

Health and Safety (Miscellaneous amendments etc) Regulations

Consultation by the Health and Safety Commission

About this document

The Health and Safety Commission (HSC) has a statutory duty to consult to seek stakeholders' views on proposals. HSC believes that this enables an open and transparent approach to decision-making, which is essential if policies and decisions are to have widespread ownership and reflect the needs and aspirations of the people they will affect. The Commission then decides on the best way forward based on an interpretation and analysis of the results of the exercise.

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

Many business e-mail systems now automatically append a paragraph stating the message is confidential. If you are responding to this CD by e-mail and you are content for your responses to be made publicly available, please make clear in the body of your response that you do not wish any standard confidentiality statement to apply.

We will acknowledge all responses 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. When HSC has decided upon its recommendation to Ministers, we will let you know how the work will proceed and how the decision reached reflects the results of the consultation.

If you are not satisfied with the way in which this consultation exercise has been conducted we want to know, and we want to put things right. Please phone or write to the contact on the consultation document. We aim to reply to all complaints within 10 working days. If you are not satisfied with the response, you may ask for your complaint to be passed to a more senior member of staff. Following our second response, if you are still not satisfied, you can ask for your complaint to be referred to the Chief Executive.

If you reply to this consultation 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 this 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. Please note that all replies will be made public unless you specifically state that you wish yours to be made confidential.

If you are reading this document on a computer screen and would prefer a printed version, it can be obtained on request. Furthermore, if you require a more accessible format an Executive Summary is available in Braille, large print, disc, audiocassette or in other languages. Please contact [to be added]

How to respond

Responses to this consultation document should be sent to Cherone Ashdown 7NW HSE Rose Court, 2 Southwark Bridge, London SE1 9HS. Responses by email are welcome and should be sent to: explosives.policy@hse.gsi.gov.uk Responses must be received by [date to be inserted].

As an aid to consultation, a summary of issues for consultation and a questionnaire is included at [to be added] You do not have to use this questionnaire, and you are welcome to comment on any issue raised by this document.

You may also respond online [url: to be added]. There is an online questionnaire or alternatively you can download a word processor template.

Code of Practice on Consultation

HSE is committed to best practice in consultation and to the Government's Code of Practice on consultation. The Code of Practice sets out 6 criteria for consultation documents. These are:

- 1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.**
- 2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.**
- 3. Ensure that your consultation is clear, concise and widely accessible.**
- 4. Give feedback regarding the responses received and how the consultation process influenced the policy.**
- 5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.**
- 6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.**

If you believe that this document, or the consultation on these proposals, does not meet these criteria please contact: Chris Simon HSE Better Regulation Unit, HSE Rose Court 2 Southwark Bridge London SE1 9HS.

Executive summary

This consultation covers three sets of issues:

- amendments to explosives legislation intended to reduce paperwork for police and holders of explosives certificates and to address issues in the Manufacture and Storage of Explosives Regulations that have come to light since the regulations came into force in 2005;
- the revocation of 224 sets of local mining regulations;
- an amendment to address an omission in the Control of Noise at Work Regulations 2005.

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. There are approximately 10,000 explosives certificate holders in Britain. Between 90 and 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. In HSC's view this duplication is unnecessary.

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.

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. In the main the changes are addressing drafting anomalies and other issues. However there are some aspects of the proposals that would involve changes to the requirements.

The main 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;
- 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.

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

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.

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.

Introduction

1. The document begins with an overview of the proposals and information about who might be affected by them. It then goes on to discuss the changes under four headings. These are:
 - amendments to the Control of Explosives Regulations 1991 (COER);
 - amendments to the Manufacture and Storage of Explosives 2005 (MSER);
 - amendment to the Control of Noise at Work Regulations 2005
 - revocation of certain local mining regulations.
2. The document also includes a summary of the issues for consultation, a questionnaire and the Impact Assessment for the regulations.

Overview of the proposals

3. These regulations make amendments to existing regulations as well as revoking a number of existing provisions. The changes are set out in the four schedules and fall under four main headings:
 - amendments to the Control of Explosives Regulations 1991;
 - amendments to the Manufacture and Storage of Explosives Regulations 2005;
 - revocations of local mining regulations;
 - amendment to the Control of Noise at Work Regulations 2005.

The draft Regulations are included at Annex 1.

4. The proposed amendments to the Control of Explosives Regulations 1991 (COER) would make a number of changes to the regime for explosives certificates with the aim of reducing paperwork both for those who are currently required to hold an explosive certificate and for the police who issue them and oversee compliance.
5. 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. Annex 2 gives a detailed commentary on the proposed amendments. In the main the changes are addressing drafting anomalies and other issues however there are some aspects of the proposals that would involve changes to the requirements. These are highlighted in the following section.
6. 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.
7. 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 Health (COSHH);
 - there are inconsistencies between the regulations which can cause problems for companies with several mines each operating under its own local regulations.
8. Finally the proposals would amend the Control of Noise at Work Regulations to correct an oversight in the original regulations by including a requirement for hearing protection supplied for use at work to comply with the Personal Protective Equipment Regulations 2002 (SI No 1144).

Who will be affected by these proposals?

9. These proposals will affect, and be of interest to the following people:
 - people involved in the manufacture and storage of explosives, including:
 - firework importers;
 - quarry operators;
 - manufacturers and users of ammonium nitrate blasting intermediates;
 - shooters and re-enactors;
 - operators of mines covered by existing local mining regulations;
 - people purchasing personal hearing protection devices for use at work.

The proposals

Control of Explosives Regulations 1991

10. The Control of Explosives Regulations 1991 (COER) carried forward the system of explosives certificates from the Explosives Act 1875. Someone wishing to acquire or keep certain types of explosive is required to obtain an explosives certificate from the police. Before granting an explosives certificate the police consider whether the applicant is a fit person to acquire or to acquire and keep explosives. The Explosives Certificate regime is very much a parallel to the Firearms Certificate regime. (For simplicity we are using the term firearms certificate to cover other permits granted under firearms legislations).
11. Since the regulations came into force there has been a significant increase in the number of people who need to hold both a firearms certificate and an explosives certificate. This increase (due to a growth in the types of shooting involving the use of black powder for home loading or for muzzle-loaded guns) means that an estimated 90 per cent of explosive certificate holders are shooters who also hold firearms certificates. There are presently of the order of 9,000 explosive certificate holders.
12. In cases where the explosives certificate is granted at the same time as the firearms certificate, the police will carry out a single set of checks for both purposes. However given the fact that the maximum life of the explosives certificate is set at 3 years the police must carry out a check on renewing the certificate after 3 years. We believe that the present position involves a great deal of duplication, involving unnecessary paperwork for both police and shooters with no obvious benefit to public safety and security.
13. In HSC's view, if someone is judged a fit person to hold a firearm then this entails that they are a fit person to hold a reasonable quantity of material for use with the firearm.
14. The proposals have been drawn up following discussions with the Association of Chief Police Officers (ACPO) and the Association of Chief Police Officers (Scotland) (ACPO(S)) and with the shooting organisations, and consultation with the Home Office. They would disapply the requirement to hold an explosives certificate in cases where people hold a firearms certificate.
15. This disapplication would be subject to two main conditions. The first would be that the person would need to write to the police giving them notice that they intended to operate under this disapplication. They would in turn need to get a letter of acknowledgement from the police. This provision is intended to meet police concerns that without this provision they would not know which

individuals were storing black powder as opposed to smokeless powder – the less-hazardous propellant used by most shooters. This notification would be a one-off process.

16. The second condition would limit the amount of explosive that could be stored. The police view would limit this quantity to 1.5 kilograms. This is intended to allow a shooter to hold one part-used bottle of powder and a further full container in reserve. The view of the shooting organisations is that they would wish to have a higher limit of at least 5kg. They have made the point that if this limit is set too low the disapplication would not achieve its objective of making a substantial reduction in the number of people holding both types of certificate.
17. The draft regulations do not include a figure for the amount of explosive that could be stored under the disapplication. Views are invited on what would be an appropriate amount. HSC will consider this issue further in the light of the submissions made during the consultation exercise.
18. It should be stressed that this provision would only disapply the requirement to hold an explosives certificate it would not disapply other duties about either the safety or the security of the explosives. The police would continue to enforce these requirements alongside the enforcement of the requirements on security of the firearms themselves.
19. The proposals will also make two further changes to reduce paperwork.
20. First, the maximum period of validity of the acquire-and-keep explosives certificate was set at three years. At the time the regulations were drafted it was believed that the life of the Firearms Certificate was to be reduced from 5 years to 3 years. In fact the life of the firearms certificates has remained at 5 years. The proposals would therefore increase the maximum period of validity from 3 years to 5 years. Not only will this reduce the administration involved in the explosives certificate regime but it will in turn enable the police to issue licences and registrations under MSER for up to 5 years – at present these cannot be issued beyond the life of the explosives certificate. (Please note that this change would only affect stores where the police are the licensing authority – where the licensing authority is the local authority or the fire and rescue authority the licences or registrations are normally renewed annually).
21. It should be noted that there would be need to be a fees for four and five-year certificates. These fees would be specified in the Health and Safety (Fees) Regulations 2008. These fees would be greater than the fee for a three year certificate to reflect the work done by the police however there would be a saving from reduced administration costs (ie the total cost of 3 five-year certificates would cost less than the total cost of 5 three-year certificates). A similar point would apply to four and five-year licences and registrations granted by the police under MSER.
22. Second, in cases where the applicant does not have a permanent place of storage they can apply for an acquire-only certificate. This enables them to acquire explosives but not to store them. This type of certificate is mainly used by reenactors who are issued with powder at events; it may also be used by blasting contractors who have explosive delivered to the site. At present the maximum period of validity for these certificates is one year. We believe that the intention of this limitation was to discourage the use of this type of certificate as a way to avoid maintaining suitable storage facilities. It is not clear that this has had any effect in achieving this objective, and in any event, the limitation applies equally

to those who have a genuine need for such certificates. In the view of both HSC and ACPO/ACPOS, this distinction is not justified and the period of validity should be increased to 5 years in line with the life of the acquire-and-keep explosives certificate. Chief officers of police would still retain discretion to grant an acquire-only certificate for shorter periods such as a year where they were of the view that the more permanent storage arrangements would be appropriate.

23. The amendment to Schedule 1 of COER would have the effect of enabling people to keep smaller rocket motors without the need for an explosives certificate. At the moment some rocket motors are on Schedule 1 and others are not, this amendment would mean that all these items would be treated in a comparable way and this in turn will be comparable with similar low hazard pyrotechnic articles.

Some issues for consultation

Do you agree, partly agree or disagree with the proposed disapplication for firearms certificate holders?

If you agree, do you have any views on what the threshold should be above which an explosives certificate is required?

Do you have any views on the proposal to extend the life of explosives certificates?

Do you agree, partly agree or disagree with the proposals on acquire-only certificates?

Do you have any views on the proposals to add smaller rocket motors to Schedule 1 of COER?

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

24. Apart from amendments to remedy minor drafting issues, these amendments fall under four main headings:

- meeting comments made by the Joint Committee on Statutory Instruments (JCSI) ;
- correcting gaps or anomalies in enforcement responsibilities;
- changes to the operation of the system for registrations
- other amendments and corrections.

25. The more significant changes are discussed in more detail below.

Comments from the Joint Committee on Statutory Instruments (JCSI)

26. 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 (if for example they sell the business). The JCSI commented in its Third Report of the Session 2006/7 (reference HL Paper 12/HC 82-iii) that there is no power in the Northern Ireland counterpart of MSER (the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006) to prevent the transfer of a licence to an unfit person.

27. This point is correct, and while the licensing authority would have the power to revoke the licence immediately after transfer, we believe that there is a need to change the regulations to meet the JCSI's concerns.

Registrations

28. MSER carried forward the Explosives Act approach in enabling someone storing smaller quantities of explosive to apply for a registration as opposed to a licence. A registration is in effect a simplified form of licence as it does not involve any site-specific conditions in the registration itself (eg a condition on the quantity or type of explosive). This means that someone with a registration can keep up to the maximum permitted by the Regulation 11.
29. MSER however departed from the Explosives Act in abolishing the distinction between the 'Mode A' store in a separate building and the 'Mode B' store in the building itself. This means that a registered person could keep the whole permitted amount in the building. Concern has been expressed about terraced houses being used for firework storage. While the building might be suitable for storage of a smaller quantity it would not be suitable for storage of the whole amount that could be kept there.
30. It is important to note however in this context that there is provision in the MSER Approved Code of Practice (paragraph 313 page 70) on storage of fireworks within or adjoining domestic/sleeping accommodation. The ACoP requires that if someone is storing more than 75kg of Hazard Type 4 fireworks then there must be:
- a fire detection system;
 - fire separation between the fireworks and the domestic accommodation and access/exit routes to the accommodation.

The ACoP goes on to say that 'where these precautions are not taken, the licensing authority may decide that the premises are not a suitable place for the storage of explosives and refuse a licence or registration'. The licensing authority would of course also have the option of taking enforcement action either by issuing an enforcement notice or through prosecution.

31. HSC would welcome views on the extent of problems with storage of large quantities of fireworks in registered stores which are unsuitable for the storage of the full quantities permitted by the regulations. It is not clear whether the concern is about the *potential* for unsafe storage rather than concern about widespread practices. It is also unclear whether the provisions in the ACoP provide an effective backstop.
32. In the informal consultation undertaken by HSC, stakeholder's views have been equivocal: on the one hand it is recognised that there are concerns, but on the other hand, there may be good arguments for relying on the provisions in the ACoP – at least at this stage.
33. It is also recognised that the proposed changes could place an additional onus on local licensing authorities to make judgements about fire-loadings which they may feel ill-equipped to make. It is recognised that there would need to be guidance to licensing authorities to ensure consistency in the operation of this provision, but this may also provide a further argument for allowing greater time to test the effectiveness of the regulations as currently drafted.
34. At present the only alternative available to the licensing authority under the regulations 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.

Information about the net mass of explosive contained in pyrotechnic articles

35. 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.
36. Suppliers have an incentive to provide this information (eg on package labelling) because in most cases the net mass is less than one quarter of the gross weight and using the true content enables the supplier to make fewer deliveries. 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 the actual net mass does not exceed the stated quantity.

Power to vary a registration

37. The proposals would enable a local licensing authority to vary a registration – for example when a business is sold, or relocates or there is a need to extend the registration. At the moment the local licensing authority can vary a licence but there is no mechanism for varying a registration. We believe that there are strong arguments for consistency of treatment between licences and registrations and are therefore proposing to amend the regulations accordingly.

Power to transfer a registration

38. The amendments would also enable licensing authorities to transfer a registration. Again this is intended to ensure comparability of treatment as between licences and registrations.

Gaps and anomalies in enforcement responsibilities

39. 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.
40. 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.

Other amendments: Short-term storage

41. Regulation 10(2)(e) allows the storage, without a licence or registration, for up to 3 days of limited quantities of either shooters' powders or fireworks provided the explosives are kept at the place of intended use. The point has been made that

while this works as intended on normal weekends it does not work so well on bank holiday weekends: if the black powder or fireworks are delivered to the site on say the Friday morning then the 3-day period runs out on the Monday morning. This seems to be a reasonable point and there does not appear at first sight to be any reason why the period for this dispensation should not be increased to 5 days. We are therefore proposing to amend the regulation accordingly.

42. It must be stressed that this disapplication is simply a disapplication from the need to hold a registration or licence – it is not in any way a disapplication of the safety requirements of the regulations.

Other amendments: Model rocket motors

43. Model rocketry is an increasingly popular hobby in the UK. As outlined above, amendments have been included that would mean that these users of smaller rocket motors were put on a footing comparable with users of similar low-hazard explosives. Regulation 5 of MSER includes provisions on separation distances around explosives stores, together with disapplications intended to benefit hobbyists using small quantities of explosives. The proposals include an amendment which would extend these disapplications to model rocket users.

Consultation points:

Do you agree, partly agree or disagree with the proposal on the transfer of licences? If you do not agree, do you believe that the provisions should be left as they stand or, should there be some alternative mechanism?

Do you have any views on the proposal to enable local licensing authorities to include a provision limiting the amount of explosive that might be stored in a registered store in certain circumstances?

Do you agree, partly agree or disagree with the proposal that there should be a mechanism to enable licensing authorities to vary a registration?

Do you have any comments on the proposals to place a duty on manufacturers and importers to ensure that they do not understate the amount of explosives in the information they provide on the net mass of the explosives in the articles they supply?

Do you agree with the proposal to extend the disapplication for short-term storage at sites of re-enactment events, firework displays and similar events?

Do you agree with the proposals on the treatment of rocket motors?

Corrections and clarifications

44. In addition to the changes outlined in the preceding paragraphs, there are four main areas where we believe there is a need to amend the regulations to correct errors and omissions.

45. First, Regulation 7 requires that 16-18 year-olds working under in the manufacture and storage of explosives must be under appropriate supervision. We are proposing to amend this regulation so that it applies to all under-18s. It must be stressed that this is subject to the general legislation on the employment of children which among other things prohibits employment in 'industrial undertakings'. The amended regulation would have the effect that *where the legislation permits their employment, under-18s*, they must be under appropriate

supervision. This would restore the position that applied under the Explosives Act 1875.

46. Second, the regulations enable a subsidiary company to store explosives at a store licensed to its parent. It is proposed to amend the regulations to extend this provision to enable the company to store at premises registered by its parent company.
47. Third, we have had some discussions with the Department of Justice about the provisions in Schedule 4 on the registers of explosives sites. For non security-sensitive sites there is a requirement on the licensing authority to maintain a register and to give access to that register to anyone. For security-sensitive explosives there is the requirement is limited to access by people living in the area. The Department of Justice were concerned that this provision could be read as a prohibition that was in contradiction with the Freedom of Information Act. The intention of our provision was to add to the Freedom of Information Act rights not to restrict them so we propose to clarify the wording of this paragraph of the Schedule.
48. Fourth, at the moment Regulation 3(2)(f) disappplies the regulations in ‘any mine ...used solely for the purpose of the getting of minerals or ensuring the safety of the mine’. The intention of this provision is to ensure that explosives used in mines are not subject to two sets of regulations (MSER or the relevant mining legislation). However, there are cases where parts of a working mine are used for purposes other than the getting of minerals (for example, for the storage of documentation or for waste disposal) and therefore the mine falls foul of the current disapplication. We would also wish to avoid a situation where disused parts of a working mine might be let out for the storage of explosives and for those explosives not to be subject to either MSER or the relevant mining regulations. We are therefore proposing to amend the regulation to make clear that the disapplication would only apply to the storage of explosives below ground at a mine, where the explosives are for use for the getting of minerals or for ensuring the safety of the mine.

Do you agree, partly agree or disagree with the proposal to amend regulation 7 to require the appropriate supervision of all under-18s working in the manufacture and storage of explosives (where that employment is permitted by general employment law)?

Do you have any comments on the proposals to place a duty on manufacturers and importers to ensure that they do not understate the amount of explosives in the information they provide on the net mass of the explosives in the articles they supply?

Do you have any views on the proposed amendment to Schedule 4 on the access to registers of stores holding certain explosives?

Do you agree, partly agree or disagree with the proposed amendment on application of the regulations below ground at a mine?

Minor drafting issues

49. The regulations also pick up some more minor drafting issues:

- Regulation 11(7) prohibits the licensing by a local licensing authority at a site where manufacturing takes place. This was intended to ensure that at HSE-

licensed sites, the HSE licence covered all of the manufacturing and storage activities covered at the site. However, Regulation 9 sets out a number of manufacturing activities where a licence from HSE is not required. There is therefore an unintended contradiction between Regulations 9 and 11. The amendment would resolve this contradiction;

- the wording of Regulation 11(9) is to be amended to make clear that it is for the licensing authority to determine the duration of a renewal registration. This would bring the wording of the provision on renewals into line with the wording of the provision on the initial grant of the registration;
- we also propose to make a similar amendment to regulation 13 which deals with the grant and renewal of licences;
- we also propose to amend regulation 13(9)b to make it consistent with regulation 13(1)b. This would ensure that the provisions on the length of renewal licences are consistent with the provisions on the initial grant of the licence;
- Schedule 1 provides for HSE to be the licensing authority for explosives ‘stored at a mine’. This is intended to apply to the surface buildings. However, Regulation 2 defines a mine as the underground workings. We propose to amend Schedule 1 to correct this.

Do you have any views on the proposed amendments discussed in paragraph 49?

Revocation of local mine regulations

50. The proposed Schedule 2 lists 224 mining regulations that are proposed for revocation. These are all special, or local, regulations applying to individual named mines.
51. The large majority of these regulations concern mines that have now been abandoned. However, 23 sets of regulations apply to mines that are still working. In 14 cases the systems referred to are no longer used. The proposal for the remaining 9 is to replace the existing local regulations with consents under section 83 of the Mines and Quarries Act. The main reasons for this are that the regulations are outdated and prescriptive and often differ between mines – leading to difficulties for companies operating more than one mine.
52. The section 83 consents would cover:
 - construction and maintenance of roadways;
 - driver competence;
 - maintenance of vehicles;
 - use of vehicles to carry people below ground; and
 - managers' transport rules on the operation of the vehicles below ground.
53. There are four sets of special regulations which the mine owners have said they wish to retain. These have not therefore been included in the list of proposed revocations

Control of Noise at Work Regulations

54. Following an oversight in the transposition of the Control of Noise at Work Regulations, a requirement for employers to ensure that hearing protection provided for use at work complied with product safety legislation was not carried over from the Noise At Work Regulations 1989 or from the draft Control of Noise at Work regulations 2005 that went out to consultation in 2004. The effect of this was to disapply European Community Directive 89/686/EEC on the approximation of laws of Member States relating to personal protective equipment. This amendment will reapply requirements for hearing protection to conform to community legislation on personal protective equipment intended to protect against harmful levels of noise. This will be achieved through requiring that hearing protection provided for use at work conform to the relevant requirements of the Personal Protective Equipment Regulations 2002.
55. HSE guidance *Controlling noise at work* (L108 ISBN 07-176-6164-4) includes detailed guidance on the selection, use, care and maintenance of hearing protection. This recommends that all hearing protection should carry the CE mark which is an indication that it meets essential requirements in accordance with the Personal Protective Equipment Regulations 2002 (paragraph 266 page 75). This advice will still be correct following this amendment and therefore no changes are proposed for the guidance. Manufacturers and suppliers of hearing protection must already comply with the Personal Protective Equipment Regulations 2002 and therefore should not be affected by this amendment.

Do you have any views on the proposed amendment discussed in paragraph 54?

Impact Assessment

56. The initial impact assessment for these proposals is included at Annex 3. The results are as follows:

Total discounted benefits	£2,390,000
Total discounted costs	£151,000
Net benefits	£2,239,000
Annual net benefit	£74,600

Questions for consultation

Some issues for consultation

Do you agree, partly agree or disagree with the proposed disapplication for firearms certificate holders?

If you agree, do you have any views on what the threshold should be above which an explosives certificate is required?

Do you have any views on the proposal to extend the life of explosives certificates?

Do you agree, partly agree or disagree with the proposals on acquire-only certificates?

Do you have any views on the proposals to add smaller rocket motors to Schedule 1 of COER?

Consultation points:

Do you agree, partly agree or disagree with the proposal on the transfer of licences? If you do not agree, do you believe that the provisions should be left as they stand or, should there be some alternative mechanism?

Do you have any views on the proposal to enable local licensing authorities to include a provision limiting the amount of explosive that might be stored in a registered store in certain circumstances?

Do you agree, partly agree or disagree with the proposal that there should be a mechanism to enable licensing authorities to vary a registration?

Do you have any comments on the proposals to place a duty on manufacturers and importers to ensure that they do not understate the amount of explosives in the information they provide on the net mass of the explosives in the articles they supply?

Do you agree with the proposal to extend the disapplication for short-term storage at sites of re-enactment events, firework displays and similar events?

Do you agree with the proposals on the treatment of rocket motors?

Do you agree, partly agree or disagree with the proposal to amend regulation 7 to require the appropriate supervision of all under-18s working in the manufacture and storage of explosives (where that employment is permitted by general employment law)?

Do you have any comments on the proposals to place a duty on manufacturers and importers to ensure that they do not understate the amount of explosives in the information they provide on the net mass of the explosives in the articles they supply?

Do you have any views on the proposed amendment to Schedule 4 on the access to registers of stores holding certain explosives?

Do you agree, partly agree or disagree with the proposed amendment on application of the regulations below ground at a mine?

Do you have any views on the proposed amendments discussed in paragraph [49]?

Do you have any views on the proposed amendment discussed in paragraph 54?

Annexes

- Annex A - List of consultees
- Annex B - The Regulations
- Annex C - Commentary on the regulations
- Annex D - Impact assessment

List of consultees

Annex A

We intend to send this document to the following organisations:

Local authorities in England Wales and Scotland with current licensing and enforcement responsibilities for enforcing MSER

Fire and rescue authorities in Metropolitan Counties

Chief Fire Officers Association

Local Authorities Coordinators of Regulatory Services

Convention of Scottish Local Authorities

Association of Chief Police Officers

Association of Chief Police Officers (Scotland)

Confederation of British Industries

CBI Explosives Industry Group and member companies

British Fireworks Association and member companies

British Retail Consortium

British Pyrotechnists Association

Quarry Products Association

British Aggregates Association

Coal Producers Association (COALPRO)

UK Coal

Mining Association UK

Federation of Small Mines in Great Britain

Union of Democratic Mineworkers

Trades Union Congress

Broadcasting Entertainment Cinematograph and Theatre Union

Fire Brigades Union

Trading Standards Institute

Institute of Explosives Engineers

[Special Effects Technicians - Lincoln Parkhouse]

Department for Business Efficiency and Regulatory Reform

Home Office

Department of Communities and Local Government

Ministry of Defence

[Welsh Assembly]

[Scottish Government]

Gun Trade Association

British Shooting Sports Council

British Association for Shooting and Conservation

Muzzle Loaders of Great Britain

National Association of Reenactment Societies

English Civil War Society

American Civil War Society

UK Rocketry Association

Southern England Rocket Fliers

British Model Fliers Association