

HSC/05/13

## **HEALTH AND SAFETY COMMISSION**

### **Approval of amendments to new regulations on the manufacture and storage of explosives**

#### **Minor corrections and amendments to the draft regulations**

##### **Issue**

1. This note is to draw the members' attention to a number of amendments to the proposed draft regulations. These are all of a very minor nature and in most cases do not make any substantive change to the regulations.
2. The attached table sets out the changes that have been made with an explanatory note.

##### **Recommendation**

3. The Commission is invited to note the changes.

<b>Regulation</b>	<b>Change</b>	<b>Comment</b>
<b>Regulation 9: Explosives not to be manufactured without a licence</b>	<b>Regulation 9(2)j</b> “the manufacture of explosives by a company which is a wholly-owned subsidiary of another company at a site in relation to which that other company holds a licence to manufacture explosives and that manufacture by the wholly-owned subsidiary is in accordance with the terms and conditions of that licence”.	Additional words inserted for clarity
<b>Regulation 10 Explosives not to be stored without a licence</b>	<b>Regulation 10(2)h</b> “the storage of explosives by a company which is a wholly-owned subsidiary of another company at a site in relation to which that other company holds a licence to store explosives and that storage by the wholly-owned subsidiary is in accordance with the terms and conditions of that licence”.	Additional words inserted for clarity
<b>Regulation 11 – Registration in relation to storage</b>	<b>Regulation 11(4)b</b> “A registration, not being a renewal of a registration, shall remain in force for such period not exceeding two years as the licensing authority determines, save that ...where the application for registration relates, whether solely or not, to the storage of smokeless powder, a registration may be granted for any period not exceeding three years”.	Amendment made in response to late comments by the police. Ensures provision works as intended.
<b>Regulation 13 – Grant of licences</b>	<b>Regulation 13(1)b</b> “subject to sub-paragraph (c), where the licence application relates, whether solely or not, to the storage of smokeless powder, a licence may be granted for such period not exceeding three years; or...”	Amendment made in response to late comments by the police. Ensures provision works as intended
<b>Schedule 1 Meaning of Licensing Authority</b>	<b>Schedule 1 paragraph 2 (page 26)</b> “In any case falling within paragraph 1(a)(i) or (ii), the applicant may apply instead to the Executive for a licence, in which case the Executive shall be the licensing authority in place of the chief officer of police or local authority”	Amendment corrects typing error
<b>Schedule 3:</b>	<b>Amount of Pyrotechnic Articles which may be kept in sales area in relation to registration</b>  Column 2 Line 1 (page 37) replace 10 kgs with 12.5 kgs	Change previously agreed with industry but not made in error.
<b>Schedule 5 Part1 (amendments to Primary Legislation)</b>	<b>Amendments to the Explosives Act 1875 (paragraph 1 page 39)</b>  “Omit sections 24, 26 to 29, 35, 36, 38, 40 and 41”	Proof-reading correction – section 25 has already been repealed.

Regulation	Change	Comment
<p><b>Schedule 5 Part 2 (amendments to Primary Legislation)</b></p>	<p><b>The Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings, Regulations 1906 (Paragraph 22 page 44)</b></p> <p>“22. In regulation 3 of the Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings, Regulations 1906 (examination and maintenance of lines or rails and points), for “Explosives factories or workshops within the meaning of the Explosives Act 1875” substitute “Any site for the manufacture of explosives which is specified in a licence granted under the Manufacture and Storage of Explosives Regulations 2005”.</p> <p>Replace with</p> <p>“ In the Factory and Workshop Act 1901, use of locomotives and wagons on lines and sidings, Regulations 1906— in the provisions on Application which begin with the words ‘Nothing in these Regulations shall apply to’ , for sub-paragraph (i) substitute “(i) Any site for the manufacture of explosives which is specified in a licence granted under the Manufacture and Storage of Explosives Regulations 2005”.</p>	<p>Drafting change – substance of amendment has not changed</p>
<p><b>Schedule 5 Part 2 (amendments to Primary Legislation)</b></p>	<p><b>Amendments to the Control of Explosives Regulations 1991 (Paragraph 34(5) - page 48)</b></p> <p>In regulation 8(e), after “regulation 3(3) or (4)” insert — “and that, where those provisions apply to a specified person only in particular circumstances or for particular purposes, those circumstances or purposes are satisfied in the case of the person concerned.”.</p>	<p>Drafting amendment for clarity – no substantive change</p>
<p><b>Schedule 5 Part 2 (amendments to Primary Legislation)</b></p>	<p><b>Amendments to the Control of Explosives Regulations 1991 (Paragraph 34(6) - page 48)</b></p> <p>In regulation 9 (restrictions on prohibited persons) — at the beginning of paragraph (1), insert “subject to paragraph (4),”; for paragraph (2), substitute — “(2) Subject to paragraph (4), no prohibited person, whether or not he satisfies any relevant conditions of regulation 7, shall acquire, handle or have control of any explosive or any restricted substance.”; and</p>	<p>Drafting changes for clarity – no substantive change.</p>
<p><b>Schedule 5 Part 2 (amendments to Primary</b></p>	<p><b>Amendments to Control of Explosives Regulations Schedule 2 (Form of Explosives Certificate) alternative B paragraph d (Page 53)</b></p>	<p>Corrects an omission.</p>

Regulation	Change	Comment
<b>Legislation</b>	In paragraph 3, the type of storage place must be entered. This will be one of the following: HSE licensed storage place or place of manufacture; police licensed or registered storage place; local authority registered storage place; or other legal place of storage.	
<b>Schedule 5 Part 2 (amendments to Primary Legislation)</b>	<p><b>The Reporting of Injuries and Dangerous Occurrences Regulations 1995 (Paragraph 40(2) - Page 55)</b></p> <p>“for sub-paragraph (1)(a) of paragraph 6, substitute —  “(a) any unintentional fire, explosion or ignition at a site —  (i) where explosives are manufactured by a person who holds a licence, or who does not hold a licence but is required to, in respect of that manufacture under the Manufacture and Storage of Explosives Regulations 2005; or  (ii) where explosives are stored by a person who holds a licence or is registered, or who is not licensed but is required to be in the absence of any registration, in respect of that storage under those Regulations”;</p>	Corrects a minor error – no substantive change
<b>Schedule 5 Part 2 (amendments to Primary Legislation)</b>	<p><b>The Health and Safety (Fees) Regulations 2004 – (Paragraph 44(2)e - page 57)</b></p> <p>“in paragraph (8) —  for “Part 2” substitute “Parts 1B and 2”; and  for “the Notes to that Part” substitute “, respectively, the Notes to Parts 1B and 2”;</p>	Amendment adds reference to the notes.
<b>Schedule 5 Part 2 (amendments to Primary Legislation)</b>	<p><b>The Health and Safety (Fees) Regulations 2004 (Paragraph 44- Page 58)</b>  add new sub-paragraph (3)</p> <p>“In regulation 13 (estimate of cost of work), for “2(3)(b) or” substitute “2(3)(b), 9(1B) or”.</p>	Requires the licensing authority to give the licensee an estimate of the likely cost of making a licence amendment.
<b>Schedule 5 Part 2 (amendments to Primary Legislation)</b>	<p><b>The Health and Safety (Fees) Regulations 2004 (Paragraph 44(3) –was sub-paragraph (4)- Page 58)</b></p> <p>“In Schedule 8 (fees payable under the Explosives Act 1875 and instruments made thereunder, under the Petroleum (Consolidation) Act 1928, the Petroleum (Transfer of Licences) Act 1936 and the Classification and Labelling of Explosives Regulations 1983) —  in Part 1 (applications for factory licences, magazine licences, acetylene importation licences and amending licences under sections 6, 12 and 40(9) of the Explosives Act 1875 and replacement of such licences), omit —  the entries in relation to sections 6 and 12 of the Explosives Act 1875; and  the last entry in column 2 which concerns “Amendment to</p>	Corrects minor omission.

Regulation	Change	Comment
	an existing licence” and the corresponding entries in columns 3 and 4 concerning fees.”	
<b>Explanatory Note</b>	<p><b>Paragraph 5 page 69</b></p> <p>The definition of explosive in regulation 2(1) does not include acetylene, which continues to be regulated as before under provisions of the 1875 Act and instruments made under it. The document called the United Nations Recommendations, which the definition of “explosive” refers to, and the Manual of Tests and Criteria, third edition, which supports those Recommendations, can be obtained from the Stationery Office Ltd., Books Sales and Service, P.O. Box 276, 51, Nine Elms Lane, London, SW8 5DR.</p>	Corrects minor omission.
<b>Explanatory Note</b>	<p><b>Paragraph 12 Page 69</b></p> <p>“The Regulations also amend the Health and Safety (Fees) Regulations 2004 (S.I. 2004/456), so as to update and align the fee provisions in those Regulations with the new licensing and registration provision made by these Regulations. The amendments also add fees in relation to the issue of explosives certificates under the Control of Explosives Regulations 1991 (regulation 28(1) and Schedule 5, paragraph 44).”</p>	Corrects minor omission.