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HEALTH AND SAFETY COMMISSION

Consultation document on amendments to the regulations on the manufacture and storage of explosives

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Summary

This paper seeks the Commission's agreement to publish a consultation document setting out proposals for an omnibus set of regulations which contain amendments to the Control of Explosives Regulations 1991, Manufacture and Storage of Explosives Regulations 2005 (MSER) and the Control of Noise at Work Regulation 2005, together with the revocation of 224 sets of local mining regulations.

The amendments aim to reduce administrative burdens especially in the overlap between the regimes for the control of explosives and fireworks. The revocations deal with regulations which are now redundant.

Issue

1. This paper seeks the Commission's agreement to the publication of a consultation document for a set of regulations to be called the Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2008.

Timing

2. If there are no delays in the process, we plan to submit the final proposals to the Commission (and then to Ministers) in March 2008 in time for the regulations to come into force on the common commencement date of 6 April 2008.

Background

3. The Explosives Act 1875 was a relevant statutory provision under the Health and Safety at Work Act. The Act covers both the safety and security of explosives. HSE has overhauled the legislation in this area replacing the majority of the Act with the Manufacture and Storage of Explosives Regulations 2005 (MSER) and the Control of Explosives

Regulations 1991 which covers security. The latter regulations were signed by a Home Office minister.

4. MSER covers high explosives and military and other munitions as well as fireworks and other pyrotechnics. It is enforced by a combination of HSE, local authorities, fire and rescue authorities and the police. The development of the regulations took several years due in part to the range of stakeholders and the diverse range of industries involved. The intention of this consultation document is not to reopen that process but to simply to put right errors and omissions in the original regulations.
5. The local mining regulations were mainly drawn up in the 1960s and '70s and most deal with the use of diesel vehicles.

Argument

6. The draft consultation document (Annex 1) contains a detailed discussion of the proposed amendments, as well as the draft regulations and an initial Impact Assessment.

Amendments to the Control of Explosives Regulations 2001

7. The main changes to reduce paperwork are the proposals to disapply the requirement for an Explosive Certificate in respect of firearms certificate holders wishing to hold a small amount of explosive for use with their firearm. (Explosive Certificates are issued by the police and not by HSE or local authorities). There are approximately 9,000 explosive certificate holders in Britain. About 95 per cent of these are holders of Firearm and Shotgun Certificates. The criteria for the grant of the two types of certificate are virtually identical and there is therefore considerable duplication between the two regimes.
8. The document also sets out proposals to increase the life of explosives certificates to five years (in line with firearms legislation); this would in turn enable the life of many licences and registration for the storage of explosives to be extended from 3 years to 5.

Amendments to the Manufacture and Storage of Explosives Regulations (MSER)

9. The amendments to the Manufacture and Storage of Explosives Regulations address a number of issues that have become apparent since the regulations came into force. Most changes address drafting anomalies and other issues. The substantive changes are:
 - changes to the mechanism for transferring a licence, to give the licensing authority the power to refuse a transfer where the transferee is not a fit person to manufacture and/or store explosives. This responds to comments made by the Joint Committee on Statutory Instruments about the Northern Ireland counterpart of MSER;
 - changes to enable licensing authorities to vary a registration and, in certain circumstances, further limit the amount of explosives that can be stored at a registered store;
 - a proposed new duty on the accuracy of the labelling or other information about the amount of explosive contained in fireworks. This

information is used by storeholders to assist them in keeping within the limits set out in their registration or licence;

- giving MSER enforcement authorities powers to enforce the requirements of Regulation 3 of the Managing Health and Safety at Work Regulations in relation to the risk assessments about manufacture or storage of explosives.

These amendments are discussed in more detail in Annex 2.

Control of Noise at Work Regulations

10. The proposals would correct an oversight in the Control of Noise at Work Regulations by including a requirement for hearing protection supplied for use at work to comply with the Personal Protective Equipment Regulations 2002.

Revocation of local mining regulations

11. Finally, the proposals would also revoke 224 sets of local mine regulations (ie specific to one mine). In the large majority of cases, the mine closed some time ago.
12. It is also proposed to revoke the local regulations at 20 working mines. The main reasons for this are that:
 - the regulations are in most cases outdated – referring to working systems and /or equipment that are no longer in use.
 - they are also inconsistent in approach with current legislation – especially the regulations on the Control of Substances Hazardous to (COSHH);
 - there are inconsistencies between the regulations which can cause problems for companies with several mines each operating under its own local regulations.

Consultation

13. HSE has consulted, informally, with the CBI Explosives Industry Group, local authority associations and with the Chief Fire Officers Association, the Home Office, Business Enterprise and Regulatory Reform, the Department of Education Children and Families, the Association of Chief Police Officers and Association of Chief Police Officer (Scotland).
14. The proposals have been considered by a national consultative committee involving representatives from the explosives industry, local authorities, trade unions and professional bodies. There has also been informal consultation with the mining sector on the proposed revocation of local mining regulations.
15. We plan to have a web-based consultation document.

Presentation

16. We intend to write to all stakeholders. We plan a press release for the Consultation Document (subject to Home Office views) which would highlight our efforts to reduce paperwork and to revoke obsolete legislation.

Costs and Benefits

17. The benefits of these proposals are of the order of £2.2m (over 30 years) with costs of £150,000.

Financial/Resource Implications for HSE

18. We estimate the project costs of preparing these proposals, consulting stakeholders, and preparing the final draft regulations at less than £20,000.

Environmental Implications

19. None.

Other Implications

20. None.

Action

21. That the Commission endorse the publication of the attached Consultation Document.

Annex 2: Amendments to the Manufacture and Storage of Explosives Regulations 2005

Comments from the Joint Committee on Statutory Instruments

1. MSER created a power for a licensing authority to refuse a licence where it took the view that the applicant was not a fit person to manufacture or store explosives safely. The regulations also enable licensees to transfer their licences to someone else. However there is no power for the licensing authority to prevent the transfer of a licence to an unfit person (although it could revoke the licence subsequently).

Registration

2. Registration is in effect a simplified form of licensing for smaller quantities of explosive. The maximum amounts that can be kept in a registered store are set out in the regulations. It has been argued that in some situations the licensing authority would have concerns about the safety of storing the whole permitted amount at a particular place – for example a shop in a terrace of houses. At present the only alternative would be to refuse or revoke the registration. The amendment would create the option of setting a lower maximum amount for the premises. This would be subject to the ‘due process’ requirements of the regulations as well as to section 44 of the HSW Act.

Labelling

3. There are a number of aspects of the regulations where the requirements vary depending on the quantity and type of explosive. Under the old legislation the quantity of explosive in pyrotechnics was deemed to be one quarter of the gross weight. MSER gives two options, if the supplier provides specific information about the net mass of explosive then the store operator can use these in determining how much they can store. If the supplier does not provide this information then it is assumed that the explosive makes up one quarter of the gross weight.
4. Suppliers have an incentive to provide this information (eg on package labelling) because it has the effect of enabling them to make fewer deliveries as, in most cases, the net mass is less than one quarter of the gross weight. However, there is also the possibility that the supplier could provide incorrect information (deliberately or otherwise). Experience of the operation of this duty suggests strongly that there is a need to create a specific duty in the regulation so that where suppliers provide this information, they ensure, so far as is reasonably practicable, that it is accurate.

Enforcement responsibilities

5. The regulations do not themselves contain a duty on risk assessment but instead rely on the Regulation 3 in the Management of Health and Safety at Work Regulations. The proposed amendment would enable enforcing authorities for MSER to enforce the regulation on risk assessment in relation to the manufacture or storage of explosives.
6. MSER also covers ‘ammonium nitrate blasting intermediates’. These provide the primary ingredient for on-site mixed explosives. While the

current regulations provide for enforcement in respect of the manufacture of these materials they did not provide for the enforcement in relation to their storage. The amendment corrects that omission.