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## HEALTH AND SAFETY COMMISSION

### Amendments to the regulations on the manufacture and storage of explosives

#### A Paper by Andy Miller

Cleared by Jonathan Rees on 14 August 2007

#### Issue

1. This paper seeks the Commission's agreement to amend the Manufacture and Storage of Explosives Regulations 2005 (MSER). These amendments are necessary because the regulations currently, incorrectly, allocate enforcement and licensing responsibilities to fire and rescue authorities, rather than to *metropolitan county* fire and rescue authorities.
2. The paper asks the Commission to propose these regulations to the Secretary of State without further formal consultation, on the basis, that all of the main stakeholders have been consulted informally, and the amendment gives effect to the policy that had been agreed during previous formal consultations.

#### Timing

3. Urgent. We need to make the amendment in time for the forthcoming firework season. Most licences for firework storage will be due to expire at the end of September, and deliveries to shops for the firework season will start in early October.

#### Recommendation

4. That the Commission note the proposal on consultation (paragraph 10); approve the proposed amending regulations (Annex 1) and the attached draft letter (Annex 2) for the Chairman to send to Lord McKenzie.

#### Background

5. MSER replaced the Explosives Act 1875. In England the Explosives Act was enforced by a HSE at manufacturing and larger storage sites and, at smaller storage sites, by a combination of county councils and London boroughs. However, for reasons that go back to local government reorganisation in the mid 1980s, in the old metropolitan counties (West Midlands, Greater Manchester, Merseyside, Tyne and Wear, West Yorkshire and South Yorkshire) these responsibilities were carried out by the fire and civil defence authorities as they were then known.
6. The Commission published a discussion document in 2000 seeking views on the role of local authorities in the enforcement of explosives legislation. The position agreed as a result of this consultation was to leave these responsibilities with the fire and civil defence authorities in the metropolitan counties. In other areas of England, outside

London, the enforcement and licensing responsibilities were allocated to the county councils where these still existed. (In Wales and Scotland there is only one tier of local government). This view was supported by the local government associations and other stakeholders.

## **Argument**

7. In 2004 new legislation meant that the old fire and civil defence authorities became fire and rescue authorities and the wording of MSER was changed with the intention of reflecting this. However the omission of the words 'metropolitan county' meant that we inadvertently extended the enforcement responsibilities to other fire and rescue authorities. This creates a particular problem in areas where there is a combined fire and rescue authority which is a separate organisation from the county council.
8. A commentary on the draft regulations is attached at Annex 3.
9. The main purpose of these amendments is to give effect to the policy that was originally agreed with the local authority associations and which consultees believed was the effect of the regulations - and indeed has been the basis on which local authorities have been operating since the regulations came into force.
10. The proposals do not include the normal 12-week consultation period. However, our view is that all the issues of substance on the allocation of licensing and enforcement responsibilities were fully consulted on with the publication of the Commission's discussion document in 2000 and the Consultative Document on MSER in 2002. The current proposals simply correct an error in order to effect the original intention of the regulations and we have consulted all the main stakeholders on this approach (see paragraph 15).
11. It is important to stress that with the exception of the former metropolitan counties, it is not the intention to choose between trading standards departments and fire services as to which is better placed to carry out responsibilities under these regulations. It is for the local authority to decide who should carry out this work. This was the position put forward in the 2000 discussion document and it remains equally valid today.
12. As well as correcting the original mistake, the regulations need to put right the knock-on consequences in ensuring that the licences granted by local authorities in these areas are deemed to be valid and also ensuring that the authority is able to take enforcement action.
13. MSER requires that the local authority should give its assent before HSE grants a licence at the sites it regulates. There are 12 cases HSE has granted a licence under MSER where it received the assent of the county council when, because of the effect of the error in the definition, the assent of the fire and rescue authority was required. These licences are therefore technically invalid. The proposals therefore include a further provision which would make these licences valid from the date of coming into force of the regulations.
14. If we did not amend the regulations the combined fire and rescue authorities would be left as the licensing and enforcing authority. There would be considerable disruption in any handover, as well as costs to both sets of authorities. There would also be costs to people who hold licences and registrations that are currently invalid.
15. Finally, the draft regulations take the opportunity to make two amendments which we promised to make in response to comments from the Joint Committee on Statutory Instruments.

## **Consultation**

16. HSE has written to all of the affected authorities (both the local authorities and the fire and rescue authorities) advising them of this problem and how we intended to resolve it. They were also invited to comment on the draft regulations. HSE has also met with the local authority associations, the Chief Fire Officers Association and the CBI Explosives Industry Group. Details of the consultation are attached at Annex 4.

## **Presentation**

17. We plan to write to all of the affected local authorities once the regulations have been signed.

## **Costs and Benefits**

18. There are no costs attached to this proposal for local authorities as it would simply ensure that they were able to continue to do what they are presently doing. Indeed, there would be costs to local authorities were we not to make this amendment.

## **Financial/Resource Implications for HSE**

19. Again there are no cost implications for HSE beyond the costs of the work involved in preparing the amending regulations and consulting with stakeholders. We estimate these costs at £3000. There would be significantly greater cost implications were we not able to make the changes.

## **Environmental Implications**

20. None.

## **Other Implications**

21. None.

## **Action**

22. That the Chairman sends the attached letter to Lord McKenzie.

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 STATUTORY INSTRUMENTS
 

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**2007 No.**

**HEALTH AND SAFETY**

**The Manufacture and Storage of Explosives and the Health and Safety (Enforcing Authority) (Amendment and Supplementary Provisions) Regulations 2007**

<i>Made</i> - - - -	***2007
<i>Laid before Parliament</i>	***2007
<i>Coming into force</i> - -	***2007

The Secretary of State makes these Regulations —

(a) in exercise of the powers conferred upon him by sections 15(1) and (3)(c), 18(2)(a) and 82(3)(a) of, and paragraph 4(2) of Schedule 3 to, the Health and Safety at Work etc. Act 1974(a) (“the 1974 Act”); and

(b) for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act .

In preparing these Regulations, he has consulted the bodies that appeared to the Health and Safety Commission to be appropriate, as required by section 50(3) of the 1974 Act.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Manufacture and Storage of Explosives and the Health and Safety (Enforcing Authority) (Amendment and Supplementary Provisions) Regulations 2007 and shall come into force on [ ] 2007.

(2) In these Regulations —

- (a) “the 1998 Regulations” means the Health and Safety (Enforcing Authority) Regulations 1998(b); and
- (b) “the 2005 Regulations” means the Manufacture and Storage of Explosives Regulations 2005(c).

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(a) 1974 c.37. Sections 15 and 50 were amended by the Employment Protection Act 1975 (c.71) Schedule 15, paragraphs 6 and 16 respectively. The general purposes of Part I of the 1974 Act were extended by section 1(1) of the Offshore Safety Act 1992 (c.15).

(b) S.I. 1998/2024, amended by S.I. 2005/1082; there are other amending instruments but none is relevant.

(c) S.I. 2005/1082.

## **Amendment of the 2005 Regulations**

- 2.—(1) The 2005 Regulations are amended as follows.
- (2) In regulation 2(1) —
- (a) in the definition of “local authority”, in paragraph (c), before “fire and rescue authority” insert “metropolitan county”; and
  - (b) in the definition of “registration”, omit “save in regulation 22 and Schedule 4”.
- (3) In regulation 9, in paragraph (2)(a), for “those Regulations” substitute “the Control of Explosives Regulations 1991(a)”.

## **Amendment of the 1998 Regulations**

3. Regulation 4(11) of the 1998 Regulations is amended by the insertion of “local authority,” after “licensing authority,”.

## **Supplementary provisions**

- 4.—(1) Paragraph (2) applies in the case of licences granted by the Executive under regulation 13 of the 2005 Regulations before the commencement of these Regulations to which the assent of a fire and rescue authority was required pursuant to regulation 13(3) but the assent of a local authority other than a fire and rescue authority was obtained instead.
- (2) Where this paragraph applies, the licence granted shall have effect after the commencement of these Regulations as if the assent of the relevant fire and rescue authority had been duly obtained.
- (3) Paragraph (4) applies in the case of a licence or registration granted by a local authority other than a fire and rescue authority under, respectively, regulation 13 or 11 of the 2005 Regulations before the commencement of these Regulations, where the authority which had the power to grant the licence or registration was the fire and rescue authority instead.
- (4) Where this paragraph applies the licence or registration shall have effect after the commencement of these Regulations as if it had been granted by the relevant fire and rescue authority.
- (5) In respect of a site in relation to which a person has been granted such a licence or registration as is referred to in paragraph (3), regulation 4(7)(a) of the 1998 Regulations shall have effect as if it provided that the enforcing authority shall be the local authority which, before the commencement of these Regulations, granted the licence or registration.
- (6) Where before the commencement of these Regulations a fire and rescue authority, other than a metropolitan county fire and rescue authority, was an enforcing authority for the purposes of regulation 4(7) of the 1998 Regulations, the county council or, if there is none, the district council shall be the enforcing authority in place of the fire and rescue authority in relation to the matters referred to in sub-paragraphs (a) to (c) of regulation 4(7) of the 1998 Regulations in the area of that county or district council, as the case may be.
- (7) In this regulation, “licence”, “local authority”, “registration” and “site” have the same meanings as in the 2005 Regulations.

Signatory text

Address  
Date

*Name*  
Parliamentary Under-Secretary of State  
Department for Work and Pensions

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(a) S.I. 1991/1531, to which there are amendments not relevant to these Regulations.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

1. These Regulations amend the Manufacture and Storage of Explosives Regulations 2005 (S.I. 2005/1082) (“the 2005 Regulations”) and the Health and Safety (Enforcing Authority) Regulations 1998 (S.I. 1998/494) (“the 1998 Regulations”).

2. The Regulations amend regulation 4(11) of the 1998 Regulations so that “local authority” in that provision has the meaning given by the 2005 Regulations (regulation 3).

3. They correct errors in relation to the definitions of “registration” and “local authority” in the 2005 Regulations. In the definition of “local authority”, they now refer to “metropolitan county fire and rescue authority” instead of “fire and rescue authority”. County and district councils will take over the enforcement role under the 1998 Regulations of fire and rescue authorities that are losing their role as licensing authorities under the 2005 Regulations. The Regulations treat certain licences granted by the Health and Safety Executive as having been granted with the relevant fire and rescue authority assent. They also treat certain licences and registrations granted by local authorities other than fire and rescue authorities as having been granted by the latter authorities, who held the power to do so. They make the local authorities which made those earlier grants responsible for enforcement of certain explosives legislation (regulation 4).

**Lord McKenzie of Luton  
Parliamentary Under Secretary  
Department for Work and Pensions  
Caxton House  
Tothill Street  
London  
SW1H 9DA**

XX September 2007

**Proposals for amendments to the Manufacture and storage of explosives regulations**

I am sending you the Health and Safety Commission's proposals for regulations to amend the Manufacture and Storage of Explosives Regulations 2005. This amendment is to correct an error in the definition of 'local authority' in the regulations. The effect of this error has been to give enforcement and licensing responsibilities to all fire and rescue authorities when the intention had been to give these responsibilities only to the fire and rescue authorities in the former metropolitan counties (West Midlands, Greater Manchester, Merseyside, Tyne and Wear, West Yorkshire and South Yorkshire).

Given forthcoming fireworks season, the amendment is required as a matter of urgency and I would hope the amendment can be made on the 1 October common commencement date.

**Sir Bill Callaghan  
Chairman HSC**

**The Manufacture and Storage of Explosives and the Health and Safety (Enforcing Authority) (Amendment and Supplementary Provisions) Regulations 2007 - commentary**

<b>Regulation 2 amendments to the Manufacture and Storage of Explosives Regulations 2005</b>	
<p>Regulation 2(1) – amendment to the Manufacture and Storage of Explosives Regulations 2005</p> <p>In regulation 2(1) —</p> <p>...in the definition of “local authority”, in paragraph (c), before “fire and rescue authority” insert “metropolitan county”; and</p>	<p>This amendments rectifies the original omission of the words ‘metropolitan county’</p> <p>The amended regulation would read:</p> <p>“local authority” means in relation to —</p> <p>(a) the City of London, the Common Council for the City of London;</p> <p>(b) an area in the rest of London, the London Borough Council for that area;</p> <p>(c) an area where there is a <b>metropolitan county</b> fire and rescue authority, that authority;</p> <p>(d) the Isles of Scilly, the Council of the Isles of Scilly;</p> <p>(e) an area in the rest of England, the county council for that area or where there is no county council for that area, the district council for that area;</p> <p>(f) an area in Scotland, the council for the local government area; and</p> <p>(g) an area in Wales, the county council or the county borough council for that area;</p>
<p>In regulation 2(1) —</p> <p>...in the definition of “registration”, omit “save in regulation 22 and Schedule 4</p>	<p>The amended regulation would read</p> <p>“registration” means registration under regulation 11 and “certificate of registration” means a certificate issued under regulation 11(3);</p>

	This amendment meets a commitment made to the Joint Committee on Statutory Instruments.
In regulation 9, in paragraph (2)(a), for “those Regulations” substitute “the Control of Explosives Regulations 1991”.	This amendment also meets a commitment made to the Joint Committee on Statutory Instruments.
<b>Regulation 3: Amendments to the Health and Safety (Enforcing Authority) Regulations 1998</b>	
Regulation 4(11) of the 1998 Regulations is amended by the insertion of “local authority,” after “licensing authority,”.	This amendment ensures that the MSER definition of local authority is used where relevant in interpreting the Enforcing Authority Regulations.
<b>Regulation 4: Supplementary provisions</b>	
(1) Paragraph (2) applies in the case of licences granted by the Executive under regulation 13 of the 2005 Regulations before the commencement of these Regulations to which the assent of a fire and rescue authority was required pursuant to regulation 13(3) but the assent of a local authority other than a fire and rescue authority was obtained instead.  (2) Where this paragraph applies, the licence granted shall have effect after the commencement of these Regulations as if the assent of the relevant fire and rescue authority had been duly obtained.	MSER requires that the local authority should give its assent to most licences granted by HSE. The omission from the definition of local authority means that in areas where there is a combined fire authority, the assent of that authority is required. There have been 10 licences granted by HSE since 2005 where the relevant county or district council gave its assent when that assent should have been given by the fire and rescue authority. This provision will ensure that those licences are valid.
(3) Paragraph (4) applies in the case of a licence or registration granted by a local authority other than a fire and rescue authority under, respectively, regulation 13 and 11 of the 2005 Regulations before the commencement of these Regulations, where the authority which had the power to grant the licence or registration was the fire and rescue authority instead.  (4) Where this paragraph applies the licence or registration shall have effect after the commencement of these Regulations as if it had been granted by the fire and rescue authority.	This provision will ensure that any licences granted by county and district councils which continue after the 1 October, will be valid.
(5) In respect of a site in relation to which a person has been granted such a licence or registration as is referred to in paragraph (3), regulation 4(7)(a) of the 1998 Regulations shall have effect as if it provided that the enforcing authority shall be the local authority which, before the commencement of these Regulations, granted the licence or registration.	Under the enforcing authority regulations, the authority which has the power to issue licences or registrations is also the enforcing authority for MSER. This regulation would ensure that where a county or district council had granted a licence or registration it would be the enforcing authority for the regulations rather than the combined fire and rescue authority.
(6) Where before the commencement of these Regulations a fire and rescue authority, other than a metropolitan county fire and rescue authority, was an	This provision is to ensure that in cases where a combined fire and rescue authority had granted a licence or registration, that the county council or

<p>enforcing authority for the purposes of regulation 4(7) of the 1998 Regulations, the county council or, if there is none, the district council shall be the enforcing authority in place of the fire and rescue authority in relation to the matters referred to in sub-paragraphs (a) to (c) of regulation 4(7) of the 1998 Regulations in the area of that county or district council, as the case may be.</p>	<p>district council would take over enforcement responsibilities from the 1 October.</p>
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## **List of organisations given the opportunity to comment on the regulations**

### **Representative organisations**

Local Authorities Coordinators of Regulatory Services (LACORS)  
Chief Fire Officers Association  
Convention of Scottish Local Authorities  
CBI Explosives Industry Group  
British Fireworks Association

### **Local authorities in England**

Bath & North East Somerset Council  
Bedford County Council  
Blackburn with Darwen Borough Council  
Blackpool Borough Council  
Bracknell Forest Borough Council  
Bristol City Council  
Buckinghamshire County Council  
Cambridge County Council  
Chester County Council  
Chester-le-Street District council  
City of York Council  
Cleveland County Council  
Darlington Borough Council  
Derby City Council  
Derby County Council  
Devon County Council  
East Riding of Yorkshire Council  
East Sussex County Council  
Essex County Council  
Halton Borough Council  
Hampshire County Council  
Hartlepool Borough Council  
Hastings Borough Council  
Hereford County Council  
Kent County Council  
Kingston upon Hull City Council  
  
Lancashire County Council  
Lewes District Council  
Luton Borough Council  
Medway Council  
Middlesbrough Borough Council  
Milton Keynes Council  
North East Lincolnshire Council  
North Lincolnshire Council  
North Yorkshire County Council  
Nottingham City Council  
Nottingham County Council  
Peterborough City Council  
Plymouth City Council  
Portsmouth City Council  
Reading Borough Council  
Redcar and Cleveland Borough Council  
Royal Borough of Windsor & Maidenhead Council  
Rutland County Council  
Shropshire County Council  
Slough Borough Council  
Somerset County Council  
South Gloucestershire  
Southampton City Council  
Southend-on-Sea Borough Council

Staffordshire County Council  
Stoke on Trent City Council  
Stockton on Tees Borough Council  
Swindon Borough Council  
Telford and Wrekin Council  
Thurrock Borough Council  
Torbay Council  
Warrington Borough Council  
West Berkshire District Council  
Wiltshire County Council  
Wokingham Borough Council  
Worcestershire County Council

### **Combined fire authorities**

Avon Fire Authority  
Bedfordshire and Luton Combined Fire Authority  
Buckinghamshire and Milton Keynes Fire Authority  
Cambridgeshire and Peterborough Fire Authority  
Cheshire Fire Authority  
Cleveland Fire Authority  
County Durham and Darlington Fire and Rescue Authority  
Devon Fire and Rescue Authority  
Dorset Fire Authority  
Derbyshire Fire Authority  
East Sussex Fire Authority  
Essex Fire Authority  
Hampshire Fire and Rescue Authority  
Hereford and Worcester Combined Fire Authority  
Humberside Fire Authority  
Kent and Medway Fire and Rescue Authority  
Lancashire Combined Fire Authority  
Leicester, Leicestershire and Rutland Combined Fire Authority  
London Fire and Emergency Planning Authority  
North Yorkshire Fire and Rescue Authority  
Nottinghamshire and City of Nottingham Fire Authority  
Royal Berkshire Fire Authority  
Shropshire and Wrekin Fire Authority  
Somerset Fire and Rescue Service  
Stoke on Trent and Staffordshire Fire Authority  
Wiltshire and Swindon Fire Authority

### **Local Authorities in Wales**

Blaenau Gwent County Borough Council  
Bridgend County Borough Council  
Caerphilly County Borough Council  
Carmarthenshire County Council  
Ceredigion County Council  
City and County of Cardiff Council  
Conwy County Borough Council  
Denbighshire County Council  
Flintshire County Council  
Gwynedd County Council  
Isle of Anglesey County Council  
Merthyr Tydfil County Borough Council  
Monmouthshire County Council  
Neath Port Talbot County Borough Council  
Newport City Council

Pembrokeshire County Council  
Powys County Council  
Rhondda Cynon Taff County Borough Council  
Swansea City and Borough Council  
Torfaen County Borough Council  
Vale of Glamorgan  
Wrexham Borough Council

### **Local Authorities in Scotland**

Aberdeen City Council  
Aberdeenshire Council  
Angus Council  
Argyll & Bute Council  
Clackmannanshire Council  
Dumfries and Galloway Council  
Dundee City Council  
East Ayrshire Council  
East Dunbartonshire Council  
East Lothian Council  
East Renfrewshire Council  
City of Edinburgh Council  
Comhairlie nan Eilean Siar (Isle of Lewis)  
Falkirk Council  
Fife Council  
Glasgow City Council  
Highland Council  
Inverclyde Council  
Midlothian Council  
Moray Council  
North Ayrshire Council  
North Lanarkshire Council  
Orkney Islands Council  
Perth and Kinross Council  
Renfrewshire Council  
Scottish Borders Council  
Shetland Islands Council  
South Ayrshire Council  
South Lanarkshire council  
Stirling Council  
West Dunbartonshire Council  
West Lothian Council