EXPLANATORY MEMORANDUM TO

THE IDENTIFICATION AND TRACEABILITY OF EXPLOSIVES (AMENDMENT) REGULATIONS 2012

2012 No. 638

1. This explanatory memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument amends the existing Identification and Traceability of Explosives Regulations 2010, S.I. 2010/1004 (the 2010 Regulations), which are due to come into force on 5th April 2012. The purpose is to extend the coming into force date to 5th April 2013 and to insert in accordance with government policy, a provision requiring the Secretary of State to review the operation and effect of the 2010 Regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 The 2010 Regulations transpose Commission Directive 2008/43/EC of 4th April 2008 *setting up, pursuant to Council Directive 93/15/EEC, a system for the identification and traceability of explosives for civil uses* (the 2008 Directive) aimed at preventing the misuse and theft of civil use explosives (e.g. for blasting at quarries) and assisting authorities in tracing the origin of lost or stolen explosives.

4.2 The 2008/43/EC Directive required that the national provisions to implement it be in place by 5th April 2009 and be effective from 5th April 2012.

4.3 On 22nd February 2012 Commission Directive 2012/4/EU amending Directive 2008/43/EC was adopted. This changed the date for most of the requirements of 2008/43/EC to be effective to 5th April 2013, and for some to 5th April 2015. While it also introduces some other amendments to the measures required, this instrument relates solely to a changed date for coming into force of the 2010 Regulations. In doing so it partially implements the changes effected by the 2012/4/EU.

4.4 The Transposition Note is at Appendix 1.

4.5 The Regulations are made under the Health and Safety at Work etc Act 1974. The aim, in particular, is to control the keeping and use of explosive or highly flammable or otherwise dangerous substances, and to prevent the unlawful acquisition, possession and use of such substances.

4.6 The Commission Directives 2008/43/EC and 2012/4/EU are made in exercise of the Commission's own delegated powers under Council Directive 93/15/EEC. Neither has therefore been subject to scrutiny by the Parliamentary Committees.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain. Northern Ireland will introduce equivalent amending legislation.

5.2 It also applies outside Great Britain in the same way that the 2010 Regulations apply outside Great Britain.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1.1 The 2012/4/EU Directive amends the 2008/43/EC Directive. It extends the dates by which the national provisions for most measures must apply to 5th April 2013 and for the repackaging, data collection and record keeping provisions to 5th April 2015. It also makes some changes to the requirements for record keeping and marking of small items, and exempts from its requirements some items of explosives which present a low risk.

7.1.2 If the 2010 Regulations are allowed to come into force on the 5 April 2012 this would unnecessarily gold-plate the 2008/43/EC Directive, as amended by the 2012/4/EU Directive. The gold-plating arises because GB businesses would be placed at a competitive disadvantage, being required to comply with measures one year ahead of the rest of Europe, and with requirements that will be relaxed elsewhere.

7.1.3 This instrument extends the date by which the 2010 Regulations will apply to 5th April 2013, to ensure that the implementing measures for the 2008 Directive do not come into force before they are now required to. This instrument also inserts a review clause into the 2010 Regulations; in compliance with government policy for a statutory duty on Ministers to periodically review Regulations.

7.1.4 A further set of Regulations is being prepared that will fully implement the changes made by the 2012/4/EU Directive (see below).

7.1.5 Because the change will not require those in the sector to do anything different the only action required is to ensure that they are provided with information (see guidance at para 9.1 below).

Consolidation

7.2 This is the first amendment to the 2010 Regulations and introduces minor changes. Consolidation for this purpose is not necessary. In due course, we will put forward proposals for new Regulations that will introduce measures to implement in full the amendments required by the 2012/4/EU Directive. These will revoke the 2010 and 2012 Regulations.

8. Consultation outcome

8.1 HSE carried out a limited consultation exercise on the change made by this instrument. The Directive 2012/4/EU which prompted the change was published 10 days before the latest date on which this instrument could be laid prior to the 5th April 2012. There was insufficient time post-publication for formal consultation.

8.2 The UK's negotiating position on the proposed Directive was developed in response to the views of the industry and they have been informally consulted throughout the process. In February 2012 the proposed Directive had progressed through European scrutiny to a point where there was some certainty it would be adopted, and that a change to the coming into force date would be needed before 5th April 2012. HSE

carried out a limited consultation solely on the change to the coming into force date by an email direct to affected businesses and other interested parties, giving 13 days to respond. This was appropriate as:

- the practical problems with the Directive were raised by industry;
- the relevant businesses have been aware of the negotiations in Europe and the proposed amendments;
- best endeavours have been made to directly inform those affected by these regulations of the consultation; and
- the consultation concerns solely a change to the date the Regulations come into force, it is neither complex nor contentious.

8.2 One third of those contacted responded. Just over half of responses were from businesses that will be directly affected by the change to the Regulations. There has been no objection to the proposal. They responded:

- unanimously that the proposed delay in implementation would not create any new costs,
- 82% provided examples of benefits of the proposed change; the remainder said there would be no benefits, and
- none of the respondents believed there would be other disadvantages to the proposed delay in implementation; including that it would not be detrimental to safety and security in the manufacture and supply of explosives.

9. Guidance

HSE will send information to the explosives community to explain the changed implementation date. This information will also be on the HSE website.

10. Impact

10.1 The impact on civil society organisations is expected to be minimal.

10.2 Public sector organisations, especially HSE and the Police are affected as regulators, and they and other public sector organisations that use explosives for civil uses (ie not the military or police) will be affected, but the impact is expected to be minimal.

10.3 A full impact assessment is attached to this memorandum and will be published alongside the explanatory memorandum on www.legislation.gov.uk.

11 Regulating small business

Whilst some end users are small firms there are no aspects of the regulatory changes that will especially impact them. This is also the case of micro-businesses. The Government's policy to exempt micro-businesses from new regulation does not apply in this instance as the UK legislative changes implement European legislation without gold-plating.

12 Monitoring & review

The instrument includes a provision for periodical Ministerial review of the 2010 Regulations, and for the first report of this review to be published before 5th April 2018.

13. Contact

Anna Bliss at the Health and Safety Executive (Tel: 0151 951 3581 or email: anna.bliss@hse.gsi.gov.uk can answer any queries regarding the instrument.

Appendix 1

TRANSPOSITION NOTE

Transposition note for the partial implementation of Articles 1(4) and 2(1) of Commission Directive 2012/4/EU of 22 February 2012 amending Directive 2008/43/EC of 4 April 2008 *setting up pursuant to Council Directive 93/15/EEC, a system for the identification and traceability of explosives for civil uses*. Directive 2008/43/EC is transposed in Great Britain by the Identification and Traceability of Explosives Regulations 2010 (the 2010 Regulations).

The Identification and Traceability of Explosives (Amendment) Regulations 2012 (this instrument) does what is necessary to implement only the following part of Articles 1(4) and 2(1) of the 2012/4/EU Directive:

Article	Purpose	Implementation	Responsibility
1(4)	Amends Article 15(1) of the 2008/43/EC Directive by providing that the provisions of that Directive are to apply from 5th April 2013, save that the provisions of Articles 3(6), 13 and 14 of that Directive are to apply from 5th April 2015.	Regulation 3(2) partially.	Secretary of State.
2(1)	States the date, 5th April 2013, by which Member States will apply the provisions of the national laws, regulations and administrative provisions necessary to comply with the 2012/4/EU Directive.	Regulation 3(2) partially.	Secretary of State.