

## Health and Safety (Miscellaneous Amendments and Revocations) 2008 - commentary

<b>Amendments to the Control of Explosives Regulations</b>		
<b><i>Regulation 2: Interpretation</i></b>		
<i>Amendment</i>	<i>Comment</i>	<i>Impact</i>
<p>for the definition of “chief officer of police”, substitute —</p> <p>““chief officer of police”—</p> <p>(a) in relation to England and Wales, has the same meaning as in section 101(1) of the Police Act 1996); and</p> <p>(b) in relation to Scotland, means the person appointed to the office of chief constable pursuant to section 4 of the Police (Scotland) Act 1967;”;</p>	<p>This amendment brings the wording used in COER into line with the wording used in MSER.</p>	<p>None</p>
<p>After paragraph (8) insert:</p> <p>“The performance of any function given to the chief officer of police under these Regulations may be delegated by him, to such an extent and subject to such conditions as he may specify—</p> <p>(a) to a member of the police force in respect of which he is the chief officer of police;</p> <p>(b) to a person employed to assist that police force as mentioned in section 15 of the Police Act 1996 (civilian employees); or</p> <p>(c) to a person employed or appointed in relation to that police force as mentioned in section 9 of the Police (Scotland) Act</p>	<p>In a large number of police force areas the explosives certificate regime is administered by civilian employees of the police force rather than by uniformed members of the force. This amendment is intended to recognise that role, and again is in line with the wording of MSER.</p>	<p>None. This simply reflects existing practice.</p>

<p>1967(civilian employees), and any such delegation shall be made in writing by that chief officer of police.”</p>		
<p><b>Regulation 3: application</b></p>		
<p>for sub-paragraph (c) of paragraph (3), substitute — “(c) a person employed to assist that police force as mentioned in section 15 of the Police Act 1996 (civilian employees) or a person employed or appointed in relation to that police force as mentioned in section 9 of the Police (Scotland) Act 1967 (civilian employees); or”; and</p>	<p>This amendment simply updates the wording of Regulation 3(3)(c) of COER so that it refers to the Police Act 1996 as opposed to the Police Act 1964. Regulation 3 provides an exemption for civilian employees of police forces from the need to hold an explosives certificate in respect of explosives held on behalf of the force.</p>	<p>None.</p>
<p>After paragraph (4), insert – “(4A) Regulation 7 shall not apply to a person who acquires or keeps black powder of a quantity not exceeding [ ] kilograms if — (a) that person — (i) is the holder of a firearm certificate or a shot gun certificate granted under the Firearms Act 1968 or is exempt from the need to hold such a certificate under that Act; and (ii) is aged 18 years or over; and (iii) is not a prohibited person or a person prohibited by section 21 of the Firearms Act 1968 from having a firearm in his possession; and (iv) is resident in Great Britain; and (v) has, before acquiring the black powder, sent a written notification in the form set out in Schedule 5 (or one to the same effect) to the chief officer of police for the relevant police force and has received a written acknowledgement of the notification from</p>	<p>This is a new provision which would exempt certain holders of Firearm and Shotgun Certificates from the need to hold an explosives certificate provided certain conditions are met. One of these conditions is the amount of powder that can be stored. As noted in the main consultation document, this amount will be determined in the light of evidence submitted during the consultation exercise. A further condition is that those wishing to take advantage of this disapplication will need to notify the police force for the area where they live.</p>	<p>The most significant cost savings likely to result from a reduction in the number of people required to hold an explosives certificate as well as a Firearms and Shotgun Certificate. At present there is no fee for these explosives certificates so cost savings would be primarily for the public sector, although paperwork requirements for certificate holders would also be reduced. Average <b>annual</b> benefit calculated at £77.8k. There would be <b>one-off</b> costs for processing initial notifications to the police from certificate holders wishing to take advantage of the disapplication - calculated at £150.8k</p>

<p>that chief officer of police; and</p> <p>(b) the black powder is for use exclusively in a firearm to which the certificate or exemption referred to in sub-paragraph (a)(i) relates.</p> <p>(4B) For the purposes of paragraph (4A) –</p> <p>(a) “relevant police force” means —</p> <p>(i) where the notification relates to the keeping of black powder, the police force for the police area in which the place of keeping is to be situated;</p> <p>(ii) where the notification relates to the acquisition only of black powder, the police force for the police area in which the person acquiring the explosive resides or, in the case of a body corporate, the police area in which the body corporate has its registered office, or, if it has no registered office, its principal office; and</p> <p>(b) “certificate”, “firearm” “firearm certificate”, “shot gun” and “shot gun certificate” have the same meanings as they are given in the Firearms Act 1968.</p>		
<p><b><i>Regulation 5: revocation and expiry of explosives certificates</i></b></p>		
<p><i>Amendment</i></p>	<p><i>Comment</i></p>	<p><i>Impact</i></p>
<p>In regulation 5(3) —</p> <p>(a) for sub-paragraph (a), substitute “5 years after the date that its validity begins; or”; and</p> <p>(b) omit sub-paragraph (b)”.  Amendment would read:</p>	<p>This amendment would increase the maximum life of explosives certificates from 1 year to 5 years in the case of acquire-only certificates and from 3 years to 5 years in the case of ‘acquire and keep’ certificates.  This would in turn increase the maximum life of</p>	<p>We calculate that the proposed increase in the duration of the certificates would result in reduced costs amounting to annual benefits £8.1k for acquire only certificates and £7.8k for acquire and keep certificates. Linked to this proposal would be further benefits arising from the proposal to increase the duration of certain</p>

<p><i>An explosives certificate shall cease to be valid —</i></p> <p><i>(a) 5 years after the date that its validity begins; or</i></p> <p><i>(b) after such lesser time as may be stated therein; or</i></p> <p><i>(c) after notice of revocation by the chief officer of police for the relevant police force has been served on the holder of the certificate, whichever happens first.</i></p>	<p>the storage licence.</p>	<p>licences and registrations under the Manufacture and Storage of Explosives Regulations (see below).</p>
<p><b>Regulation 15: enforcement</b></p>		
<p><i>Amendment</i></p>	<p><i>Comment</i></p>	<p><i>Impact</i></p>
<p>In regulation 15(2)(a), for “licensed factory or magazine” substitute “site in relation to which the Executive is the licensing authority by virtue of paragraph 1(c) of Schedule 1 to the 2005 Regulations”.</p>	<p>The present regulation refers to the Explosives Act. The reference should have been replaced by a reference to MSER. This amendment corrects that oversight.</p>	<p>None.</p>
<p><b>Schedule 1</b></p>		
<p><i>Amendment</i></p>	<p><i>Comment</i></p>	<p><i>Impact</i></p>
<p>In Schedule 1, under the heading “EXCEPTIONS”, insert “PART 1” and at the end insert —</p> <p>“PART 2</p> <p>Model rocket motors, which —</p> <p>(a) are allocated the U.N. no. 0186, 0272,</p>	<p>It has been agreed with the police that the smaller, lower powered articles as defined in this amendment are not criminally attractive and should therefore be included in Schedule 1</p>	<p>This provision would be of benefit to model rocketry enthusiasts. However, we do not know how many such enthusiasts there are. We believe the number to be relatively small and so have not sought to quantify the benefit for the purpose of the impact assessment.</p>

<p>0349, 0351 or 0471 or 0499;          (b) are intended to be used for the propulsion of model rockets; and          (c) in respect of each individual model rocket motor, have a net mass of explosive content of no more than 1 kilogram.”</p>		
<p><b>Schedule 5: Form of Notification</b></p>		
<p><i>Amendment</i></p>	<p><i>Comment</i></p>	<p><i>Impact</i></p>
<p>After Schedule 4, insert —          “SCHEDULE 5 Regulation 3(4A)(a)(v)f          FORM OF NOTIFICATION          To: The Chief Officer of Police          I intend to *acquire / acquire and keep less than [ ] of black powder. I am the holder of a firearm/shot gun certificate granted under the *Firearms Act 1968/exempt from the need to hold a firearm/shot gun certificate under the Firearms Act 1968 and the black powder is for use exclusively in a firearm to which the *certificate/exemption relates.          I am 18 or over and am not a prohibited person within the meaning of the Control of Explosives Regulations 1991 or the Firearms Act 1968.          Signed.....          Name.....          Address.....          Date.....          *Delete as applicable”</p>	<p>This is the text of the proposed notification</p>	<p>See above</p>

<b>The Health and Safety (Enforcing Authority) Regulations 1998</b>		
<i>Amendment</i>	<i>Comment</i>	<i>Impact</i>
<p>In regulation 4 — after paragraph (8) insert — “(8A) In respect of a site — (a) at which more than two tonnes of (i) ammonium nitrate blasting intermediate, or (ii) ammonium nitrate blasting intermediate and other explosives is stored, the Executive shall be the enforcing authority for the 2005 Regulations; and (b) at which two tonnes or less of (i) ammonium nitrate blasting intermediate, or (ii) ammonium nitrate blasting intermediate and other explosives is stored, the chief officer of police for the area in which the site is situated shall be the enforcing authority for the 2005 Regulations.”;</p>	<p>MSER states that the HSE should be the enforcing authority in respect of the <i>manufacture</i> of ammonium nitrate blasting intermediates (ammonium nitrate emulsions and similar materials used for the on-site mixing of blasting explosives). However it made no provision for licensing and enforcement in relation to the storage of these materials. This amendment corrects that omission and provides that the HSE should be the enforcing authority for the storage of more than 2 tonnes and the police for 2 tonnes or less. This is in line with the enforcement responsibilities for blasting explosives.</p>	<p>At present the enforcement responsibility for these sites would lie with the authority that has general enforcement responsibilities for health and safety at the site. This might be HSE but in many cases would be the local authority. We believe that there are currently about 10 storage sites for this substance, and HSE would take over enforcement responsibility for all of these sites.</p>
<p>after paragraph (9), insert — “(9A) A licensing authority shall be the enforcing authority for regulation 3 of the Management of Health and Safety at Work Regulations 1999 in relation to any manufacture or storage of explosives for which it is the enforcing authority by virtue of paragraph (7)”.</p>	<p>MSER does not itself contain a duty to carry out a risk assessment. Instead it relies on the duty in the Management of Health and Safety at Work Regulations (MHSWR). A person storing explosives would have a duty under MHSWR to carry out a risk assessment of the risks arising from the manufacture and storage of explosives, and duties under MSER to control those risks. At the moment in certain cases these two duties are enforceable by different authorities. This amendment would align the enforcement responsibilities under the two sets of regulations</p>	<p>None. It is important to stress that this does not create an additional duty. It simply means that the same enforcing authority has responsibility for enforcing both the risk assessment duty and the duties under MSER.</p>

	in relation to explosives. This would mean that if a dutyholder had failed to carry out an adequate risk assessment and had in turn failed to comply with the substantive requirements of MSER the same authority could take enforcement action on both areas of concern.	
(a) in paragraph (11), omit “local authority”; (b) after paragraph (11), insert — “(12) In paragraph (9) and sub-paragraph (a) of paragraph (10), “local authority” has the same meaning as it is given by regulation 2(1) of the 2005 Regulations.”.		
<b>The Manufacture and Storage of Explosives Regulations 2005</b>		
<b><i>Regulation 2: interpretation</i></b>		
<i>Amendment</i>	<i>Comment</i>	<i>Impact</i>
(a) after the definition of “mine”, insert — ““model rocket motors” means explosive articles allocated the U.N. no. 0186, 0349, 0351 or 0471 which are intended to be used for the propulsion of model rockets; ”;	There are a number of provisions in the regulations which provide dispensations for people keeping small quantities of low-hazard explosives. Unfortunately these dispensations do not cover the propellant cartridges used to propel model rockets (‘model rocket motors’). There are amendments to both MSER and to the Control of Explosives Regulations which are intended to rectify this position. This amendment supports those provisions by adding a definition.	None (supports substantive provisions).
(b) in paragraph (9), omit the words from “and		None.

<p>includes” to the end.</p> <p>Amended regulation would read:  <i>“For the purposes of these Regulations, save for paragraph 45(3)(f) of Schedule 5, “chief officer of police” —</i></p> <p><i>a) in relation to England and Wales, has the same meaning as in section 101(1) of the Police Act 1996; and</i></p> <p><i>(b) in relation to Scotland, means the person appointed to the office of chief constable pursuant to section 4 of the Police (Scotland) Act 1967; and in relation to an area, means the chief officer of police for that area”</i></p>		
<p><b>Regulation 3: application</b></p>		
<p><i>Amendment</i></p>	<p><i>Comment</i></p>	<p><i>Impact</i></p>
<p>For sub-paragraph (f) of regulation 3(2), substitute –  “(f) the storage of explosives below ground at a mine, where the explosives are for use at that mine for the getting of minerals or ensuring the safety of the mine”.</p>	<p>Currently regulation 3(2)(f) disapplies the regulations in ‘any mine ...used solely for the purpose of the getting of minerals or ensuring the safety of the mine’. 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 such a mine falls foul of the current disapplication. The proposed amendment makes it clear that the disapplication would only apply to the storage of explosives where they are for use for the getting of minerals or for ensuring the safety of the mine.</p>	<p>Clarifies the original intention that MSER is disapplied only to explosives stored underground and used for getting minerals or for ensuring the safety of the mine (as these are covered by mining regulations). Storage of explosives below ground at a mine for other purposes would be covered by MSER.</p>

<b>Regulation 5: separation distances</b>		
<i>Amendment</i>	<i>Comment</i>	<i>Impact</i>
In paragraph (2), at the end add “or would have been required pursuant to that provision but for the operation of regulation 27(4) in the cases to which regulation 27(3) applies”; and	Regulation 5(2) disapplies separation distances in cases where HSE grants to licence under the assent process. Regulation 27(3) disapplies Regulation 13(3) in certain specified cases. The intention was to ensure that in these cases there was no need to go through the assent process. Unfortunately this had the unintended knock-on consequence of disapplying Regulation 5(2). The proposed amendment means that Regulation 5(2) applies where Regulation 13(3) applies or would have applied but for the effect of Regulation 27(3)	Restores original intention that the disapplication on separation distances in Regulation 5(2) should apply to cases covered by Regulation 27(4) for deemed licences.
In regulation 5(3) — (a) after sub-paragraph (a), insert — “(aa) a combined total of 5 kilograms of shooters’ powder and model rocket motors;” , and	Regulation 5 includes requirements to maintain separation distances around explosives stores. The distance depends on the type and quantity of explosives.  There are some exceptions to these requirements for shooters and similar users. The intention of this amendment is to ensure that users of rocket motors are treated in a comparable way to shooters and similar users. In its direct effect it would enable users of rocket motors to keep a quantity of black powder as well as rocket motors, without having to maintain the separation distances that would otherwise be required.	At the moment, we understand that the normal practice is for rocket motor enthusiasts to cooperate with some users to keeping black powder while others keep the rocket motors. This amendment would have some benefit in terms of convenience for the rocket motor users.
(b) in sub-paragraph (d) — (i) omit “and” at the end of paragraph (i); and		There is currently provision in the regulations allowing the police to store small quantities of explosives for dog training purposes without

<p>(ii) at the end of paragraph (ii), add “and  (iii) 4 kilograms of explosive kept temporarily and for operational purposes other than those referred to in subparagraph (d)(i) and (ii).”; and</p>		<p>needing to maintain separation distances. This amendment would extend that provision to other operational purposes.</p>
<p>(c) at the end, add “and, in the case of any storage of model rocket motors, the net mass of explosive content of each model rocket motor must not exceed 1 kilogram.”</p>	<p>See entry for sub-paragraph (a)</p>	<p>See above.</p>
<p><b>Regulation 7: employment of young persons</b></p>		
<p><i>Amendment</i></p>	<p><i>Comment</i></p>	<p><i>Impact</i></p>
<p>In Regulation 7, for “between the age of 16 years and” substitute “under”.  Amended regulation would read:  <i>“No person who manufactures or stores explosives shall permit a person under 18 years to work in that manufacture or storage except under appropriate supervision”.</i></p>	<p>The present regulations require that young persons between the age of 16 and 18 should only be employed in the manufacture or storage of explosives if under appropriate supervision. The regulation should have applied the same requirement to under-16s (where there employment is permitted at all by employment legislation). This amendment corrects that omission.</p>	<p>We do not believe that this amendment will impose any additional costs.</p>
<p><b>Regulation 9: explosives not to be manufactured without a licence</b></p>		
<p><i>Amendment</i></p>	<p><i>Comment</i></p>	<p><i>Impact</i></p>
<p>In regulation 9(2)(j), omit “terms and”.</p>	<p>The second amendment to Regulation 9 replaces deletes the word ‘term’ from the</p>	<p>None, other than to make the regulations more consistent and logical.</p>

<p>Amended regulation would read:</p> <p><i>“(j) 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 conditions of that licence”.</i></p>	<p>phrase ‘terms and conditions’.</p> <p>At the moment some of the regulations use the phrase ‘terms and conditions’ whereas others simply refer to ‘conditions’. This amendment is intended to make the use of these terms more consistent and logical. We have sought to standardise the terminology by using ‘terms’ to cover such matters as, for example the duration of a licence and ‘conditions’ to cover something that a person is required to comply with in order to be able to carry out an activity, for example they may store explosives, but only explosives of a particular type.</p>	
<b>Regulation 10: explosives not to be stored without a licence</b>		
<i>Amendment</i>	<i>Comment</i>	<i>Impact</i>
<p>in paragraph (2)(e), for “3 days” substitute “5 days”.</p> <p>Amended regulation would read:</p> <p><i>“(e) the storage of no more than 100 kilograms of —</i></p> <p><i>(i) hazard type 3 explosives consisting of fireworks;</i></p> <p><i>(ii) shooters’ powders; or</i></p> <p><i>(iii) a combination of shooters’ powders and hazard type 3 and 4 explosives consisting of fireworks,</i></p> <p><i>provided that the explosives are stored for no longer than 5 days in their place of intended use”.</i></p>	<p>The regulations include provisions exempting temporary storage at re-enactment and similar events from the need for storage licences or registrations. This provision would extend the duration of these provisions to give some greater flexibility in particular to provide for Bank Holiday weekends.</p>	<p>This measure would be a benefit for re-enactors and for the suppliers of black powder to such events. The number of such events is relatively small. We have not sought to quantify this benefit for the Impact Assessment.</p>
<p>For paragraph (2)(h), substitute —</p>	<p>The present regulation 10(2) allows a subsidiary company to use a store licensed by its parent</p>	<p>Although this has potential benefits for companies we have not sought to quantify this</p>

<p>“(h) 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 —</p> <p>(i) a registration, or</p> <p>(ii) a licence to store explosives</p> <p>and that storage by the wholly-owned subsidiary is in accordance with any term of that registration or condition of that licence.”; and</p>	<p>company without the need to obtain a licence itself. However, there is no equivalent provision where the parent company holds a registration (ie for a store holding a smaller quantity). The amendment corrects this anomaly.</p>	<p>benefit for the Impact Assessment.</p>
<p>In paragraph (3) —</p> <p>(a) in sub-paragraph (a), omit “and” at the end; and</p> <p>(b) in sub-paragraph (b), omit “or explosive articles” and after that sub-paragraph insert—“and</p>	<p>The Regulations define ‘explosives’ as explosive substances and explosive articles. In the phrase ‘explosives and explosive articles’, ‘explosive articles’ is redundant because they are already fall within the definition of ‘explosives’. A similar amendment has been made to regulation 11.</p>	<p>None</p>
<p>(c) where a person wishes to rely on the exception referred to in paragraph (2)(b)(ia), each model rocket motor to be stored for the purposes of that exception must have a net mass of explosive content not exceeding 1 kilogram.”</p>	<p>MSER permits people to keep small quantities of certain explosives without the need for a licence or registration. These quantities are set out in Regulation 10 (2)(b)(ii). The effect of the amendment to add model rocket motors to Schedule 1 of COER is that model rockets can benefit from these allowances.</p> <p>However, ‘model rockets’ range from very small to very large devices. In the case of the large devices we believe that these should be subject to the requirement to hold a licence or registration. This provision sets the condition that to benefit from the exemption all of the items should contain less than 1kg of propellant.</p>	<p>Again this is a provision that will be of clear benefit to model rocketry enthusiasts. However because of the difficulty in quantifying this benefit we have not taken it into account in the Impact Assessment.</p>

<b>Regulation 11: registration in relation to storage</b>		
<i>Amendment</i>	<i>Comment</i>	<i>Impact</i>
(a) in paragraph (4)(b), for “three years” substitute “five years”.	Sub-paragraph (a) states that the licence for storage or registration may last for as long as the applicants Explosives Certificate. Sub-paragraph b covers cases where the police issue a licence or registration to cover the storage of smokeless powder where there is no requirement for an explosives certificate, or where the applicant qualifies for one of the allowances in Regulation 10. It would permit the police to grant registrations for up to five years as opposed to three at present.	This would be of benefit to firearms dealers selling shooters powders. We believe this would be a clear benefit for the dealers concerned but because of the small number we have not sought to quantify this benefit for the Impact Assessment.
(b) in paragraph (5), omit “the exceptions listed in”; Amended regulation would read: <i>‘(5) For the purposes of paragraph (1) no more than one of the subparagraphs (a) to (e) of paragraph (1) shall apply ....’</i>	Simply removes unnecessary words.	None
(c) in paragraph (7), after “manufacture of explosives” insert “,other than manufacture not requiring a licence by virtue of regulation 9(2),”. Amended regulation would read: <i>“(7) No application for registration may be made in respect of the storage of explosives at a site at which the manufacture of explosives, other than manufacture not requiring a licence by virtue of regulation 9(2), also takes place or is to take place”.</i>	The intention behind Regulation 11(7) was to prohibit the granting by a local licensing authority of a licence or registration for storage at a site licensed by HSE for the manufacture of explosives. This was to ensure that there would be a single licensing and enforcing body for the site. However, Regulation 9(2) sets out a number of circumstances where manufacture does not require a licence. The amendment to Regulation 11(7) has been drafted to take account of these situations.	None.
(d) in paragraph (8), omit “or explosive articles”;	MSER defines ‘explosives’ as explosive	None.

	<p>substances and explosive articles. The amendment to Regulation 11(8) deletes the unnecessary reference to 'explosive articles' in the phrase 'explosives or explosive articles' – explosive articles are by definition 'explosives'.</p>	
<p>(e) in paragraph (9) —</p> <p>(i) after “exceeding one year” insert “as the licensing authority determines”; and</p> <p>(ii) for “solely” substitute “, whether solely or not,”. and</p> <p>(iii) for “three years” substitute “five years”.</p> <p>Amended regulation would read:</p> <p><i>“A renewal of a registration may be granted for any period not exceeding one year as the licensing authority determines save that –</i></p> <p><i>(a) subject to sub-paragraph (b), where the applicant for renewal has been granted an explosives certificate, a renewal of a registration may be granted for any period not exceeding the due expiry date of that explosive certificate where that date is later than that one year period; or</i></p> <p><i>(b) where the application for renewal of registration relates, whether solely or not, to the storage of smokeless powder, a renewal of registration may be granted for any period not exceeding five years”.</i></p>	<p>Regulation 11(9) stipulates the maximum periods for which a licensing authority may grant a licence. The amendment makes clear that it is for the licensing authority to determine the length of the renewal. This brings the wording of Regulation 11(9) into line with the wording of Regulation 11(4).</p> <p>In line with the amendment to Regulation 11(4) , the amendment also extend the maximum period for which a regulation can be renewed in these cases, from three years to five.</p>	<p>Again there would be a clear benefit to those affected but we have not sought to quantify this benefit.</p>

<b>Regulation 13: grant of licences</b>		
<i>Amendment</i>	<i>Comment</i>	<i>Impact</i>
(a) in paragraph (1)(b), for “three years” substitute “five years”;	This is a very similar amendment to the amendment to Regulation 11(4)(b) it would enable the police to grant licences for up to five years in cases where an explosives certificate is not required, instead of the present three years.	This is likely to be a clear benefit for a small number of people. We have not tried to quantify this benefit.
(b) in paragraph (5), after “licence shall”, insert “include conditions which”;	(see comments under proposed amendment to Regulation 9(2)(j))	
<p>(b) in paragraph (9) —</p> <p>(i) for “up to one year”, substitute “up to two years as the licensing authority determines; and</p> <p>(ii) in sub-paragraph (a), for “one year period”, substitute “two year period”.</p> <p>Amended regulation would read:</p> <p><i>“(9) A renewal of a licence may be granted for any period up to two years as the licensing authority determines”...</i></p> <p><i>“(a) subject to sub-paragraphs (b) and (c), where the applicant for the renewal has been granted an explosives certificate, a renewal of a licence may be granted for any period not exceeding the due expiry date of that explosives certificate where that date is later than that two year period”;</i></p>	<p>There are very similar amendments to Regulation 11 designed to make the wording of the provisions on the renewal of licences consistent with the provisions on their initial grant.</p> <p>The amendment to Regulation 13(9) is to make the wording of this provision on the renewal of registrations consistent with the wording of regulation 13(4) on the grant of registrations.</p>	None. However, there would be costs to both licensing authorities and duty holders if we did not make these changes.
(iii) in sub-paragraph (b) —	This is a similar amendment to the amendment made to Regulation 11(9). It would enable the	

<p>(aa) for “solely” substitute , whether solely or not; and (bb) for “three years” substitute “five years”.</p>	<p>police to renew licences for up to 5 years. This would be consistent with the increased period for the initial grant of licences.</p>	
<p><b>Regulation 15: refusals of licences, registration and draft licences</b></p>		
<p><i>Amendment</i></p>	<p><i>Comment</i></p>	<p><i>Impact</i></p>
<p>(a) in paragraph (1), after “regulation 18”, insert “and, in relation to paragraph (2)(a), subject to paragraphs (2A) and (2B),”; and</p> <p>Amended regulation would read: “(1) Subject to regulation 18, and, in relation to paragraph (2)(a), subject to paragraphs (2A) and (2B), the licensing authority shall.....”</p> <p>(b) after paragraph (2), insert — “(2A) Paragraph (2B) applies where, in relation to an application for registration, the only ground for refusing the application is the one referred to in paragraph (2)(a) but the licensing authority is also of the view that the proposed site, or within it, any place where the storage of explosives is to take place, would be suitable for that storage if the amount of explosives to be stored there were of an amount determined by the licensing authority which is less than the maximum amount permitted by regulation 11(1) for the kind or kinds of explosives to which the application relates.</p> <p>(2B) Where this paragraph applies — (a) the ground for refusal referred to in paragraph (2)(a) shall not apply;</p>	<p>Regulation 11 sets out amounts of explosive that can be kept in registered premises. In contrast to a licence, the regulations do not provide for the registration to set out the maximum amount that can be kept at the site. At present, if a licensing authority took the view that the site was unsuitable for storage of the full amount permitted by Regulation 11 then the only alternative would be to refuse the registration. This amendment would permit the licensing authority to specify a reduced maximum amount as an alternative to refusal.</p>	<p>Our initial assessment is that on balance, this proposal would be cost neutral. The costs to business of operating with a reduced storage limit would be offset by the benefit in not having to find new premises in the event of a refusal of a licence or registration.</p>

<p>(b) regulation 11(2) shall apply in relation to the application as if there were no grounds for refusal;</p> <p>(c) the licensing authority shall specify the maximum amount of explosives which may be stored at the proposed site or a place within it, which, in their opinion, would have the effect that that site or place would be suitable for that storage; and</p> <p>(d) the applicant shall not store more than that specified amount.”.</p>		
<p><b>Regulation 16: variation of licences</b></p>		
<p><i>Amendment</i></p>	<p><i>Comment</i></p>	<p><i>Impact</i></p>
<p>In regulation 16 — after paragraph (2), insert — “(2A) The licensing authority which grants a registration may vary it —</p> <p>(a) where there has been a change of circumstances such that the separation distances can no longer be maintained and a consequent reduction in the amount of explosives that may be stored is required so as to reduce that amount to a quantity specified by the licensing authority which is below the maximum amount referred to in regulation 11(1) for the kind or kinds of explosives concerned;</p> <p>(b) where the person registered is a company and the name of the company changes;</p> <p>(c) so as to change the period for which the registration is in force;</p> <p>(d) so as to reduce or increase any maximum amount specified pursuant to regulation 15(2B)(c);</p>	<p>The amendment to Regulation 16 adds a provision that would enable a licensing authority to vary a registration. At the moment the regulations only permit it to vary a licence.</p>	<p>Applicants are currently required to apply for a new registration when circumstances change. Proposals likely to result in reduced costs for applicants and simplified procedures.</p>

and (e) in relation to any of the matters it relates to, by agreement with the person registered”.		
<b>Regulation 17: revocation of licences and registration</b>		
<i>Amendment</i>	<i>Comment</i>	<i>Impact</i>
In regulation 17, at the end of paragraph (1)(b), insert “or”.	This amendment inserts an ‘or’ that was omitted. This is necessary to make clear that the three paragraphs of Regulation 17(1)(b) are alternatives	None, apart from correcting drafting error.
<b>Regulation 18: Further provisions concerning refusals, variations and revocations</b>		
In regulation 18(1)(a), after “registration” insert “or a renewal of a licence or registration”.	This amendment makes clear that if a licensing authority wishes to a refuse to renew a licence or registration it must go through the process set out in Regulation 18. This is already implicit in the regulation; the amendment simply makes this point explicit. It is also consistent with the proposed wording of Regulation 19.	None apart form clarity and consistency.
<b>Regulation 19: appeal against refusal or revocation of registration</b>		
<i>Amendment</i>	<i>Comment</i>	<i>Impact</i>
For regulation 19, and the chapeau to that regulation, substitute — <b>“Appeal against decisions concerning registrations</b>	s44 of the Health and Safety at Work Act gives rights of appeal to anyone aggrieved by the decision of a licensing authority. The present regulations provides for rights of	This would give wider rights of appeal to holders of registrations. Assumed that this would be cost-neutral.

<p>“19. A person may appeal to the Secretary of State against a decision of a licensing authority —</p> <p>(a) refusing to register him, to renew his registration or to transfer to him a registration held by another;</p> <p>(b) issuing him with a registration subject to a term or restriction which aggrieves him;</p> <p>(c) varying or refusing to vary his registration or a term of it; or</p> <p>(d) revoking his registration,</p> <p>and the provisions of section 44(2) to (6) of the 1974 Act (appeals in connection with licensing provisions) shall apply in respect of any such appeal.”</p>	<p>appeal in the event of a refusal or a revocation of a <i>registration</i>.</p> <p>This proposal would widen those rights of appeal for holders of registrations take account of decisions that could be made under the amended regulations especially the amended provisions on the transfer or variation of a registration or the provision enabling a licensing authority to restrict the amount that can be stored.</p>	
<b>Regulation 20: transfer of licences and registration</b>		
<i>Amendment</i>	<i>Comment</i>	<i>Impact</i>
<p>For regulation 20, substitute –</p> <p>“20.—(1) A licence or registration may be transferred in writing by the licensing authority which issued the licence or registration to any other person who wishes to manufacture or store explosives in place of the licensee or the person who is registered and who applies to the licensing authority for the transfer.</p> <p>(2) A licensing authority shall grant an application for a transfer of a licence or registration unless it is of the opinion that the applicant is not a fit person —</p> <p>(a) to store explosives, in the case of an application to transfer a registration or a licence to store explosives; or</p> <p>(b) to manufacture explosives, in the case of an</p>	<p>This amendment made has been made to meet concerns raised by the Joint Committee on Statutory Instruments in its report on the Manufacture and Storage of Explosives (Northern Ireland) Regulations (reference HL Paper 12/HC 82-iii). The concern raised by the JCSI and that the current provision could permit a transfer to someone who, if they had to apply for a licence in their own right, was not a fit person in the view of the licensing authority.</p>	<p>Under the present regulations licensees can transfer a licence simply by notifying the licensing authority. Under the new proposal they would need to apply to the licensing authority to have the licence transferred. There would be some additional costs to both licensees and dutyholders. However, it is assumed that under the present arrangements, licensing authorities would exercise a degree of scrutiny of transfers notified to them and that in principle the proposal should not in practice significantly increase the amount of work involved. We have assumed that 50 licences or registrations are transferred annually, and that this would involve an average of 30 minutes of time for both the transferor/transferee and the licensing authority</p>

<p>application to transfer a licence to do so.</p> <p>(3) A refusal to transfer a licence or registration shall be treated for the purposes of these Regulations as a refusal of an application for, respectively, a licence or registration and the provisions of regulation 18 shall apply to any such refusal to transfer as if the references in that regulation to “refuse an application for a licence or registration “ included refusing to transfer a licence or registration.”</p>		
<p><b><i>Regulation 21: death, bankruptcy or incapacity</i></b></p>		
<p><i>Amendment</i></p>	<p><i>Comment</i></p>	<p><i>Impact</i></p>
<p>(In regulation 21(1) – a) for “terms”, substitute “conditions”; and</p>	<p>(see comments under proposed amendment to Regulation 9(2)(j))</p>	
<p>(b) for “or registration” where it first appears, substitute “or the terms of his registration”; and (c) in sub-paragraph (a), for “28 days from”, substitute “a period of 60 days starting with the date of” and omit “or”; and (d) in sub-paragraph (b), at the end insert “; or (c) the transfer of, or a refusal to transfer, a licence or registration,”</p> <p>Amended regulation would read: <i>“(1) If a licensee or registered person dies or becomes incapacitated, a person manufacturing or storing explosives in accordance with the conditions of the first-named person’s licence or the terms of his registration shall be treated as being licensed or registered in accordance with the first-named person’s licence or registration until either —</i></p>	<p>Regulation 21 currently provides a 28-day period of grace in the event of death or incapacity for someone else to take over the running of the business. This amendment provides a longer period to take account of the amendments to Regulation 20.</p>	<p>This would provide a benefit in such cases however we believe these would be rare and have not attempted to quantify this benefit.</p>

<p>(a) the expiration of a period of 60 days starting with the date of such death or incapacity;</p> <p>(b) the grant or refusal of a new licence or registration; or</p> <p>(c) the transfer of, or a refusal to transfer, a licence or registration, whichever is the earlier.</p> <p>(2) If a licensee or registered person becomes bankrupt or, in the case of a company, goes into liquidation or receivership or has a receiving order made against it, any receiver, trustee in bankruptcy or liquidator shall be treated as being the licensee or registered person”.</p>		
<p><b>Regulation 25A : information as to net mass of pyrotechnic articles</b></p>		
<p><i>Amendment</i></p>	<p><i>Comment</i></p>	<p><i>Impact</i></p>
<p>After regulation 25, insert- 25A. Where the manufacturer, importer or supplier of a pyrotechnic article specifies its net mass of explosive on the pyrotechnic article, its packaging or in a document accompanying the pyrotechnic article, he shall ensure, so far as is reasonably practicable, that the net mass of the explosive in that pyrotechnic article does not exceed the amount he so specifies on, as the case may be, the pyrotechnic article, the packaging or that document.”.</p>	<p>The maximum amounts that may be stored under a licence or registration are based on the net mass of explosive contained in the explosive article. In the case of fireworks or other pyrotechnic articles the net mass of explosive is assumed to be one quarter of the gross weight unless the supplier provides more specific information – for example that the explosive composition of a certain article was only one sixth of the gross weight.</p> <p>The proposed regulation would place a duty on the manufacturer, importer, or supplier, to ensure that any such information is, so far as is reasonably practicable, does not understate the stated amount.</p>	<p>It is assumed that this proposal is cost neutral in that dutyholders have the option of relying on the default assumption about the net mass as a proportion of the gross.</p>

<b>Schedule 1: meaning of licensing authority</b>		
<i>Amendment</i>	<i>Comment</i>	<i>Impact</i>
<p>in paragraph 1, in sub-paragraph (a)(iii), for “at a mine” substitute “on the surface at a mine, whether in a building or not,”;</p> <p>Amended sub-paragraph would read:  <i>“(iii) the Executive where the explosives are to be stored on the surface at a mine, whether in a building or not.....”</i></p>	<p>Schedule 1 sets out enforcement and licensing responsibilities and gives the HSE responsibility for mines. The intention had been to make HSE responsible for the enforcement of the regulations above ground at a mine (in line with its responsibilities below ground). However, this is at odds with the definition of a mine in Regulation 2 which defines the mine as the workings below ground. The amendment clarifies this issue.</p>	None
<p>in paragraph 3, after “manufacture” insert “explosives to which paragraph (1) of regulation 9 applies”.</p> <p>Amended paragraph would read:  <i>“Where a person wishes to manufacture explosives to which paragraph (1) of regulation 9 applies and store explosives at the same site, the Executive shall be the licensing authority in respect of any application for a licence relating to that site and the reference to “an application” in paragraph 1(c) includes any such application”.</i></p>	<p>The intention behind the original regulation was to have a single licence covering both manufacture and storage at sites where HSE had granted a licence for manufacture (ie to end the practice of having LA-registered stores at HSE-licensed manufacturing sites). However there may be cases where the site operator is doing work that falls within the definition of manufacture but where an HSE manufacturing licence is not required. The intention is to exclude such sites from paragraph 3.</p>	None
<p>In Schedule 4 —  for paragraph 2(g), substitute —  “(g) where separation distances are required by regulation 5 or a condition of the licence to be maintained around the store or the building where explosives are manufactured, a plan in a suitable</p>	<p>The present regulation requires ‘a plan in a suitable scale sufficient to show the separation distances required...’. The amended regulation would more clearly exclude premises that are not subject to any separation distances.</p>	None apart from improved clarity.

<p>scale sufficient to show those separation distances.”</p>		
<p>(b) in paragraph 4, omit “only” in both places where it appears. Amended regulation would read: <i>“Subject to paragraph 7, where the licence or registration relates to explosives which require an explosives certificate under the Control of Explosives Regulations 1991, the licensing authority shall</i></p> <p><i>“(a) ensure that the information referred to in paragraph 2(a) to (d) in respect of that licence or registration is available for inspection at an office of the licensing authority, at all reasonable times and free of charge, by a person who resides or, in the case of an undertaking, is situated within a public consultation zone concerned in relation to the licence or registration; and</i></p> <p><i>“(b) provide a copy of the entry in the register relating to the information referred to in subparagraph 2(a) to (d) in respect of that licence or registration to such a person as is referred to in subparagraph (a) who requests a copy and pays a charge which shall not exceed the reasonable cost of providing the copy.</i></p>	<p>This amendment follows discussions with the Department of Justice about the relationship between paragraph 4 of Schedule 4 and the Freedom of Information Act. It was felt that this was a prohibition that was in conflict with the Act. That was not the intention and it was agreed to delete the word only, as it was unnecessary and gave a misleading impression. Without the word ‘only’ the provision requires the police to make available certain information to people living in the vicinity of explosives sites and does no more than that.</p>	<p>None</p>