

| Health and Safety Executive Board | | HSE/14/33 | |
|-----------------------------------|----------------|-------------|--|
| Meeting Date: | 9 April 2014 | FOI Status: | Partially open |
| Type of Paper: | Above the Line | Exemptions: | Annex 4 and 5 are fully closed: FOI S.35 Formulation of Government Policy) |
| TRIM Reference: | 2014/114411 | | |

Consolidated Explosives Regulations 2014 and Acetylene Safety (England and Wales and Scotland) Regulations 2014

Purpose of the paper

1. To update the Board on the Explosives Legislative Review, including the outcome of the consultations on the proposed Explosives Regulations 2014 (ER 2014) and Acetylene Safety (England and Wales and Scotland) Regulations 2014 (ASR 2014) and to seek the Board's agreement for the final Regulations.

Background

2. During summer 2013, HSE consulted on consolidating all 'HSE owned' explosives specific legislation in Great Britain (GB) into the ER 2014 (HSE/13/63 refers), and all acetylene related statutory instruments into the ASR 2014 (HSE/16/64 refers). This was in response to the Government's Löfstedt review, 'Reclaiming Health and Safety for all', which recommended a series of sector specific legislative consolidations.
3. HSE also consulted on removing the Manufacture and Storage of Explosives Regulations (MSER) 2005 Approved Code of Practice (ACOP), and replacing it with more modern, user-friendly, guidance.
4. The explosives and acetylene legislation considered in the consolidation exercise (see Annex 1), covered health, safety and security and addressed both existing European requirements and long standing domestic provisions. In terms of 'One-in, Two-out':
 - ER 2014 is an 'Out' the consolidation encompasses ten pieces of secondary legislation, fifteen exemption certificates, one complete Act and elements of a further Act.
 - ASR 2014 is an 'Out' the consolidation encompasses six pieces of secondary legislation, seven exemption certificates and elements of one Act.
5. These proposals were developed with stakeholders from across the explosive and acetylene sectors in an 'open policy' making approach. The statutory

public consultations ran in parallel for 8 weeks from 30 July to 24 September 2013.

6. Both ER 2014 and ASR 2014, as Löfstedt recommendations, qualify as 'fast track' measures. Validation impact assessments (Annexes 6 and 7) have been submitted to the Regulatory Policy Committee for validation.

Argument

Purpose of the consolidation

7. The purpose of the consolidation was to make dutyholder compliance easier, by making the law simpler to understand and apply, and by reducing bureaucracy. Whilst ensuring that existing standards of safety are maintained, the proposals remove overlapping legal duties, clarifying legal definitions and simplifying and modernise the law.
8. ER 2014 brings all HSE's explosives requirements into a single framework based around common topics such as authorisation, security and placing on the market. Similarly, ASR 2014 consolidates a range of exemption certificates and requirements into a single set of regulations.

Consultation communications strategy

9. Development of the proposed ER 2014 and ASR 2014 began in 2012. Engagement with stakeholder groups has helped steer and coordinate the development of proposals, supporting early identification of issues and information sharing via the stakeholder's own networks.
10. Representation on these groups included industry, trade associations, representative bodies, unions, and other relevant regulators and Government Departments.
11. Interest via stakeholder networks and the specialist and trade sector press, resulted in nearly 1500 downloads of each consultation document.

Analysis of the consultation responses

12. Extensive pre-consultation activity helped ensure that many substantive issues and suggestions were identified early on and addressed in the consultation document itself. This resulted in only a limited number of consultation responses 37 for explosives, 23 for acetylene, despite both documents being downloaded nearly 1500 times each. The great majority of responses were either supportive or unconcerned by the proposals. A brief summary of the issues arising from the consultations are outlined below, full analysis of the responses are detailed in Annex 2 (ER 2014) and Annex 3 (ASR 2014).

Summary of responses to the consultation on ER 2014

13. The legislative consolidation was generally supported, most respondents recognised the potential for reduced burdens, greater simplicity and time savings. Specific comments related to clarification of the existing law and

definitions, or were in response to specific questions posed within drafting notes within the consulted draft regulations.

14. Analysis of the responses found that there was:

- Strong support for:
 - i. The overall consolidation and its associated simplifications and revocations;
 - ii. Updating licensing by the merging in of registration and by allowing Local Authorities to issue licences up to 5 years, so better aligning them with equivalent HSE/Police issued licences;
 - iii. Extending licensing to address storage of Ammonium Nitrate Blasting Intermediate (ANBI), and
 - iv. Withdrawal of the current MSER ACOP.
- Either indifference to, or no expected effect from the proposals to:
 - i. Update the schedule of explosives that may be acquired, and
 - ii. Amend the marking of plastic explosives.
- Some responses which highlight the need for:
 - i. Clarity in the definitions and interpretations contained within any new proposed regulations;
 - ii. Licences to be proportionate to the risk posed;
 - iii. Support/guidance to be available in the various aspects of the new consolidated regulations, and
 - iv. The need to maintain current legally enforceable standards.

15. Some follow up consultation was undertaken to clarify the scope and detail of some of the specific issues raised. As a result of this all the issues have either been addressed by refining the proposed new regulations or are being addressed, by the development of industry and regulator guidance in conjunction with relevant stakeholders.

16. There is agreement in principle with Home Office that they would take ownership of the remaining elements of the Explosives Act 1875, which relate to the application of police powers for national security. This approach has also been agreed with the Department of Business Innovations and Skills, whose interest in this Act relates to the control of antisocial behaviour involving fireworks. A final Ministerial decision is expected in April.

17. Based upon pre-consultation views and these public consultation responses we consider the proposed ER 2014 consolidation is supported by stakeholders.

Update on the main risks to ER 2014 identified at consultation stage

18. The key risks to the proposed ER 2014 identified prior to consultation (HSE/13/63 refers) were: changes to the status and licensing of certain explosives and potential explosives; licensing of ANBI storage; the effects of issuing longer licences on Local Authority cost recovery, and withdrawal of the

MSER ACOP. These have all been addressed or mitigated and are detailed in Annex 8.

Summary of headline responses to acetylene consultation

19. This legislative consolidation was either supported or raised no concerns, respondents recognised the potential for greater simplicity and clarification of the existing law. Specific comments related to definitions within the new proposed law, or clarification of some of the retained technical detail.

20. Analysis of the responses found that there was:

- Expressed support for the benefits of the overall consolidation and its associated simplifications and revocations;
- Some support or indifference to:
 - i. Retaining the current acetylene cylinder colour scheme, and
 - ii. The prohibition of solid acetylene.
- Some responses which highlight the need for:
 - i. Clarity in the definitions and retained technical detail within any new proposed regulations;
 - ii. Support/guidance to be available in the various aspects of the new consolidated regulations and that guidance should link to HSE general flammable atmospheres guidance;
 - iii. The need to maintain current legally enforceable standards, and
 - iv. Additional regulation of acetylene in the construction industry.

21. The issue of acetylene regulation within the construction sector was raised by an individual and reviewed with the aid of HSE's construction sector. We could find no evidence for additional regulation at this time but we are keeping the need for specific construction industry guidance under review. The other issues raised were also discussed with the stakeholder working group. As a result of this all the issues raised have either been addressed by refining the proposed new regulations or are being addressed by the development of industry and regulator guidance in conjunction with relevant stakeholders.

22. Based upon pre-consultation views and these public consultation responses we consider the proposed ASR 2014 consolidation is supported by stakeholders.

Update on main risks to ASR 2014 identified at consultation stage

23. The key risks to the proposed ASR 2014 identified prior to consultation (HSE/13/64 refers) were: retaining current acetylene cylinder colour; regulation of solid acetylene, and developing simpler regulations and guidance. These have all been addressed or mitigated and are detailed in Annex 9.

Devolved Administrations

24. ER 2014 and ASR 2014 will apply across GB. Regulatory activity will continue to be carried out by HSE, LAs and the Police. Fire and Rescue Services also have an interest in the provisions relating to fire safety in both sets of regulations.
25. The devolved administrations were notified of HSE's intention to consult on the consolidation proposals during the Government clearance process. At this stage, responses were received from the Scottish Government. No responses were received from the Welsh Assembly. No formal responses were received to the consultation itself from either devolved administration.

Northern Ireland

26. ER 2014 and ASR 2014 only consolidate explosives and acetylene legislation effecting GB and the changes will not affect Northern Ireland save for provisions concerning importation of plastic explosive, certain pyrotechnics and civil explosives. Where legislation considered under the consolidation has provisions relating to Northern Ireland, such as in the Explosives Act 1875, savings have been made to ensure that existing provisions continue to apply in Northern Ireland

Implementation Approach for ER 2014 and ASR 2014

27. We have considered consultation comments provided on potential transitional provisions and have, following further discussion with stakeholders, proposed arrangements which allow enough time for businesses to comply with any substantive changes to the law. These are outlined in Annex 10.
28. During summer 2014, HSE will hold stakeholder events to support the publication of the guidance document and the pending launch of the new Regulations. These will be held for industry and Regulator groups and will provide a further opportunity for both groups to access information on the new guidance and the Regulations before they take effect.
29. Subject to Board and Ministerial approval, the final regulations will be laid by the summer recess to come into force on 1 October 2014.

Action

30. The Board is asked to note the responses to the consultation exercises and the analysis at Annex 2 (Explosives) and Annex 3 (Acetylene).
31. Agree the final Regulations at Annex 4 (Explosives) and Annex 5 (Acetylene) for submission to the Minister for the final 'write around'.

Paper clearance

This paper was cleared by the Regulation Committee at its meeting on the 13th March 2014.

Annexes

Annex 1 – Legislation in scope of consolidation

Annex 2 – Analysis of the responses to the ER 2014 consultation

Annex 3 – Analysis of the responses to the ASR 2014 consultation

Annex 4 – Final Draft ER 2014

Annex 5 – Final Draft ASR 2014

Annex 6 – Validation Impact Assessment for ER 2014

Annex 7 – Validation Impact Assessment for ASR 2014

Annex 8 - Update on the main risks to ER 2014 identified at consultation stage

Annex 9 - Update on main risks to ASR 2014 identified at consultation stage

Annex 10 - Transitional provisions

Annex 1 – Legislation in scope of consolidation

ER 2014 - List of Acts, Regulations, Orders in Council, Orders of Secretary of State and Exemption Certificates in scope

1. Explosives Act 1875
2. Fireworks Act 1951
3. The Explosives Act 1875 and 1923 etc. (Repeals and Modification) Regulations 1974
4. The Explosives Act 1875 and 1923 etc. (Repeals and Modification) (Amendment) Regulations 1974
5. The Explosives Act (Exemptions) Regulations 1979
6. The Explosives Act 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984
7. Control of Explosives Regulations 1991 (COER)⁶
8. Placing on the Market and Supervision of Transfers of Explosives Regulations 1993 (POMSTER)
9. Marking of Plastic Explosives for Detection Regulations 1996 (MPEDR)
10. The Health and Safety (Enforcing Authority) Regulations 1998¹
11. Manufacture and Storage of Explosives Regulations 2005 (MSER)
12. Manufacture and Storage of Explosives and the Health and Safety (Enforcing Authority) (Amendment and Supplementary Provisions) Regulations 2007
13. Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2009²
14. Identification and Traceability of Explosives Regulations 2013 (ITOER)
15. Order in Council No.26 to the EA1875 relating to Picric Acid, Picrates and Mixtures of Picric Acid with other substances
16. Order of Secretary of State No.11 to the EA1875 making Byelaws as to the Conveyance of Explosives on the Roads and in certain special cases.
17. Certificate of Exemption No. 2 of 2001 to COER
18. Certificate of Exemption No. 1 of 2010 to COER
19. Certificate of Exemption No. 2 of 2010 to COER
20. Certificate of Exemption No. 1 of 2010 to MSER
21. Certificate of Exemption No. 1 of 2010 to MSER (*duplicate number issued*)
22. Certificate of Exemption No. 2 of 2010 to MSER
23. Certificate of Exemption No. 2 of 2010 to MSER (*duplicate number issued*)
24. Certificate of Exemption No. 3 of 2010 to MSER
25. Certificate of Exemption No. 3 of 2010 to MSER (*duplicate number issued*)
26. Certificate of Exemption No. 4 of 2010 to MSER
27. Certificate of Exemption No. 2 of 2011 to MSER
28. Certificate of Exemption No. 3 of 2011 to MSER
29. Certificate of Exemption No. 1 of 2012 to MSER
30. Certificate of Exemption No. 2 of 2012 to MSER
31. Certificate of Exemption No. 3 of 2012 to MSER

ASR 2014 - List of Acts, Regulations, Orders in Council, Orders of Secretary of State and Exemption Certificates in scope

¹ Regulation 4 (7) – 4 (11) only

² Regulation 3 (1) Schedule 1.1., 2., and 4 only

1. Explosives Act 1875
2. Order of Secretary of State No.5 1898
3. Order of Secretary of State No.5A 1905
4. Order of Secretary of State No.9 1919
5. Order in Council No.30 1937
6. Compressed Acetylene Order 1947
7. Compressed Acetylene (Importation) Regulations 1978
8. Certificates of Exemption (Explosives Act (Exemption) Regulations) 1979:
9. Certificate of Exemption No. 1 of 1984 - a company specific exemption for the British Railways Board relating to hose and flame arrestor arrangements.
10. Certificate of Exemption No. 2 of 1984 - a company specific exemption for Welding Equipment Service Co Ltd. relating to the testing of flame arrestors.
11. Certificate of Exemption No. 3 of 1984 - a company specific exemption for Welding Equipment Service Co Ltd. relating to the testing of flame arrestors.
12. Certificate of Exemption No. 4 of 1984 - a generic exemption relating to manifolds above 1.5 bar and pipe work design
13. Certificate of Exemption No. 2 of 1989 - a generic exemption relating to acetylene equipment operating between 0.62 bar and 1.5 bar
14. Certificate of Exemption No. 1 of 1995 - a generic exemption relating to acetylene cylinder standards for cylinders making up part of a ships equipment
15. Certificate of Exemption No. 1 of 2001 - a generic exemption relating to permissible cylinder standards.

Annex 2 – Analysis of the responses to the ER 2014 consultation

During the 8 week consultation period we received 37 responses to the consultation, with 1465 downloads of the consultation papers.

The consultation paper detailed the headline proposals and rationale for consolidating explosives legislation in Great Britain (GB). It also included a transposition table detailing the specific changes proposed, a draft of the new consolidated Regulations and the impact assessment outlining the proposed costs and benefits of the changes.

The consultation was promoted extensively through representative industry and Government working groups that had supported the development of the proposals; the online explosives communities' forum; HSE's website, and a general press release announcing the work.

The list of publicly available responses can be accessed through HSE's Knowledge Centre by email to: - KnowledgeCentre@hse.gsi.gov.uk or calling direct on 0151 951 4382. 11 respondents asked for their responses to be withheld from the public but their comments have still been considered in this analysis.

Who contributed to the public consultation?

Respondents represented the following Industry sectors:

- Industry – 13
- Local Government - 7
- Consultancy – 5
- Non-Governmental Organisation - 3
- Charity – 1
- Member of Public – 1
- Pressure Group – 1
- No response – 6

Note: Respondents included a Trade Association, the British Caving Research Association, Fire and Rescue Services, a Hobbyist, The National Product Safety Focus Group, a Shooting sports body, the Association of Chief Police Officers (ACPO) Firearms and Explosives Licensing Working Group, the Trading Standards Institute, Trading Standards South East, and the UK Rocketry Association.

Replies were received from:

- Employers - 7
- Health and Safety Professional - 7
- Employees – 6
- Consultants – 4
- Training Provider – 1
- No response - 12

Analysis of the consultation questionnaires

Q01. The proposed consolidation of the explosives regulations will result in one set of regulations with a modular structure – the Explosives Regulations 2014 (ER 2014) as shown in Annex D.

(a) Do you agree with this structure?

| | |
|-------------|----|
| Yes | 33 |
| No | 0 |
| No response | 4 |

(b) Please give reasons for your answer (free text option).

Summary

All respondents supported the consolidation and cited greater simplicity and time savings as the benefits. One respondent suggested that there is further scope for rationalisation and whether other structures may aid readability in the new Regulations. One respondent also added that it was important to ensure that standards of safety were not lowered through the consolidation.

HSE's response

HSE notes the strong support for the consolidation and the benefits identified. HSE continues to discuss the revised structure with its working group and will reflect any further beneficial adaptations in the final Regulations. HSE is committed to ensuring that existing standards of health and safety are not lowered through the consolidation exercise and the purpose remains to modernise and simplify the regulatory framework.

Q02. The proposed consolidation includes a recommendation to the Secretary of State that the remaining provisions of the Firework Act 1951 should be repealed.

(a) Do you agree with this proposal?

| | |
|-------------|----|
| Yes | 30 |
| No | 0 |
| No response | 7 |

(b) Please give reasons for your answer (free text option).

Summary

The analysis of the responses were grouped as follows:

- Provisions of the Firework act 1951 are contained in the existing/ consolidated regulations - 8
- Reduction in burden – 5
- Firework Act 1951 is no longer relevant – 2
- Respondents were not involved in the fireworks industry - 8
- No further comments provided – 14

HSE's response

HSE notes the strong support for recommending the repeal of the remaining provisions of the Firework Act 1951. Respondents identified a range of benefits which reflect the intention of the consolidation exercise. Where respondents were not directly involved in the fireworks industry, a number still supported the general benefits of the consolidation as it would reduce burdens on industry.

Q03. The proposed consolidation (ER 2014 shown in Annex D) includes a list of interpretations or definitions

(a) Would any of the definitions benefit from further clarification? Please give reasons for your answer

Summary

The analysis of the responses were grouped as follows:

- Specific suggestions/ queries on definitions made - 14
- No further clarification required – 10
- Generally supports the inclusion of definitions – 2
- No comment - 11

HSE's response

HSE has considered the specific suggestions and comments provided. A number of respondents raised queries on the definitions, or areas for clarification, which we have sought to address through the new accompanying guidance document. Some responses addressed specific areas within the draft Regulations where we had requested further input, such as on the definitions of pyrotechnic substances. Proposals were also made to reflect the impact of the Police Scotland Act. We have considered the specific comments provided and amended the Regulations, where appropriate, in light of this.

(b) Where should this clarification be provided (e.g. in the regulations or guidance)? Please give reasons for your answer.

Summary

Respondents linked their answers to the previous question. For example, if they felt an area needed more clarification they identified this would be better in guidance, whereas if they felt there was legal ambiguity, they identified this should be in the Regulation. The analysis of the responses were grouped as follows:

- Regulations – 8
- Guidance – 8
- Both - 4
- No comment - 17

HSE's response

HSE has considered the comments provided in relation to queries on the definitions, or areas for clarification. Where there was a preference for clarification to be included within the Regulations this was due to a concern that it would leave legal uncertainty if it was in the Guidance. We have worked with our legal advisors to identify where further legal clarification can be provided in the Regulations, and where additional information could be provided to support interpretation of the Regulations in the guidance. A key aim of the modernisation of the legislative framework has been to ensure that there is clarity about the law and how it applies. Equally, the proposal to remove the ACOP to MSER and replace it with a guidance document has enabled us to remove unnecessary duplication and provide further interpretative guidance to support the application of the Regulations.

(c) Are there other interpretations or definitions which should be considered for inclusion? Please give reasons for your answer

Summary

The analysis of the responses were grouped as follows:

- Specific definitions suggested - 12
- No further definitions required – 6
- Response not linked to question posed - 2
- No comment - 17

HSE's response

HSE has considered the suggestions made in relation to other definitions to include in the Regulations and interpretations to include in the Guidance. The specific suggestions made varied depending on the interests of the respondents, although there were some common areas such as further guidance on what is meant by a 'fit person'. We have worked with our legal advisors to identify where further legal clarification can be provided in the Regulations, and where additional information could be provided to support interpretation of the Regulations in the guidance.

Q04 The proposed consolidation (ER 2014 shown in Annex D) includes a recommendation that would enable licences from Local Authorities to be granted for a period of up to 5 years; aligning them with similar HSE and Police issued licences.

(a) Do you agree with this proposal?

| | |
|--------------------|----|
| Yes | 26 |
| No | 3 |
| No response | 8 |

(b) Please give reasons for your answer.

Summary

Those supporting the consolidation provided the following reasons:

- Save time/make the process easier/reduce costs – 11
- Bring consistency/ remove confusion – 9
- No comment – 9
- Response not linked to question posed – 2

Those not supporting the consolidation identified the following concerns:

- Up to a five year licence is too long - 1
- Up to a five year licence is too short – 2

All respondents not supporting the consolidation identified similar concerns:

- Need to ensure that the length of licence issued was proportionate to risk - 3

HSE's response

The majority of respondents supported the proposal to enable licences from Local Authorities to be issued for up to five years. HSE acknowledges the concern raised in relation to whether a five year licence might be too long depending on the applicant business. However, the key part of the proposal is that a licence can be issued for up to five years and this should be done in proportion to the risk posed by the applicant. The proposal allows for five year licences where businesses have a good track record of safety, equally it allows for much shorter licences to be issued where the business might only operate for a seasonal period or where the potential hazards suggest a shorter licence might be appropriate. This will be made clear in the accompanying guidance document. In terms of increasing the licence issuing period to greater than five years, the proposal sought to align the local authority licensing requirements with those of HSE and the Police to simplify the process for businesses. Increasing the licence period for local authorities outside of that used by HSE and the Police would remove this benefit.

Q05 The proposed consolidation (ER 2014 shown in Annex D) includes a recommendation to consolidate Registration and Licensing, into a single licensing system.

(a) What effect will this proposal have on you or your business?

| | |
|--------------------------|----|
| No overall effect | 11 |
| Positive effect | 14 |
| Negative effect | 1 |
| No opinion | 3 |
| No comment | 8 |

(b) Please give reasons for your answer.

Summary

Those supporting the consolidation provided the following reasons:

- Simplification of the process – 12
- Provide consistency – 2
- Encourage compliance with the law as it will enable better business planning – 1
- Allows greater local authority discretion as all premises storing will now need a licence - 1
- No comment – 16
- Nil effect - 1
- Response not linked to question posed – 1

1 respondent supporting the proposal suggested a site plan and storage proposal should be submitted with all applications or renewals.

2 respondents who felt there would be no overall effect, and 1 who felt there would be a negative effect, made similar observations:

- There will be an initial burden on local authorities due to system changes and possible financial impacts of accommodating the new system – 3

HSE's response

HSE intends for the proposal to simplify existing systems and many respondents acknowledged this in the comments made. Responses were generally split between there being a positive effect or no overall effect in the proposal. Where respondents believed there would be no overall effect, the general comments were that the impact on how businesses operate is likely to remain unchanged although they did acknowledge some benefits in streamlining and consolidating the two processes. HSE recognises the concerns raised by the 3 respondents who identified potential burdens and financial impacts upon local authorities in implementing any revised processes. These responses were all from local authorities or relevant representative organisations. HSE has engaged with trading standards organisations throughout the development process and representatives have been involved in working group discussions. We are also continuing to meet with local authority representatives to discuss the likely business process changes and identify how these can be minimised to mitigate any costs associated with implementing the proposal.

Q6 The proposed consolidation (ER 2014 shown in Annex D) includes amendments to the separation distance tables.

(a) What effect will the proposed changes have on you or your business?

| | |
|--------------------------|----|
| No overall effect | 12 |
| Positive effect | 6 |
| Negative effect | 3 |
| No opinion | 6 |
| No comment | 10 |

(b) Please give reasons for your answer.

Summary

The analysis of the responses were grouped as follows:

- Simplify processes – 6
- Specific comments on the format of the tables - 4
- Specific comments on application in a subsector – 1
- Separation distances for smaller amounts would be helpful – 1
- Want to retain ability to calculate themselves as part of technical justification – 1
- Would help to have distances for smaller amounts – 1
- Storage should be calculated on the basis of risk not distance – 1
- Additional training will be required for Regulators – 1
- Further advice requested on impact of the changes on a particular site - 1
- No comment - 20

HSE's response

Most respondents believed the proposal would have no overall effect or didn't provide a comment or an opinion. Those respondents who felt the proposal would have a positive effect identified simplification of the process as a key benefit. Where respondents felt the change would have a negative effect the concerns included a lack of support for separation distances in principle; a concern that the ability to calculate distances themselves would be lost, and concerns about the interpretation of the new requirements. The legislation prescribes separation distances as they provide a clear and consistent method to help businesses store explosives safely; they provide clarity on what it required to comply with the law and they help Regulators apply the requirements consistently. However, this does not prevent businesses approaching HSE directly to calculate suitable distances when granting an appropriate licence for the manufacture or storage of explosives. We have worked with our legal advisors to identify where further legal clarification can be provided in the Regulations and tables, and where additional information could be provided to support interpretation of separation distances in the guidance.

Q7. The proposed consolidation (ER 2014 shown in Annex D) includes updated provisions to modernise the contents of schedule 1 to COER.

(a) What effect will the proposed changes have on you or your business?

| | |
|--------------------------|----|
| No overall effect | 14 |
| Positive effect | 6 |
| Negative effect | 1 |
| No opinion | 8 |
| No comment | 8 |

(b) Please give reasons for your answer.

Summary

The analysis of the responses were grouped as follows:

- Better protection – 1
- Modernise requirements – 1
- Clearer requirements – 3
- Specific changes suggested – 2
- Extra costs associated with changes – 1
- Further clarity requested on changes - 2
- No comment - 27

HSE's response

The proposed changes were intended to account for the potential for certain explosives to be misused and to consider misuse in the context of the new requirements of Regulation (EU) No. 98/2013 on the marketing and use of explosives precursors. The majority of respondents felt that the changes would have no overall effect, with a number offering no comment or opinion on the proposals changes. Where respondents supported the proposal, they recognised the benefits of updating and modernising the requirements. Some respondents suggested specific changes and we have worked with our legal advisors to implement amendments where possible. One respondent felt the change would have a negative effect due to extra costs associated with the changes. However, HSE, having taken account of the views of the security community, believes the additional security is warranted in these instances given the potential of the specific material for serious misuse, the need to reflect modern practice and the requirements of the new EU Regulation.

Q8 The proposed consolidation (ER 2014 shown in Annex D) will align the regulation of the storage of Ammonium Nitrate Blasting Intermediate (ANBI) with its manufacture. Specifically, by extending the licensing arrangements in place for the manufacture of ANBI to its storage.

(a) Do you agree with this proposal?

| | |
|--------------------|----|
| Yes | 20 |
| No | 0 |
| No response | 17 |

(b) Please give reasons for your answer.

Summary

The analysis of the responses were grouped as follows:

- There should be a consistent approach to storage and manufacture – 8
- Increased security – 1
- Increased safety – 4
- No comment - 23
- Response not linked to question posed – 1

HSE's response

HSE welcomes the support for this proposal as it will align the controls for the storage of ANBI with its manufacture. Respondents recognised the benefits around security, safety and consistency which this alignment will bring.

Q9 The consolidation includes a proposal to withdraw the Approved Code of Practice to the Manufacture and Storage of Explosives Regulations 2005 (MSER), and replace it with an over arching 'principles' document, supported by stakeholder led and developed sub-sector guidance.

(a) Do you agree with this proposal?

| | |
|--------------------|----|
| Yes | 25 |
| No | 5 |
| No response | 7 |

(b) Please give reasons for your answer.

Summary

Respondents supporting the removal of the ACOP provided the following additional comments:

- Guidance is a better format and easier to update – 9
- The ACOP is out of date and not user friendly – 2
- Guidance must be of good quality and retain the legal weight of the ACOP for enforcement and regulation purposes – 3
- Stakeholders must be involved in the development - 3
- Guidance must be ready for the launch of the Regulations – 2
- No change envisaged in moving from an ACOP to Guidance – 1
- Response not linked to question posed – 4

Respondents not supporting the removal of the ACOP provided the following additional comments:

- The ACOP is useful and should be retained – 1
- Response not linked to question posed – 1
- Guidance must be of good quality and retain the legal weight of the ACOP for enforcement and regulation purposes – 2
- Guidance must be ready for the launch of the Regulations – 1

8 respondents provided no further comments.

HSE's response

HSE welcomes the support for the overall proposal. However, whether respondents did or didn't support the proposal there was clear feedback that the Guidance document needs to carry the same weight as the ACOP, must be of good quality and that it must be ready in time for the new Regulations taking effect. HSE began work to develop the replacement to the MSER ACOP (subject to the outcome of this consultation) in July 2013. Guidance development is being overseen by a Guidance Working Group (comprising representatives from industry, other regulators, and other Government Departments) that has been engaged in discussion on the drafting and format for the new document since its inception. Underpinning the guidance

document is sub sector guidance. The sub sector guidance provides a new opportunity for individual sectors to build on the overarching guidance produced by HSE and contextualise them in guidance for their particular area of interest. Each sub sector guidance document is owned by an industry working group, with content being developed by HSE with industry input or vice versa. HSE intends to publish a draft of the guidance document in July 2014, to enable industry and regulator familiarisation, prior to publishing the final document on the launch of the new Regulations in October 2014. Sub sector guidance will be launched in parallel with the main guidance document, but may follow October 2014, in consideration of industry stakeholder resource. No existing sectoral guidance will be removed from HSE's website until such time as it is replaced by the new sub sector guidance. During Summer 2014, HSE will hold stakeholder events to support the publication of the document and the commencement of the new Regulations. These will be held for industry and Regulator groups and will provide a further opportunity for both groups to access information on the new guidance and the Regulations before they take effect.

(c) If you have answered 'No', that you don't agree with the proposal, which parts of the existing MSER ACOP should be retained? Please give reasons for your answer.

Summary

The analysis of the responses were grouped as follows:

- Retain ACOP and update – 2
- Guidance must be developed before ACOP withdrawn - 1
- Guidance must be of good quality and carry legal weight for enforcement and regulation purposes – 1
- Specific comments on ACOP paragraphs to retain - 2
- No comments - 31

HSE's response

HSE acknowledges concerns about supporting removal of the ACOP where industry is not yet able to see the replacement document. As above, HSE began work on this document in July 2013 and is now working closely with industry stakeholders to capture and deliver on a number of the points raised within the consultation. Two respondents provided specific comments on retaining parts of the ACOP. HSE is working closely with the Guidance Working Group to devise the content and ensure that the key guidance on explosives is carried over into the new document, or captured in the relevant sub sector guidance.

(d) Is there any guidance within the ACOP that you use which is not available elsewhere?

Summary

The analysis of the responses were grouped as follows:

- Yes – 11
- No – 2
- Need to ensure that any ACOP text not replicated in the new Guidance is highlighted - 1
- Response not linked to question posed – 3
- No comment – 20

HSE's response

HSE is working with the Guidance working group and sub sector working groups to consider amendments to incorporate the suggestions raised through the consultation. HSE will also produce a supporting note alongside the new guidance document to identify the key changes made from the ACOP.

Q10 HSE is proposing to review the relevant explosives guidance that it has published and replace it with an overarching document identifying principles of safe and secure operation. The guidance document will be supported by sub-sector specific guidance drafted in consultation with sector stakeholders.

(a) Do you agree with this proposal?

| | |
|-------------|----|
| Yes | 28 |
| No | 1 |
| No response | 8 |

(b) Please give reasons for your answer.

Summary

The analysis of the responses were grouped as follows:

- It will be simpler to understand, making compliance easier and removing some of the ambiguity - 19
- No comment – 17
- Needs further information to support understanding – 1

HSE's response

The responses provided here echo the responses to Question 9. Respondents welcomed the proposed format for the guidance but additional comments were that the guidance needed to be developed before the ACOP was withdrawn and that the Guidance must be of good quality. There were also some specific comments about a need for guidance on storage of fireworks. As above, HSE acknowledges concerns about supporting removal of the ACOP where industry is not yet able to see the replacement document. HSE began work on this document in July 2013 and is now working closely with industry stakeholders to capture and deliver on a number of the points raised within the consultation. Including within the sub sector guidance

package is guidance on commercial storage of fireworks and pyrotechnic articles.

Q11. What guidance and support do you currently access to help you comply with the law?

Summary

(Individuals provided multiple responses to this question)

The analysis of the responses were grouped as follows:

- Regulations and ACOP - 16
- HSE Guidance - 14
- External Stakeholder Guidance - 9
- Police/ LAs Guidance – 5
- Businesses own guidance - 2
- Standards - 1
- No comment - 13

HSE's response

HSE recognises the wide range of guidance accessed by industry and regulators to help support understanding and application of the Regulations. Most respondents currently use the Regulations, ACOP or other relevant HSE Guidance, with many also using industry guidance. As above, Guidance development is being overseen by a Guidance Working Group (Group (comprising representatives from industry, unions, professional bodies, other regulators, and other Government Departments) HSE intends to publish a draft of the guidance document in July 2014, to enable industry and regulator familiarisation, prior to publishing the final document on the launch of the new Regulations in October 2014. Sub sector guidance will be launched in parallel with the main guidance document but may follow October 2014, in consideration of industry stakeholder resource.

Q12 Are there any other regulations relating to explosives safety and security that you would like to be considered as part of these proposals? Please provide reasons for your suggestions.

Summary

The analysis of the responses were grouped as follows:

- No - 30
- Dangerous Substances and Explosives Atmospheres Regulations (DSEAR) 2002 – 1
- Dangerous Substances in Harbour Areas Regulations (DSHAR) 1987 – 1
- Remove the exemption from building regulations approval for explosives sites - 1
- Response not linked to question asked - 4

HSE's response

Most respondents did not identify additional regulations for consideration in the consolidation. In terms of the specific points raised, the ACOPs supporting the Dangerous Substances and Explosive Atmospheres Regulations (DSEAR) 2002 have recently been reviewed and consolidated into one document. The regulations themselves transpose wider European requirements into UK law and so there is minimal scope for change as part of this consolidation. HSE is also undertaking a review of the Dangerous Substances in Harbour Areas Regulations 1987 (DSHAR) as part of its ongoing activities to simplify the Health and Safety regulatory framework, in line with the Government's Better Regulation agenda. The request to remove the qualified exemption for explosives sites from Building (Scotland) Regulations 2004 and the Building Regulations 2010 was not felt to be appropriate. Buildings used for storing or manufacturing explosives may need to be constructed in a way which would not be compatible with the requirements of these regulations.

Q13. What transitional provisions do you think should be in place for any of the proposals outlined in this consultation? (A transitional provision allows business time to comply with new regulations). Please give reasons for your answer.

Summary

(Individuals provided multiple responses to this question)

The analysis of the responses were grouped as follows:

- Good communications required - 2
- Enough time to enable businesses to comply - 8
- 2-3 years - 3
- 2 years - 6
- 1 year - 5
- 6 months – 1
- Case by case – 1
- Phased provisions - 2
- Up to the period of licence renewal - 4
- 10-15 years on licences without limits – 1
- Minimum period only where there are no substantive changes - 2
- Response not linked to question asked - 2
- No comments - 10

HSE's response

A range of responses were provided in relation to this question. HSE has provided for transition arrangements which allow enough time for business to comply with any substantive changes to the law. Further information will be provided on the transitional provisions leading up to the new Regulations coming into force. This information will be available on the HSE website, will accompany the publication of the draft guidance document in July 2014, and will be presented at the HSE stakeholder events to support the publication of the document and the commencement of the new Regulations.

Q14. Are there any further comments you would like to make on the issues raised in this consultation document?

Summary

The analysis of the responses were grouped as follows:

- Specific suggestions made on the Regulations – 14
- No – 11
- Suggestion made out of scope of the legislative consolidation exercise; to develop an approved training for the explosives industry – 1
- No comment – 11

HSE's response

A number of specific suggestions were made about the proposed Regulations in relation to the drafting notes included in the consultation version of the Statutory Instrument. We have considered these comments and whether it is possible to incorporate or amend requirements in line with the suggestions made.

Q15. Is there anything you particularly liked or disliked about this consultation?

Summary

(Individuals provided multiple responses to this question)

The analysis of the responses were grouped as follows:

- No – 9
- Negative comment on structure of consultation – 6
- Positive comment on structure of consultation – 5
- Consultation period too short - 2
- Specific questions raised (i) involvement of the Metropolitan Fire and Rescue Services (as Regulators) and (ii) whether any seminars will be held to support implementation - 2
- Scope of review too narrow – 1
- Changes proposed will enable savings for business – 1
- Requested a further consultation on a next draft - 1
- No Comment - 14

HSE's response

Respondents raised various comments on the consultation exercises. Some found the document hard to navigate whilst others found it clear and easy to understand. There were also some concerns about the 8 week consultation being over a Summer period, and that the focus of the review was too narrow. HSE needed to deliver the consultation during the Summer in order to meet the Government's target of implementing the consolidated Regulations in October 2014. Whilst there won't be a further formal consultation exercise we will continue to liaise with industry as the Regulations are finalised. The explosives legislative review delivers part of the consolidation exercise identified in the Löfstedt review of health and safety. The parameters of the review were to update legislative provisions, and make them simpler to understand. In this way, the scope was clearly defined. As

set out above, during Summer 2014, HSE will hold stakeholder events to support the publication of the document and the commencement of the new Regulations. These will be held for industry and Regulator groups and will provide a further opportunity for both groups to access information on the new guidance and the Regulations before they take effect. In terms of involvement by the Metropolitan Fire and Rescue Services as regulators, there has been representation from the Chief Fire Officers Association (CFOA) throughout the development of the proposals. The CFOA continued to be represented on the Regulations working group and is also involved in HSE's Guidance Working Group.

HSE's conclusions from the public consultation exercise on the consolidated Explosives Regulations 2014

Following analysis of the responses received, HSE has made some minor amendments to the Statutory Instrument. However, no major changes were required to the proposed Statutory Instrument or supporting Impact Assessment as a consequence of the consultation exercise.

Annex 3 – Analysis of the responses to the ASR 2014 consultation

During the 8 week consultation period we received 23 responses to the consultation, with 1468 downloads of the consultation papers. The associated set of current exemption certificates, which currently define permissible acetylene usage, were downloaded 1247 times.

The consultation paper detailed the headline proposals and rationale for consolidating and modernising acetylene legislation in Great Britain. It also included a draft of the new consolidated Regulations and the impact assessment outlining the proposed costs and benefits of the changes.

The consultation was promoted through representative industry and Government working groups that had supported the development of the proposals; the online explosives communities' forum; HSE's website, and a general press release announcing the work.

The list of publicly available responses will be available via HSE's Knowledge Centre by email: - KnowledgeCentre@hse.gsi.gov.uk or calling direct on 0151 951 4382. Six respondents asked for the details of their comments to be withheld from the public, but their comments were still considered as part of the consultation.

Summary of Responses

Who contributed to the public consultation?

Respondents represented the following industry sectors:

- Industry - 14
- Trade associations 2
- Consultants - 2,
- Non-departmental public bodies - 2 (were either fire or transport related),
- Local Government - 1 (a fire authority) ,
- Trade Union - 1,
- Did not classify themselves - 1.

Relies where received from:

- Health and safety professionals - 9,
- Employers - 5,
- Employees - 4,
- Trade union official - 1,
- Did not classify themselves - 4.

Analysis of the consultation questionnaires

Whilst there were 23 responses to this public consultation, not every respondent answered every question. Some respondents did explain their reasons for not answering a question, whilst others provided no explanation. Similarly, some respondents gave comments to support an answer and others did not.

Q1. How would you best describe your use of acetylene?

Summary

(Individuals provided multiple responses to this question)

The analysis of the responses were grouped as follows:

- Welding, cutting, heating, brazing and soldering - 11
- Acetylene for sale/supply - 5
- Supply acetylene equipment - 4
- Manufacture, purify and compress acetylene - 3
- Supply acetylene cylinders - 2
- Metal coating by spray gun - 1
- Lubrication of moulds for manufacture of glass bottles - 1
- Low pressure carburizing of steels - 1
- Use for electronic component manufacture - 1
- Fuel gas for flame in atomic absorption analyzers - 1
- Use gas alone or in mixtures for calibration of analytical equipment - 1
- Use gas as a chemical synthesis - 1
- Hobby use (i.e. non-work related) - 1
- Do not use acetylene - 2
- No Comment - 2

HSE's response

The only potential acetylene uses that had no representation were where it is:

- Used as a fuel - we do not believe that this occurs in GB, so expected this result.
- Produced as a by-product but is not purified for supply - typical users in this area would be petrochemical refineries who we had previously contacted in our pre consultation. We used their responses to ensure that we did not unnecessarily limit current acceptable activities in ASR 2014.

HSE notes that those responding to the consultation have an understanding/represent users across the vast majority of uses of compressed acetylene. HSE will ensure that it does not unnecessarily limit any current acceptable activity.

Q2. How would you best describe your typical acetylene usage pattern?

Summary

The analysis of the responses were grouped as follows:

- Daily - 4
- Once a week - 1
- Monthly - 4
- Less than once a month - 3
- I am not an acetylene user - 4
- No response - 7

HSE's response

HSE notes that they have had responses from across the spectrum of the frequency of use of compressed acetylene.

Q3. The proposal is that the regulation of acetylene safety will be separate from the regulation of general explosives. What overall effect will this have on your business?

Summary

(Individuals provided multiple responses to this question)

The analysis of the responses were grouped as follows:

- Positive effect - 10
 - No overall effect - 9
 - I have no opinion on this - 1
 - Negative effect - 0
 - No response - 3
-

Q4. If you have answered that there will be an effect on your business, please give reasons for your answer.

Summary

There were 11 responses to this question. Analysis of the responses were grouped as follows:

- Supportive of a simplification of the existing regulations - 7
 - Generally supportive but not explaining why – 2
 - No concern over change – 1
 - Negative comments - 0
 - Response not relevant to question - 1
-

HSE's response - Q3 & Q4

HSE notes the expressed support for separating acetylene safety from that of general explosives and that many feel the change will have no effect on their business. In addition no objections have been raised to the proposal. The key benefit identified was simplification. On balance HSE considers that the effects on business will be either positive or negligible.

Q5. HSE proposes to have less prescriptive legislation for acetylene. What overall effect will this have on your business?

Summary

The analysis of the responses were grouped as follows:

- No overall effect - 11
- Positive effect - 4
- Negative effect - 2
- No opinion on this issue – 2
- No response - 4

Q6. If you have answered that there will be an effect on your business, please give reasons for your answer.

Summary

The analysis of the responses were grouped as follows:

- Supportive of the simplification of the existing regulations - 3
- Generally supportive but not explaining why – 2
- Concerned it may lead to poorer standards less enforcement– 1
- Negative response feels that acetylene legislation should be more stringent in the construction sector - 1
- Negative response may lead to falling standards - 1
- Response not relevant to question - 2
- No response - 13

HSE's response - Q5 & Q6

HSE notes the support for the proposal.

In relation to the other comments:

- Concern for standards/enforcement - HSE is taking steps to ensure that there will be no change in either the practical standards expected by inspectors during their inspections and the regulatory decision when dealing with acetylene related issues.
- Construction sector - There were two responses identified as being from the construction sector one was supportive the other expressed the need for more stringent legislation in the construction sector. This later view has been considered in conjunction with colleagues in the construction sector. We also considered available incident/injury/inspection reports, the current fire guidance in the construction sector (HSG168) and the general available guidance for acetylene users. We do not currently consider there to be any need for additional legislation, but will keep the issue of further guidance under review as we continue to engage with stakeholders.

On balance HSE considers that the effects on business will be either positive or negligible.

Q7. Where do you get information on how to control the risks associated with acetylene?

Summary

(Individuals provided multiple responses to this question)

Analysis of the responses were grouped as follows:

- Suppliers - 9
- HSE leaflets or HSE website - 8
- British Compressed Gases Association (BCGA) and other UK/international organisations - 4
- Past training - 1
- No response - 7

HSE's response

HSE notes the important role of guidance produced by Industry, HSE, trade associations and standards bodies. HSE will continue to provide guidance and information to help users of acetylene and will also 'signpost' users to other relevant industry guidance from the HSE website.

Q8. Which aspects of this information are helpful / unhelpful to you?

Summary

(Individuals provided multiple responses to this question)

Analysis of the responses were grouped as follows:

- Having the information all in one place- 1
- There provide me with safety information - 3
- The information keeps me up to date - 2
- Helps me know how to deal with emergencies - 1
- Response not relevant to question - 8
- No response - 9

HSE's response

HSE notes the need for safety information that is current and addresses emergency situations. HSE will continue to provide relevant safety information.

Q9. Is there any additional information that would help you manage these risks?

Summary

(Individuals provided multiple responses to this question)

Analysis of the responses were grouped as follows:

- Expressed that there is no need for any additional information - 4
- Advice on use - 4
- Advice on storage - 5
- Written on the cylinder itself - 1
- Chemical synthesis - 1

- No response - 12

HSE's response

HSE notes that some users reported there was sufficient guidance whilst others wanted more. HSE will review its guidance to make sure it is clear and concise. It will also support this through a webpage directing users to existing HSE, industry and trade association information and guidance.

HSE has considered the idea of including more information on the cylinder but does not consider that it would be practicable to permanently attach sufficient information to be of significant use.

Chemical synthesis using acetylene is a very minor activity and carries significant potential hazards that would have to be addressed on a case by case basis. HSE does not believe specific guidance on this area is justified, at this stage, given the costs and limited application.

Q10. HSE proposes to retain the colour marking of acetylene cylinders. What overall effect will this have on your business?

Summary

The analysis of the responses were grouped as follows:

- No overall effect - 9
- Positive effect - 8
- I have no opinion on this issue - 1
- Negative - 0
- No response - 5

Q11. If you have answered that there will be an effect on your business, please give reasons for your answer.

Summary

Analysis of the responses were grouped as follows:

- Already widely known/prevents new familiarisation issues - 2
- Generally support but do not explain why - 2
- Changing cylinder colour would be a significant cost to industry - 1
- Makes acetylene cylinders easy to identify - 1
- No concerns over the proposal - 1
- No response - 16

HSE's response - Q10 and Q11

HSE notes that no responder felt that maintaining the current colour of acetylene cylinders would have a negative effect. In addition, changing the acetylene cylinder colour could hinder identification, and be a burden to industry due to familiarisation costs and the cost of repainting cylinders.

For these reasons HSE intends to retain the current cylinder colour.

Q12. HSE proposes to prohibit solid acetylene. What overall effect will this have on your business?

Summary

(Individuals provided multiple responses to this question)

The analysis of the responses were grouped as follows:

- No overall effect - 9
- Positive effect - 8
- I have no opinion on this issue - 1
- Negative - 0
- No response - 5

Q13. If you have answered that there will be an effect on your business, please give reasons for your answer.

Summary

Analysis of the responses were grouped as follows:

- Generally support but do not explain why - 3
- No concerns over the proposal - 1
- Issue does not apply to them - 1
- No response - 18

HSE's response - Q12 and Q13

HSE notes that responders reported that the prohibition of solid acetylene would either have no effect or would be a positive measure. No negative views were raised. HSE intends to proceed with the prohibition of solid acetylene.

Q14. Are there any other regulations relating to compressed acetylene safety that you would like to be considered as part of these proposals? Please provide reasons for your suggestions.

Respondent's comments

Analysis of the responses were grouped as follows:

- No other regulations need to be considered - 7
- The ACOP for Dangerous Substances and Explosives Atmosphere Regulations (DSEAR) should be altered - 3
- No response - 13

HSE's response - Q14.

HSE has taken these comments on board and has incorporated amendments to the DSEAR ACOP where it makes reference to acetylene to improve clarity and support its use in a safe and proportionate manner.

Q15. Do you use acetylene under a company specific exemption certificate?

Summary

The analysis of the responses were grouped as follows:

- No - 14
- Yes - 0
- No response - 9

Q16. If you have answered 'Yes', please give details of that exemption.

Respondent's comments

There was only one response to this question, and that said that the question was not applicable.

HSE's response - Q15 and Q16

HSE had already reviewed past files and directly contact those with company specific exemption certificates and will ensure that, where requested, any proposed legislation will be such that past lawful and safe acetylene related will be able to continue.

HSE considers this response as confirming that there are no unidentified acetylene exemptions.

Q17. What transitional provisions do you think should be in place for any of the proposals outlined in this consultation? (Transitional provisions are a set of temporary arrangements to give businesses time to adapt to the new requirements.) Please give reasons for your answer.

Respondent's comments

Analysis of the responses were grouped as follows:

- No transitional provisions are required - 6
- Less than 6 months - 1
- 6 months to 1 year - 2
- 2 years and above - 2
- Period should be locally agreed - 1
- Response not relevant to the question - 1
- No response - 10

HSE's response - Q17

HSE has taken these comments on board and will set a transitional period that will avoid unnecessary cost to industry but will ensure that there is clear date of compliance with any new requirements.

HSE will discuss this further with its acetylene stakeholder working group to get a clearer insight of industry practice.

Q18. Are there any further comments you would like to make on the issues raised in this consultation document.

Respondent's comments

(Individuals provided multiple responses to this question)

Analysis of the responses were grouped as follows:

- No - 9
- Change the title of the proposed regulations - 1
- Supportive of the overall proposals - 3
- Specific detailed technical issues raised that either address wording in the regulations or possible scenarios for consideration - 6
- No response - 3

HSE's response - Q18.

HSE has noted the specific technical issues raised and will address them in discussion with its stakeholder working group. None of the technical issues raised argued against the proposals but are suggestions or requests for improvements to the technical clarity of the regulations.

HSE will consider all issues raised and make amendments if necessary.

Q19. Is there anything you particularly liked or disliked about this consultation?

Respondent's comments

Analysis of the responses were grouped as follows:

- No - 7
- Supportive comment - 2
- Comment not directly relevant to this question - 2
- No response - 12

HSE's response - Q19.

HSE notes that no objections to the consultation process were raised.

HSE's conclusions from the public consultation exercise on the consolidated Acetylene Safety (England and Wales and Scotland) Regulations 2014

No objections were raised to the general approach to improving acetylene regulations with respondents' opinions being either supportive or indifferent. A steer was given for HSE to further improve its guidance as a result of the consolidation. We are using stakeholder input to improve available HSE guidance and are also developing an 'acetylene' webpage to route users with complex or niche needs to other helpful non-HSE guidance sources.

Following analysis of the responses received, HSE has made some minor amendments to the Statutory Instrument. However, no major changes were required to the proposed Statutory Instrument or supporting Impact Assessment as a consequence of the consultation exercise.



DRAFT



DRAFT

Annex 6 – Validation Impact Assessment for ER 2014 (cleared by chief economist).

| | |
|---|---|
| Title: Proposals to consolidate and modernise explosives legislation and to withdraw the Approved Code of Practice to the Manufacture and Storage of Explosives Regulations 2005 IA No: HSE 0083 Lead department or agency: Health and Safety Executive Other departments or agencies: | Impact Assessment (IA) |
| | Date: 05/03/2014 |
| | Stage: Validation |
| | Source of intervention: Domestic |
| | Type of measure: Secondary legislation |
| | Contact for enquiries: Alexander.Tsavalos@hse.gsi.gov.uk Rowan.Tunncliffe@hse.gsi.gov.uk |

Summary: Intervention and Options **RPC Opinion:** Awaiting Scrutiny

| Cost of Preferred (or more likely) Option | | | |
|---|----------------------------|--|---|
| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, Two-Out? Measure qualifies as |
| £1.50m | £1.50m | £-0.16m | Yes OUT |

What is the problem under consideration? Why is government intervention necessary?
 As part of the independent review into health and safety legislation carried out by Professor Ragnar Löfstedt, it was recommended that sector-specific consolidations of regulations should be undertaken. The Government has accepted this recommendation and seeks to consolidate over 20 legislative and regulatory elements covering the explosives sector into one.

What are the policy objectives and the intended effects?
 The consolidated regulations will consolidate, modernise, and, where practicable, update and simplify the current legislative arrangements. They will aid clarity and reduce burdens on industry without reducing safety standards.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Option 1: Do nothing..

 Option 2 (preferred option): Reduce the regulatory burden on business and regulators through consolidation, updating and simplification of the existing explosives regulations. This has been supported by industry through consultation, and is therefore the preferred option.

| | | | | | |
|--|---------------------|-----------------------|---------------------|----------------------|---------------------|
| Will the policy be reviewed? It will be reviewed. If applicable, set review date: October 2019 | | | | | |
| Does implementation go beyond minimum EU requirements? | | | Yes | | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | Micro Yes | < 20 Yes | Small Yes | Medium Yes | Large Yes |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | | Traded: | | Non-traded: |

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing option

FULL ECONOMIC ASSESSMENT

| Price Base Year 2012 | PV Base Year 2012 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|-------------------------|----------------------|-------------------------|---------------------------------------|----------------|------------------|
| | | | Low: Optional | High: Optional | Best Estimate: 0 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|---|-------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | 0 | 0 | 0 |

Description and scale of key monetised costs by 'main affected groups'

This is the baseline option and as such there are no associated costs

Other key non-monetised costs by 'main affected groups'

The changes were recommended by the Löfstedt review, and have been accepted in full by the Government, therefore there would be reputational costs to HSE from not going ahead with the changes.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|---|----------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | 0 | 0 | 0 |

Description and scale of key monetised benefits by 'main affected groups'

This is the baseline option and as such there are no associated benefits

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks

Discount rate (%)

N/A

BUSINESS ASSESSMENT (Option 1)

| | | | | |
|---|-------------|--------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | | | In scope of OITO? | Measure qualifies as |
| Costs: 0 | Benefits: 0 | Net: 0 | No | NA |

Summary: Analysis & Evidence Policy Option 2

Description: Consolidate the current suite of regulation

FULL ECONOMIC ASSESSMENT

| Price Base Year | PV Base Year | Time Period Years | Net Benefit (Present Value (PV)) (£m) | | |
|-----------------|--------------|-------------------|---------------------------------------|----------------|--------------------|
| | | | Low: Optional | High: Optional | Best Estimate: 1.5 |
| 2013 | 2013 | | | | |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|--|----------------------------|
| Low | 0.0 | 0.0 | 0.0 |
| High | 0.0 | 0.0 | 0.0 |
| Best Estimate | 0.0 | 0.0 | 0.0 |

Description and scale of key monetised costs by 'main affected groups'

Industry: Introduction of licensing for the storage of Ammonium Nitrate Blasting Intermediate (ANBI) will affect 19 business sites in one subsector and will cost £22K. Some of these sites will need to make alterations which have been estimated at £5K. One-off familiarisation costs are estimated to be of around £14K as the fundamental approaches are not changing and industry are familiar with the issues involved due the consultative approach taken by HSE. All of these costs round to £0.0 million.

Other key non-monetised costs by 'main affected groups'

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low | Optional | 0.2 | 1.2 |
| High | Optional | 0.2 | 1.8 |
| Best Estimate | 0.0 | 0.2 | 1.5 |

Description and scale of key monetised benefits by 'main affected groups'

Retail: Replacing the current registration system with a "zero separation distance licence" of periods up to 5 years maximum for businesses selling fireworks will deliver benefits estimated between £1.2M to £1.8M. Dutyholders who can demonstrate that they maintain a suitable Health and Safety management system with appropriate physical controls will be able to apply for the longer licence period.

Other key non-monetised benefits by 'main affected groups'

Retail: The clarification of the regulations will enable dutyholders across the Retail sector to understand their responsibilities better .
 Industry: It is thought that the proposals will have a positive impact on Health and Safety at work with businesses having clarity of what they need to do to comply with the regulations which could potentially reduce the number of accidents in the work place and the likelihood of a catastrophic event.

| Key assumptions/sensitivities/risks | Discount rate (%) |
|--|-------------------|
| We assume that 60% of supermarkets sell fireworks and all of these would be eligible to apply for a five year licence period. We assume that 10% of smaller retail shops sell fireworks and that 50% of these would be able to apply for the longer period licences. Given uncertainty, sensitivity analysis has been conducted using different proportions (25% and 75%) of small firms being able to apply for longer period licences. | 3.5 |

BUSINESS ASSESSMENT (Option 2)

| Direct impact on business (Equivalent Annual) £m: | In scope of OIOO? | Measure qualifies as |
|---|-------------------|----------------------|
| Costs: 0.0 | Yes | OUT |
| Benefits: 0.2 | | |
| Net: 0.2 | | |

Evidence Base (for summary sheets)

Background

1. The explosives sector comprises a large number of diverse subsectors regulated by HSE, the Police, Local Authorities and the MoD. One of the key reasons for the current regulatory complexity has been the historical approach of addressing sub-sector issues in detail, in isolation and in topic-based sets of regulations, rather than as part of a coherent, sector-wide, regulatory framework. This has resulted in overlapping legal duties and divergent legal definitions at both UK and international levels.
2. HSE began an Explosives Legislative Review programme (ELR) in 2010. As the independent review into health and safety legislation carried out by Professor Ragnar Löfstedt¹ recommended a number of sector-specific consolidations (a recommendation which was accepted by the Government), the ELR was subsequently incorporated within the Löfstedt review delivery programme. However, the general strategic direction remained the same.
3. ELR offers a major opportunity not just to consolidate, but to modernise and simplify explosives regulations whilst also future-proofing them against external legislative and technical changes. It is also an opportunity to review the accompanying Approved Codes of Practice (ACOPs) and guidance that support the current framework.
4. Currently, the explosives legislative framework consists of over twenty legislative instruments and a number of UK-wide or company-specific exemptions. The legislation provides the framework for worker, public and product safety across the sector. It also:
 - delivers the requirements of Section 1(1) (c) of the Health and Safety at Work etc Act 1974 (HSWA), as it achieves the control of the keeping of a dangerous substance;
 - contains consumer protection and anti-social behaviour legislation;
 - interacts with domestic and international provisions in counter-terrorism;
 - provides much of the UK's regulatory framework for the safe manufacture and storage of the industrial gas, acetylene.
5. Much of this wider scope is heavily intertwined with the Explosives Act 1875, parts of which still comprise existing statutory provisions of HSWA.

Rationale for intervention

6. The recommendations from Professor Ragnar Löfstedt's review of Health and Safety legislation, including those to undertake sector consolidations, were accepted by the Government. Additionally, there is scope for modernising, updating and simplifying regulatory requirements. Achieving those aims requires changes to the Regulations to be made.
7. The ELR Programme has engaged with key stakeholders in the various explosives subsectors in order to deliver the necessary technical changes to the Regulations. Stakeholders have made improvement recommendations which have built up an expectation of change within the sector.
8. During summer 2013, HSE consulted on consolidating all explosives-related statutory instruments². The consultation document was downloaded 1465 times and HSE received 37 responses. Analysis of the responses found that there was general support for the proposals among stakeholders; further details are given below.

Policy objective

9. The primary objective of this proposal is to reduce the regulatory burden on business and regulators through clarification and simplification, as well as to update requirements where necessary. The review

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66790/lofstedt-report.pdf

² www.hse.gov.uk/consult/condocs/cd256.htm

has sought to involve all interested parties and deliver a consolidated and integrated suite of updated explosives legislation.

10. The proposal will assist in reducing the policy costs of regulation, for example, by eliminating the need for short-term piecemeal amendment of regulations and reducing the need for future major revisions. It will also assist in making the regulatory framework easier to understand, by reducing the total number of regulations through more effective integration and amalgamation of the numerous Orders and amending Regulations into the parent legislation.
11. An earlier review, Lord Young's Good Health and Safety, Good for Everyone³, the recommendations of which were also accepted by the Government, outlined the next steps in the Government's plans for reform of the health and safety system in Britain. The Government believes the regulation of major hazard industries to be soundly based and in accordance with best international practice. The report highlighted the need to continue with a programme of modernisation of regulatory approaches and co-operation between regulators to provide a consistent and proportionate approach for business, ELR is designed to help meet this objective.

Options Considered

Option 1: Do Nothing (Baseline)

12. In this option, the existing regulations would continue as they are currently, with no changes. There would, however, be reputational costs to HSE, as the Löfstedt review recommended changes to the Regulations which have been accepted by the Government.
13. This option is the baseline against which the other option will be compared.

Option 2: Modernisation and Consolidation

14. Reduce the regulatory burden on business and regulators through clarification and simplification of the existing regulations and consolidation into one document, also updating requirements where necessary.
15. Extend the period that licences for storing explosives such as fireworks (known as "zero separation distance licences") are valid for from one year to a maximum of 5 years, to avoid unnecessary administrative burden on shops who sell fireworks but who meet and maintain minimum storage standards.
16. Redefine Ammonium Nitrate Blasting Intermediate (ANBI) under international standards as UN3375. This will bring ANBI in to line with the international standards that the sector currently works to and will have no inherent costs.
17. Introduce licensing for the storage of ANBI. ANBI is an ammonium nitrate emulsion, suspension or gel that can be sensitised on site to become an explosive. Its typical use is in quarry blasting. It's generally safer in transport, storage and use than traditional explosives, but there have been incidents where it has exploded following engulfment by fire. The intention of licensing ANBI storage is to ensure that bulk storage of this material is subjected to controls proportionate with the potential of such material to explode. This will ensure that the companies involved operate in accordance with the relevant parts of widely used international industry standards for ANBI, creating greater regulatory consistency and reducing market inconsistencies that occur if sites operate to different standards. HSE explosives sector has directly consulted with, and has agreement for this proposal from, those companies operating the 19 sites that will be affected. HSE will continue to work closely with the ANBI industry during the transition period to allow them to adapt.

Monetised and non-monetised costs and benefits of each option

General Assumptions

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66745/good-health-and-safety.pdf

18. The discount rate used is 3.5%, in line with the HM Treasury Green Book⁴ guidance.
19. Costs and benefits are assessed over 10 years as there is no reason to depart from the general advice in the Green Book.
20. Price base and present value year is 2013.
21. The price base year for One in Two Out calculations is 2009.
22. Estimates for the cost of dutyholders' time are based on the Annual Survey of Hours and Earnings⁵ (ASHE 2012 provisional figures) using SOC code 3567 - Occupational Hygiene/Safety Officer and up rating this by 30% to account for non-wage costs, which equates to £30 per hour in total. This is in line with Treasury Green Book Guidance.
23. Figures presented in this IA are generally rounded to two significant figures. However, calculations are based on non-rounded numbers. Given this, some figures set out may not add up to the totals presented.
24. There are no definitive numbers for how many retail outlets actually sell fireworks but HSE believe that around 14,000 is a reasonable estimate, based on an HSE analysis of a sample of licence data from 2011/12 (including 60% of hypermarkets, supermarkets, superstores, major DIY Chains and 10% of convenience and traditional retailing outlets). This figure is derived from a total number of around 89,000 retail outlets that could potentially sell fireworks and that would require a storage licence to enable them to store fireworks, taken from a published Institute of Grocery Distribution (IGD)⁶ survey of retail outlets.
25. There are 19 sites that store ANBI.

COSTS

26. The majority of the proposals are not expected to create significant costs, as many of the changes involve consolidating, clarifying and simplifying the Regulations into an integrated legislative package, and will not fundamentally alter longstanding approaches to explosives safety and security.
27. Redefining ANBI under international standards as UN3375 and introducing licensing for the storing of ANBI will affect 19 business sites in one subsector and will cost £22K over the appraisal period. This is calculated on the basis of each of the 19 sites paying approximately £1,200 for a licence. These licences will be held indefinitely, until there is a major change in technology or the holder changes their practices. Given this is an established sector where major change is unlikely, we only expect each site to apply once over the 10 year appraisal period. Sites where ANBI is manufactured are already licenced by HSE.
28. The redefinition of ANBI may also lead to one-off costs from changing storage practices at 4 sites, totalling £5K. This figure has come about as a result of formal and informal consultation with the companies in question. HSE's Explosives sector will work closely with the dutyholders affected during the transition period to allow industry to adapt.
29. The proposals will increase entry costs for new businesses who wish to store ANBI as they will now need a licence. Those manufacturing ANBI already need a licence. The proposals will not affect entry or exit costs for any other sub sectors in the explosives sector as this new requirement only applies to companies who store or wish to store ANBI. However, given the small number of specialist sites storing ANBI, it is expected that there will be no new entrants over the 10 year appraisal period, nor would there be without the new costs..

⁴ http://www.hm-treasury.gov.uk/data_greenbook_index.htm

⁵ <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2012-provisional-results/stb-ashe-statistical-bulletin-2012.html>

⁶ <http://www.igd.com/our-expertise/Retail/retail-outlook/3371/UK-Grocery-Retailing/>

30. Five year “zero separation distance licences” for explosives such as fireworks will be available for those firms meeting certain criteria (the demonstration of which will require no additional effort on the part of the companies – see paragraph 37), but licences valid for a shorter period will remain available. There will be no additional costs relating to a five year licence over a one year licence.
31. Many of the people acquiring explosives which do not currently require an explosives certificate, but which may change status under the modernised framework, will already have an explosives certificate in relation to other explosives already held.
32. The collaborative way in which guidance will be drawn up will reduce the one-off familiarisation costs of the proposals. These should remain small as the majority of changes will not, fundamentally, alter longstanding approaches to explosives safety.
33. There will be one-off costs to business of around £13K from familiarising themselves with the consolidated regulations, These costs are based on Safety Officers making themselves aware of the changes and reviewing the updated guidance. This has been estimated at 3 hours per firm based on knowledge of previous changes. This figure assumes that most of the approximately 14,000 dutyholders in the sector will not familiarise themselves with the new legislation, as most of the changes will not alter fundamentally longstanding approaches, and industry are familiar with the issues involved due to the highly consultative and collaborative approach taken by the ELR Programme. However, it is assumed that 150 dutyholders, the number of which is based on those companies operating larger sites licenced by HSE and companies operating from multiple locations, would choose to have someone in the business spend some time familiarising themselves with the changes. This assumption was tested at consultation and there were no objections raised.
34. Costs of familiarisation with extending licences to store explosives such as fireworks have not been calculated as we assume dutyholders will familiarise themselves with requirements when they next need to renew a licence, and will then come across the new requirements. There are therefore no additional costs expected. This assumption was tested at consultation stage and no objections were received.
35. It is not appropriate to include familiarisation costs for new market entrants over the appraisal period. as new entrants will only be interested in the situation when they enter the market, not what has changed over time. However, modernisation and consolidation, including removing counter terrorism and antisocial behaviour legislation from the Health and Safety legislative framework, may reduce the familiarisation burden imposed on new industry and regulator new entrants, which would generate savings in comparison to the current situation. These savings are not expected to be significant, so no attempt has been made here to quantify them.

BENEFITS

36. There would be a benefit to industry from the reduction in administration and paperwork resulting from a move to extend the life of licences to store explosives such as fireworks from one year to five.
37. Dutyholders who can demonstrate that they maintain a suitable health and safety management system with appropriate physical controls, will be eligible for a storage licence for a longer period than currently permitted by legislation (up to 5 years). There will be no additional administrative burden on dutyholders who are eligible for this extension, as all premises wishing to store or sell fireworks submit the same paperwork and are inspected by their local authority as a matter of course, and the extension will merely be at the discretion of the local authority dependent on the control measures and management practices that the dutyholder has in place.
38. HSE believes that it is reasonable that, out of the total 14,000 retailer outlets we estimate sell fireworks, all of the approximately 6,000 hypermarkets, supermarkets, superstores and major DIY chains would be eligible for a storage licence with periods longer than is currently permitted. Of the remaining convenience and traditional retailing outlets, we estimate some 50% (approximately 4,000) would be eligible, based on an HSE analysis of a sample of licence data from 2011/12.
39. Replacing the current registration system with a “zero separation distance licence” of up to five years for businesses selling fireworks would mean a reduction in costs to business, in present value terms, of a

best estimate of £1M over a ten year period, on the assumption that all supermarkets and half of smaller shops would be eligible. This is as a result of a reduction in the number of times dutyholders would need to apply for a storage licence from the Local Authority. Registration previously cost £136 and covered the first two years, and then there was a renewal fee of £52 every year thereafter. The replacement of registration with a “zero separation distance licence” of up to five years, will change the costs to £229 for the first five years, and £178 for every subsequent five year renewal.

40. There would also be administration savings to businesses wishing to store explosives such as fireworks as a result of reduced form completion that would amount to a best estimate of £0.5M over the appraisal period, based on the assumption that a form completion takes 15 minutes of a Safety Officer's time (this assumption is based on the completion of a random sample of forms used by local authorities to apply for licences).
41. This will benefit those dutyholders who can demonstrate that they maintain a suitable health and safety management system with appropriate physical controls. This means that health and safety will not be diminished by introducing the new licences, as the requirements placed upon licence holders will not be reduced, the change will simply mean that unnecessary administrative burdens are reduced.
42. HSE anticipates the overall impact of the proposal on health and safety outcomes to be positive for business and regulators. The consolidated regulations will help ensure there is legal clarity for those firms operating in the explosive sector. This creates a potential benefit in that it may reduce the amount of time that businesses in the sector spend dealing with their health and safety obligations. Whilst this reduction in time is clearly a benefit, it will not be proportionate to quantify the benefit of legal clarity. This is due to the uncertainty surrounding the potential time saving that will result as well as the number of businesses that will be affected.
43. Legal clarity will also help to boost public confidence in these major hazard industries. It will enable them to operate successfully with less challenge, and together with the help, advice and regulatory oversight that HSE and co-regulators will provide on safety matters this will help to ensure the industry can operate more effectively.
44. Local authorities will experience administrative savings from moving from the one-year to five year licensing scheme. However, these savings will be counteracted by a reduction in revenue from licences, and it is assumed that the income from the licences covered the administration costs of issuing licences completely; therefore there will be a zero net effect on local authority income.

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

45. The figures for the number of retail outlets in the UK are based on published market research analysis by IGD. While this provides an indication for how many stores there are in the UK, there are no centrally available figures for how many stores sell/store fireworks. However, HSE have conducted a survey of licence issuers to identify how many have been issued in the last year and the estimate is based on the returns HSE has received.
46. HSE have engaged with key stakeholders in industry, local authorities and other government departments to help ensure that there was understanding and agreement in the proposals. HSE have worked closely with stakeholders in consultation working groups to address specific details and have used the HSE website to disseminate key information and request assistance to clarify HSE's understanding.
47. Familiarisation costs are estimated based on knowledge from previous changes and both formal and informal consultation with business.

Key Risks and Assumptions

48. The figures for the number of retail stores selling fireworks will remain as estimates. It would not be proportionate to centrally pull together information which is not currently collected on such a wide and disparate group of organisations.

49. Owing to the uncertainty surrounding these figures, sensitivity analysis was conducted based on the changed assumptions that 25% of smaller firms would be eligible for extended licences in the reasonable worst-case scenario, and that 75% of smaller firms would be eligible in the reasonable best-case scenario. This sensitivity analysis found that the potential benefit of the changes to licensing ranged between £1.2m to £1.8m over the appraisal period, with a best estimate of £1.5M.
50. HSE has engaged with stakeholders via working groups and the HSE website on this issue, and there were no objections. Industry is familiar with the issues involved due to the consultative approach taken by the ELR Programme.

Direct costs and benefits to business calculations (One In Two Out)

51. It is estimated that the total present value of the net benefit to Business over the 10 year appraisal period will be around £1 million.
52. It is estimated that the Equivalent Annual Net benefit to Business will be £160K, therefore this proposal is a OITO “out” of £160k.

Wider impacts

Competition

53. The proposals will not favour or disadvantage any firm or type of firm or affect their ability to compete with others in the same market.
54. The Office of Fair Trading have four filter questions to decide whether a more detailed analysis of competition impacts is necessary, and these are answered as follows:
1. Does the policy directly limit the number or range of suppliers?
It is not thought the policy will directly limit the number or range of suppliers.
 2. Does the policy indirectly limit the number or range of suppliers?
It is not thought the policy will indirectly limit the number of range of suppliers, as explained in paragraph 29.
 3. Limit the ability of suppliers to compete?
It is not thought the policy will limit the ability of suppliers to compete.
 4. Reduce suppliers’ incentives to compete vigorously?
It is not thought that the proposal will reduce suppliers’ incentives to compete vigorously.

“Gold Plating”

55. Some of the long standard domestic provisions go beyond the minimum requirements of European Directives. These provisions generally relate to areas where EU legislation does not exist. Any potential gold plating of EU legislation was considered at the point at which the original domestic provisions were introduced. The current legislative proposal focuses on consolidation and minor updating. However, discussions have taken place with the security community (which includes National Counter Terrorism Security Office (NaCTSO) and the police, who rely on many of the security and acquisition provisions contained in HSE explosives legislation, along with historical evidence), to review the case for retaining the domestic provisions. This consultation indicated that a failure to retain these provisions would pose a significant risk to both worker and public safety and to security standards. Failure to include these measures could result in the loss of support from the Home Office and the Police /security services. Furthermore, there has been no strong drive from the sector to remove the domestically-derived permissioning requirements from the legislative framework.

Small/Micro Firms and the Self employed

56. We propose that these provisions will apply to small/micro firms and the self-employed as they seek to clarify duties and so could benefit such firms. If hazardous explosives were placed outside of legislative control they could pose significant hazards to neighbouring businesses and members of the public by

way of their potential to give rise to catastrophic events. It is not thought the proposals will have a disproportionately negative impact on small firms. There will be no material changes to the standards industry are expected to comply with. In the consolidation, the changes are not being made to the substance of the regulation.

Hobbyists

57. There is a large and active hobbyist community (cavers, divers shooters etc.) It is not thought that the proposals will have a negative impact on any of the groups in this sector.

Health and Well being

58. It is thought that that the proposals will have a positive impact on Health and Safety at work with businesses having clarity of what they need to do to comply with the regulations, which could potentially reduce the number of accidents in the workplace. Regulators will also have more clarity and should be able to enforce the regulations more consistently. However, owing to the uncertainty surrounding this, these benefits have not been quantified.

59. There will be no reduction in the standards that firms licenced to store explosives will have to maintain, and extended five-year licences will only be provided to those firms who can prove that they meet these standards. Therefore, there will be no reduction to public or workplace safety from extending firework storage licences from one year to five years.

Environment

60. It is possible that there will be a positive impact environmentally; as business will have greater clarity of what they need to do to comply with the regulations which could potentially reduce the risk of major hazard incidents occurring.

Annex 7 – Validation Impact Assessment for ASR 2014 (cleared by chief economist)

| | | |
|---|--|--|
| Title: Impact Assessment for the proposed Acetylene Safety Regulations 2014 IA No: HSE0084 Lead department or agency: Health and Safety Executive Other departments or agencies: | Impact Assessment (IA) | |
| | Date: 07/02/2014 | |
| | Stage: Validation | |
| | Source of intervention: Domestic | |
| | Type of measure: Secondary legislation | |
| | Contact for enquiries: Alexander.Tsavalos@hse.gsi.gov.uk | |

Summary: Intervention and Options **RPC Opinion:** Awaiting Scrutiny

| Cost of Preferred (or more likely) Option | | | |
|---|----------------------------|--|---|
| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, Two-Out? Measure qualifies as |
| £0m | £0m | £0m | Yes Zero Net Cost |

What is the problem under consideration? Why is government intervention necessary?
 As part of the Löfstedt Review of Health and Safety in the UK, it was recommended that sector-specific consolidations of regulations should be undertaken. The Government has accepted this recommendation and seeks to consolidate six legislative elements covering compressed acetylene into one. This will remove unnecessary legislation and move towards a more straightforward legislative framework.

What are the policy objectives and the intended effects?
 The aims of the consolidation are to remove regulatory burden on businesses and legislators, whilst at the same time maintaining current health and safety standards. The consolidation also seeks to future-proof the acetylene legislation so that costly piecemeal amendments can be avoided as far as possible in the future.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Option 1: Do nothing.

 Option 2 (preferred option): Consolidate existing compressed acetylene legislation into one piece of legislation. This follows recommendations in the Löfstedt Review, which have been accepted by the Government. This option would also remove obsolete requirements of formal HSE approval of flame arrestors and for the import of acetylene containers. The proposed option has been supported by industry through consultation and is therefore the preferred one.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 10/2019

| | | | | | |
|--|---------------------|-----------------------|---------------------|----------------------|---------------------|
| Does implementation go beyond minimum EU requirements? | | | N/A | | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | Micro Yes | < 20 Yes | Small Yes | Medium Yes | Large Yes |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | | Traded: | | Non-traded: |

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 3

Description: Do nothing option

FULL ECONOMIC ASSESSMENT

| Price Base Year | PV Base Year | Time Period Years | Net Benefit (Present Value (PV)) (£m) | | |
|-----------------|--------------|-------------------|---------------------------------------|----------------|------------------|
| | | | Low: Optional | High: Optional | Best Estimate: 0 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|--|----------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | 0 | 0 | 0 |

Description and scale of key monetised costs by 'main affected groups'

This is the baseline option and therefore there are no costs

Other key non-monetised costs by 'main affected groups'

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | 0 | 0 | 0 |

Description and scale of key monetised benefits by 'main affected groups'

This is the baseline option and therefore there are no benefits.

Other key non-monetised benefits by 'main affected groups'

| | | |
|-------------------------------------|-------------------|-----|
| Key assumptions/sensitivities/risks | Discount rate (%) | N/A |
|-------------------------------------|-------------------|-----|

BUSINESS ASSESSMENT (Option 3)

| | | |
|---|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | In scope of OITO? | Measure qualifies as |
| Costs: 0 | No | NA |
| Benefits: 0 | | |
| Net: 0 | | |

Summary: Analysis & Evidence Policy Option 4

Description: Consolidation of sector specific acetylene legislation

FULL ECONOMIC ASSESSMENT

| Price Base Year | PV Base Year | Time Period Years | Net Benefit (Present Value (PV)) (£m) | | |
|-----------------|--------------|-------------------|---------------------------------------|----------------|------------------|
| | | | Low: Optional | High: Optional | Best Estimate: 0 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|--|----------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | 0 | 0 | 0 |

Description and scale of key monetised costs by 'main affected groups'

There will be no material changes to the standards industry are expected to comply with, and as such the only costs will be from familiarisation. The number of dutyholders is very small, and these dutyholders have been consulted regularly, both formally and informally, and are fully aware of the changes being made, therefore familiarisation costs are expected to be negligible.

Other key non-monetised costs by 'main affected groups'

No other costs have been identified.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | 0 | 0 | 0 |

Description and scale of key monetised benefits by 'main affected groups'

No benefits have been monetised.

Other key non-monetised benefits by 'main affected groups'

There is an un-quantified benefit associated with consolidating the current legislation in helping to counteract the impression that acetylene legislation is complex, confusing and out of date. The proposal will also separate acetylene from wider explosive regulations and the potential confusion caused by high pressure acetylene being 'deemed' an explosive will be removed. The consolidation will also remove the need for further costly 'piecemeal' legislative updates, and there will be negligible administrative savings.

| | | |
|--|--------------------------|-----|
| Key assumptions/sensitivities/risks | Discount rate (%) | 3.5 |
|--|--------------------------|-----|

BUSINESS ASSESSMENT (Option 4)

| | | | | |
|--|-------------|--------|--------------------------|-----------------------------|
| Direct impact on business (Equivalent Annual) £m: | | | In scope of OIOO? | Measure qualifies as |
| Costs: 0 | Benefits: 0 | Net: 0 | Yes | Zero net cost |

Background

1. Acetylene gas is extremely flammable and becomes unstable under pressure and can in some circumstances detonate, even in the absence of oxygen. It is commonly used as a welding and cutting gas, as it can burn with a flame much hotter than other gases.
2. The following legislative elements currently exist to address the regulation of compressed acetylene:
 - Order of the Secretary of State No.5 1898.
 - Order of the Secretary of State No.5A 1905.
 - Order of the Secretary of State No.9 1919.
 - Order in Council No.30 1937.
 - Compressed Acetylene Order 1947.
 - Compressed Acetylene (Importation) Regulations 1978.
3. There are also a number of generic and company-specific exemption certificates that have been made under the Explosives Act 1875 (Exemptions) Regulations 1979.
4. Acetylene regulation has been separated from the main Explosives Legislative Review (ELR) work and they have had separate impact assessments undertaken because:
 - Acetylene is not classified as an explosive and is not a part of the explosives sector. It was 'deemed' an explosive so that powers of the Explosives Act 1875 (EA) could be used for its regulation.
 - Acetylene regulation is a narrower issue than the main ELR, with limited uses and only two manufacturers/main distributors.

Rationale for intervention

5. Following a recommendation in Professor Ragnar Löfstedt's review of Health and Safety⁹, HSE is moving forward with proposals for consolidation of sector-specific acetylene legislation.
6. HSE has engaged with key stakeholders in the industry in order to deliver the necessary technical consolidation to the Regulations. Stakeholder input has helped to improve the clarity of the consolidated regulations and focus attention of the key elements for retention.
7. The rationale for intervention is:
 - Current acetylene regulation is complex and does not align well with the modern, more straightforward, approach to health and safety;
 - It is Government policy to remove unnecessary regulation.
8. The current standards are considered by both HSE and the industry to be fit for purpose. There is no need to revise the physical controls for acetylene as they directly reflect the physico-chemical properties of the gas under pressure which remain unchanged.

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66790/lofstedt-report.pdf

9. HSE is also taking this opportunity to remove obsolete legislation requiring formal HSE approval of flame arrestors and for the import of acetylene containers. This is a minor deregulatory measure aimed at removing what is essentially duplication, as other legislative standards set acceptable limits on these objects anyway.

Policy objective

10. The primary objective is to reduce the regulatory burden on business and regulators through consolidation and simplification. The review has sought to involve all interested parties and deliver a consolidated and integrated suite of modern Acetylene legislation.
11. The review will also assist in reducing the policy costs of regulation, for example, by eliminating the need for short-term piecemeal amendment of regulations and reducing the need for future major revisions, and assist in reducing the amount of regulation, for example, by reducing the total number of regulations through more effective integration and amalgamation of the numerous Orders and amending Regulations into a single set of regulations.
12. The intervention will replace the current ageing and complex acetylene regulatory framework with a new, easier to interpret regulation that does not alter the practical measures or operating standards required to comply with the law.
13. The intended effects are to:
 - Maintain current dutyholder risk-control measures;
 - Reduce red tape/confusion by streamlining regulations, and
 - Make the regulations more future-proof.
14. Lord Young's report Good Health and Safety, Good for Everyone¹⁰, the recommendations of which have been accepted by the Government, outlined the next steps in the Government's plans for reform of the health and safety system in Britain. The Government believes the regulation of these major hazard industries to be soundly based and in accordance with best international practice. The report highlighted the need to continue with a programme of modernisation of regulatory approaches and co-operation between regulators to provide a consistent and proportionate approach for business. The consolidation of acetylene legislation, as part of the wider Explosives Legislative Review, is designed to meet that objective.

Options Considered

Option 1: Do Nothing (Baseline)

15. In this option, the existing regulations would continue as they are currently, with no changes. There would, however, be reputational costs to HSE, as the Löfstedt review has recommended changes to the Regulations which have been accepted by the Government.
16. This option is the baseline against which the other options for implementing Professor Löfstedt's recommendations are compared.

Option 2: Consolidation

17. This is a consolidation of existing law, with the removal of legal duplication and a shift towards more straightforward regulations supported by user-friendly guidance. New law will replace old law, whilst maintaining the current policy position and

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66745/good-health-and-safety.pdf

expectation of dutyholder activity. The significant hazards posed by compressed acetylene to both users and those nearby are the result of its physico-chemical nature giving a potential for explosions and fire. These characteristics make any consideration of a non-regulatory approach unsustainable.

18. There are some minor deregulatory changes, namely, removing the need for formal HSE approval of flame arrestors and for the import of acetylene containers. These are expected to have minimal impact in practice and are primarily aimed at removing duplication of regulation.
19. During summer 2013, HSE consulted on consolidating all acetylene related statutory instruments (www.hse.gov.uk/consult/condocs/cd257.htm). The consultation document was downloaded 1468 times and HSE received 23 responses. Where a view was expressed, the proposed approach of:
 - a. simplifying/consolidating existing acetylene regulation;
 - b. removing acetylene from the regulation of 'classical' explosives, and
 - c. clarifying the prohibition of solid acetylene,was either well supported or met with public indifference. No substantive objections were raised.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

20. HSE have engaged with industry via working groups and the HSE website, and assumptions below are based on information gathered through this process. Industry is familiar with the issues involved due to the consultative approach taken by HSE.

COSTS

OPTION 1: DO NOTHING

21. The do nothing option is the baseline used to compare other options against. As such, there are no additional costs or benefits associated with option 1.

OPTION 2: Consolidation

22. There are no compliance costs expected from this proposal.
23. The proposals will not favour or disadvantage any firm or type of firm or affect their ability to compete with others in the same market.
24. There will be no material changes to the practical workplace standards industry are expected to comply with. The changes are being made to the underlying regulation and as such, existing guidance would only require minimal editorial updates. Therefore, irrespective of the number of dutyholders in scope of the legislation, the costs they face as a result of this change are negligible.
25. Based on the responses to our public consultation, HSE understand that supplier-produced guidance would only require minor editorial changes to reflect the change in legal references, as HSE do not intend to alter the technological and operational standards that are required for the 'safe' use of acetylene. HSE will review this again following the public consultation and if it is not the case will address how this work is taken forward.

Familiarisation

26. There are in the region of 400,000 - 500,000 compressed acetylene gas cylinders in Britain and the vast majority will be used for metal welding and cutting operations¹¹. There are currently two main distributors/retailers in Great Britain and one manufacturing site, with a second under construction. We estimate that they have in the region of 320,000 business customers between them. Many of these businesses will be SMEs, primarily vehicle repair and metal fabrication.
27. Also based on data gathered during consultation, it is assumed that these smaller customers who are acetylene users rely upon training and supplier-provided information, rather than actively refer to the existing legislation. We do not expect that the proposed changes would alter this behaviour.
28. Dutyholders refer to guidance as and when they need to. The changes made to current guidance, as mentioned above, will be purely editorial i.e. changing the references to regulations. We do not expect users to specifically familiarise themselves with any new guidance produced. Therefore, we expect that familiarisation costs will be negligible.
29. There were no objections to these assumptions during the consultation process.

BENEFITS

30. There is an unquantified benefit associated with consolidating the current legislation. Without any intervention these 6 pieces of legislation would remain in force and contribute to the impression that acetylene legislation is complex, confusing and out of date. This work is one element of a much wider programme of work to make the legislative framework simpler and easier to understand, while maintaining the same standards of protection for those in the workplace or affected by work activities.
31. The proposal will also separate acetylene from wider explosive regulations and the potential confusion caused by high pressure acetylene being 'deemed' an explosive will be removed.
32. There will be some minor administrative and financial savings from the limited elements of deregulation, namely, removing the need for formal HSE approval of flame arrestors and for the import of acetylene containers. These savings will be very limited, as this is a mature sector and such applications for approval are limited to only a few a year, with existing costs in the hundreds of pounds, and therefore it would be disproportionate to place a monetary estimate on the savings. The changes are not expected to have any impacts on health and safety outcomes due to these activities being covered by other standards and regulations, and the changes, in effect, would simply be removing the small administrative burden arising from having to seek approval from HSE, and the duplication of having unnecessary additional checks upon the existing standards.

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

33. This is sectoral consolidation as promoted in the Government's response to the Löfstedt report. It will not alter any of the practical controls currently found in the workplace, so will have minimal impact on those currently making, trading or using acetylene. There has already been considerable consultation in reviewing the acetylene regulatory framework in collaboration with GB acetylene producers and representatives of traders, users, and the fire and rescue services.

¹¹ Communication from the British Compressed Gases Association (BCGA).

34. The user base is quite disparate. To ensure that HSE had not overlooked any subsector issues, the formal consultation gave stakeholders an opportunity for comment and there will be an adequate period prior to making new regulations. This is a relatively small and contracting sub-sector, with users increasingly moving to alternative gases and technologies.

General Assumptions

35. The IA is prepared in accordance with the Better Regulation Framework Manual.

Direct costs and benefits to business calculations (One In Two Out, OITO)

36. The proposal is in scope of OITO. However, it would not have a direct impact on business (costs and benefits to business are expected to be negligible, as explained above) and therefore is deemed as having a zero net cost to business.

Wider impacts

Competition

37. It is not anticipated that the proposed changes will have an impact on competition. The Office of Fair Trading have four filter questions to decide whether a more detailed analysis of competition impacts is necessary, and these are answered as follows:
- a. Does the policy directly limit the number or range of suppliers?
 - It is not thought the policy will directly limit the number or range of suppliers.
 - b. Does the policy indirectly limit the number or range of suppliers?
 - It is not thought the policy will indirectly limit the number or range of suppliers.
 - c. Limit the ability of suppliers to compete?
 - It is not thought the policy will limit the ability of suppliers to compete.
 - d. Reduce suppliers' incentives to compete vigorously?
 - It is not thought that the proposal will reduce suppliers' incentives to compete vigorously.

Small/Micro Firms and the Self employed

38. We propose that these provisions will continue to apply to small/micro firms and the self-employed. If hazardous forms of acetylene were placed outside of legislative control they could pose significant hazards to neighbouring businesses and members of the public. It is not thought the proposals will have a disproportionate impact on small firms. There will be no material changes to the existing standards dutyholders are expected to comply with. The changes are being made to the structure of the existing regulations, and in general, we do not expect businesses to seek to familiarise themselves with those changes. In addition, the simplification and consolidation of the legislation would benefit any small/micro firms or self-employed user that wanted to consult the regulations directly.

Measures Beyond Minimum EU requirements

39. There are no specific EU requirements relating to acetylene. However, the proposed simplified regulations will maintain the current long standing practical controls that are not fully addressed by EU regulations relating to explosive atmospheres or those directed towards true explosives.

40. Maintaining current controls will ensure that GB industry can continue to use acetylene in various garage, repair and engineering workshops with no reduction in the level of health and safety protection that employees and their nearby neighbours currently receive. .

Summary and preferred option with description of implementation plan.

41. HSE is committed to implement Professor Löfstedt's recommendation replacing the current ageing and complex acetylene regulatory framework with a new, easier-to-interpret regulation that does not alter the practical measures or operating standards required to comply with the law.
42. In terms of implementation the proposal will form part of the Eighth Statement of New Regulations, May 2014 and it is expected it will be made law in October 2014.

Annex 8 - Update on the main risks to ER 2014 identified at consultation stage

The key risks to the proposed ER 2014 identified prior to consultation (HSE/13/63 refers) have been addressed or mitigated as follows:

- *Changes in status of certain explosive substances and extension to licence requirements for certain high hazard potential explosives* – The majority of respondents did not comment on these proposals. As set out above, we have considered specific points raised to make drafting amendments in ER 2014 or to identify any exemptions from the requirements with the Home Office. We will believe the proposals will ensure that appropriate controls are in place in relation to the hazard of the items being stored or acquired.
- *Proposal to extend licensing to include storage of ANBI* – The majority of consultation responses supported this proposal. We will continue to offer to work with any ANBI businesses affected by the proposal to ensure a smooth transition.
- *Funding implications for Local Authorities as a result of aligning ‘fixed rule’ licence periods* – No responses were received on this specific issue during the consultation and the majority of respondents supported the proposal. It was also discussed at the working group, overseeing the proposals, which involves Local Authority representatives. A new burdens assessment has been produced and cleared by PFPD and agreed in principle with DCLG. As set out above, we believe the proposal supports the principles of risk based regulation and will help reduce burdens on businesses.
- *Proposal to replace the MSER ACOP* – As a set out above, the majority of respondents supported the proposal and we will continue to work with industry groups to develop the content.

Annex 9 - Update on main risks to ASR 2014 identified at consultation stage

The key risks to the proposed ASR 2014 identified prior to consultation (HSE/13/64 refers) have been addressed or mitigated as follows:

- *Retaining the cylinder colour for easy identification in an emergency* – We have incorporated provisions within ASR 2014, as permitted by Europe, to retain the existing colour coding, in the absence of any European standards. If a binding European standard is agreed in the future, ASR 2014 would need to be amended.
- *Regulation of solid acetylene* – No adverse impact was identified in relation to closing this legal ‘gap’. This reflects our working assumptions that there would be no impact from this additional control.
- *Development of simple regulations and user-friendly guidance* – One respondent raised concerns that the less prescriptive approach in ASR 2014 could lead to a reduction in standards. As set out above, we are continuing to work with operational colleagues and the industry working group to ensure that there is no dilution in standards as a result of the consolidation.

Annex 10 - Transitional provisions

1. The following transitional provisions have been developed to allow enough time for businesses to comply with any substantive changes to the law.
2. In relation to ER 2014 the following key transitional provisions will apply:
 - Licences and registrations which were valid prior to ER 2014 coming into force, will be deemed to be licences under the ER continuing in force until such time as they are due to expire or are revoked.
 - Explosives certificates which were issued prior to ER 2014 coming into force will continue to apply until such time as they are due to expire or are revoked. Similar provision is made for Recipient Competent Authority documents.
 - Applications for licences received prior to ER 2014 coming into force will continue to be acted on.
3. In relation to ASR 2014), the following key transitional provisions will apply:
 - Existing approvals for acetylene gas manufacture or compression, will be deemed a licence to continue those activities and in the case of compression will also cover cylinder filling. These deemed licences will continue until there are grounds for variation or revocation.
 - Acetylene gas, which prior to ASR 2014 coming into force, was kept in:
 - i. a manifold compliant with the requirements of Certificate of Exemption (CoE) No.4 of 1984, or
 - ii. conditions compliant with the requirements of CoE No.2 of 1989, will for the next 15 months be treated as permissible under Regulation 5(2)b or 5(2)a respectively.
 - A cylinder which, prior to ASR 2014 coming into force, complied with CoE No.1 of 1995 or CoE No.1 of 2001 can continue to be used for the storage of acetylene.
 - Applications for approvals received prior to ASR 2014 coming into force will be treated as a licence application.