EXPLANATORY MEMORANDUM TO

THE IDENTIFICATION AND TRACEABILITY OF EXPLOSIVES REGULATIONS 2013

2013 No. 449

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 implements Commission Directive 2008/43/EC setting up a system for the identification and traceability of explosives for civil uses, as amended by Commission Directive 2012/4/EU. The instrument consolidates the Identification and Traceability of Explosives Regulations 2010 (S.I. 2010/1004) ("the 2010 Regulations") and the Identification and Traceability of Explosives (Amendment) Regulations 2012 (S.I. 2012/ 638) ("the 2012 Regulations").

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

None

4. Legislative Context

4.1 The 2010 Regulations transposed 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. It imposes requirements as to the marking of civil use explosives with unique identifications.

4.2 The 2008 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 the 2008 Directive to apply to 5th April 2013, and for some to 5th April 2015. The 2012 Regulations transposed some of the amendments introduced but some provisions are outstanding. The 2013 Regulations will implement all the remaining provisions and consolidate the 2010 and 2012 Regulations into a single set of Regulations.

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. Section 1 of the Act includes as one of the "general purposes" of Part I of the Act, "controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances, and generally preventing 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 legislation.

5.2 It also applies outside Great Britain in the same way that the 2010 Regulations applied 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. Commission Directive 2008/43/EC on the tracking and traceability of civil use explosives was due to come into force on 5th April 2012. However, after further discussions between the European Commission, member States and explosives industry bodies, it was amended by Commission Directive 2012/4/EU. This delayed implementation of marking requirements to 5th April 2013, and record keeping requirements to 5th April 2015. It also excluded certain explosives from scope and amended requirements for the marking of small items of explosives.

7.2. The amending Commission Directive 2012/4/EU had to be transposed into law by member States by 4th April 2012 (with its provisions being applied from 5th April 2013). To meet this exceptionally tight timescale, Identification and Traceability of Explosives (Amendment) Regulations 2012 (ITOE(A)R 2012) and equivalent NI regulations were implemented which concentrated primarily on extending the coming into force date of ITOER 2010, which was the key priority for UK businesses, and introducing a review clause into the legislation in line with Government policy.

7.3. The UK now needs to fully transpose the remaining provisions of the amending Commission Directive 2012/4/EU. If the requirements are not fully transposed, the record keeping requirements will come into effect for UK businesses prematurely and UK businesses will be subject to requirements that will be relaxed elsewhere. This would unnecessarily gold-plate the 2008/43/EC Directive, as amended by the 2012/4/EU Directive.

7.4. This instrument revokes and replaces the 2010 and 2012 Regulations. It ensures that record keeping requirements will apply from 5th April 2015. It also introduces exclusions from scope and clarity on the marking of small explosives items in line with Commission Directive 2012/4/EU. This instrument does not include a requirement which was in the 2010 Regulations, which related to ensuring the safekeeping of explosives while they are awaiting marking. That requirement was considered unnecessary given that there are existing relevant duties in other legislation.

7.5. The change will not require those in the sector to do anything different, apart from in relation to marking of small items where the legal obligations have been modified. The only action required is to ensure that they are provided with information (see guidance at para 9.1 below).

- **Consolidation**

7.6. The 2013 Regulations revoke and replace the 2010 Regulations and the 2012 Regulations, into a single set of Regulations. The ongoing Explosives Legislative Review (ELR) programme will further review and consolidate all explosives legislation and the Identification and Traceability of Explosives Regulations 2013

(ITOER 2013) will be incorporated within this review process. The new explosives legislative framework will be in place by October 2014.

8. Consultation outcome

8.1 HSE carried out a consultation exercise on the wording used in this instrument, the extended coming into force date for record keeping and the revocation of the requirement for employees to record the names of any employees to whom an explosive is given to use. The changes are minimal and, in order to ensure responses were gathered from those most likely to be affected, the consultation was conducted through the explosives communities' online forum and by email with affected businesses. Both consultation groups involved manufacturers, importers, those storing explosives, those involved in the commercial carriage of explosives and those involved in regulation of explosives security.

8.2. The consultation began on 30 August 2012 and lasted for 5 weeks. Given ITOER 2013 only transposes some minor remaining provisions of Commission Directive 2012/4/EU, and consolidates existing Regulations, the consultation responses were minimal with the majority of respondents agreeing with the proposed amendments. One respondent stated that the revocation of Regulation 6(3)(d) shouldn't be necessary as security requirements are closely aligned to safety requirements. However, HSE has continued with the revocation as the requirements of 6(3)(d) are already covered in other legislation.

9. Guidance

HSE has sent information to the explosives community to explain the changed implementation date. This information is available on the HSE website.

10. Impact

10.1 The changes are trivial in scope entailing legislative reorganisations and implementation of minor changes. They do not impact on existing policies put into practice through ITOER 10 and ITOE(A)R12, both of which were supported by Impact Assessments. Consequently, the gross cost to business and civil society organisations is minimal (estimated at less than £5 thousand in total) and mainly relates to industry familiarising themselves with the changes in the legislation. Overall the changes are expected to deliver a small net benefit to business.

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 (i.e. not the military or police) will be affected, but the impact is expected to be minimal. No additional resource will be allocated to these regulators, with any action being incorporated into existing regulatory visits. The amount, which cannot be quantified, is expected to be minimal.

10.3 A full impact assessment was conducted when the 2010 Regulations were implemented. This was updated when the 2012 Regulations were implemented. Businesses were also consulted on the wording of the 2013 Regulations and a validation impact assessment is available from 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 2012 Regulations implemented a five year review clause in line with Government policy. This will remain in place in the 2013 Regulations, with the first report of this review to be published before 5th April 2017, which is the fifth year of the period established under the 2012 Regulations.

13. Contact

Alison Wellens at the Health and Safety Executive (Tel: 0151 951 3356 or email: alison.wellens@hse.gsi.gov.uk can answer any queries regarding the instrument.

Appendix 1: Transposition Note

TRANSPOSITION NOTE: **<u>Commission Directive 2008/43/EC, as amended by Commission Directive 2012/4/EU</u>** **This Transposition Note is for the implementation of 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, as amended by Commission Directive 2012/4/EU.**			
Introductory Note:			
These Regulations are called **the Identification and Traceability of Explosives Regulations 2013**.			
Article	**Objective**	**Implementation**	**Responsibility**
Article 1.	Subject matter of the Directive.	While no specific transposition of this Article is necessary, the Regulations cover its subject matter.	
Article 2.	Scope.	Regulation 3(1)(a), (d) to (h). (The disapplications in regulation 3(1)(b) and (c) are derived from Article 1.3 of the parent Directive 93/15/EEC of 5th April 1993 on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses.).	
Article 3.1, first paragraph.	Requires manufacturers and importers to mark explosives with a unique identification.	Regulation 4(1) and (5).	Secretary of State.

Article 3.1, second paragraph.	This makes provision as to when a new unique identification is required in place of an original, after a further manufacturing process.	Regulation 4(4).	As above.
Article 3.2.	Marking with a unique identification is not required where manufactured for export and the marking is in accordance with the importing country's requirements.	Regulation 4(3).	As above.
Article 3.3	The unique identification is to comprise the components in the Annex.	Regulation 4(2)(a) and Schedule 1.	As above.
Article 3.4.	Manufacturing sites are to be attributed a three digit code.	Regulation 5 (1) and (2).	As above.
Article 3.5, first paragraph.	For manufacturing sites outside the EU with a manufacturer established in the EU, the importing national authority is to attribute a code to the manufacturer.	Regulation 5(3)(a) and (c), (4) and (6).	As above.
Article 3.5, second paragraph.	For manufacturing sites outside the EU with a manufacturer not established in the EU, the importing national authority is to attribute a code to the importer.	Regulation 5(3)(b) and (5).	As above.

Article 3.6.	This makes provision as to distributors who repackage explosives.	Regulation 4(7).	As above.
Article 4.	Requires the marking of the unique identification to be durable and legible.	Regulation 4(2)(b).	As above.
Article 5, first paragraph.	Marking of cartridged explosives and explosives in sacks.	Regulation 4(1) and Schedule 2, paragraph 1(a) and (b).	As above.
Article 5, second paragraph.	Attaching tags to cartridged explosives and explosives in sacks.	Regulation 4(1) and Schedule 2, paragraph 1(c).	As above.
Article 6.	Marking of two-component explosives.	Regulation 4(1) and Schedule 2, paragraph 2.	As above.
Article 7, first paragraph.	Marking of plain detonators.	Regulation 4(1) and Schedule 2, paragraph 3(a) and (b).	As above.
Article 7, second paragraph.	Attaching tags to plain detonators.	Regulation 4(1) and Schedule 2, paragraph 3(c).	As above.
Article 8, first paragraph.	Marking electric, non-electric and electronic detonators.	Regulation 4(1) and Schedule 2, paragraph 4(a) and (b).	As above.
Article 8, second paragraph.	Attaching tags to electric, non-electric and electronic detonators.	Regulation 4(1) and Schedule 2, paragraph 4(c).	As above.
Article 9, first paragraph.	Marking primers and boosters.	Regulation 4(1) and Schedule 2, paragraph 5(a) and (b).	As above.
Article 9, second paragraph.	Attaching tags to primers and boosters.	Regulation 4(1) and Schedule 2, paragraph 5(c).	As above.
Article 10, first paragraph.	Marking detonating cords.	Regulation 4(1) and Schedule 2, paragraph 6(a) to (c).	As above.

Article 10, second paragraph.	Attaching tags to detonating cords.	Regulation 4(1) and Schedule 2, paragraph 6(d).	As above.
Article 11, first paragraph.	Marking cans and drums containing explosives.	Regulation 4(1) and Schedule 2, paragraph 7(a).	As above.
Article 11, second paragraph.	Attaching tags to cans and drums containing explosives.	Regulation 4(1) and Schedule 2, paragraph 7(b).	As above.
Article 12.	Copies of original labels.	Regulation 4(1) and Schedule 2, paragraph 8.	As above.
Article 13.1.	Requires data collection in relation to explosives.	Regulation 6(1), (2) and (3).	As above.
Article 13.2.	Data collection is to allow holders of explosives to be identified.	Regulation 6(1), (3) and (4).	As above.
Article 13.3	Requires the data to be kept for ten years after the end of the explosive's life cycle.	Regulation 6(6) and (9).	As above.
Article 14(a)	Requirements as to the record to be kept.	Regulation 6(1) and (3)(a), (c) and (d).	As above.
Article 14(b)	The record is to cover the location of the explosives.	Regulation 6(1) and (3)(b).	As above.
Article 14(c)	The data collection system is to be tested regularly.	Regulation 6(5).	As above.
Article 14(d)	The record is to be kept and maintained.	Regulation 6(1) and (6).	As above.
Article 14(e)	The data is to be protected.	Regulation 6(7).	As above.
Article 14(f)	Provision of information to the competent authority about the origin and location of the explosive.	Regulation 6(8)(a).	As above.

Article 14(g)	The provision of information to the national authority as to contact details of persons.	Regulation 6(8)(b).	As above.
Article 14, final paragraph	Requires records to be maintained in accordance with national provisions for explosives manufactured or imported before 5th April 2015.	Regulation 12 of, and Schedule 3 to, the Control of Explosives regulations 1991 (S.I. 1991/1531).	As above.
Article 15, paragraph 1, 1st sub-paragraph	Transposition.	These Regulations.	As above.
Article 15, paragraph 1, 2nd sub-paragraph	Dates for the provisions to apply from.	Regulation 1.	As above.
Article 15, paragraph 1, 3rd sub-paragraph	Provisions Transposing the Directive to refer to the Directive .	Explanatory Note.	As above.
Article 15a	Commission review by 31.12.2020 on whether to revoke point 3 of the Annex.	No transposition is necessary.	
Article16	Entry into force.	No transposition is necessary.	
Article 17	The Directive is addressed to Member States.	No transposition is necessary.	
Annex, points 1 and 2 and paragraph 1 of point 3	The description of the unique identification.	Regulation 4(2)(a) and Schedule 1.	As above.
Annex, paragraphs 2 to 5 of point 3	Marking of very small articles.	Regulation 4(1)(a) and Schedule 2, paragraph 9.	As above.