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HEALTH AND SAFETY COMMISSION

New Regulations on the Manufacture and Storage of Explosives

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Issue

1. The Commission's agreement to putting draft Regulations and an ACoP to our Minister for making and laying before Parliament. The proposals have been endorsed by the Advisory Committee on Dangerous Substances and are therefore submitted 'below the line'.
2. The documents attached are: the draft regulations (Annex A), draft ACoP¹ and guidance to the regulations (Annex B), a revised Regulatory Impact Assessment and Competition Assessment (Annex C), a draft letter to send to Ministers (Annex D).

Timing

3. We wish to have the Regulations laid before Parliament early in 2004 in order to allow sufficient time for training before coming into force in May 2004.

Recommendation

4. That the Commission endorse the proposed Regulations and ACoP and agree to their submission to our Minister under cover of the letter at Annex D.

Background

5. A consultation document on these proposals was published in 2002 having been preceded by a Discussion Document in 2001.
6. Explosives legislation covers a wide range of products ranging from blasting explosives and munitions to fireworks, car airbags, and party poppers.
7. The Explosives Act 1875 is one of the few major pre-Health and Safety at Work Act pieces of legislation that is still in force. While the Act itself has stood the test of time well there have been significant changes in the industry and in the wider economy that have been addressed in this review, for example:
 - the shift from factory-based production to on-site mixing;
 - the growing numbers of supermarkets and DIY 'superstores';
 - the growth of leisure and entertainment uses of explosives (firework displays, re-enactment events, and cinema special effects).

¹ Please note that due to production deadlines the text of the regulations in the draft ACoP does not include a few very recent amendments to the regulations.

8. **The new regulations replace not only most of the Explosives Act but also 48 items of secondary legislation. The major benefit from the new legislation will be in reducing the complexity of the legislation.** This work forms part of HSC/E's contribution to the government's 'better regulation' effort as well as to meet the obligations under section 1(2) of HSWA to progressively replace pre-1974 legislation.

Fireworks

9. HSE is responsible for regulation of the safety of storage of the manufacture and storage of fireworks and the safety of firework displays, while the DTI are responsible for legislation on consumer product safety and on the supply of fireworks to the general public. There is an important relationship between the two regulatory regimes and in many areas of the country both sets of legislation are enforced by trading standards officers.

10. The Fireworks Act became law recently. This provides enabling powers to make regulations on the control of the supply of fireworks and other related issues. It seems very likely that the DTI will propose the introduction of a licensing system for the sale of fireworks. This would have implications for the regime for the regulation of storage (especially shops selling fireworks). However DTI have not yet formulated their policy on this, and would then need to go through a formal consultation. New regulations are probably at least a year away. We have therefore decided that we should not further delay the making of these regulations – clearly it will be important to consider with DTI any issues arising from any proposals for new legislation. If necessary their proposals would include provisions for consequential amendments.

Argument

Key features of the proposals

11. The proposed new Regulations will replace the Explosives Act and 48 items of secondary legislation. The approach taken in the proposals will retain the fundamental features of the existing framework. These are:

- a licensing system for the manufacture and storage of explosives administered by HSE and local licensing authorities;
- HSE is responsible for licensing manufacturing activity and larger stores while local authorities will either license or register stores holding smaller quantities of explosives;
- HSE licences will be site-specific depending on the nature of the activities. They are generally subject to local authority assent. There is a simplified licensing system for smaller stores.

12. While retaining the fundamental features of the existing system, the proposals will introduce a number of changes. These include the following:

- the new regulations adopt a goal-setting approach. The principal regulation is regulation 4 requiring dutyholders to prevent fires and explosions, to prevent them spreading, and to protect people in the event of an explosion. This duty is backed up by guidance and approved code;
- the new regulations will apply to the Crown. The major organisation affected by this change is MoD. MoD have supported the proposal to extend the Regulations to cover their activities. The proposals make provision to enable MOD to maintain its own licence system and system of separation distances – subject ultimately to regulation by HSE;

- the regulations will apply to the manufacture and storage of ammonium nitrate blasting intermediates – these are used in the on-site manufacture of explosives;
- the system of separation distances around explosives sites has been reviewed to take into account new knowledge and to base the distances on an explicit risk criterion;
- licensing authorities will have the power to refuse, revoke or modify licences in certain circumstances;
- the regulations will introduce a new duty prohibiting supply of fireworks to anyone unable to produce proof that they do have a licensed or registered store available. Given the widespread concern over fireworks being sold by ‘white van traders’, it is difficult to defend the current position where anyone (with or without a white van) can obtain any quantity of fireworks with no questions asked;
- enforcement responsibilities are to be rationalised so that the police will enforce both safety and security requirements at certain stores holding high explosives. This proposal, which is supported by both the local authority associations as well as the Home Office and the Associations of Chief Police Officers, would have undoubted efficiency benefits, especially at more remote stores where inspections involve considerable travelling. Local authority staff would then concentrate on inspection of premises holding fireworks - numerically these make up the overwhelming majority of licensed stores and registered premises;
- the requirements on the keeping of registers and disclosure of information to the public have been reviewed with the aim of finding a reasonable balance between ensuring that the public has a right to information about potential hazards while not prejudicing security and increasing vulnerability to attack;
- the limits on the amount of fireworks which can be kept without a licence or registration will be tightened. At present an unlimited quantity of fireworks may be kept for up to 14 days. There is concern over the potential for abuse. These concerns have been addressed, while at the same time the limit has been set so that members of the public and voluntary organisations holding small firework displays will not have to register with the local authority.

Issues raised in the consultation

13. There was virtual unanimous support for the retention of the fundamental features of the existing framework. However, a number of aspects of the proposals attracted further comment. These are discussed in further detail in the following paragraphs.

Application to MoD

14. MoD were concerned that the provision giving powers for the Secretary of State for Defence to make exemptions in certain circumstances on grounds of national security should be extended to cover civilian MoD personnel on the grounds that the many of the personnel involved in explosives logistics were now civilian MoD staff. This change has been agreed.

Separation distances around explosives buildings

15. This was the aspect of the proposal that attracted the most comment and interest because of its potential impact on people storing and using explosives. A number of detailed changes have been made to mitigate the impact on certain types of store and in particular to ensure that the regulations did not have a perverse effect by increasing the number of transport movements of explosives on the roads (and therefore potentially having an overall negative impact on public safety).

Revocation and refusal of licences

16. This proposal was supported. However, while accepting the principle of the proposal, industry had concerns about the operation of this provision. In the light of these concerns, the 'due process' requirements of the regulations have been strengthened.

Fireworks

17. One of the more controversial areas of the proposals has been the storage and display of fireworks in shops and other retail premises. Traditionally fireworks have been sold through 'corner shops' however an increasing proportion are being sold through supermarkets and similar premises. The present law restricts the amount that can be kept in the public area to 50 kg (gross). This is irrespective of the size of the shop. HSE has sought to update the law to reflect changes in the economy, and to replace the current single limit with a limit related to the size of the premises.

Keeping registers and disclosure of information

18. There was some controversy over the initial proposals. Under these proposals licensing authorities (HSE, local authorities and the police) would have held plans showing the separation distances around the site. These would have been available for inspection by anyone living in the immediate vicinity of the site. Many respondents were concerned that this would mean the disclosure of security-sensitive information. HSE has reviewed the proposals in the light of comments made, and in particular weighing the public benefit of disclosure against the potential risks to security.

Approved Code of Practice

19. There is still some editorial work to do on the ACoP, and it is due to be discussed on November 27 by the ACDS Explosives Sub-committee. In the unlikely event that there are any significant changes we will advise the Commission.

Consultation

20. These proposals have been developed in close consultation with a sub-committee of the ACDS involving the CBI, TUC, the Institute of Explosives Engineers, local authority organisations, trading standards officers, fire services and police. The package has been endorsed by the ACDS on the unanimous recommendation of the sub-committee. There have also been extensive bilateral discussions with many other interested parties. HSE's Explosives Inspectorate has been fully engaged in both the ACDS sub-committee and otherwise. HSE's Press Office is content with the line on presentation and PEFD is content with the statement on financial and resource implications for HSE.

Presentation

21. The media have a great interest in fireworks, but at present their focus is on noise and other environmental issues. We expect however that they will be interested in particular in the clamping down on rogue traders and the new restrictions on storage. We will issue a press release with the document and target it at the relevant specialist and national press.

22. We do not plan any major public launch; instead we plan to build awareness of about the changes through industry and other representative groups. Our line will be that, in overall terms, the proposals maintain the strengths of the existing framework while bringing the law up to date and making it easier to understand. They will also help to improve standards by bringing together guidance on best practice in one document. Where necessary, the framework has been strengthened and enforcement responsibilities rationalised.

23. Given the sensitivities around fireworks, the proposals are likely to attract interest from MPs. There is a good story to tell in that HSE has worked closely with local authorities (and DTI) in the development of the regulations and sought to address the issues they have identified, in to order to strengthen the hand of enforcers in dealing with illegal storage (and by extension, with illicit trading).

Costs and Benefits

24. The objective has been to introduce a set of proposals that are cost neutral overall. There will be cost benefits from reducing the volume of legislation and paperwork requirements.

25. HSE has sought to limit and mitigate the adverse cost implications of the proposals. The proposals on separation distances were potentially the changes that had the greatest cost impact and, as discussed above, HSE has sought to limit the costs. The steps taken will mean that the overwhelming majority of licensees will be unaffected. HSE has also made provision to enable holders of small quantities of explosives to keep explosives with a high degree of safety. Nevertheless there will still be a small number of occupiers of registered stores who will be forced to relocate. HSE estimate the numbers affected at about 20.

26. The Regulatory Impact Assessment is included as Annex C. Total discounted compliance costs are estimated at between £1.3 and £1.4 million over ten years, the majority of the cost occurring in the first year that the regulations are introduced. When annualised, this cost is between approximately £130,000 and £140,000. Cost savings for dutyholders are estimated at £2.6 million over ten years in present value terms. When annualised, this is £260,000. Total health and safety benefits discounted over 10 years would be estimated at around £800,000. When annualised, this is £80,000. There are in addition cost savings to HSE and local authorities.

Competition assessment

27. The OFT made a submission on competition issues and as part of the preparation of these proposals HSE had a number of discussions with the OFT. There are a number of markets affected by the proposals where there are competition issues (eg in fireworks one company holds more than 20 per cent of the market). However, given that the proposals do not increase the barriers to market entry, they are unlikely to have a negative impact on competition.

Financial/Resource Implications for HSE

28. The changes will result in some very limited additional licensing responsibilities for HSE which will be offset by operational benefits from the modernisation of the legislation. The completion of the review will release resources in HIPD for deployment to other issues.

Environmental Implications

29. A fire or explosion at an explosives site has the potential for significant environmental effects, and measures to prevent fires and explosions have an indirect environmental benefit. The regulations themselves do not impose direct requirements in relation to the environment. Some larger explosives sites are also subject to the Control of Major Accident Hazard Regulations 1999 and the related environmental requirements.

Other Implications

30. There has been considerable consultation with the local authority associations on these proposals. While this is a reserved matter, both CoSLA and ACPO (Scotland) have been involved in the development of these proposals. The National Assembly of Wales and the Scottish Executive were among the consultees.

Action

31. The Commission is invited to agree that the Regulations should be submitted to the Minister and to approve the Approved Code of Practice and Guidance.