

Health and Safety Executive Board		Paper No: HSE/09/79	
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Type of paper:	Above the line	Exemptions:	Section 35: Formulation of policy
Trim reference:	2009/325700		
Better regulation review of explosives legislation and the proposed approach to transposing the Traceability Directive			

Purpose of the paper

- This paper seeks Board approval of the following none of which will lower standards of health and safety:
 - a review of explosives legislation aimed at reducing the regulatory burden;
 - transposition of the Traceability Directive¹ aligned with the review; and
 - the publication of the Consultative Document, Appendix 2, for transposition jointly with the Northern Ireland Office (NIO) with a shortened consultation period of 8 weeks.

Background

- Reducing the regulatory burden of legislation forms an important part of the wider Government Better Regulation agenda and the Department for Business Innovation and Skills (BIS) is expected to announce new simplification targets for 2010-2015 shortly. These are likely to include a new Government-wide Departmental administrative burden reduction target and challenging targets for reducing the policy costs of regulation and the amount of regulation.
- Explosives legislation has grown over time leading to a fragmented set of requirements with multiple sets of Regulations and subsequent amendments. The main elements of this legislation are:
 - the Explosives Act 1875;
 - the Classification and Labelling of Explosives Regulations 1983 (CLER);
 - the Control of Explosives Regulations 1991 (COER) – this is Home Office legislation under which HSE has enforcement duties;
 - the Placing on the Market and Supervision of Transfers of Explosives Regulations 1993 (POMSTER) – this transposed a European Directive²; and
 - the Manufacture and Storage of Explosives Regulations 2005 (MSER).
- There is also an urgent need to transpose the European Commission's (EC) Traceability Directive which was adopted on 4 April 2008. It requires most explosives for civil uses to be marked with a 'unique identification' and the recording of all transfers and issues of such explosives. The target date for

¹ Commission Directive 2008/43/EC setting up a system for the identification and traceability of explosives for civil uses.

² Council directive 93/15/EEC on the harmonisation of the provisions relating to the placing on the market and supervision of transfers of explosives for civil uses.

transposition was 5 April 2009, however the majority of Member States were unable to meet this and the EC agreed to delay infraction proceedings until October 2009.

5. In November 2008³, the Board agreed an outline transposition plan involving the amendment of CLER and COER. As COER is Home Office (HO) legislation, initial agreement was obtained from the relevant HO Minister for the outline plan and a 12 week consultation period. However, at that time it could not be predicted that infraction proceedings would be stayed, allowing further consideration of the best means of transposition, particularly from a better regulation perspective. This opportunity allowed the development of a new transposition plan which could be co-ordinated with a wider review of explosives legislation for which Board approval is sought.

Argument

Review of explosives legislation

6. It is proposed that in 2010, HSE begins a review of all explosives legislation, aiming to reduce the regulatory burden on business and regulators through clarification and simplification. The review will seek to involve all interested parties and deliver a consolidated and integrated suite of updated explosives legislation in April 2012. This review will facilitate:
 - the regulatory burden being reduced so allowing HSE to meet its better regulation targets (see paragraph 7);
 - existing outstanding work on explosives legislation being dealt with more efficiently by co-ordinating it with other work within the review (see paragraph 8); and
 - the transposition of the Traceability Directive as rapidly as possible (see paragraph 10).
7. From a better regulation perspective, the fragmented nature of explosives legislation offers considerable potential for reducing the overall regulatory burden on industry and regulators through clarification and simplification. The review is expected to:
 - assist HSE in meeting its administrative burden reduction target, for example, by incorporating amendments into parent legislation and producing a co-ordinated suite of amended legislation making it simpler for industry to understand and comply;
 - assist in reducing the policy costs of regulation, for example, by eliminating the need for short-term piecemeal amendment of regulations and reducing the need future major revisions; and
 - assist in reducing the amount of regulation, for example, by reducing the total number of regulations through more effective integration and amalgamation of the numerous Orders and amending Regulations into the parent legislation.

³ Paper HSE/08/57

8. Stakeholders have identified desired amendments to legislation, particularly MSER and COER. These will be dealt with most efficiently through an integrated review rather than piecemeal amendment to legislation. The proposed review will also include the overdue general review of COER in conjunction with the Home Office, and the review of the costs and benefits of MSER due in 2010, about which the House of Lords Merits Committee has recently requested information.
9. The first phase of the review will involve intelligence gathering in order to identify areas of legislation requiring attention. The work will be prioritised and detailed options for future action produced. Once complete, the Board will be updated on progress and approval sought for future action.

Proposed change in approach to transposition

10. The original transposition plan involving the amendment of CLER and COER had weaknesses on better regulation grounds as other new regulations amending COER were already due in April 2009. Further changes to COER only months later as part of transposition risked HSE facing criticism for increasing the regulatory burden.
11. The time it would take to amend the two sets of regulations, one HO "owned", was also of concern. The UK is under a legal obligation to transpose European directives fully and on time. Our failure to do so leaves the UK open to infraction proceedings that would be not only embarrassing but could also end with the UK being fined by the European Court of Justice.
12. HSE will continue to engage with the EC with respect to infraction proceedings. Discussion of our engagement strategy is contained in Appendix 1 to this paper, which is fully closed due to Freedom of Information (FOI) considerations, specifically Section 35 of the Freedom of Information Act which provides exemptions for formulation of government policy.
13. To overcome the weaknesses in the original approach and facilitate rapid transposition, the proposed new approach involves simply transposing the Directive as ITOER without initially amending any existing Regulations. In accordance with the Directive, transposing Regulations need not come into force until 5 April 2012 so in the meantime existing national legislation will still apply. The review of explosives legislation will deliver a consolidated and integrated suite of updated explosives legislation (to include ITOER) in April 2012.
14. This approach allows the simplest and quickest transposition, offering the best opportunity to bring the UK into compliance with European law. The wider review facilitates this approach because the necessary amendments to UK legislation will be coordinated with ITOER coming into force as part of the simplification of all explosives legislation.
15. Legally ITOER can be made by the DWP Secretary of State, although as these Regulations deal in part with security matters, agreement for this will be sought from the Home Office. Home Office officials support the principle of a review of explosives legislation including COER and are of the opinion that the Minister will not object to the new approach to transposition. If the Board

approves the proposed approach then Home Office officials will be formally notified.

Consultation on transposition

16. It is proposed that this consultation jointly involves the Northern Ireland Office as well as HSE and the Consultation Document (CD) at Appendix 2 to this paper, reflects this. The EC requires transposition by the UK as a whole and joint consultation will mean timely transposition in both Great Britain and Northern Ireland. The Better Regulation Executive also recommends joint consultation “whenever possible and appropriate”.
17. The CD includes the initial impact assessment (IA) and invites stakeholder comment on the proposed implementation of the Directive and IA but not on the Directive itself. Information on costs is requested in the CD in order to refine the IA if possible. The draft statutory instrument is in the form of new, free-standing Regulations, rather than amending existing regulations – the draft statutory instrument is not included in the CD Annexed to this paper.
18. For simplicity, the IA considers a single option, as the set up and running costs and benefits of fully implementing the Directive are similar for both the original and new approaches to transposition. The IA shows an annual total net benefit of just under £18,000 and an increase in the administrative burden of approximately £11,000. The table below shows the total discounted benefits and costs calculated over a 30 year period.

Total discounted benefits	£1,900,000
Total discounted costs	£1,369,432
Net benefits	£538,568
Average net annual benefit	£17,952

19. The IA does not take into account any reduction in the regulatory burden as this is difficult to quantify at this stage. When the IA for the review of all explosives legislation is completed it may be possible to determine a proportionate share of the reduction in the regulatory burden.

Proposed shorter consultation period

20. The Department of Business, Innovation and Skills (BIS) Code of Practice on Consultations states that they should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible. In this case, a 12 week consultation means that due to Christmas and New Year the Regulations would not realistically be fully transposed until February/March 2010 which risks infraction proceedings reaching the European Court of Justice.
21. Therefore the Board is asked to support a shorter consultation of 8 weeks in this case for the reasons listed below:
 - there is an urgent need to transpose the Directive in order to avoid a potential fine by the European Court of Justice for failure to transpose by the required date in the Directive of 5th April 2009;

- the part of the explosives sector affected by this Directive is mature and compact with well-established and effective formal and informal intelligence gathering and dissemination networks;
 - this Directive further implements a part of a parent Directive⁴ that had itself been consulted upon and the regulations implementing that Directive have been in force for a number of years;
 - the impact of these regulations will be relatively small as the majority of the duties exist to a large degree in current explosives legislation;
 - businesses have been aware for some months that this Directive would affect explosives marking and record keeping;
 - there has already been considerable informal consultation with both trade associations and businesses in the affected sector on the duties in the Regulations and how they can be met;
 - best endeavours will be made to directly inform those affected and potentially affected by these Regulations of this consultation.
22. As well as directly informing trade bodies, unions and businesses that we know are affected by the legislation of the consultation, we will similarly inform other trade bodies and unions whose members may potentially be affected by this legislation. Informal consultation with interested parties is ongoing and not surprisingly, there is support for a review aimed at reducing the regulatory burden.

Presentation

23. The security of explosives is a specialist area and it is unlikely that this work will attract significant media attention. The sector of the explosives industry affected is small and the requirements of this Directive are well known to them. Indications are that the review will be positively received.

Financial/Resource Implications for HSE

24. The resources necessary to complete transposition of the Traceability Directive and to complete the initial scoping phase of the review can be found from within the Mines, Quarries and Explosives Policy Team - requiring 50% of a B2 for this work year, equivalent to about £20K. It is anticipated that the resources required for a wider review of explosives legislation will exceed those available in the Team however this will be covered in a further paper to the Board once the scoping phase is complete. All this work will require support from LAO, EAU and other colleagues.

Action

25. The Board is invited to:
- approve the review of explosives legislation;
 - approve the new approach to transposing the Directive;

⁴ Council directive 93/15/EEC on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses that can be found at:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993L0015:EN:HTML>

- approve the publication of the CD jointly with NIO; and
- approve an 8 week consultation period.

Paper clearance

Cleared by Peter Brown on 18 August 2009.

Traceability Directive Transposition – proposed strategy for engaging with the EC on infraction proceedings



▶◀ *This Appendix is withheld under Section 35 of the Freedom of Information Act: Formulation of Government Policy*

CONSULTATION ON LEGISLATION TO IMPLEMENT THE DIRECTIVE ON THE IDENTIFICATION AND TRACEABILITY OF EXPLOSIVES FOR CIVIL USES

This consultative document is issued by the Health and Safety Executive in compliance with its duty to consult under section 50(3) of the Health and Safety at Work etc Act 1974 and the Secretary of State for Northern Ireland, in compliance with his duty to consult under Article 46(1) of the Health and Safety at Work Order (Northern Ireland) 1978 (a) as so applied and modified.

Comments, including those from Northern Ireland consultees, should be sent to:

Diane Savage
Health and Safety Executive
Mines, Quarries and Explosives Policy
5S.G Redgrave Court
Merton Road
Bootle
Merseyside L20 7HS
Tel: 0151 951 4198 Fax: 0151 951 3098
E-mail: explosives.policy@hse.gsi.gov.uk
to reach there no later than **2 November 2009**

The Executive tries to make its consultation procedure as thorough and open as possible. Responses to this consultative document will be lodged with its Information Centres after the close of the consultation period where they can be inspected by members of the public or be copied to them on payment of the appropriate fee to cover costs.

Responses to this consultative document are invited on the basis that anyone submitting them agrees to their response being dealt with in this way. Responses, or part of them, will be withheld from the Information Centres only at the express request of the person making them.

In such cases, a note will be put in the index to the responses identifying those who have commented and have asked that their views, or part of them, be treated as confidential.

Many business e-mail systems now automatically append a paragraph stating the message is confidential. If you are responding to this CD by e-mail and you are content for your responses to be made publicly available, please make clear in the body of your response that you do not wish any standard confidentiality statement to apply.

Further single copies of this document may be obtained from HSE Books – see back cover.

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CONSULTATION ON LEGISLATION TO IMPLEMENT THE DIRECTIVE ON THE IDENTIFICATION AND TRACEABILITY OF EXPLOSIVES FOR CIVIL USES

Consultation by the Health and Safety Executive and the Secretary of State for Northern Ireland

About this document

The Health and Safety Executive (HSE) has a statutory duty to consult to seek stakeholders' views on proposals. HSE believes that this enables an open and transparent approach to decision-making, which is essential if policies and decisions are to have widespread ownership and reflect the needs and aspirations of the people they will affect. The Executive then decides on the best way forward based on an interpretation and analysis of the results of the exercise.

The Executive tries to make its consultation procedure as thorough and open as possible. Responses to this consultation document will be lodged in the Health and Safety Executive's Knowledge Centre, Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS after the close of the consultation period where they can be inspected by members of the public or be copied to them on payment of the appropriate fee to cover costs.

Responses to this consultation document are invited on the basis that anyone submitting them agrees to their being dealt with in this way. Responses, or part of them, will be withheld from the Knowledge Centre only at the express request of the person making them. In such cases a note will be put in the index to the responses identifying those who have commented and have asked that their views, or part of them, be treated as confidential.

Many business e-mail systems now automatically append a paragraph stating the message is confidential. If you are responding to this CD by e-mail and you are content for your responses to be made publicly available, please make clear in the body of your response that you do not wish any standard confidentiality statement to apply.

We will acknowledge all responses and give full consideration to the substance of arguments in the development of proposals; we may also contact you again if, for example, we have a query. When HSE has decided upon its recommendation to Ministers, we will let you know how the work will proceed and how the decision reached reflects the results of the consultation.

If you reply to this consultation document in a personal capacity, rather than as a post holder of an organisation, you should be aware that information you provide may constitute "personal data" in the terms of the Data Protection Act 1998. For the purposes of this Act, HSE is the 'data controller' and will process the data for health, safety and environmental purposes.

HSE may disclose this data to any person or organisation for the purposes for which it was collected, or where the Act allows disclosure. You have the right to ask for a copy of the data and to ask for inaccurate data to be corrected. Please note that all replies will be made public unless you specifically state that you wish yours to be made confidential.

If you are reading this document on a computer screen and would prefer a printed version, it can be obtained on request by emailing explosives.policy@hse.gsi.gov.uk or writing to Diane Savage,

Health and Safety Executive, Mines, Quarries and Explosives Policy, 5S.G Redgrave Court, Merton Road, Bootle, Merseyside L20 7HS (Tel: 0151 951 4198 Fax: 0151 951 3098).

If you require a more accessible format, an Executive Summary is available in Braille, large print, audio formats (eg CD, audiocassette tape) or in other languages. Please contact HSE's Infoline on 0845 345 0055, or write to HSE Information Services, Caerphilly Business Park, Caerphilly, CF83 3GG.

How to respond

As an aid to consultation, a summary of issues for consultation and a questionnaire can be found by going to: <http://www.hse.gov.uk/consult/condocs/XXX> . You do not have to use the questionnaire, and you are welcome to comment on any issue raised by this document.

You can:

- Complete the online questionnaire.
- Respond on paper – you can do this either by:
 - printing the online questionnaire; or
 - photocopying the questionnaire (at Annex 1); or
 - making a written response in whatever format you wish; andsending your completed response to Diane Savage, Health and Safety Executive, Mines, Quarries and Explosives Policy, 5S.G Redgrave Court, Merton Road, Bootle, Merseyside L20 7HS.
- Respond by email – you should send this to explosives.policy@hse.gsi.gov.uk

Responses must be received by 2 November 2009.

Code of Practice on Consultation

HSE is committed to best practice in consultation and to the Government's Code of Practice on consultation. The Code of Practice sets out seven criteria for consultation. These are:

- **When to consult** - Formal consultation should take place at a stage when there is scope to influence the policy outcome;
- **Duration** - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible. This consultation will last 8 weeks and the reasons why are detailed below;
- **Clarity of scope and impact** - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- **Accessibility** - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach;
- **The burden of consultation** - Keeping the burden of the consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained;
- **Responsiveness** - Consultation responses should be analysed carefully and clear feedback should be provided following the consultation; and
- **Capacity to consult** - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

This consultation lasts 8 weeks rather than the normal 12 for the following reasons:

- there is an urgent need to transpose the Directive in order to avoid a potential fine by the European Court of Justice for failure to transpose the Directive on time;
- the part of the explosives sector affected by this Directive is mature and compact with well-established and effective formal and informal intelligence gathering and dissemination networks;
- this Directive further implements a part of a parent Directive⁵ that had itself been consulted upon and the regulations implementing that Directive have been in force for a number of years;
- the impact of these regulations will be relatively small as the majority of the duties exist to a large degree in current explosives legislation;
- businesses have been aware for some months that this Directive would affect explosives marking and record keeping;

⁵ Council directive 93/15/EEC on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses that can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993L0015:EN:HTML>

- there has already been considerable informal consultation with both trade associations and businesses in the affected sector on the duties in the regulations and how they can be met;
- best endeavours have been made to directly inform those affected by these regulations of this consultation.

If you believe that this document, or the consultation on these proposals, does not meet these criteria, or if you are not satisfied with the way in which this consultation exercise has been conducted, we want to know and put things right. Please contact Maureen Kirwan, HSE, 5S.3, Redgrave Court, Merton Road, Bootle, Merseyside LS20 7HS.

We aim to reply to all complaints within 10 working days. If you are not satisfied with the response, you may ask for your complaint to be passed to a more senior member of staff. Following our second response, if you are still not satisfied, you can ask for your complaint to be referred to the Chief Executive.

Executive summary

Background

This consultation concerns the proposed legislation transposing the European Commission Directive 2008/43/EC on the Identification and Traceability of Explosives for Civil Uses (see Annex 5). Whilst the application of the proposed legislation applies to Great Britain this consultation also includes Northern Ireland - hence the use of "United Kingdom" in these consultation documents. The Northern Ireland Office (NIO) intend to use this consultation for the purposes of drafting the equivalent Northern Ireland Regulations and will not undertake a separate formal consultation.

Application and Duties

The Directive requires that explosives for civil uses are uniquely identified and can be traced from the production site through to their final use. This is with a view to preventing misuse and theft and assisting authorities in tracing the origin of lost or stolen explosives. It does **not** apply to:

- pyrotechnics for example, flares or fireworks;
- ammunition;
- unpackaged explosives transported and delivered for direct unloading into the blast-hole for example in pump trucks; and
- explosives produced in situ for immediate use;
- explosives for legal use by the military or police.

The main duties in the Directive are:

- Product identification - explosives manufactured in, or imported into a member state after 5 April 2012 are uniquely marked with an alphanumeric code and barcode;
- Record keeping - all undertakings involved in the manufacture, import, transfer or use of the explosives:
 - record their involvement in the movement of the explosives and keep these records for 10 years; and
 - provide the responsible authorities with contact details so that information in their records can be accessed at any time necessary.

Impact on existing legislation

The duties in the Directive, and therefore the proposed regulations (Identification and Traceability of Explosives Regulations – ITOER), overlap duties in two existing sets of regulations, the Classification and Labelling of Explosives Regulations 1983 (CLER) and the Control of Explosives Regulations 1991 (COER) which will remain in force until superseded by ITOER on 5 April 2012.

Before then, HSE is to undertake a broad review of all existing explosives legislation, including CLER and COER, in order to reduce the regulatory burden on business through clarification and simplification. The review will aim to engage with all interested parties beginning in 2010 delivering a consolidated and integrated suite of updated explosives legislation that will include ITOER in April 2012. Any changes resulting from this review will be subject to appropriate formal consultation.

The legislative position in Northern Ireland is broadly similar. There are no current plans to review it.

Consultation

This consultation lasts 8 weeks rather than the normal 12. The reasons for this can be found on page 3 of this document.

We are consulting businesses involved in the manufacture, importation, storage and commercial carriage of the explosives to which the Directive applies as well as others affected

by the proposed regulations. This is primarily to avoid unintended consequences of the wording in the regulations, although the duties in ITOER in the main follow directly from the Directive.

We are seeking views on:

- how we intend to implement the Directive (but not views on the Directive itself which was agreed by the European Commission and published in April 2008); and
- the draft Impact Assessment.

If you are not satisfied with the way in which this consultation exercise has been conducted, we want to know and put things right. Please contact Maureen Kirwan, HSE, 5S.3, Redgrave Court, Merton Road, Bootle, Merseyside LS20 7HS.

We aim to reply to all complaints within 10 working days. If you are not satisfied with the response, you may ask for your complaint to be passed to a more senior member of staff. Following our second response, if you are still not satisfied, you can ask for your complaint to be referred to the Chief Executive.

This consultation concerns the proposed legislation transposing the European Commission Directive 2008/43/EC on the Identification and Traceability of Explosives for Civil Uses. Whilst the application of the proposed legislation applies to Great Britain, this consultation also includes Northern Ireland - hence the use of “United Kingdom” in these consultation documents. The Northern Ireland Office (NIO) intend to use this consultation for the purposes of drafting the equivalent Northern Ireland Regulations and will not undertake a separate formal consultation.

Overview of the Directive and the proposed Identification and Traceability of Explosives Regulations

1. This overview discusses who will be affected by the regulations, the duties in the Directive and how these duties correspond to the proposed regulations. A questionnaire, a list of consultees, the proposed regulations, the initial Impact Assessment and the Traceability Directive are at Annexes 1-5 respectively).

Who will be affected by these proposals?

2. These proposals will affect and be of interest to businesses and organisations in the following categories which deal in explosives other than those listed in paragraph 3 below:
 - manufacturers of explosives;
 - importers of explosives;
 - those storing explosives as part of their business including:
 - quarry operators;
 - mine operators;
 - those involved in the commercial carriage of explosives;
 - those involved in the regulation of explosives security.
3. The Directive does **not** apply to:
 - Pyrotechnics, for example, flares or fireworks;
 - ammunition;
 - unpackaged explosives transported and delivered for direct unloading into the blast-hole for example in pump trucks; and
 - explosives produced in situ for immediate use;
 - explosives for legal use by the military or police.

The duties in the Directive

4. The Directive (see Annex 5) is aimed primarily at setting up a harmonised system for the safe and secure circulation of explosives on the community market. It requires that explosives for civil uses are uniquely identified and can be traced from the production site through to their final use. This is with a view to preventing misuse and theft and assisting authorities in tracing the origin of lost or stolen explosives. The Directive requires that its provisions are to apply from 5 April 2012.
5. In summary, the main duties in the Directive are:
 - Product identification - explosives manufactured in, or imported into a member state after 5 April 2012 are uniquely marked with an alphanumeric code and barcode;
 - Record keeping - all undertakings involved in the manufacture, import, transfer or use of the explosives:
 - record their involvement in the movement of the explosives and keep these records for 10 years; and
 - provide the responsible authorities with contact details so that information in their records can be accessed at any time necessary.

Product Identification

6. The marking of explosives is covered in Articles 3 to 12 of the Directive. The essential requirement is that each individual explosive item manufactured in or imported into the European Community (for example, a detonator, cartridge or primer) and the smallest packaging unit containing the items must be marked with a unique identification.
7. The Directive has an Annex (see Annex 5 of this document) that contains the detail of what the unique identification should consist of – essentially:
 - the name of the manufacturer and an alphanumerical code in human readable form; and
 - an electronic readable barcode or matrix code that relates directly to the alphanumerical code.
8. The unique identification is to comprise of a two-letter country identification code and a three number code identifying the manufacturer both of which can be obtained from the national authority (HSE in Great Britain and the Secretary of State in Northern Ireland). The Directive goes on to deal with the procedures for obtaining the manufacturer's code for items imported into the European Community from non-member states.
9. Further Articles dealing with product identification cover:
 - what is required if a product undergoes further manufacture, is manufactured for export outside the Community or is repackaged;
 - how various explosive items are to be marked;
 - that the unique identification should be firmly affixed or marked; and
 - the need for any copies of labels that can be detached from the items to be visibly marked as copies.

Record Keeping

10. Data collection is dealt with in Article 13 that requires that all undertakings in the explosives sector put in place a system for collecting data on explosives that they have custody of throughout its supply chain and life cycle. This system should allow the ownership of the explosives to be identified at any time and Member States should ensure that this data is kept by undertakings for ten years after the end of the life cycle of the explosives even if the undertaking stops trading.
11. The obligations of undertakings with respect to recording and maintaining the data are dealt with in Article 14, and these are:
 - recording the unique identification and other “pertinent information” including the explosive type and the company or person to whom its custody was given;
 - recording the location of each explosive until it is transferred to another undertaking or used;
 - testing the data collection system regularly to ensure its effectiveness and data quality;
 - keeping and maintaining the data for 10 years; and
 - protecting the data collected against accidental or malicious damage or destruction;
 - providing Member State authorities with contact details of a person able to provide information from records outside normal business hours; and
 - providing information upon request that includes the origin and location of each explosive during its life cycle and throughout the supply chain.

How the proposed regulations transpose these duties

Existing legislation

12. The duties in the Directive, and therefore the proposed regulations (Identification and Traceability of Explosives Regulations (ITOER) see Annex 3), overlap existing explosives marking and record keeping duties. These duties exist in the Classification and Labelling of

Explosives Regulations 1983 (CLER) and the Control of Explosives Regulations 1991 (COER) which will remain in force until superseded by ITOER on 5 April 2012. Northern Ireland has broadly similar controls in place.

13. Before then, HSE is to undertake a broad review of all existing explosives legislation, including CLER and COER, in order to reduce the regulatory burden on business through clarification and simplification. The review will aim to engage with all interested parties beginning in 2010 delivering a consolidated and integrated suite of updated explosives legislation that will include ITOER in April 2012. Any changes resulting from this review will be subject to appropriate formal consultation. The legislative position in Northern Ireland is broadly similar. There are no current plans to review it.
14. We have sought to implement the Directive fully and keep the additional regulatory burden to a minimum. We have used identical wording to the Directive when possible and have tried to incorporate existing legal duties where they meet the requirements of the Directive. Until the proposed regulations come into force the existing legal duties in CLER and COER will apply.

Consultation points – existing legislation:

1. Do you agree that there is a need for a review of existing explosives legislation?
2. Do you agree with that the development of an integrated suite of explosives legislation would be beneficial?

Proposed Regulation 4 - Unique Identification

15. Paragraphs (1), (2) and (3) of this Regulation correspond to the duties under Article 3 of the Directive for a manufacturer to mark explosives with a unique identification unless it is to be exported and is marked in accordance with the requirements of the importing country. Paragraph (3) caters for explosives that are further manufactured and we have proposed that there is only a requirement for such explosive to be uniquely marked if the original unique identification is no longer marked as required.
16. The Directive puts the same duty to mark explosives on importers as it does on manufacturers and paragraph (4) of this Regulation transposes this duty and provides two options for achieving compliance to the importer:
 - arrange for the explosives and smallest packaging units to be marked by the manufacturer before import; or
 - mark the explosives after importation but before they are transferred to another person. However, should the importer chose the latter option, then they will be unable to transfer the custody of the explosives until they are marked as required.
17. Additionally, should the latter option be selected by an importer, paragraph (5) places a duty on that importer to apply security measures so far as is reasonably practicable, to ensure the safekeeping of the explosives, e.g. against them being lost or stolen. In addition, the option of marking after importation has the effect of prohibiting the transfer of the explosives to another person until the explosives are marked as required.
18. Paragraph (6) transposes directly from the Directive the duty on distributors who might repackage explosives to ensure that explosives and the smallest packaging unit are marked as required.
19. We believe that this Regulation accounts for any need for explosives to be marked.
20. Paragraphs (7), (8) and (9) of this Regulation require the unique identification to be marked or affixed to the explosives so as to be durable and clearly legible, including the format it should be in and how it should be affixed to a variety of items. (8) and (9) refer respectively to Schedules 1 and 2 of the Regulations both of which are dealt with later in this document.

Consultation point – proposed Regulation 4:

3. Do you agree that paragraphs (1) to (6) cover the instances when explosives and the smallest packaging units will require marking?

If you do not agree, what other instances might there be?

We are particularly interested in any comments on how importers would be able to mark after import, for example, how and where they could do so?

Proposed Regulation 5 – Attribution of manufacturing site codes

21. This Regulation describes how the three-digit code for each manufacturer is to be obtained and transcribes those parts of Article 3 of the Directive that were not dealt with in Regulation 4 above. It covers three situations:

- for explosives manufacturing sites in Great Britain that manufacturer should apply to HSE for the code;
- for explosives being manufactured in a non-member state by a manufacturer -
 - established in Great Britain then the manufacturer should apply to HSE for the code;
 - established in a member state other than Great Britain then the HSE will supply the manufacturer with the code upon being requested to do so; and
- for explosives being manufactured in a non-member state by a manufacturer not established in a member state then the importer should apply to HSE for the code.

22. Paragraph (4) of Regulation 5 provides for two alternatives (the second situation bulleted above) even though in both cases the manufacturer has to request the code. For consultees in Northern Ireland, for “Great Britain” and “HSE” read “Northern Ireland” and “the Secretary of State” respectively.

Consultation point – proposed Regulation 5:

4. Do you agree that the circumstances described in this Regulation cover all situations when a manufacturing site code will be requested?

If you do not agree, what are the additional situations?

Proposed Regulation 6 – Records

23. As can be seen from Regulations 4 and 5, the duties relating to marking will fall to a limited number of businesses in the explosives sector. Regulation 6 transposes Articles 13 and 14 of the Directive on data collection and the obligations of undertakings. The duties under this Regulation apply to all involved from production to end use, including third party commercial carriers who may transport explosives. Record keeping in relation to the end use of the explosive will involve recording the issue of explosive to the individual who is actually using the explosive at a site and any returns of explosives will need to be captured in the records.

24. Record keepers have a choice of how they keep these records and they do not necessarily need to involve an electronic barcode reading system. Provided the system of record keeping employed meets the duties in these regulations then it should be fit-for-purpose and appropriate to the size and type of business. Businesses may find that the records regarding explosives that they are currently required to keep can be adapted to meet their new duties.

25. The following scenario illustrates how the system will work in practice. Spanish police find explosives that from the markings they determine were manufactured in Great Britain by ABC Ltd. British authorities are informed and they contact the nominated person at ABC Ltd. A records check determines the explosives in question were shipped to XYZ Ltd. The authorities contact the nominated person at XYZ Ltd and so on through the chain until who

last had custody of the explosives is established. The information is passed onto the Spanish authorities.

26. The duties in this Regulation only apply to explosives either manufactured in, or imported into, Great Britain, or Northern Ireland in relation to its Regulations, on or after 5 April 2012 so for other explosives the duties in existing legislation will apply.

Consultation points – proposed Regulation 6:

5. Do you agree that in order to have a means of tracing explosives right through the supply chain requires that carriers keep records of explosives that they transport?
6. Do you agree that record keeping need not include the electronic reading of barcodes unless it is appropriate for the size and type of business?

Proposed Regulation 7 - Enforcement

27. Enforcement of these regulations in Great Britain is to be divided between the police and HSE. This reflects existing arrangements for enforcement under certain explosives legislation where both the police and HSE are given enforcement roles. In Great Britain, HSE are to have responsibility for all sites licensed by HSE under the Manufacture and Storage of Explosives Regulations 2005 (MSER) with the exception of surface storage at mines for which the police are to have responsibility. The police are to have responsibility for all other locations in Great Britain. The proposal is that Northern Ireland's Regulations will be enforced by the police.

Proposed Schedule 1 – Unique identification for explosives

28. The content of this Schedule relates to Regulation 4(8) and is taken from the Annex to the Directive (see Annex 5 in this document) including the words, "logistical information designed by the manufacturer" (paragraph 1(b)(iii)). The Directive does not define what this information is or how long the alphanumeric code identifying the explosive should be. In the example in the Directive, the code is 27 units long including gaps and includes a date. It also states what information must be marked on explosives which are too small to be marked with all the information normally required.

Consultation point – proposed Schedule 1:

7. Do you believe that the ability to record "logistical information designed by the manufacturer" as part of the code will be beneficial to you? We are particularly interested in what logistical information you believe should be included.

Proposed Schedule 2 – methods of marking or affixing the unique identification to explosives

29. The content of this Schedule relates to Regulation 4(9) and is taken from Articles 5 to 11 in the Directive (see Annex 5 in this document). This Schedule provides methods of marking or affixing the unique identification for a variety of explosives types that are covered by the Regulations. It also allows for the optional use of inert electronic tags in addition to direct marking or labelling.

Consultation point – proposed Schedule 2:

8. Do you agree that this Schedule includes all of the types of explosives affected by the proposed Regulations that you are concerned with?
If you do not agree, what are the additional types?

Impact Assessment

30. The initial impact assessment for these proposals is included at Annex 4. The base results are as follows:

Total discounted benefits	£1,900,000
Total discounted costs	£1,369,432
Net benefits	£538,568
Average net annual benefit	£17,952

31. The calculation of benefits for these proposed Regulations is difficult as it is not possible to assess their preventative deterrent impact on potential theft of explosives. For the purposes of the initial impact assessment, we have assumed that over a 30 year period two lives will be saved by the measures acting as a deterrent to crime. These Regulations transpose a European Directive with a potentially unlimited fine for not doing so (based on the length of time) therefore there is also the benefit of avoiding that potential cost.
32. The set up costs for manufacturers is based on figures provided by the explosives sector however, the annual ongoing costs include in part a more speculative figure of how much it will cost the sector to meet their record keeping duties. Although the £5 cost for the average increase in record keeping costs may look low it should be remembered that many end-users use explosives to which these proposed Regulations do not apply.

Consultation point – initial impact assessment:

9. Do you agree that the costs in the initial impact assessment are reasonable?
If you do not agree, what are your suggested costs?

QUESTIONNAIRE

If you return a completed downloaded version of this questionnaire please include in your covering e-mail or letter whether or not you are content that your response is made available to the public. You should also include full contact details including postal and e-mail addresses and telephone and fax numbers as appropriate.

QUESTIONNAIRE - CONSULTATION ON LEGISLATION TO IMPLEMENT THE DIRECTIVE ON THE IDENTIFICATION AND TRACEABILITY OF EXPLOSIVES FOR CIVIL USES			
Consultation point 1 – existing legislation: Do you agree that there is a need for a review of existing explosives legislation?			
Yes		No	
Further Comments			
Consultation point 2 – existing legislation: Do you agree with that the development of an integrated suite of explosives legislation would be beneficial?			
Yes		No	
Further Comments			
Consultation point 3 – proposed Regulation 4: Do you agree that paragraphs (1) to (6) cover the instances when explosives and the smallest packaging units will require marking?			
If you do not agree, what other instances might there be?			
Yes		No	
Further Comments			
Consultation point 4 – proposed Regulation 5: Do you agree that the circumstances described in this Regulation cover all situations when a manufacturing site code will be requested?			
If you do not agree, what are the additional situations?			
Yes		No	

Further Comments			
Consultation point 5 – proposed Regulation 6: Do you agree that in order to have a means of tracing explosives right through the supply chain requires that carriers keep records of explosives that they transport?			
Yes		No	
Further Comments			
Consultation point 6 – proposed Regulation 6: Do you agree that record keeping need not include the electronic reading of barcodes unless it is appropriate for the size and type of business?			
Yes		No	
Further Comments			
Consultation point 7 – proposed Schedule 1: Do you believe that the ability to record “logistical information designed by the manufacturer” as part of the code will be beneficial to you? We are particularly interested in what logistical information you believe should be included.			
Yes		No	
Further Comments			
Consultation point 8 – proposed Schedule 2: Do you agree that this Schedule includes all of the types of explosives affected by the proposed Regulations that you are concerned with?			
If you do not agree, what are the additional types?			
Yes		No	

Further Comments

Consultation point 9 – initial impact assessment: Do you agree that the costs in the initial impact assessment are reasonable?

If you do not agree, what are your suggested costs?

Yes

No

Further Comments

Comments on any issues associated with the proposed transposition of the Directive

LIST OF CONSULTEES**We have notified the following organisations about the publication of this document:**

Association of Chief Police Officers
Association of Chief Police Officers (Scotland)
Confederation of British Industries
CBI Explosives Industry Group and member companies
British Pyrotechnic Association
Quarry Products Association
British Aggregates Association
Coal Producers Association (COALPRO)
UK Coal
Mining Association UK
Federation of Small Mines in Great Britain
Union of Democratic Mineworkers
Trades Union Congress
Institute of Explosives Engineers
Department for Business Innovation and Skills
Home Office
Ministry of Defence
Welsh Assembly
Scottish Executive
Northern Ireland Office
Gun Trade Association
British Shooting Sports Council
British Association for Shooting and Conservation
Muzzle Loaders of Great Britain
National Association of Reenactment Societies
English Civil War Society
American Civil War Society
Construction Federation
Road Haulage Association
Police Service of Northern Ireland
Health & Safety Executive, Northern Ireland

Deliberately omitted

Summary: Intervention & Options

Department /Agency: Home Office/ Health Executive	Title: Initial Impact Assessment of European Community Directive on the Identification and Traceability of Explosives for civil uses.	
Stage: Consultation	Version: 1	Date: 3 August 2009
Related Publications: Directive on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses Directive on the identification and traceability of explosives for civil uses		

Available to view or download at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993L0015:EN:HTML>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:094:0008:01:EN:HTML>

Contact for enquiries: David Pascoe

Telephone: 0151 951 4241

What is the problem under consideration? Why is government intervention necessary?

On 4 April 2008, the European Commission adopted the Identification and Traceability of explosives for civil uses Directive, requiring most explosive articles for civil uses to be labelled with a 'unique identification' made up of a human readable alphanumeric code and a bar code. The Directive also requires records to be kept of all transfers and issues of explosives. The implementation deadline was 5 April 2009. The Directive does not apply to explosives for military or police use, pyrotechnics, ammunition nor to the onsite mixing of explosives.

What are the policy objectives and the intended effects?

The aim of this directive is to uniquely identify commercial packaged explosive and other items such as detonators to assist in determining their place of manufacture and the chain of supply. This is a measure intended by the EU to reduce the risk of a terrorist attack such as the Madrid bombings which involved the use of stolen commercial explosive. The measures should also assist in the investigation of both terrorist and non-terrorist criminal activities involving explosives.

What policy options have been considered? Please justify any preferred option.

Had Member States taken action individually to address this issue, individual national measures might have been seen as barriers to trade and therefore incompatible with European law, and inconsistencies between the measures of individual Member States would have led to additional compliance costs for businesses. Community legislation is the most uniform and effective Community-wide response to this issue.

Failure to implement the European Directive will result in infraction proceedings against Great Britain and potentially a considerable fine.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

We intend to review these regulations in 2017, five years after they come into force so that they have had time to bed in and take effect.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Summary: Analysis & Evidence

Policy Option:	Description: Directive is adopted
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ 75,000	1	Costs to manufacturers of labelling equipment and systems together with associated running costs. Costs for explosives users of holding records for 10 years as opposed to current 3 years.
	Average Annual Cost (excluding one-off)		
£ 68,000	30	Total Cost (PV)	£ 1,369,432
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' For the reasons outlined in the evidence base, it is difficult to estimate the benefits of these proposals. The figure below is based on two deaths through criminal/terrorist activity being prevented over a 30 year period through more efficient investigation and intelligence resulting from the improvements in tracing explosives.
	One-off	Yrs	
	£		For the reasons outlined in the evidence base, it is difficult to estimate the benefits of these proposals. The figure below is based on two deaths through criminal/terrorist activity being prevented over a 30 year period through more efficient investigation and intelligence resulting from the improvements in tracing explosives.
	Average Annual Benefit (excluding one-off)		
£	30	Total Benefit (PV)	£ 1,900,000
Other key non-monetised benefits by 'main affected groups'			

Key Assumptions/Sensitivities/Risks It is assumed that the implementation of the directive will **not** make it more difficult for explosives users to maintain records manually.

Price Base Year 2007	Time Period Years 30	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	Great Britain			
On what date will the policy be implemented?	5 April 2012			
Which organisation(s) will enforce the policy?	HSE and police			
What is the total annual cost of enforcement for these organisations?	£ no additional costs			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium 18,000	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of	£ £11000	Decrease of	£
Net Impact			£ 11000

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

Assessment of the impact of EU directive on the labelling and traceability of explosives

Introduction

The Directive is part of the European Commission's Action Plan on the Security of Explosives, and is a 'daughter' Directive of the Placing on the market, supervision and transfer of explosives Directive (93/15/EEC). In line with the scope of its parent, this Directive applies to civil explosives and not to explosives for military and police use; nor does it apply to pyrotechnic articles or to ammunition.

The key requirements of the Directive are that manufacturers and importers from outside the European Economic Area (henceforth referred to as 'importers') must ensure that explosives and 'each smallest packaging unit' of the explosives are marked with a unique identification number. This is a alphanumeric code which is in a human readable form in a format prescribed by the Directive as well as in the form of an electronic readable identification (a bar code or matrix code). The alphanumeric code will include information on the place of production or import into the Community market and the manufacturing site. This information should be marked on or firmly affixed to the explosive and smallest packaging unit.

The Directive also requires 'undertakings in the explosives sector' to maintain a data collection system in relation to explosives throughout the supply chain and life cycle of the explosive. This system must enable those holding the explosives to be identified at any time and the information must be held for up to 10 years from delivery or from the end of the life-cycle of the explosive.

Background

The UK industry

Civil explosives fall into three broad types:

- bulk, site-mixed, explosives which provide the main explosive charge for blasting;
- packaged explosives which are used in certain more specialist situations such as underground or in wet conditions; and
- detonators and primers which supply the initial energy to initiate an explosion in the bulk explosives.

Bulk explosives are manufactured on-site, in most cases at mines and quarries. They are made by mixing ammonium nitrate with diesel fuel or by mixing ammonium nitrate-based emulsions with fuel and gassing agents. This type of explosive is by far the most widely used in the UK and because it is not actually explosive until it undergoes final mixing on site it is not covered by the requirements of the Directive. Packaged explosives are used in situations where site-mixed explosives would not be suitable. Detonators and primers are now almost entirely imported.

There are three companies in the UK manufacturing explosive articles for use in the civilian sector (other companies are involved in the manufacture of emulsions). Two of these companies operate as a joint venture so there are effectively only two manufacturing sites in the UK with three manufacturing lines in total. All of these companies also provide blasting services to the mining and quarrying industry – ie rather than selling the explosives to the quarrying company, the company carries out the blasting operations itself and is paid for the quantity of material involved in the blast.

Existing legislation on labelling and record keeping

The labelling requirements for explosives supplied in Great Britain are set out in the Classification and Labelling of Explosives Regulations 1983 (SI 1140/1983). These require that for certain listed security-sensitive explosive articles and substances, the outer packaging should display the following information:

- the total number of explosives articles and the total nominal mass of any explosives substances (or in the case of detonating cord the length of the cord);
- the month and year of manufacture or when the explosives left the factory;
- ‘a description which enables each explosive article to be distinguished from every other explosive article which is not identical’.

For those explosive substances, the ‘inner packaging’ must also carry the following information:

- the name of the explosive substance;
- the nominal mass or length and diameter of the cartridge;
- the month and year when the explosives were manufactured or left the factory.

There are similar requirements in Northern Ireland.

The requirements on record-keeping for GB are set out in the Control of Explosives Regulations 1991 (SI 1991/1531). These require that anyone acquiring or keeping certain security-sensitive explosives should maintain records. The main information that must be included in the records is as follows:

- the date the explosives were acquired;
- the date the explosives were transferred, or used or destroyed [etc];
- if the explosives are transferred, the details of the person receiving the explosive;
- a description of the explosive;
- the quantity of explosive (ie net mass or number of articles etc).

These records must be kept for three years from the date the explosives are transferred, used or destroyed etc.

There are similar requirements in Northern Ireland.

Costs for UK industry

Costs for explosives manufacturers and importers

As noted above there are already fairly extensive requirements on labelling and recordkeeping in the UK. However, the Directive goes further.

On marking/labelling:

- all items of explosives must marked with a unique identification
- the identification must use the format prescribed by the directive;
- articles such as detonators and cartridges must be marked or labelled – previously only the outer packaging had to be labelled.

The implications for manufacturers of these changes are that they will need to invest in labelling equipment and systems – and there will be a ongoing costs (see detailed costing below).

The major change in the recordkeeping requirements is that record must be maintained for 10 years rather than 3 years.

Costs and benefits for end-users

End-users will be required to keep records for ten years. The working conditions at mines and quarries as well as other technical issues present real difficulties in the deployment of barcode readers. In any event it is debateable whether or not it would be cost-effective for most end-users to develop the necessary computer systems to facilitate barcode scanning. We therefore anticipate that end-users will mainly continue to maintain records manually incurring little additional cost above that already incurred to comply with existing legislation.

The Directive leaves manufacturers freedom to decide how to use most of the characters. It would be beneficial, particularly for end-users, if manufacturers were to use this code in a way that facilitated manual record-keeping. For the purposes of this impact assessment we have assumed that this aspect of the Directive will be cost neutral.

Impact on small firms

The explosives manufacturers in the UK are small firms, but are all part of larger multinational organisations.

There are a large number of small firms in the mining and quarrying sector. However, in terms of production (and therefore consumption of explosives) the sector is dominated by eight major firms.

Costs to the public sector

As noted above, the Directive does not apply to explosives for police or military use. Therefore there are no direct or indirect costs to users of explosive in the public sector.

There are potential benefits to the police in that the proposals could assist in investigations into terrorist and non-terrorist criminal activities involving explosives. This is through each piece of explosive being uniquely identified allowing the place of manufacture and chain of supply to be determined. The benefits in investigations involving explosives manufactured outside of the UK will be correspondingly greater difficulty in obtaining information.

Detailed analysis of costs

Manufacturers and importers

The costs for a basic labelling and recording system for a single production line producing 1000 tonnes of explosive per year have been estimated by one manufacturer to be as follows:

One-off setup and capital costs (per line)

Label printer with software	£1.5K
3 hand held scanners	£7.5K
1 x PC	£0.5K

1 x Database	£15K
Total	£24.5K
Ongoing annual costs (per line)	
Consumables	£2K
Maintenance Contracts	£3K
Equipment replacement costs	£3K (replacement of hardware every 3 yrs)
Labour costs	£10K
Total	£19K

The labour costs are for the work involved in scanning product barcodes during the production and dispatch process, and in maintaining records and administering the information system. This is estimated at 5 person hours per day (ie approximately 1000 hours per year per line) Wage costs are estimated at £10 per hour.

Assuming that there are 3 operating lines in the UK each producing about 1000 tonnes of explosives, one-off costs to manufacturers are likely to be of the order of £75,000 in total. Operating costs are estimated as £57,000 per year in total.

Costs for end-users

There are approximately 2,200 quarries in the UK. Most of which will be using explosives for quarrying operations – although only a minority actually store explosives or use explosives regularly. We have estimated the additional record-keeping costs at averaging £5 per quarry per year ie a total of £11,000.

Total costs

Total costs are therefore estimated at £75,000 for one-off costs, and £68,000 per year for annually recurring costs. Discounted over a 30 year period this cost, inclusive of one-off and annually recurring costs, is £1,369,432 in present value terms.

Benefits

The aim of this directive is to uniquely identify commercial packaged explosive and other items such as detonators to assist in determining their place of manufacture and chain of supply. This is a measure intended by the EU to reduce the risk of a terrorist attack such as the Madrid bombings which involved the use of stolen commercial explosive. The measures could also assist in the investigation of both terrorist and non-terrorist criminal activities involving explosives.

Clearly the benefits to society of preventing even a single terrorist event would be substantial. However, the total benefit is extremely difficult to calculate because:

- there are relatively few such events, their effects vary so greatly and are so complex it is difficult to make assumptions about them;
- the effects of the Directive in reducing the frequency of such events are very indirect and therefore it is difficult to make assumptions about their impact.

There are already strict UK controls on the security of explosives and robust requirements on labelling and recordkeeping. It is therefore extremely difficult to attempt to quantify an additional benefit from tightening these controls still further.

The estimated value of a preventable fatality is £1.5 million (source: HSE Economic Appraisal Values). It is not possible to estimate the number of fatalities that may be prevented as a result of this proposal. However, to provide an indication of the potential value of benefits of this proposal, if the measures did result in avoiding a hypothetical explosion (or similar terrorist attack) saving two lives in year 30, the benefit in present value terms would be approximately £1.9m.

Competition assessment

Markets

The primary market affected by these proposals is the market for explosives for civil use.

Product market

The major secondary market is the market for blasting services to the mining and quarrying industry.

It is arguable that this market could be further divided into three sub-markets:

- bulk explosives;
- cartridge explosives; and
- detonators and primers.

According to figures published by the Office for Fair Trading, production and sales of packaged explosives have fallen from about 17,000 tonnes in 1992 to less than 4,000 tonnes today, as users switch to the use of bulk site-mixed explosives. Packaged explosives are estimated to account for 15% by volume and 30% by value of the civil explosives market.

The market for bulk explosives will be largely unaffected, and given that very few detonators and primers are now manufactured in the UK the impact in the UK will primarily affect the market for packaged explosives.

Geographic market

Of the three UK producers (Ulster Industrial Explosives, Exchem and Exxor – a joint venture between Exchem and Orica), one is based in Northern Ireland and the others in Great Britain at a site with two production lines. There is very little movement of explosives either between Northern Ireland and Great Britain or between continental Europe and the UK. It is not clear whether this lack of movement is due to the depressed prices for packaged explosives in the UK or to logistical and transport difficulties or a combination of the two.

Consumers

When it considered the proposal for the joint venture between Exchem and Orica, the OFT noted that the mining and quarrying sector is dominated by eight companies and that 'these are knowledgeable and sophisticated purchasers who may be able to exercise buyer power'. They are also potentially capable of manufacturing bulk explosives for themselves on-site, providing their own blasting services or purchasing explosives elsewhere in Europe for direct import.

Impact on competition

The Directive applies equally to all explosives manufacturers – although there will be an increase in the costs of producing packaged explosives as compared to bulk site-

mixed explosives. This is therefore likely to reinforce the trend towards users switching to these types of explosive. The Directive will not add substantially to the barriers to entering this market as doing so already necessitates substantial capital outlay.

This market is characterised by a very low-level of competition, apparently tempered by a high-level of buyer power. There does not appear to be any evidence that the Directive will reduce the level of competition still further.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	Yes	Yes
Sustainable Development	Yes	Yes
Carbon Assessment	Yes	Yes
Other Environment	Yes	Yes
Health Impact Assessment	Yes	Yes
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	Yes	Yes
Rural Proofing	Yes	Yes

Annexes

Small Firms Impact Test

See evidence base,

Competition Assessment

See evidence base.

Legal Aid

Not applicable – the Directive does not create new criminal sanctions or civil penalties

Sustainable development

The Directive has no implications for sustainable development.

Environmental Impact

The Directive will not:

1. **lead to a change in the emission of greenhouse gases;**
2. **be vulnerable to the predicted effects of climate change;**
3. **impact significantly on air quality;**
4. **involve a material change to the appearance of the landscape or townscape;**
5. **change either the degree of water pollution or levels of abstraction of water or exposure to flood risk;**
6. **disturb or enhance habitat or wildlife;**
7. **affect the number of people exposed to noise or the levels to which they are exposed.**

Health Impact Assessment

The Directive will have no significant impact on human health by virtue of its effects on the following wider determinants of health: income; crime; environment; transport; housing; education; employment; agriculture; or social cohesion

The Directive will have no significant impact on any of the following lifestyle related variables: physical activity; diet; smoking, drugs, or alcohol use; sexual behaviour; accidents and stress at home or work

The Directive will not impact on any of the variables that influence the probability of an individual becoming more or less healthy.

The Directive will not result in a significant demand on any of the following health and social care services: primary care; community services; hospital care; need for medicines; accident or emergency attendances; social services; a health protection and preparedness response; likely contacts with health and social service provision.

Race Equality Impact Assessment

The consequences of the Directive will not differ according to people's racial group, for example, because they have particular needs, experiences or priorities.

There is no reason to believe that people could be affected differently by the Directive, according to their racial group, for example in terms of access to a service, or the ability to take advantage of opportunities.

There is no evidence that any part of the Directive could discriminate unlawfully, directly or indirectly, against people from some racial groups.

There is no evidence that people from some racial groups may have different expectations of the Directive.

The Directive is unlikely to affect relations between certain racial groups, for example because it is seen as favouring a particular group or denying opportunities to another.

The Directive is not likely to damage relations between any particular racial group (or groups) and HSE.

The Directive is not relevant to the race equality duty.

Carbon assessment

The Directive has no significant impact on emissions of greenhouse gases

Disability Impact Assessment

This Directive has no impact on disability equality.

Gender Impact Assessment

The Directive will not affect men and women differently, or have any impact positive or negative on life chances or on gender stereotyping.

Human Rights

The Directive will not engage with anyone's convention rights.

Rural proofing

The Directive will not have any significant differential impact in rural areas.

NIO POLICY EQUALITY SCREENING FORM

Deliberately omitted

EU Directive
Deliberately omitted