplied the explosives, in order to remove them from the market.

(3) An authorised officer, when taking a measure referred to in paragraph (1), shall notify the person concerned in writing, setting out the reasons for the seizure and destruction of the explosives concerned.

*Measures entailing refusal or restriction*

41. (1) Where the market surveillance authority takes a measure referred to in Regulation 35 or 36, the authority shall follow the procedures set out in this Regulation.

(2) A measure to which paragraph (1) applies shall be notified without delay to the person concerned, and the notification shall—

- (a) state the exact grounds on which the measure is based,
- (b) inform the person concerned of his or her right to make representations under paragraph (3) and of his or her right of appeal under Regulation 43, and
- (c) state the nature of the measures to which the notification relates, and any time limits associated with such measures.

(3) A person who is notified of measures to which paragraph (1) applies shall, unless circumstances of urgency, justified in particular by public health, security or safety requirements, giving rise to the need for the measures to be taken immediately, would render it impracticable to do so, be provided with an opportunity to make representations to the market surveillance authority in advance of any measures referred to in the notification being taken.

(4) Where circumstances, justified in particular by public health, security or safety requirements, arise that render it impracticable to provide a person who is notified of a measure referred to in paragraph (1) an opportunity to make representations in advance of the measure being taken, the market surveillance authority shall give such opportunity, as soon as may be, thereafter.

(5) The market surveillance authority may, where it is considered appropriate to do so, withdraw or amend by a further notification in writing any notification of a measure to which paragraph (1) applies.

(6) A measure to which paragraph (1) applies may be required to be undertaken—

- (a) immediately, because of the urgency of the matter,
- (b) from a specified date,
- (c) by a specified date, or
- (d) between specified dates.

(7) Notification of a measure to which paragraph (1) applies shall, subject to Regulation 42, take effect on the date specified therein.

(8) A person shall comply with a notification of a measure to which paragraph (1) applies unless and until it is annulled under Regulation 43.

(9) Where a person fails to comply with a notification of a measure to which paragraph (1) applies, the market surveillance authority may institute proceedings in the appropriate court for an order requiring the person to comply with the terms of the notification.

(10) In this Regulation “specified date” means a date not earlier than 14 days after the receipt by a person of notification of a measure to which paragraph (1) applies.

*Service of documents*

42. (1) A notice or other document that is required to be served on or given to a person under this Act shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address;
- (d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner.

(2) In this Regulation a company (within the meaning of the Companies Act 2014 (No. 38 of 2014)) shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

*Right of appeal against notifications or other measures*

43. (1) A person aggrieved by a measure to which Regulation 33 or 41(1) applies may appeal to the appropriate court against the taking of the measure.

(2) An appeal under this Regulation shall state the grounds on which the appeal is brought and be made by written notice, which shall be lodged with the office of the appropriate court by the appellant not later than 14 days from the date upon which the appellant was notified of the measure concerned.

(3) A copy of the notice by which a person brings an appeal under this Regulation shall be given by the appellant to the market surveillance authority.

(4) Where an appeal is brought under paragraph (1), the measure shall remain in force until the appeal is determined or withdrawn, subject to any decision to the contrary by the appropriate court.

(5) On the hearing of an appeal under this Regulation the appropriate court may confirm the measure under appeal, vary it or allow the appeal and make any other order as it considers appropriate.

(6) If, in relation to an appeal under this Regulation to the District Court, the court determines that the market value of the explosives the subject of the appeal exceeds that court's jurisdiction in tort, it may, if it so thinks fit, transfer

the appeal to the Circuit Court or the High Court, whichever it considers appropriate having regard to its opinion of the value of the explosives.

(7) If, in relation to an appeal under this Regulation to the Circuit Court, the court determines that the market value of the explosives the subject of the appeal exceeds that court's jurisdiction in tort, it may, if it so thinks fit, transfer the appeal to the High Court.

(8) Paragraphs (6) and (7) are without prejudice to the jurisdiction of a court (being either the District Court or the Circuit Court) to determine an appeal under this Regulation in relation to which it was, at the time of the hearing of the appeal, the appropriate court.

(9) In determining the market value of the explosives under this Regulation, that value shall be taken as the price which the goods might reasonably be expected to have fetched, after payment of any duty chargeable on them, if they had been sold on the open market at or about the date of the seizure under Regulation 33 or notification of a measure to which Regulation 41(1) applies.

(10) A decision of the District Court on appeal under this Regulation shall be final, save that, by leave of the court an appeal from the decision shall lie to the High Court on a specified question of law.

(11) A decision of the Circuit Court on appeal under this Regulation shall be final, save that, by leave of the court an appeal from the decision shall lie to the High Court on a specified question of law.

(12) A decision of the High Court on appeal under this Regulation shall be final, save that, by leave of the court an appeal from the decision shall lie to the Court of Appeal on a specified question of law.

*Jurisdiction (Regulations 41(9) and 43(1))*

44. (1) The jurisdiction conferred on the District Court by Regulation 41(9) or 43(1), as the case may be, shall be exercised by a judge of the District Court assigned to the District Court district in which the explosives concerned were placed on the market or the appellant ordinarily resides or carries on business.

(2) The jurisdiction conferred on the Circuit Court by Regulation 41(9) or 43(1), as the case may be, shall be exercised by a judge of the circuit in which the explosives concerned were placed on the market or the appellant ordinarily resides or carries on business.

*Offences and penalties*

45. (1) A person who contravenes Regulation 4, 5, 7, 8, 10, 12, 13, 14, 16(3) or (4), 19(4), 24, 25(1), 27(2), 31(3) or (4), 32(1), 34, 35(2), (6) or (8), 36(2), 38(11) or (12) or 41(8) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €50,000.



(2) Where an offence under this Regulation is committed by a body corporate and is proved to have been so committed with the consent or connivance of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(4) Summary proceedings for an offence under this Regulation may be brought and prosecuted by the market surveillance authority.

(5) Where a person is convicted of an offence under this Regulation, the court may order the forfeiture to the market surveillance authority of any explosives to which the offence relates.

(6) Where an order is made under paragraph (5), the market surveillance authority may for the purpose of giving effect to it seize and detain the explosives where they have not already been seized under these Regulations.

(7) Paragraphs (5) to (7) of Regulation 39 shall apply to an order made under paragraph (5) and a reference in paragraph (5), (6) or (7) of that Regulation to the District Court shall be construed as a reference to the court referred to in paragraph (5).

(8) If a person is convicted of an offence under this Regulation the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the prosecutor the costs and expenses, measured by the court, reasonably incurred by the prosecutor in relation to the investigation, detection and prosecution of the offence, including costs incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees, consultants and advisers.

#### *Transitional provisions*

46. (1) The making available on the market of explosives that are in conformity with the Regulations of 1995 and that were placed on the market before 1 September 2016 continues to be lawful.

(2) Certificates and transfer documents issued under the Regulations of 1995 continue to be valid in relation to the explosives to which they relate under these Regulations.

(3) Where, before the coming into operation of these Regulations, a manufacturer of explosives had made an application under the Regulations of 1995 for



a certificate to be issued by a notified body but the application was not completed then, the application shall be deemed to be a request under Regulation 19 and shall be dealt with accordingly.

(4) In this Regulation “Regulations of 1995” means the European Communities (Placing on the Market and Supervision of Explosives for Civil Uses) Regulations 1995 (S.I. No. 115 of 1995).

*Revocations*

47. The following are revoked:

- (a) the European Communities (Placing on the Market and Supervision of Explosives for Civil Uses) Regulations 1995 (S.I. No. 115 of 1995);
- (b) the European Communities (Placing on the Market and Supervision of Explosives for Civil Uses) (Amendment) Regulations 2005 (S.I. No. 546 of 2005).

**Schedule 1****ESSENTIAL SAFETY REQUIREMENTS**

Regulations 4, 5(1), 7, 8, 11, 13(1)(a) and 19

**1. General requirements**

(1) Each explosive must be designed, manufactured and supplied in such a way as to present a minimal risk to the safety of human life and health, and to prevent damage to property and the environment under normal, foreseeable conditions, in particular as regards the safety rules and standard practices until it is used.

(2) Each explosive must attain the performance characteristics specified by the manufacturer in order to ensure maximum safety and reliability.

(3) Each explosive must be designed and manufactured in such a way that when appropriate techniques are employed it can be disposed of in a manner which minimises effects on the environment.

**2. Special requirements**

(1) As a minimum, the following information and properties, where appropriate, must be considered or tested:

- (a) design and characteristic properties, including chemical composition, degree of homogeneity and, where appropriate, dimensions and grain size distribution;
- (b) the physical and chemical stability of the explosive in all environmental conditions to which it may be exposed;
- (c) sensitiveness to impact and friction;
- (d) compatibility of all components as regards their physical and chemical stability;
- (e) the chemical purity of the explosive;
- (f) resistance of the explosive against influence of water where it is intended to be used in humid or wet conditions and where its safety or reliability may be adversely affected by water;
- (g) resistance to low and high temperatures, where the explosive is intended to be kept or used at such temperatures and its safety or reliability may be adversely affected by cooling or heating of a component or of the explosive as a whole;
- (h) the suitability of the explosive for use in hazardous environments (e.g. firedamp atmospheres, hot masses) if it is intended to be used under such conditions;

- (i) safety features intended to prevent untimely or inadvertent initiation or ignition;
- (j) the correct loading and functioning of the explosive when used for its intended purpose;
- (k) suitable instructions and, where necessary, markings in respect of safe handling, storage, use and disposal;
- (l) the ability of the explosive, its wrapping or other components to withstand deterioration during storage until the 'use by' date specified by the manufacturer;
- (m) specification of all devices and accessories needed for reliable and safe functioning of the explosive.

(2) Each explosive shall be tested under realistic conditions. If this is not possible in a laboratory, the tests shall be carried out in the conditions in which the explosive is to be used.

### **3. Requirements for the groups of explosives**

(1) Blasting explosives shall also comply with the following requirements:

- (a) the proposed method of initiation must ensure safe, reliable and complete detonation or deflagration as appropriate, of the blasting explosive. In the particular case of black powder, it is the capacity as regards deflagration which shall be checked;
- (b) blasting explosives in cartridge form must transmit the detonation safely and reliably from one end of the train of cartridges to the other;
- (c) the fumes produced by blasting explosives intended for underground use may contain carbon monoxide, nitrous gases, other gases, vapours or airborne solid residues only in quantities which do not impair health under normal operating conditions.

(2) Detonating cords, safety fuses, other fuses and shock tubes shall also comply with the following requirements:

- (a) the covering of detonating cords, safety fuses, other fuses and shock tubes must be of adequate mechanical strength and adequately protect the explosive filling when exposed to normal mechanical stress;
- (b) the parameters for the burning times of safety fuses must be indicated and must be reliably met;
- (c) detonating cords must be capable of being reliably initiated, be of sufficient initiation capability and comply with requirements as regards storage even in particular climatic conditions.

(3) Detonators (including delay detonators) and relays shall also comply with the following requirements:

- (a) detonators must reliably initiate the detonation of the blasting explosives which are intended to be used with them under all foreseeable conditions of use;
- (b) delay connectors for detonating cords must be reliably initiated;
- (c) the initiation capability must not be adversely affected by humidity;
- (d) the delay times of delay detonators must be sufficiently uniform to ensure that the probability of overlapping of the delay times of adjacent time steps is insignificant;
- (e) the electrical characteristics of electric detonators must be indicated on the packaging (e.g. no-fire current, resistance);
- (f) the wires of electric detonators must be of sufficient insulation and mechanical strength including the solidity of the link to the detonator, taking account of their intended use.

(4) Propellants and rocket propellants shall also comply with the following requirements:

- (a) these materials must not detonate when used for their intended purpose;
- (b) propellants where necessary (e.g. those based on nitrocellulose) must be stabilised against decomposition;
- (c) solid rocket propellants, when in compressed or cast form, must not contain any unintentional fissures or gas bubbles which dangerously affect their functioning.

**Schedule 2**

**EU DECLARATION OF CONFORMITY (No. XXXX)<sup>1</sup>**

*Regulation 13(1)(b)*

1. No ... (product, type, batch or serial number):
2. Name and address of the manufacturer and, where applicable, his authorised representative:
3. This declaration of conformity is issued under the sole responsibility of the manufacturer.
4. Object of the declaration (identification of product allowing traceability):
5. The object of the declaration described above is in conformity with the relevant Union harmonisation legislation:
6. References to the relevant harmonised standards used or references to the other technical specifications in relation to which conformity is declared:
7. The notified body ... (name, number) performed ... (description of intervention) and issued the certificate:
8. Additional information:

Signed for and on behalf of:

(place and date of issue):

(name, function) (signature):



GIVEN under my Official Seal,  
30 July 2016.

FRANCES FITZGERALD,  
Minister for Justice and Equality.

<sup>1</sup>It is optional for the manufacturer to assign a number to the declaration of conformity.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation)*

These Regulations give effect to Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 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). Articles 12 and 13 which deal with the transfer of ammunition is implemented in S.I. 362 of 1993 which gives effect to Council Directive 91/477/EEC on the control and acquisition of weapons and ammunition.

Directive 2014/28/EU (the Recast Explosives for Civil Uses Directive) essentially aligns the existing Explosives for Civil Uses Directive (Directive 93/15/EEC) with the New Legislative Framework and so these Regulations inter alia transpose those additional provisions of the Directive into Irish legislation.

The Regulations outline the obligations of the manufacturer, importer and distributor when making available explosives on the market and prohibit a person from placing any explosives on the market unless they satisfy the essential safety requirements, have been subject to conformity assessment procedures, have had the CE marking and a unique identification affixed to them and when properly stored and used for their intended purpose, do not endanger the health and safety of persons, property or the environment.

The Regulations continue to implement a system for the supervision of transfers of explosives whether by way of import into the State, transfer into, out of or through the State or an internal transfer within the State such that no explosives may be transferred except under the authority of a transfer document.

The Regulations make provision for the designation of a notifying authority which shall be responsible for the assessment and notification of conformity assessment bodies. The Regulations also provide for the notification procedure and the operational obligations of notified bodies.

The Regulations make provisions for dealing with explosives which present a risk to persons, property or the environment and provide for the authorised officers to carry out market surveillance on explosives on behalf of the Minister.

Subject to certain transitional provisions the Regulations come into operation on 1 September 2016.

The Regulations revoke the following Statutory Instruments:

- the European Communities (Placing on the Market and Supervision of Explosives for Civil Uses) Regulations 1995 (S.I. No.115 of 1995);

- the European Communities (Placing on the Market and Supervision of Explosives for Civil Uses) (Amendment) Regulations 2005 (S.I. No. 546 of 2005)

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