EXPLANATORY MEMORANDUM

THE CARRIAGE OF EXPLOSIVES (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2012

S.R. 2012 No. 177

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under powers in the Health and Safety at Work (Northern Ireland) Order 1978, and is subject to the negative resolution procedure.

2. Purpose

2.1 The Statutory Rule amends the Carriage of Explosives Regulations (Northern Ireland) 2010 (CER) (SR 2010 No 59), which relate to the carriage of explosives by road and rail in Northern Ireland. It makes consequential amendments to the Regulations as a result of Directive 2010/35/EU of the European Parliament and of the Council on transportable pressure equipment. The Directive 2010/35/EU repealed five earlier Directives:

- Council Directive 76/767/EEC on common provisions for pressure vessels and methods for inspecting them.
- Council Directive 84/525/EEC on seamless, steel gas cylinders.
- Council Directive 84/526EEC on seamless, unalloyed aluminium and aluminium alloy gas cylinders.
- Council Directive 84/527/eec on welded unalloyed steel gas cylinders
- Council Directive 1999/36/EC on transportable pressure equipment

2.2 The Statutory Rule also revokes The Classification and Labelling of Explosives Regulations (Northern Ireland) 1991(CLER (NI) 1991) (SR 1991 No. 516). The classification requirements of CLER (NI) 1991 will be provided for in the Carriage of Explosives (Amendment) Regulations (Northern Ireland) 2012 and the labelling requirements by non-legislative means through an industry code of conduct.

2.3 The Chief Constable is named as enforcing authority in relation to roads and the Secretary of State for Defence in relation to those

functions for which the Secretary of State for Defence is competent authority.

3. Background

3.1 The 2010 Regulations regulate the carriage of explosives by road and rail in Northern Ireland, and the training, examining and certification of dangerous good safety advisers. They transposed Directive 2008/68/EC (which consolidated and replaced five Directives relevant to dangerous goods). They also referred to Directive 1999/36/EC relating to common provision for transportable pressure equipment. The Directive has been replaced by Directive 2010/35/EU which makes changes to the EU regime governing transportable pressure equipment. The Directive was transposed by the Department of Enterprise Trade and Investment (DETI) on 18 October 2011 and came into operation on 10 November 2011. The Department of Justice are required to make consequential amendments to the meaning given to 'The Transportable Pressure Equipment Directive' and to update regulation 14(6)(d) of CER to ensure it refers to the new Directive.

3.2 1991 CLER (NI) make provision about the classification and labelling of explosives. The 2010 regulations prohibit the carriage of explosives unless the carriage complies with the requirements (including in relation to classification) of the international agreements governing the transport of explosives by road (ADR) and rail (COTIF). This Statutory Rule makes provisions to make clear that the competent authority of a contracting party to ADR or RID must carry out the classification of class 1 goods. This amendment to the 2010 Regulations allows for the revocation of the 1991 Regulations.

3.3 The 2010 Regulations sets out who is responsible for carrying out competent authority functions under those regulations (see in particular regulation 17) and for enforcing the requirements of the Regulations (see in particular regulation 22). This instrument makes certain amendments to those provisions.

4. Consultation

4.1 A full consultation exercise was carried out on the proposed Carriage of Explosives (Amendment) Regulations (Northern Ireland) 2012. The consultees were individuals and bodies representative of section 75 of the Northern Ireland Act 1998 and other organisations with an interest in explosives. All members of the Northern Ireland Assembly were consulted and the consultation was advertised in the local press. In total there were nine responses. There are no objections to the proposed Regulations.

5. Equality Impact

5.1 The Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differentia aspects were identified.

6. Regulatory Impact

6.1 Directive 2010/35/EU has been transposed by the Department of Enterprise Trade and Investment in Northern Ireland and we are required to make consequential amendments to the Carriage of explosives as a result of this of the Directive. A regulatory impact assessment was not therefore carried out by the Department of Justice

6.2 The revocation of the Classification and Labelling of Explosives Regulations (Northern Ireland) 1991 will result in changes to the existing classification provision in the Carriage of Explosives Regulations (Northern Ireland) 2010. An impact assessment prepared by the Health and Safety Executive (HSE) concludes that the changes to classification will reduce the number of applications made to HSE by approximately 20-25%. It also indicates that based on the 2009-10 figures for classification application that the changes could result in an annual reduction of approximately £20K in costs to industry. There should also be additional savings to industry being able to design the labelling requirements to suit logistical needs rather than the current prescriptive approach.

6.3 The effect of the changes to the existing classification provisions in Northern Ireland will be negligible as the manufacturing base here is very small in comparison with Great Britain. Since 2008 we have received two applications to classify.

7. Financial Implications

7.1 As explained above, and based on the Great Britain impact assessment, the cost to Northern Ireland is negligible with little or no impact on small firms.

8. Section 24 of the NI Act 1998

8.1 The Department has considered the matter of convention rights and is satisfied that there are no matters of concern.

9. EU Implications

9.1 The Statutory Rule will make consequential amendments to the Carriage of Explosives Regulations (Northern Ireland) 2010 as a result of Directive 2010/35/EU of the European Parliament and of the Council on transportable pressure equipment. Directive 2010/35/EU also repeals five earlier Directives (see para 2.1).

10. Parity or Replicatory Measure

10.1 In Great Britain Directive 2010/35/EU is transposed by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) Regulations 2011 (SI 2011 No 1885) which were made on 26 September and came into force on 24 October 2011

10.2 In Northern Ireland Directive 2010/35/EU is transposed by the Department of Trade and Industry in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) Regulations (Northern Ireland) 2011 (SI 2011 No. 365) which were made on 18 October 2011 and came into force on 10 November 2011.

10.3 The Great Britain and Northern Ireland proposals together are intended to ensure that the UK meets the necessary requirements to implement Directive 2010/35/EU. The Department of Justice is making the necessary consequential amendments as a result of the transposition of the Directive.

11. Additional Information

11.1 A guidelines document on the technical provisions of Directive 2010/35/EU is currently being prepared by the European Commission.

Department of Justice
March 2012