



# **Review of explosives legislation: the role of local authorities**

This discussion document is issued by the Health and Safety Commission to encourage a debate about the role of local authorities in the operation of the Explosives Act 1875. Responses will help inform proposals for making new regulations under the Health and Safety at Work etc Act 1974.

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to reach him no later than Friday 18 February 2000

The Commission tries to make its consultation procedure as thorough and open as possible. Responses to this discussion document will be lodged in the Health and Safety Executive's Information Centres after the close of the discussion 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 discussion document are invited on the basis that anyone submitting them agrees to their being dealt with in this way. Responses, or parts 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.

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DISCUSSION  
DOCUMENT

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## SUMMARY

This document seeks views on four main issues concerned with the role of local authorities in the operation of the Explosives Act 1875.

The first set of issues concern the role of the local authority when it is asked to give assent to the grant of a licence by HSE for a factory or a magazine. The document seeks views on what role local authorities should have in scrutinising the safety measures required in licences, and whether the present procedures provide the best opportunity for them to fulfil this role. The document also seeks views on whether the assent process provides safeguards on non-safety issues which are not provided by planning legislation.

Secondly, the document seeks views on the nature of the local authority regime: whether it should continue as at present to be governed by fixed non-discretionary rules - with special cases being dealt with by HSE - or whether there is scope for local authorities to have greater discretion in setting the conditions for the licences they grant.

Thirdly the document asks whether the present system for registration of premises storing smaller quantities of explosives (mainly shops selling fireworks during the firework season) should be retained. It seeks views on whether the information needs of fire services might be better met through the licensing system or a registration system with a more restricted scope.

The fourth and final set of issues concern the allocation of enforcement responsibilities. The document seeks views on the following issues:

- whether there should be a rationalisation of the allocation of enforcement responsibilities between the different types of local authority in England - at present, depending on the area of the country, enforcement of the Explosives Act may be the responsibility of a unitary authority, of a county council, a London Borough or a Fire and Civil Defence Authority;
- whether the Health and Safety Commission should seek to direct the allocation of enforcement responsibilities between professional specialisms (eg to make Trading Standards Officers responsible for premises storing fireworks);
- whether the requirements of the Act on the security of explosives should be enforced by the police or - as at present by local authorities;
- whether HSE should have responsibility for enforcement of the Explosives Act at mines and quarries.

Comments on these issues should be sent to Ashley Salandy at the address on the front cover to reach him no later than Friday 18 February 2000.

# **Review of legislation on the manufacture and storage of explosives: the role of local authorities**

## **Introduction**

As part of its remit to modernise health and safety legislation, the Health and Safety Commission is to review the Explosives Act 1875 with the intention of recommending new regulations on the manufacture and storage of explosives. These new regulations will be the subject of a consultation document to be published next year.

Local Authorities have an important role in the operation of the Explosives Act. This document discusses a number of issues which have implications for the work of local authorities. HSC is publishing this discussion document in order to ensure that these issues are widely discussed and that the work of framing proposals for new regulations can be informed by a broad range of views and experience.

It is important to stress that this review has not been prompted by any concern over the way that local authorities currently carry out their role in the regime. The Explosives Act predates most health and safety and most planning legislation. This has given rise to differences between the Explosives Act and other regimes. These differences need to be considered as part of any review but that does not imply any prior judgement on their appropriateness or otherwise.

The Explosives Act applies to Great Britain and Northern Ireland. Any proposals brought forward by the HSC would apply to Great Britain only. It would be for the Northern Ireland Office to consider what replacement regulations should apply in Northern Ireland. However this does not prevent organisations and individuals in Northern Ireland submitting responses to this document should they wish to do so.

## **Background**

The Explosives Act covers the whole range of explosives from blasting explosives and ammunition to fireworks. It requires that explosives can only be manufactured in a factory licensed by HSE. It also contains requirements on the licensing or registration of explosives stores. The largest stores (known as magazines) require a licence from HSE. Depending on the quantity of explosive to be kept, smaller stores may either be licensed by the local authority or registered with it. In exceptional cases such stores may also be licensed by HSE.

Smaller quantities of explosive kept for 'private use' do not require a licence or registration (although an Explosives Certificate may be required). In addition an unlimited quantity of fireworks may be kept for up to 14 days for private use. It is important to note that 'private use' includes use for work purposes provided that it does not involve resale. These dispensations for private use are under review and any proposals will be included in the full consultation document which is expected to be published next year.

Licences contain a number of requirements - primarily concerned with safety (health issues are dealt with through other legislation such as the Control of Substances Hazardous to Health Regulations). Among other things, licences set down the distances which must be maintained between buildings where explosives are stored or manufactured and buildings and roads outside. These distances are derived from the quantity and type of explosive.

The Explosives Act covers security as well as safety. Occupiers of places where explosives are kept must take due precautions to safeguard the security of the explosives and to prevent unauthorised entry. HSE and local authorities are responsible for the enforcement of these requirements. In this regard it should also be noted Section 1(1)(c) of the Health and Safety at work Act also covers “controlling the keeping and use of explosive substances... and generally preventing the unlawful acquisition, possession and use of such substances”.

At the same time the acquisition and keeping of explosives is also controlled under the Control of Explosives Regulations 1991. These include requirements to hold an Explosives Certificate in order to acquire or keep ‘controlled’ explosives, as well as requirements on record-keeping.

## **Issues**

This document has four sections which discuss four main issues:

- Section 1: the role of the local authority in the process when HSE proposes to grant a licence (‘the assent process’);
- Section 2: the role of the local authorities in the licensing of smaller stores and the relationship between HSE and the local authority in this area;
- Section 3: the purpose and effectiveness of the registration system;
- Section 4: the allocation of licensing and enforcement responsibilities.

## **Section 1: The role of local authorities in the grant of a factory or magazine licence**

### **Summary**

This section discusses the role of the local authority when it is asked to give assent to the grant of a licence by HSE for a factory or a magazine. The document seeks views on what role local authorities should have in scrutinising the safety measures required in licences, and whether the present procedures provide the best opportunity for them to fulfil this role. The document also seeks views on whether the assent process provides safeguards on non-safety issues which are not provided by planning legislation.

1 Anyone wanting to establish an explosives factory or magazine (a store which is normally for more than 1800 kg of explosive or 7200 kg of fireworks) must apply for a licence to HSE. HSE will agree a draft licence with the applicant which will specify the separation distances and other conditions which HSE deems necessary. Once HSE is satisfied that the draft licence meets its requirements it gives permission for the applicant to submit the draft licence to the local authority for its assent (depending on the area this may be either the county council or unitary authority, London Borough, or fire and civil defence authority). The local authority then holds a hearing at which those who have lodged objections may be heard. The local authority may:

- grant assent without conditions;
- grant assent with conditions requiring further restrictions;
- refuse assent.

The local authority may adjourn the hearing to a later date to allow time for it to seek further information to consult with HSE.

2 Once the local authority has given its assent HSE grants the licence.

3 There are about four or five licence applications each year to which the assent process applies.

4 The Explosives Act predates planning legislation, and as written, the assent process could be taken to cover both safety and non-safety issues. These issues which need to be considered include the following:

- on safety issues:
  - What role should local authorities have in scrutinising the safety requirements included in the licence?
  - Would it be helpful if the formal local authority input into the process took place earlier in the process to allow it to draw local issues to HSE's concern before the licence is drafted?

- on non-safety issues
  - Does the assent process offer safeguards on non-safety issues not offered by planning legislation?
  - Does there need to be any formal and explicit interface between the planning and assent processes?

### *Safety issues*

5 The applicant for a licence submits the draft licence agreed by HSE to the local authority. It has been suggested to HSE that, given that the local authority does not have specialist expertise in the area, it is very difficult for it to reasonably dispute or query HSE's conclusions as embodied in the draft licence. It is therefore very unclear what the local authority is expected to do.

6 If this uncertainty is widely felt among local authorities then there is a danger that the assent process could simply become a procedural formality.

7 The assent process provides an opportunity for scrutiny of the draft licence and for the local authority to raise any local circumstances which should be taken into account in the drafting of the licence.

8 Views are invited as to whether:

- local authority assent should remain as a part of the licensing process;
- the assent process should provide an opportunity for the scrutiny of the safety measures required in licence conditions;
- the assent process as currently constituted enables local authorities to properly scrutinise these measures, and if not how its functioning might be improved.

9 Two ways in which the effectiveness of the assent process might be increased are:

- *an explicit statement of the role of local authorities in the process.* A statement of the role of the local authority in the assent process could be set out in the guidance to any new regulations. Views are invited on whether this would be of benefit;
- *earlier involvement by the local authority in the process.* Under the current process the local authority's views are sought at a comparatively late stage. Views would be welcome on whether earlier involvement by local authorities would help in bringing local circumstances to HSE's attention.

10 As well as ensuring that the consultation is meaningful, it will be important to ensure that the new arrangements do not create undue delay or lead to undue costs being incurred.

## *Non-safety issues*

11 Views would be welcome on whether the assent process adds any safeguards on non-safety issues to the controls provided by planning legislation. Policy on planning issues is a matter for the Secretary of State for the Environment, the National Assembly for Wales and the Scottish Executive and HSC would not wish to inadvertently remove controls if these were felt to have a role in the planning regime which should be retained.

### ***Questions for consultation***

*Views would be welcome on all of the issues raised by the preceding discussion. Evidence would be especially welcome from local authorities which have direct experience of the operation of the assent process.*

*Particular questions on which respondents may wish to comment are as follows:*

- Should the assent process be retained as a mechanism for scrutiny of the safety requirements contained in licences?*
- Would an explicit statement on the role of local authorities in the assent process be beneficial?*
- Would it be helpful if the formal local authority input into the process took place earlier in the process to allow it to draw local issues to HSE's concern before the licence is drafted?*
- Does the assent process add any safeguards on non-safety issues to the controls provided by planning legislation?*

## Section 2: The local authority licensing regime

### Summary

This section seeks views on the nature of the local authority regime: whether it should continue as at present to be governed by fixed non-discretionary rules - with special cases being dealt with by HSE - or whether there is scope for local authorities to have greater discretion in setting the conditions for the licences they grant.

12 Under the Explosives Act the local authority must automatically grant a licence for a store provided that the siting of the store, its construction, and the amounts of explosive to be stored in it are in accordance with rules set out in Orders-in-Council.

13 As with much early prescriptive legislation, what started out as a simple set of rules has become progressively more fragmented and complex as successive statutory orders were brought forward to cope with technical change (mainly the development of new explosives) as well as varying circumstances.

14 The regime as presently constituted seeks to cover very different circumstances and risks with a single set of rules. The rules do not take account of any safety measures taken to reduce risks or to mitigate the consequences of a fire or explosion. However, there is some flexibility in the system in that applicants can, as an alternative, apply to HSE for a licence (while the Explosives Act specifies the upper thresholds for local authority licences, it does not specify a lower level for HSE licences). HSE has the discretion to take account of matters such as safety measures (eg venting or mounding) when setting separation distances. Local authority assent would be required before any licence could be granted.

15 Any review of the local authority licensing regime needs to consider whether the system of fixed rules, under which the local authority has no discretion and the HSE deals with all 'special cases', should continue in its present form or whether local authorities should have greater discretion to vary conditions to reflect the level of risk and the safety measures adopted in particular cases.

16 There are valid arguments for retaining the fixed rules approach in that

- it gives greater certainty to industry and reduces the scope for inconsistency as well as reducing enforcement and administration costs;
- it does not require specialist explosives expertise to interpret and enforce. Enforcing authorities are under a duty to ensure that their staff are competent. Greater discretion would place greater demands on local authority staff, with a consequent continuing training need. This would be further exacerbated by the fact that an individual local authority would deal with very few applications, thus making it harder for staff to gain experience or maintain expertise.



17 On the other hand:

- by attempting to cover all circumstances fixed rules are likely to be based on worst-case, or at least conservative assumptions, this could result in higher than necessary costs where risks are lower;
- in attempting to provide for different circumstances fixed rules may become increasingly complex leading to greater inconsistency and undermining the rationale for their use;
- fixed rules may encourage a culture of compliance with the letter of the law rather than its spirit.

18 There appear to be two main options:

- i. to adopt a goal-setting approach allowing local authorities greater discretion to take account of risk and safety measures in carrying out their licensing functions. This would obviously require additional guidance which would need to be carefully written;
- ii. to retain the existing fixed rules approach - simplified and modernised as necessary.

19 Retaining the fixed rules approach would in turn require consideration of the appropriate mechanism for dealing with special cases. At the present moment, an application would be made direct to HSE. The draft licence agreed by HSE would in turn be submitted to the local authority. At first sight the ability to apply direct to HSE might be seen as a means of bypassing the local authority. Views would be welcome whether this indeed a concern - or whether the present system (modified as necessary in line with the changes suggested earlier) provides sufficient safeguards.

20 A further related issue is that the Explosives Act does not provide the power for the local authority to refuse to grant a licence, or to revoke or modify a licence once it has been granted. Regulation 16 of the Control of Explosives Regulations 1991 gives HSE such power to revoke or modify a licence it has granted. The lack of a power to revoke a licence appears to be an anomaly which needs to be corrected. The question of whether there should be a power to modify the licence will depend on the answer to the question on whether local authorities should have greater discretion in setting licence conditions - the power to modify a licence would be pointless without such discretion. In exercising any power to revoke or modify, local authorities would be subject to the same conditions as HSE (these would themselves be part of the review of explosives legislation).

## **Questions for consultation**

*Questions on which respondents may wish to comment include:*

- *Should the present fixed rules approach be maintained in its present form? Should local authorities have greater discretion, within the framework of HSC guidance, to take account of risk and safety measures in setting safety distances?*
- *If a fixed rules approach is maintained what should be the mechanism for dealing with special cases to HSE?*
- *Should local authorities have the right to refuse to grant a licence, or to modify or revoke a licence - subject to the same conditions as HSE?*

### Section 3: The registration system

#### Summary

This section asks whether the present system for registration of premises storing smaller quantities of explosives (mainly shops selling fireworks during the firework season) should be retained. It seeks views on whether the information needs of fire services might be better met through the licensing system or a registration system with a more restricted scope.

21 In addition to the categories of HSE and local-authority licensed premises, there is a third category of premises which are required simply to register with the local authority each year. There are an estimated 25,000 registered premises of which the large majority are shops selling fireworks during the firework season. Each pays £11.20 per year.

22 The registration requirement covers a wide spectrum of premises ranging from shops selling fireworks during the firework season to places storing much larger quantities of fireworks - these may hold as much as 1 tonne of certain types of fireworks or 100kg of gunpowder with 250 kg of ammunition or 30kg of other explosive together with 250 kg of ammunition.

23 The problem with this approach is that the registration requirement is arguably unnecessary for many of the premises to which it currently applies while offering inadequate control over the smaller proportion (estimated at 5 five per cent) which present the greatest hazard. It might be a more effective to take some of the current registered premises into the local-authority licensing regime and to take some or all of those storing the smallest quantities out of the registration system. This would allow a better use of resources by focusing enforcement and regulatory effort on the small proportion of registered premises keeping larger quantities of fireworks or other explosive, or keeping the more powerful explosives.

24 It is important to stress that the safety requirements of the new regulations would apply to all premises storing explosives whether or not they were registered.

25 Views would be welcome on the general principle of this approach. The issue of how the levels for the new thresholds might be set will be considered in the consultative document which it is planned to publish next year. However, submissions on this issue would also be welcome.

26 If the most hazardous premises were taken into the licensing system this would then leave the issue of the treatment of the remaining premises, this in turn depends on the view taken of the purpose of the registration requirement.

27 There is a very valid argument that the addresses of premises where explosives are being stored should be made available to fire services so that firefighters would know whether explosives might be stored at a particular address This information would also assist fire services in making appropriate firefighting arrangements

take into account the safety of firefighters and the public. It should also be borne in mind that the Chemical Agents Directive will require that the emergency services should be notified in advance when significant amounts of hazardous chemicals are being used or stored. However, there are two points to make. First, it is not clear that this information is in practice being passed on to fire services. Second and more importantly, the fact that registration system draws such a wide variety of premises into its net may substantially reduce the usefulness of the information it provides. An estimated 90 percent of the 25,000 registered premises are shops stocking fireworks during the firework season. It is not clear that information on these premises is of interest to fire services.

28 A more selective approach which focused on the premises which presented the greatest hazard might give more useful information. If the threshold for the licensing requirement were set at the appropriate level, a list of licensed premises might best meet fire services' information needs, making registration of other premises unnecessary. Alternatively the scope of the registration system might be limited to certain types of premises and/or quantities of explosive. Clearly, the views and experience of the fire services themselves will be essential in deciding the way forward.

29 It has also been suggested that the registration system is needed as a source of information to aid the enforcement of the safety requirements of the Act. Clearly a list of premises storing fireworks makes it easier for local authority staff to identify those premises they need to visit. However, it is not clear that registration is a necessary aid to this enforcement work (other health and safety legislation is enforced without the need for registration schemes) or that it is the most cost-effective way to gather intelligence for enforcement work. In any event the list of registered premises will not include all those premises storing fireworks - others will have either deliberately or inadvertently failed to register - additional sources of information will therefore be needed.

30 Views would therefore be welcome on two main questions:

- Is there a need to maintain a registration requirement as a means of providing information to fire services on the addresses of premises storing explosives or could this information need be met through the licensing system?
- If there is a need to maintain such a requirement does it need to extend to all of the present registered premises?

31 It has been suggested that while there is no direct safety justification for the registration requirement it is required to assist enforcement of controls on the sale of fireworks (ie concerning the types of fireworks which may be sold to the general public, restrictions on sale to under-18s etc). Views would be welcome on whether this is the case.

32 If the decision were taken to retain registration in some form consideration would need to be given to ways of reducing administrative and other costs. One possibility

might be to extend the registration period from the present one year to two or more years (probably with some increase in the registration fee). Consideration would also need to be given to guidance on the sharing of the information gathered.

33 There appear to be three main options for those premises where the hazard is not sufficient to justify licensing:

- iii. removal of the registration requirement combined with changing the threshold for licensing to ensure that the licensing system covered the right range of premises;
- iv. applying a registration/advance notification requirement to a smaller group of premises than is presently the case;
- v. a registration/advance notification requirement with the same present scope as the present registration requirement.

34 It should also be borne in mind that an unlimited quantity of fireworks may be kept for up to 14 days for 'private use' without the need for a licence or registration provided that the fireworks are kept in a safe and suitable place with all due precautions for public safety. 'Private use' may include storing by firms for commercial purposes (other than for sale), as well as, for example, storage by schools and voluntary organisations. This derogation will need to be considered as part of the wider review of the Explosives Act.

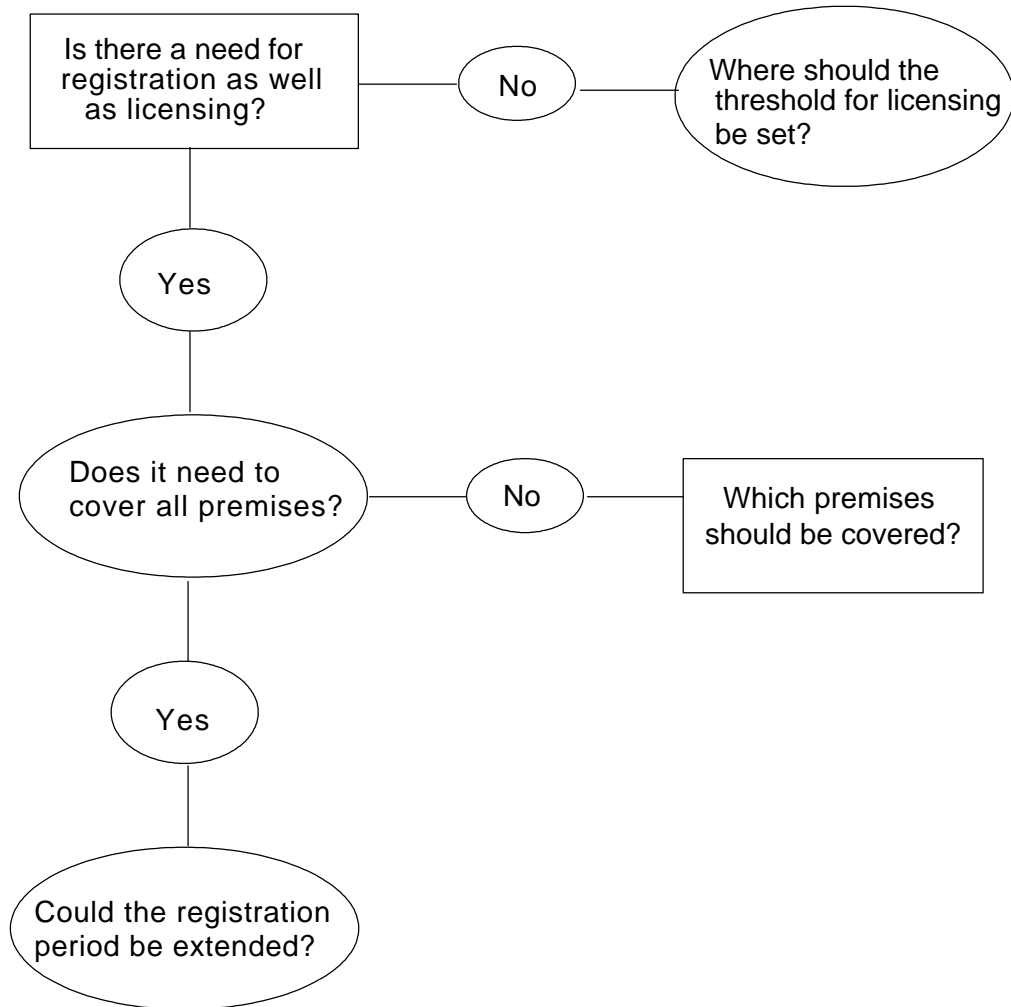
#### **Questions for consultation**

*Issues on which respondents may wish to comment include the following:*

- *Should the more hazardous premises currently covered by registration be subject to licensing rather than registration?*
- *Should the registration requirement be abolished?*
- *Should the scope of the registration/notification system be narrowed to so that it applies to a proportion of the premises currently covered? If so what types of premises should be covered?*
- *Should a registration/notification system be retained with the present scope?*
- *If registration is retained should the registration period be extended?*

*(These issues are set out in diagrammatic form at Decision Tree 1).*

# DECISION TREE 1



## Section 4: Licensing and enforcement responsibilities

This section discusses the allocation of enforcement responsibilities and seeks views on the following issues:

- whether there should be a rationalisation of the allocation of enforcement responsibilities between the different types of local authority in England - at present, depending on the area of the country enforcement of the Explosives Act may be the responsibility of a unitary authority, of a county council, a London Borough or a Fire and Civil Defence Authority);
- whether the Health and Safety Commission should seek to direct the allocation of enforcement responsibilities between professional specialisms (eg to make Trading Standards Officers responsible for premises storing fireworks);
- whether the requirements of the Act on the security of explosives should be enforced by the police or - as at present by local authorities;
- whether HSE should have responsibility for enforcement of the Explosives Act at mines and quarries.

35 There are four issues under this heading:

- the allocation of responsibilities between the different tiers of local government;
- the allocation of enforcement responsibilities between different professional specialisms;
- the allocation, between the police and local authorities, of responsibility for enforcement of requirements on the security of explosives;
- the responsibilities of HSE, local authorities and the police in relation to explosives stored at mines and quarries.

### Allocation between tiers of local government

36 Table 1 shows how responsibility for enforcing explosives legislation and other related legislation such as health and safety at work, fire safety and consumer safety is allocated between local authorities in Great Britain. In Scotland and Wales all responsibilities are carried out by unitary authorities. However in England a patchwork of arrangements have grown up for historical reasons (see Annex 1). In England, the Explosive Act is enforced, depending on the area by:

- County Councils;
- London Boroughs;
- unitary councils;
- Fire and Civil Defence Authorities.

**Table 1: division of responsibilities between tiers of local government**

	Unitary authority (Scotland)	Unitary authority (Wales)	Unitary authority (England)	Fire and Civil Defence Authority	London Borough	County council
Explosives safety	yes (but delegated to the police)	yes (but may be delegated to the police)	yes (but may be delegated to the police or to the Combined Fire Authority)	yes	yes	yes (but may be delegated to the Combined Fire Authority)
Health and safety at work	yes	yes	yes	no (metropolitan county)	yes	no (district council)
Consumer safety	yes	yes	yes	no	yes	yes (except for areas covered by a unitary authority)
Fire safety	yes	yes	yes (except where there is a CFA)	yes	no (London Fire and Civil Defence Authority)	yes
Emergency planning	yes	yes	yes (except where there is a CFA)	yes	no (London Fire and Civil Defence Authority)	yes

37 These arrangements mean that:

- in the majority of areas, enforcement of requirements on explosives safety are carried out by trading standards officers alongside their responsibilities for consumer legislation;
- in a substantial minority of areas they are carried out by fire service personnel alongside their fire safety responsibilities;
- in a small number of cases they are carried out by Environmental Health Officers alongside the enforcement of health and safety at work legislation, or by the police alongside the enforcement of security requirements.

38 These differing allocations of enforcement responsibilities as between professional specialisms reflect the different enforcement responsibilities of the various types of local authority (see table above) as well as different local decisions on the most sensible ways of combining responsibilities in order to make best use of resources and expertise.

39 There have been suggestions that HSC should seek to determine enforcement responsibilities centrally in order to achieve a consistent enforcement allocation across the country: for example it has been suggested that Trading Standards departments should be responsible for all fireworks stores and the police for all explosives stores.

40 The role of the police is considered in the next section together with the question of allocation of responsibilities for the enforcement of security requirements.

41 HSC's view is that it is for local authorities to decide in the light of local circumstances on the allocation of enforcement responsibilities among their staff. It would only be appropriate for HSC to seek to direct these decisions if there were strong reasons for doing so, for example if there were evidence of major inconsistency in enforcement practice which could not be addressed in any other way. Views would be welcome on whether there are any problems of inconsistency in enforcement practice which can be attributed to differing allocations of enforcement responsibility.

42 Three further questions would also need to be considered:

- Would there be any health and safety benefit from a reallocation of responsibilities (either between local authorities or professional specialisms)?
- If yes, would that benefit outweigh the disruption and costs involved in a reallocation?
- Could similar benefits be achieved with less cost through the dissemination of good practice?

**Questions for consultation**

- *Would a reallocation of enforcement responsibilities for explosives legislation among local authorities be justified by the health and safety benefits?*
- *Is there a significant problem of inconsistency of enforcement practice which may be attributed to differing allocations or enforcement responsibilities among the professional specialisms within local authorities?*
- *Should HSC issue any central direction on the allocation of enforcement responsibilities among professional specialisms? If so what should it be?*

*Evidence would be welcome both on any problems arising out of the existing arrangements and examples of good practice in information-sharing and cooperation at local level.*

## **Safety and security of controlled explosives**

43 The Explosives Act 1875 requires occupiers of factories, magazines and stores to take 'all due precaution (sic) to prevent unauthorised persons having access to explosives'. Where explosives that might be attractive to terrorists are kept the Explosives Act requirements translate into measures such as installing a monitored alarm system, security locks etc. At the same time the Control of Explosives Regulations 1991 require anyone acquiring or keeping controlled explosives to have an Explosives Certificate issued by the police. In considering whether to grant an explosives certificate the police are concerned not only with whether the applicant is a fit person with good reason to acquire explosives, but also with whether the he or she has a suitable place to keep them. In addition to these requirements, there are requirements on record keeping, and the reporting of any loss.

44 The requirements of the Explosives Act on security are enforced, depending on the type of premises, by HSE or by local authorities (although as noted above in some areas, notably in Scotland, the local authority has delegated responsibility for licensing and enforcement to the police).

45 HSE has been told that this division of responsibilities can lead to operational difficulties in enforcement. For example, if a Trading Standards Officer inspecting a store has concerns about the alarm system this may necessitate a further visit to the premises accompanied by a police officer with the necessary expertise. Similarly, because they generally do not have enforcement powers under the Explosives Act, if a police officer has concerns about an alarm system it may be necessary for them to make a second visit accompanied by a local authority inspector who is able to issue an improvement or prohibition notice under the Health and Safety at Work Act. In some areas it is now general practice for police and local authority inspectors to make joint visits. The present division of enforcement responsibilities does not appear to represent an effective use of resources or expertise. Views are invited on this point.

46 There are three main options:

- i. to make the police the lead enforcement agency on all security issues at local-authority licensed stores holding controlled explosives. This could be done by amending the Control of Explosives Regulations;
- ii. to make the police the enforcing authority for both security and health and safety requirements all stores and (registered premises) holding controlled explosives.
- iii. to retain the existing division of labour.

47 The first option would align enforcement responsibilities with expertise and would provide the police with the necessary enforcement powers under the Health and Safety at Work Act. It would end the present fragmented situation in which the police have enforcement powers in relation to some, but not all, security issues. However, it should be noted that this proposal would still involve both the police and local authorities having enforcement responsibilities in relation to stores where controlled explosives are kept.

48 The second option would go a step further in seeking to combine the roles of the police and the local authority. Given that many explosives sites are in remote areas the potential cost savings in dealing with both sets of issues in one enforcement visit are significant. However, the question would need to be addressed as to whether it would be appropriate in principle for the police to be involved in the enforcement of explosives safety requirements in the workplace. It must also be recognised that there would be costs involved in training police officers for this role. The views of the Association of Police Authorities and of the Associations of Chief Police Officers will be particularly relevant in considering the options on this issue.

49 This second option is permitted by the present framework and is the general practice in Scotland. Given that this option is already permitted by the existing framework there would need to be good reason for HSC to go further and centrally direct how this work should be organised. Views are welcome on whether there are grounds for HSC taking such a step. Again it must be stressed that HSC would not wish to impose a way of working which did not have broad support among local authorities.

50 There is a similar division of labour between the police and HSE at HSE-licensed sites which raises similar issues. Given that this discussion document concerns the local authorities' role in the system the options considered here only concern the division of responsibilities between the police and local authority officials. The relationship between HSE and the police will need to be considered as part of the full consultation document to be published next year.

**Questions for consultation**

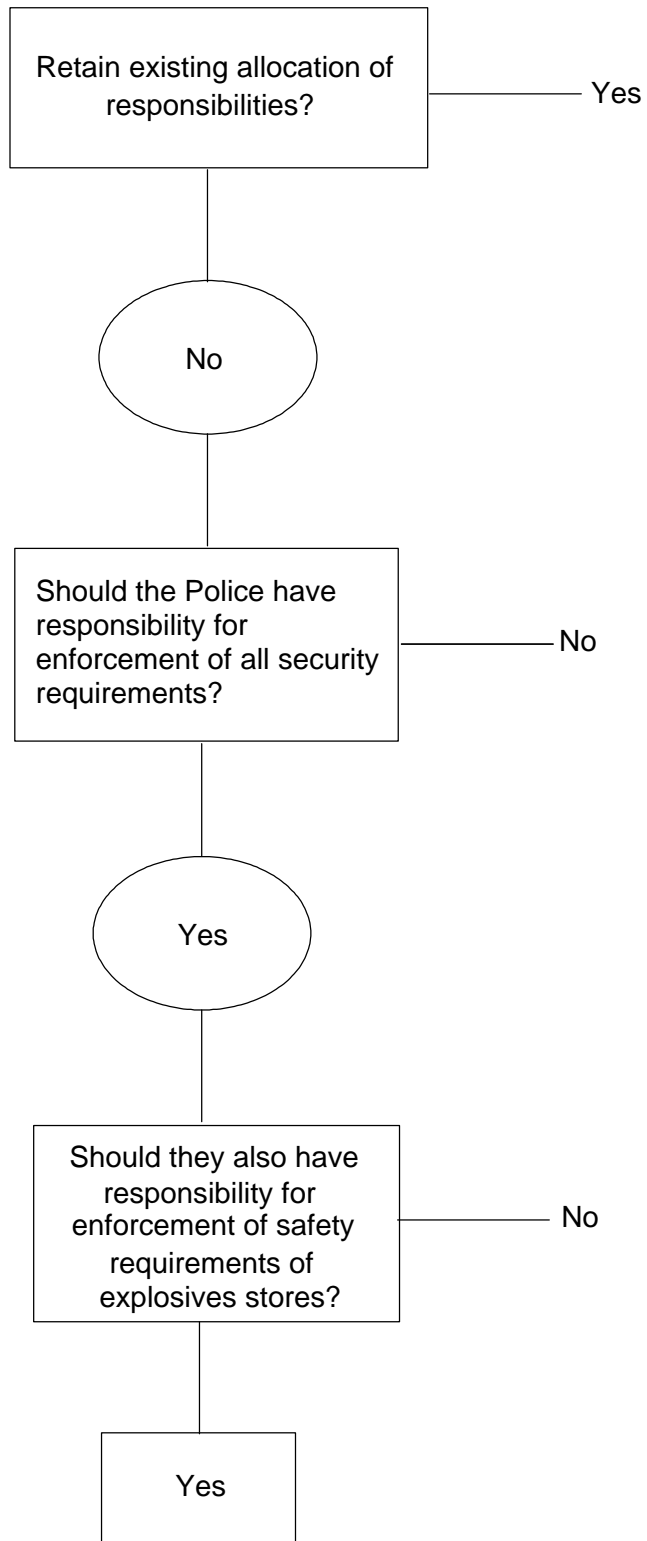
*Should the present allocation of responsibility for the enforcement of requirements on the security of explosives be retained?*

*Do you believe that the police should have lead enforcement responsibilities for requirements on the secure storage of explosives at local-authority licensed stores?*

*Should the police have responsibility for enforcing requirements on safety as well as security at stores where controlled explosives are kept?*

*(These issues are set out in diagrammatic form at Decision Tree 2).*

## DECISION TREE 2



## Mines and quarries

51 Explosives stores at quarries and mines may be either licensed by the local authority or registered with it. At the same time the police will issue an explosives certificate (which in turn requires a visit to inspect the premises). HSE has enforcement responsibilities for transport of explosives into and around the site, for their packaging and labeling, and for their use. This means that these premises may be subject to inspection by three enforcement agencies. On the face of it there is some scope for rationalisation.

52 Given that HSE is also responsible for the enforcement of safety requirements on the transportation and use of explosives at quarries and mines it would appear to be sensible that it should also have responsibility for licensing stores and for enforcing requirements on safe storage of explosives at these sites.

### Questions for consultation

*Should HSE be responsible for the enforcement of requirements on safe storage of explosives at mines and quarries and for any related licensing?*

## Resource implications

53 The fee for a local authority licence is £65-50 per year. These charges, in principle, reflect the full costs to the local authority of issuing a licence and of associated inspection work. The proposals set out above have some potential cost implications for business:

- a lowering of the threshold for licensing would result in greater costs for those businesses which had previously only been subject to a requirement to register;
- greater discretion could result in greater costs for the local authority which would need to be reflected in licence fees. For some of those affected this would be offset by cost savings resulting from greater ability to take account of lower risks and/or safety measures. However, by the same token there might in some cases be greater costs for those which presented a greater risk requiring more stringent measures;
- a reduction in the number of businesses subject to a requirement to register and/or an increase in the registration requirement would result in lower costs to those businesses.

54 Bearing in mind that the police already have responsibilities in relation to the security of explosives which would normally require inspection visits, the additional enforcement effort entailed by the proposals for the transfer of responsibilities from local authorities would be likely to be limited. HSE has been in discussion for some time with the police and Home Office over the possibility of charges for Explosives Certificates. The introduction of such charges would result in greater costs to

industry (although this would be in line with the 'polluter pays' principle that those who undertake a set of activities should bear the costs which arise from them). The introduction of charges for Explosives Certificates would mean that the police should be able to recoup any additional costs that arise. Where police are responsible for Explosives Act licences as well as issuing explosives certificates the combined fee would reflect the substantial cost savings from undertaking the two inspection visits at the same time.

## **Annex 1**

### **Local Authorities and the Explosives Act 1875**

The Local Government Act 1972 created a system of “upper” and “lower” tier local authorities (ie county and district councils respectively). The Act amended Section 67 of the Explosives Act to make the upper-tier authority the relevant authority for the purposes of the Act.

Further changes were introduced by the Local Government Act 1985. Among other things this set up Combined Fire and Civil Defence Authorities in certain metropolitan areas (Greater Manchester, Merseyside, South Yorkshire, Tyne and Wear, West Midlands and West Yorkshire). These authorities were given responsibility for enforcement of the Explosives Act.

Following a review by the Local Government Commission in 1992, the present structure was adopted. In Scotland there are 32 unitary councils and 22 unitary councils in Wales. In some areas of England the county council was abolished and replaced by unitary councils, in other areas a unitary council was created in part of the county area while the two-tier system was retained in the remainder.

Where new unitary authorities were created, most of the functions and responsibilities formerly held by the County Council, including enforcement of the Explosives Act, were transferred to the unitary authority.

In some areas where unitary authorities were created combined fire authorities were set up to provide fire services for more than one council. Some unitary councils have appointed officers of the combined fire authority to carry out inspection and licensing duties under the Explosives Act on the council’s behalf. However, for the purpose of the Explosives Act the unitary council remains the enforcing authority.

In summary, responsibility for enforcing the Explosives Act lies with:

- the unitary authority in Scotland;
- the unitary authority in Wales;
- the combined fire and civil defence authority in Greater Manchester, Merseyside, South Yorkshire, Tyne and Wear, West Midlands and West Yorkshire;
- the unitary authority areas where new unitary councils have been set up;
- London Boroughs in London; and
- County Councils in the remaining areas.

## Annex 2

### Questionnaire

We are interested to know what readers think about the quality of our discussion and consultation documents. We should welcome your answers to the following questions.

In your view how well does this discussion document represent the different policy issues involved in this matter?

- Very well
- Well
- Not well
- Poorly

Is there anything you particularly liked or disliked about this consultation exercise?  
(please add extra sheets if you wish)

## Responses to this discussion document and further information

### **Responses to this document**

We will acknowledge all responses to this Discussion Document 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.

If you reply to this 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 these 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.

### **Further information**

If you would like to be kept informed by e-mail about further developments in this subject such as the posting of papers on the Health and Safety Commission and HSE web sites or the publication of the planned consultative document please send an e-mail to: *explosives.policy.spda@hse.gov.uk*.







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# DISCUSSION DOCUMENT

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The full text of this and other Discussion Documents can be viewed  
and downloaded from the Health and Safety Executive web site on the internet:

**[www.open.gov.uk/hse/disdocs/](http://www.open.gov.uk/hse/disdocs/)**

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