

Health and Safety Executive Senior Management Team Paper SMT/08/76

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HEALTH AND SAFETY EXECUTIVE
Senior Management Team

Health and Safety (Miscellaneous Amendments and Revocations) Regulations

A Paper by Graham Collins
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Cleared by Giles Denham on 22 October 2008

Issue

1. The attached draft paper seeks the Board's agreement to submit proposed regulations (to be called the Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2008) to Lord McKenzie for approval, following consultation. We plan to bring the regulations into force on 6 April 2009.

Timing

2. For approval at the 4 November SMT meeting to enable the paper to go to the HSE Board meeting on 26 November 2008.

Recommendation

3. The SMT is invited to agree that the attached paper be submitted to the Board.

Background

4. See attached draft paper.

Consultation

5. In HSE, with Explosives Inspectorate, Policy Group, Legal Advisors Office, Communications Directorate and PFPD. Externally, with the CBI Explosives Industry Group and British Fireworks Association, local authority associations, the Chief Fire Officers Association, ACPO and ACPO(S).

Health and Safety Executive Board			Paper No: HSE/08/66
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Health and Safety (Miscellaneous Amendments and Revocations) Regulations			

Purpose of the paper

1. To ask the Board to agree the attached regulations (to be called the Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2008), and to submit them to Lord McKenzie for approval. The latest draft of the regulations are attached at Annex 1. We plan to bring the regulations into force on 6 April 2009.

Background

2. At its 6 November 2007 meeting, the Health and Safety Commission approved the publication of a consultation document seeking views on the proposed regulations. The regulations will:
 - a. amend explosives legislation to reduce paperwork for police and holders of explosives certificates and to address issues in the Manufacture and Storage of Explosives Regulations that have come to light since the regulations came into force in 2005;
 - b. revoke 224 sets of local mining regulations; and,
 - c. amend the Control of Noise at Work Regulations 2005, the Health and Safety Enforcing Authority Regulations and the Genetically Modified Organisms (Contained Use) Regulations 2000.
3. Explosives legislation has been substantially reformed in recent years and now consists mainly of Manufacture and Storage of Explosives Regulations 2005 (MSER) and the Control of Explosives Regulations 1991 (COER). The latter regulations cover security and were signed by a Home Office Minister.
4. Under the COER regulations anyone wishing to acquire most kinds of explosives must have a certificate from the police certifying that they are a 'fit person'. The explosives certificate regime closely parallels the firearms certificate regime, but the fact that the firearms certificate regime derives from the Firearms Act 1968 means that there is no scope for rationalisation of that Act under HSWA powers and primary legislation would no doubt be needed.
5. The local mining regulations were mainly drawn up in the 1960s and '70s and most deal with the use of diesel vehicles.

Argument

Amendments to the Control of Explosives Regulations 2001

6. The consultation document proposed two measures intended to reduce paperwork for both the police and users of explosives:
 - a. a provision for holders of firearms certificates to enable them to hold a certain amount of black powder for use with their weapons without having to obtain an explosives certificate as well;
 - b. an increase in the life of explosives certificates from 3 years to 5 years. This increase would bring the life of these certificates into line with

firearms certificates, and also enable an increase in the life of many storage licences.

7. The proposals for extending the maximum life of the COER acquire-and-keep and the acquire-only explosives certificates to five years were welcomed. However, we ran into an unanticipated problem on the question of the proposed exemption from the need for an explosives certificate. When this was originally agreed with the police the proposal would have produced a real saving in paperwork. This has been changed by the introduction of new police computer systems which mean that an explosives certificate can be issued by the police, literally, at the touch of a button.
8. The police have pointed out that without modifications to their national IT systems the proposal would create additional work for them and would degrade the quality of information about premises storing black powder. In view of these facts, we think it right not to take forward this proposal.
9. The Association of Chief Police Officers (ACPO) and the Association of Chief Police Officers (Scotland) (ACPO(S)) have proposed instead that there should be a radically shorter application form for people who also hold a firearms certificate. This does not require cover in the proposed Miscellaneous Amendments Regulations. Together with the extension to the life of the explosives certificate, this change would result in a significant reduction in the amount of paperwork for most explosives certificate holders. It has also been agreed with the organisations representing shooters and re-enactors.

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

10. The amendments to the Manufacture and Storage of Explosives Regulations address a number of issues that have become apparent since the regulations came into force. These proposals were uncontroversial and were agreed without any comment.
11. There was, however, disagreement over a proposal to enable local licensing authorities, in certain circumstances, to further limit the amount of explosives that can be stored at a registered store. (A proposal to allow licensing authorities to vary a registration was agreed - a registration is a simplified form of standard licence for premises holding smaller quantities of explosive). The proposal had been prompted by concerns raised by some local enforcing authorities. The Consultation Document also sought evidence as to whether there was a widespread problem which could not be addressed through the regulations as they currently stand.
12. This proposal was opposed by the industry who had serious concerns about inconsistency in approach between different local licensing authorities. There were very mixed views from the licensing authorities - some supported the proposal while others were concerned that it called on them to make judgements that they did not feel equipped to make. The consultation did not produce any evidence on the extent of the perceived problem.
13. We therefore think it right not to take forward the proposal to enable further limits both in the light of the lack of consensus on this proposal, as well the lack of evidence from the consultation process to support the change.

Control of Noise at Work Regulations

14. The proposals would correct an oversight in the Control of Noise at Work Regulations by including a requirement for hearing protection supplied for use

at work to comply with the Personal Protective Equipment Regulations 2002. This was agreed in consultation.

Amendments to the Health and Safety Enforcing Authority Regulations

15. The amendments to the Health and Safety Enforcing Authority Regulations improve provisions in the original Regulations. First, they include enforcement of certain quantities of Ammonium Nitrate Blasting Intermediates. Second, the amendments also complete a change made in 2007 to give the enforcement responsibility to the authority with responsibility for enforcing MSER rather than the authority given general responsibility for enforcing health and safety legislation at that site (eg the HSE at a factory or construction site or the local authority at a warehouse). This involves changing the meaning of “local authority” to be consistent with existing use in the Enforcing Authority Regulations.

Amendment to Regulation 24(7) of the Genetically Modified Organisms (Contained Use) Regulations 2000

16. Under these regulations HSE is required to keep a public register of GMO notifications. Regulation 24(7) states that copies of the register shall be maintained at the offices of HSE in Rose Court, London and Magdalen House in Bootle. HSE no longer has an office at Magdalen House and is moving to a single headquarters in Redgrave Court in Bootle. Therefore, this regulation will be amended to state that copies of the register as regards Great Britain shall be maintained at the offices of the Health and Safety Executive at Redgrave Court. A copy of the register will remain available on the HSE website for public viewing. This minor factual change was not in the consultation proposals (ie not in the Consultation Document) but has been consulted on separately. It is convenient to include the amendment in the Miscellaneous Amendments Regulations.

Revocation of local mining regulations

17. Finally, the proposals would also revoke 224 sets of local mine regulations (ie specific to one mine). In the large majority of cases, the mine closed some time ago. Again, these proposals were agreed in consultation.

Consultation

18. Annex 3 lists the organisations consulted on the proposals and those responding. These include CBI Explosives Industry Group and British Fireworks Association, local authority associations, the Chief Fire Officers Association, ACPO and ACPO(S).
19. The proposals have been considered by a national consultative committee involving representatives from the explosives industry, local authorities, trade unions and professional bodies. They have also been considered by the Mining Industry Committee.

Presentation

20. There are no presentational issues and press interest is unlikely. The proposals reduce administrative burdens and correct drafting anomalies, and have been broadly welcomed by industry. The two proposals that proved contentious during consultation will not be pursued.

Costs and Benefits

21. The benefits of these proposals would be of the order of £0.38m (over 30 years) with zero costs. An Impact Assessment is at Annex 4.

Financial/Resource Implications for HSE

22. We estimate the project costs of preparing these proposals, consulting stakeholders, and preparing the final draft regulations at less than £20,000. We do not anticipate any ongoing costs to HSE.

Recommendation

23. The Board is invited to:

- a) agree the proposed draft Regulations for submission to the Minister for Work;
- b) agree the draft covering letter at Annex 2.

Paper Clearance

24. This paper was produced by Andy Miller and was cleared by the HSE Senior Management Team on [4 November 2008].

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

[] 2008

Proposals for Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2008

I am pleased to send you the Health and Safety Executive's proposals for the Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2008. I also attach an Explanatory Memorandum and a short Impact Assessment.

The Regulations will:

- amend explosives legislation to reduce paperwork for police and holders of explosives certificates and to address issues in the Manufacture and Storage of Explosives Regulations (MSER) that have come to light since the regulations came into force in 2005;
- revoke 224 sets of local mining regulations; and,
- amend the Control of Noise at Work Regulations 2005 and the Genetically Modified Organisms (Contained Use) Regulations 2000.

Explosives legislation has been substantially reformed in recent years and now consists principally of MSER and the Control of Explosives Regulations 1991 (COER). The latter regulations cover security and were therefore signed by a Home Office Minister.

Under COER anyone wishing to acquire most kinds of explosives must have an explosives certificate from the police certifying that they are a 'fit person'. The proposals would increase the life of explosives certificates from 3 years to 5 years, bringing them into line with firearms certificates, and enabling an increase in the life of many storage licences.

The amendments to MSER address a number of drafting and other minor issues that have become apparent since the Regulations came into force.

The proposals would also revoke 224 sets of local mine regulations, and remedy an oversight in the Control of Noise at Work Regulations by including a requirement for hearing protection supplied for use at work to comply with the Personal Protective Equipment Regulations 2002.

Stakeholders have been fully consulted on all these proposals and have welcomed them. Two other proposals were opposed by stakeholders and the Executive has therefore decided not to proceed with them.

The proposals also contain a minor factual change which was not in our consultative document, but which is convenient to include in the Amendment Regulations. Under the Genetically Modified Organisms (Contained Use) Regulations 2000 HSE is required to maintain copies of a public register of GMO notifications at the offices of HSE in Rose Court, London and Magdalen House in Bootle. HSE no longer has an office at Magdalen House and is moving to a single headquarters in Redgrave Court in Bootle; the proposals would therefore amend the GMO Regulations to require copies of the register to be maintained at the Redgrave Court offices of the HSE. Relevant stakeholders have been alerted to this proposed change and are content.

The Executive would be grateful for your agreement to the proposed Regulations.

In line with the Government's policy on common commencement dates we propose that Regulations should come into force on 6 April 2009.

Judith Hackitt
Chair HSE

Organisations Consulted

Association of Chief Police Officers
Association of Chief Police Officers (Scotland)
Association of British Insurers
Association of Noise Consultants
Association of Stage Pyrotechnics
Atomic Weapons Establishment
Broadcasting Entertainment Cinematograph and Theatre Union
British Aggregates Association
British Association for Shooting and Conservation
British Fireworks Association
British Institute of occupational Hygienists
British Model Flying Association
British Pyrotechnists Association
British Retail Consortium
British Shooting Sports Council
CBI Explosives Industry Group
Chartered Institute of Environmental Health
Chief Executives of each English, Scottish and Welsh Local Authority Chief
Fire Officers Association
Chief Fire Officers in England and Wales
Construction Confederation
Convention of Scottish Local Authorities
Department for Business, Enterprise and Regulatory Reform
Engineering Employers Federation
English Civil War Society
Gun Trade Association
Home Office
Individual Mines Managers
Institute of Acoustics
Institute of Explosives Engineers
Local Authorities Coordinators of Regulatory Services
Major Fireworks Companies (16)
Maritime and Coastguard Agency
Mining Industry Committee
Ministry of Defence
National Association of Re-enactment Societies
Quarry Products Association
Royal National Lifeboats Institute
Scottish Parliament
Scottish TUC
Southern England Rocket Flyers
Trading Standards Institute
TUC
United Kingdom Rocketry Association
Welsh Assembly

Organisations etc who responded

1006 Rifle and Pistol Club
1st Galaxy Fireworks
Aberdeen City Council
Ace Conveyor Equipment Ltd
Alford Technologies
American Civil War Society
Association of Chief Police Officers
Association of Chief Police Officers (Scotland)
Association of Noise Consultants
Avon and Somerset Police
British Association for Shooting and Conservation
British Fireworks Association
British Pyrotechnists Association
CBI Explosives Industry Group
Cheshunt Rifle and Pistol Club
Chief Fire Officers Association
Cosmic Fireworks
Devon and Cornwall Police
East of England Trading Standards Association
East Sussex Fire and Rescue Service
Effects Associates (on behalf of film industry special effects companies)
Glasgow City Council
Hampshire County Council
Historical Breech Loading Small Arms Association
Inner London Chief trading Standards Officers Group
Institute of Explosives Engineers
Men Shun Fireworks
Muzzle Loaders Association of Great Britain
National Association of Re-enactment Societies
North Ayrshire Council
North Somerset Council
Private Individuals
QinetiQ
Rotherham Chantry Rifle, Pistol and Social Club
Sandling Fireworks
Solar Pyrotechnics
Somerset County Council
South West Trading Standards Partnership
Southern England Rocket Flyers
The Napoleonic Association
Trading Standards South East
West Yorkshire Fire and Rescue Authority