

Enforcement of Regulations on the Storage of Explosives: Advisory Guidance for Local Authority, Fire Service and Police Staff

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Overview

1. This guidance pack has been produced to assist local enforcing authorities in the enforcement of the Manufacture and Storage of Explosives Regulations 2005.
2. It is not a definitive statement of the law. It is **not** guidance issued by the Health and Safety Commission under section 18 of the Health and Safety at Work Act and is therefore advisory - ie enforcing authorities are not under a duty to follow it.
3. Questions about this guidance should be addressed to explosives.policy@hse.gsi.gov.uk. Please also check the HSE web site at www.hse.gov.uk/explosives/information/enforceauth.htm for further updates or notes. Questions on technical and enforcement issues should be addressed to explosives.licensing@hse.gsi.gov.uk.
4. HSE would welcome comments on this guidance as this will assist it in revising and updating the guidance to meet the needs of local enforcing authorities.
5. HSE would like to acknowledge the contribution of LACORS, CoSLA, CFOA, Trading Standards Institute, and of a number of individual local authority fire service and police staff, to the production of this guidance.

Health and Safety Commission guidance

6. This guidance pack should be read along side the Health and Safety Commission/HELA guidance *Section 18: HSC guidance to Local Authorities* (this guidance is at www.hse.gov.uk/lau/pdfs/sec18.pdf).
7. The HSC guidance emphasises the fact that local authorities need to be aware that they may be both duty holders and enforcing authorities under the Act. This could arise where a local authority was the organiser of firework displays and competitions or where firework displays were being held on local authority premises such as schools. The HSC believes that clear statements of responsibility and transparency will minimise any potential difficulties. HELA (the HSE/Local Authority Enforcement Liaison Committee) has issued further guidance on this subject.

Enforcing authorities

8. HSE is the enforcing authority for the manufacture of explosives and for the storage of larger quantities of explosives. Stores holding more than 2000 kgs of explosive (net) require an HSE licence.
9. Where HSE is not the enforcing authority for the Explosive Act, 'local authorities' as defined by Regulation 2 of MSER have responsibility. The authorities are as follows:
 - in Scotland and Wales:
 - the unitary authority for the area;

- in England:
 - London Boroughs;
 - Fire and Rescue Authorities in areas where these exist;
 - county councils or the district council where it is a unitary authority that has taken over the functions of the county council in its area following local government reorganisation.

In a very small number of areas officers from the fire service have been appointed to act as inspectors on behalf of the unitary authority. However, the unitary authority remains the enforcing authority for the legislation.

10. For convenience the remainder of this document uses the term 'local authority' to cover the different types of local authority with enforcement responsibility and 'enforcing authority' to cover police and local authorities.

Roles of HSE local authorities and police in enforcement action

11. HSE can provide advice and support to local authorities and police in the following areas:

- advice on the relevant legal requirements and on how to comply with them;
- advice on safety issues such as hazards, disposal options, safe handling;
- support, where appropriate, to investigations conducted by local authorities and police.

Appointment of inspectors

12. Section 20 of the Health and Safety at Work etc Act 1974 ('HSW Act') provides a number of important powers for the enforcement of health and safety legislation. These powers can only be exercised by inspectors appointed under section 19 of the Act. It is therefore essential that all authorities appoint sufficient numbers of inspectors for the enforcement of this legislation.

13. Inspectors must be suitably authorised to undertake the tasks for which they are appointed eg to institute proceedings or issue enforcement notices. Enforcement notices may only be signed and issued by an inspector who is of the opinion that there is, or has been, a contravention of one or more of the relevant statutory provisions or that there is a risk of serious personal injury.

14. It is clearly for local authorities to decide which staff should be appointed to enforce explosives legislation. However, in general staff with significant direct responsibility for enforcing the legislation should be appointed as inspectors. The issue of whether a particular member of staff should be appointed as an inspector should be determined on the basis of the operational needs of the post and **not** by their professional specialism.

Competence.

15. The HSC requires enforcing authorities to ensure that they only appoint inspectors who possess the necessary competences to carry out the tasks they will be authorised to do.

16. The HSC expects enforcing authorities to satisfy themselves that all inspectors either have adequate standards of competence in all of the relevant areas listed in Annex 2 of its guidance or are subject to appropriate supervision by other inspectors who do possess those standards.

17. It must be emphasised that it is not expected that staff who are only responsible for the enforcement of explosives legislation should have the range of knowledge and expertise that would be required of an inspector enforcing the full range of health and safety regulations. However the competency framework is relevant to the work of inspectors. This includes being able to:

- plan inspection programmes and individual visits;
- carry out inspections;
- carry out investigations;
- plan and gather evidence;
- prepare reports and where relevant institute proceedings;
- draft and serve enforcement notices;
- influence duty holders;
- improve health and safety through promotional activities.

18. It is also important to emphasise that most, if not all, of these competences might be gained and demonstrated in the context of other areas of regulatory activity – for example enforcing trading standards legislation.

19. The Association of Chief Police Officers (ACPO) and ACPO (Scotland) provide a course for Explosives Liaison Officers. This should normally be regarded as an essential part of the training of newly-appointed Explosives Liaison Officers.

Supervision

20. Where an individual, such as a recent recruit, has not had the opportunity to acquire the relevant competences they should be under the supervision of a colleague who has demonstrated the relevant standards of competence.

Instrument of appointment

21. Section 19(2) of the HSW Act requires that

‘Every appointment of a person as an inspector under this section shall be made by an instrument in writing specifying which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by the person appointed; and an inspector shall in right of his appointment under this section:

(a) be entitled to exercise only such of those powers as are so specified; and

(b) be entitled to exercise the powers only so specified within the field of responsibility of the authority which appointed him.'

22. The powers specified will be likely to be those provided to inspectors by sections 20,21,22,25 of the HSW Act, and, depending on the policy of the local authority, authorities in England and Wales may also wish to give inspectors powers under section 39 of the HSW Act to take prosecutions before magistrates' courts.

23. Local authorities may also wish to consider appointing some inspectors under section 20 only. This would permit them to take part in investigations but not to issue improvement or prohibition notices etc.

24. The warrant will also need to specify the legislation which the officer may enforce. Depending on the scope of the responsibilities of the authority, this might be all safety regulations, or a sub-set of those regulations, or possibly only the Explosives Act. For example a police Explosives Liaison Officer could only be appointed for the purpose of the enforcement of the Manufacture and Storage of Explosives Regulations 2005 and for the Control of Explosives Regulations 1991.

25. It is important to note that the appointment must be of a named individual rather than the holder of a particular post.

Explosives Act sections 30-32 and 80

26. Inspectors can only be appointed under the HSW Act to enforce that Act, regulations made under it, and any other relevant statutory provisions. While the Manufacture and Storage of Explosives Regulations 2005 repealed most of the Explosives Act (the most important exception is section 23), there are a number of provisions that are not relevant statutory provisions for the Health and Safety at Work Act which were not repealed. These sections are sections 30-32, and section 80 (sections 116-121 were also not repealed but these only apply in Northern Ireland).

27. The fact that these sections are not relevant statutory provisions means that:

- enforcing authorities will need to issue a separate appointment for officers authorised to enforce these provisions; and conversely
- it is *not* necessary for the member of staff to be appointed as an inspector under the HSW Act in order to be appointed to enforce these provisions.

(For the avoidance of doubt: sections of the Act that are not listed in this paragraph are relevant statutory provisions and are covered by the instrument of appointment discussed in the previous section).

28. It is important to note that HSW Act enforcement powers **cannot** be used to take enforcement action against breaches of the sections 30-32 and 80 of the Explosives Act - for example to seize fireworks that are being sold illegally on the street or in some other public place (section 30). The relevant enforcement powers are those provided under section 74 of the Explosives Act (see below). (This does not prevent the HSW Act powers from being used

if another offence were also being committed. Nor does it prevent enforcement powers under other legislation from being used if they are relevant).

ENFORCEMENT

Enforcement policy

29. Enforcing authorities are required to ensure that their approach to enforcement is consistent with the policy set out in the current HSC Policy Statement on Enforcement (republished as an Annex to the HSC/HELA Section 18 guidance to local authorities document – see paragraph 6).

30. The Policy Statement sets out the HSC's views on the principles of enforcement. Enforcing authorities should refer to this document but the key points are that the enforcement of health and safety law should be informed by the principles of **proportionality** in applying the law and securing compliance; **consistency** of approach, **targeting** of enforcement action and **transparency** about how the regulator operates and what those regulated may expect:

- **proportionality** means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcing authorities to achieve compliance should be proportionate to any risks to health and safety and to the seriousness of any breach;
- **consistency** of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends;
- **targeting** means making sure that inspection is targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it - whether employers, manufacturers, suppliers, or others; and
- **transparency** means helping duty holders to understand what is expected of them and what they should expect from the enforcing authorities. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

Enforcement powers

31. The following paragraphs set out the enforcement powers available under the Health and Safety at Work Act. These are:

- powers to obtain documents and other information
- powers of search and entry
- powers of seizure
- powers to issue improvement notices
- formal cautions
- prosecutions.

Annex A gives an aide-memoire on enforcement powers.

Powers to obtain documents and other information

32. Section 20 of the HSW Act gives powers for an inspector to 'require the production of, inspect, and take copies of or of any entry in... any books or documents which it is necessary for him to see for the purposes of any examination or investigation'. This power could be used to request information from haulage companies about firework deliveries for the purpose of establishing how long fireworks have been present at a site. It could also be used to request production of the information kept under other regulations even though they are not relevant statutory provisions for Health and Safety at Work Act. This includes information kept under Regulation 10 (3) of the Fireworks Regulations 2004 should it be necessary to do so

Powers of search and entry

33. Section 20(1) and 20(2) of the HSW Act provides powers of entry to an inspector 'for the purpose of carrying into effect any of the relevant statutory provisions within the field of responsibility of the enforcing authority which appointed him'. Section 20(2)(a) empowers the inspector to 'enter any premises which he has reason to believe it is necessary for him to enter' for this purpose. The entry may be at 'any reasonable time', or at 'any time' in a situation, which in the inspector's opinion 'is or may be dangerous'.

34. As a matter of general policy HSE would advise against the HSW Act powers of entry in circumstances where a magistrate would be unlikely to grant a warrant.

35. Section 20(2)(b) gives the inspector the power to '*take with him a constable if he has reasonable cause to apprehend any serious obstruction in the execution of his duty*'. Section 20(2)(c) also enables the inspector to take with him:

- any other person '*duly authorised*' by the enforcing authority;
- 'any equipment or materials required for any purpose for which the power of entry is being exercised'.

Police powers of entry

36. In addition to their powers under the Health and Safety at Work Act, **the police** have the power, under Section 73 of the Explosives Act, to enter any place (which includes a building) and search for explosives when 'reasonable cause to believe that any offence has been or is being committed with respect to an explosive...or that any explosive is in any such place in contravention of this Act, or that the provisions of this Act are not duly observed in any such place'. The most relevant provisions of the Act are sections 23, 30-32 and 80.

Normally the exercise of the power of search and entry requires a justices' warrant however, this power may be exercised without a warrant '*where it appears to a superintendent officer, or inspector or other officer of police of equal or superior rank that the case is one of emergency and that the delay in obtaining a warrant would be likely to endanger life*' [emphasis added]. For the avoidance of doubt it should be stressed that the references to '*inspector*' should be taken as a reference to a **police** inspector.

37. When carrying out their inspection duties, local authority inspectors should always be able to produce their warrant, or a duly authenticated copy on request. An example of a warrant based on those issued to inspectors of the Health and Safety Executive is at www.hse.gov.uk/lau/lacs/22-8%20rev.pdf .

Section 20(2)c - persons accompanying the inspector

38. Section 20(2)(c) provides for an inspectors using their powers of entry to take with them 'any other person duly authorised by his (the inspector's) enforcing authority. This might for example be a locksmith.

39. It is recommended that such persons to carry their authorisations and produce them if requested to do so – although this is not required by the Act. Guidance on authorising others to accompany an inspector, including an example of a suitable form of authorisation is at www.hse.gov.uk/lau/lacs/22-2.htm .

Enforcement notices

40. The primary enforcement power given to HSW Act inspectors is the power to issue enforcement notices. These may be either an improvement notice under section 21 of the Act or a prohibition notice under section 22. The most important difference between the two is that before issuing a prohibition notice the inspector must be of the opinion that the activities 'as carried on or about to be carried on... will involve a risk of serious personal injury...'.

41. Local Authorities may have their own internal instructions on the issue of notices. ie whether and when they are issued.

Formal Cautions

42. **(Note: This paragraph does not apply in Scotland).** A formal caution is a statement by an inspector, which is accepted by the dutyholder that the dutyholder has committed an offence for which there is a realistic prospect of conviction. A formal caution may only be used where a prosecution could be properly brought. Such formal cautions are entirely distinct from a caution given under the Police and Criminal Evidence Act by an inspector before questioning a suspect about an alleged offence. Enforcing authorities should take account of current Home Office guidelines when considering whether to offer a formal caution.

43. The HSC Policy Statement on Enforcement says that:

'Formal cautions are important ways to bring duty holders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, enforcing authorities should use one of these measures in addition to issuing an improvement or prohibition notice'.

Prosecution

HSC policy on prosecutions

Enforcing officials should refer to HSC's Enforcement Policy Statement (see www.hse.gov.uk/pubns/hsc15.pdf) which sets out the circumstances in which the HSC would normally expect enforcing authorities to prosecute, or recommend prosecution. It says that:

Enforcing authorities must use discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can often promote health and safety more effectively but, where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.

The Commission expects that enforcing authorities will consider prosecution¹ when:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, especially where there would be a normal expectation that a prosecution would be taken or where through the conviction of offenders, others may be deterred from similar failures to comply with the law;*
- or there is judged to have been potential for considerable harm arising from breach;*
- or the gravity of the offence, taken together with the general record and approach of the offender warrants it, eg apparent reckless disregard for standards, repeated breaches, persistent poor standards;*

The decision to prosecute must also take account of the criteria set down in the Code for Crown Prosecutors, and in Scotland by the Procurator Fiscal as published in the Crown Office and Procurator Fiscal Service's Annual Report 1992/93 eg evidence and public interest tests.

Powers of seizure

General considerations

44. The seizure of explosives will involve the enforcing authority having to make arrangements for the transport and storage of the explosives. Although (in England and Wales) the costs may potentially be recoverable in the event of a prosecution, seizure should generally only be considered where other options (the use of a prohibition or improvement notice to require the person holding the explosives to take them to a legal place of keeping) have been considered and rejected.

Powers

45. The powers of seizure are as set out in the HSW Act and in the Explosives Act. These provide for seizure but only in specified circumstances.

46. For breaches of storage requirements, including storage without a licence or registration, the powers of seizure are those set out in the HSW Act. The most relevant sections are sections 25 (*Power to deal with cause of imminent*

¹ In England and Wales the decision to proceed with a court case rests with the enforcing authorities. In Scotland the Procurator Fiscal decides. This may be on the basis of a recommendation by an enforcing authority; although the Procurator Fiscal may institute proceedings independently of an enforcing authority. The Crown Office Edinburgh and the Procurator Fiscal Service endorse this Statement by the Commission, and acknowledge that action on reports of offences submitted to them by the enforcing authorities should reflect the approach set out here.

danger...) and 42 (*Power of court to order cause of offence to be remedied or, in certain cases, forfeiture*).

47. The first paragraph of section 25 ('Power to deal with cause of imminent danger') says:

'Where, in the case of any article or substance found by him in any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious personal injury, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).'

48. It is difficult to give guidance on all the circumstances when these powers might be relevant. However, the primary circumstances are where the fireworks are:

- in a dangerous condition;
- being kept in circumstances where they are close to sources of ignition;
- kept in a place where a fire would spread to residential premises – especially if it were to threaten the entry or exit to multi-occupied premises;
- stored in a place in close proximity to quantities of flammable or toxic substances such that a fire involving the fireworks would be likely to spread to the other substances.

49. It is also important to stress that if the fireworks are likely to pose a hazard to the safety of purchasers of the items, then it will be more appropriate to use the enforcement powers under the Consumer Protection Act.

50. Paragraph 4 of Section 42. States that:

'...the court by or before which a person is convicted of an offence [consisting of acquiring or attempting to acquire, possessing, or using an explosive article or substance in contravention of any of the relevant statutory provisions] ...may order the article or substance in question to be forfeited and either destroyed or dealt with in such other manner as the court may order'.

Explosives Act powers of seizure

51. Under the Explosives Act 1875 the main circumstances under which fireworks may be forfeited is under section 30 which prohibits hawking/sale or exposure for sale in any road or other public place. These powers are quite separate from the powers under the HSW Act and are only available to local authorities as defined by section 67 of the Act – and not to HSE.

Temporary seizure for purposes of gathering or preserving evidence

52. While long-term/permanent seizure should be approached as a last resort there may be circumstances when it is necessary to temporarily seize or secure fireworks purposes of gathering or preserving evidence - for example if it is necessary to weigh the fireworks in cases of overstocking.

53. Sections 20(2)(h) and (i) state that

'in the case of any article or substance found in any premises which he [the inspector] has the power to enter, being an article of substance which appears to him to have caused or to be likely to cause a danger to health and

safety.....to take possession of it and detain it for so long as is necessary ... to ensure that it is available for use as evidence in any proceedings for an offence under any of the relevant statutory provisions or any proceedings relating to a notice under section 21 or 22...’.

54. Examples of circumstances when it might be appropriate to consider temporary seizure would be:

- it would be difficult to carry out the work on site;
- when the safety or security of the staff might be jeopardised;
- if there were reasonable grounds for believing that the fireworks might not continue to be available for weighing etc if left at the site.

GUIDANCE ON PARTICULAR TOPICS

Domestic premises

55. The enforcing authority for MSER is the licensing authority or (if there is no licence or registration) the authority that would be the licensing authority for those premises. This differs from the normal allocation of enforcement responsibilities under the HSW Act both in respect of work places and in respect of domestic premises:

- HSE would be the licensing authority in cases of manufacture without a licence (or breaches of the relevant safety requirements) while
- the local authority or the police would be the enforcing authority for storage without a licence (etc).

Evidence requirements in prosecutions for exceeding permitted quantities

56. This section gives guidance on what steps enforcement officials would need to take to satisfy the court that a firm or individual had been keeping more than the quantities permitted under their licence or registration. It should be read in conjunction with the Health and Safety Commission’s statement on enforcement policy. In general prosecution is appropriate in cases of flagrant or repeated overstocking rather than for example inadvertent overstocking or minor overstocking in exceptional circumstances.

57. Weighing all of the explosives would be a lengthy and expensive process – for the licensing authority and for the firm. There are also potential safety issues raised by staff having to unpack boxes of fireworks or other explosives to weigh the contents.

58. The task for the licensing authority is to demonstrate beyond a reasonable doubt that the quantity kept exceeds the permitted limits. The enforcing authority could satisfy the court by weighing a representative sample of the explosives and then demonstrating that the sample was representative of the whole.

59. This might involve:

- weighing the contents of a statistically representative sample of boxes;
- verifying that the samples chosen were representative. The boxes weighed should be selected at random from different parts of the store. It is also a good idea to give the storeholder the option of selecting some or all of the boxes to be used in the sample. It is recommended that the enforcing officers open a further sample of boxes to check that they are the same as the sampled boxes;
- taking photographic or video evidence of the number of boxes. This should normally also be backed up by documentary evidence and interviews/questions to the storeholder.

Where the content weights are marked on the box the enforcing could use this information in its evidence however this would also involve following a similar process to enable it to demonstrate that the marked weights were accurate.

60. To take a hypothetical example suppose a store is registered to hold 1 tonne of fireworks. It contains 100 identical boxes each holding 15 kgs of fireworks (ie 1500kg in total). To establish that an offence had been committed the licensing authority would need to weigh a statistically significant proportion of the boxes (say 20) and then open a further 20 to establish that the contents of the remaining boxes were identical to the original sample.

61. This illustrative example assumes that all of the boxes are identical. In real life there are likely to be a number of different types of product. It may then be necessary to follow these steps for each of the products concerned.

62. The proportion of boxes that would need to be weighed would depend on the desired confidence level. This will depend on the extent of the overstocking. For example where the defendant was alleged to be storing double the permitted quantity then a 90 per cent confidence level would still establish the offence beyond a reasonable doubt. However where the extent of the overstocking was (say) a matter of ten per cent then a higher confidence level (eg better than 95 per cent) could be required.

Gross and net weight

63. One of the changes made by the Manufacture and Storage Regulations is that the maximum quantities that can be kept under various provisions are expressed in terms of net weight. This puts all of the allowances on a comparable basis.

64. Traditionally the quantities for fireworks and pyrotechnic articles have been expressed in terms of gross weight, with the gross weight assumed to be four times the mass of explosive contained in the article. This assumption has been retained under the new regulations. Regulation 2(4) states that:

“Any reference in these Regulations to the quantity of an explosive shall be construed as a reference to the net mass of explosive substance and, in the case of any pyrotechnic article, the net mass of the explosive shall, for the purposes of these Regulations, be deemed to be one quarter of the gross mass of the pyrotechnic article...”

However the regulation goes on to say that:

“...or, where the manufacturer, importer or supplier specifies a different net mass amount on the pyrotechnic article, its packaging or a document accompanying the pyrotechnic article, that amount”.

65. It will therefore be important, as a first step, to establish whether the person storing the explosives has such documentary evidence to justify the use of a higher multiple. If they do not then, then the net weight can be taken to be one quarter of the gross weight. If they do, then normally the factor given in the documentation should be used.

Weighing methods and use of electrical weighing equipment

66. Electrical weighing equipment should where possible be used away from the main storage area. It should not be used to weigh damaged fireworks or in other cases where loose powder may be present. Battery-powered weighing equipment represents a significantly lower hazard than mains-powered equipment. For more detailed guidance on the use of electrical equipment in or around explosives buildings see *HSE Guidance Note PM 82 - The selection, installation and maintenance of electrical equipment for use in and around buildings containing explosives (ISBN 0 7176 1217 1)*.

67. Where very large quantities of explosives are involved and these significantly exceed the permitted quantity then a weighbridge may provide a cost-effective method of establishing the weight of the explosives.

Questions and answers

68. Enforcement officers may also use interviews along with other evidence gathering to establish the amount kept.

Other issues

69. The MSER regulations require that the person who is storing the explosives should hold a licence or registration. Enforcing authorities will therefore need to seek to obtain evidence concerning ownership of the fireworks and control of the premises.

Registration

General points

70. The Manufacture and Storage of Explosives Regulations require the person who is doing the storing to hold the licence or registration. It is entirely legitimate for an organisation to have a contract with an agent and for the agent to handle the administration of the registration. However the application must be made in the name of the firm that will be storing the fireworks at that address, and the licence or registration issued to them. It is equally open for a firm to contract with another firm to store fireworks on its behalf. However the latter must have full control over the premises and full responsibility for compliance with the relevant legal requirements.

Fireworks

General points on good practice in the storage of fireworks

71. The basic principles for the display, storage and handling of pyrotechnic articles in retail and other premises (such as cash and carry stores) are the same as for other types of explosive. Those storing these articles must carry

out a risk assessment and take the appropriate measures to control the risks identified by the risk assessment. These measures include:

- storing pyrotechnic articles well away from flammable liquids and materials that can easily catch fire and burn; and
- controlling the quantities being stored, handled or displayed in areas where people work or gather. This is obviously especially relevant to the shopfloor area of shops;
- prohibiting smoking anywhere near the stored fireworks or other pyrotechnic articles;
- ensuring that sources of heat, such as space heaters, are kept well away from the fireworks or other pyrotechnics;
- keeping the fireworks and pyrotechnic articles in closed transport containers;
- storing the fireworks and other pyrotechnic articles away from hazardous substances;
- protecting the articles from damp; and
- ensuring that other chemicals do not contaminate the articles.

Transport storage and disposal of seized/found fireworks

72. Guidance is given below on the transport and storage of seized fireworks. This includes a list of commercial organisations that may be willing to store seized fireworks.

73. It is important to stress that the HSE Explosives Inspectorate has limited resources and its ability to respond to finds of illegally stored fireworks will depend on available resources and other immediate priorities. HSE does not have reserve storage facilities.

74. Local authorities from time to time come into possession of quantities of fireworks, which require transport, storage or destruction. Local authorities will not generally have the facilities to deal with seized fireworks themselves and will need to seek assistance from commercial companies or other bodies routinely involved in explosives. There are only a few companies in this country with suitable storage or destruction facilities. A number of companies who have indicated that they may be able to provide local authorities with assistance are listed below.

Company	Location	Contact Number
Surefire (UK) Ltd	London	020 8994 0714 (Mob 07831 385 525)
Black Cat Fireworks	West Yorkshire	01484 640640
Essex Pyrotechnics Ltd	Essex	01799 541414

Exchem Explosives	Derbyshire and Essex	01255 880239
Kimbolton Fireworks	Cambridgeshire	01480 860998
Millennium Pyrotechnics Ltd	Wiltshire	01722 716900
Sandling Fireworks	Gloucester	01452 410453
Shell Shock Firework Company	Suffolk	01986 784469
Solar Pyrotechnics	Kent	01732 838566 01732 458490
Wallop Defence Systems	Hampshire	01264 781456

75. Please note:

- there is no guarantee that these companies will be able to provide facilities at any time or under all circumstances. In the build-up to the fireworks season the storage facilities may be required for the companies own stock;
- the companies concerned will also have licence requirements that they will need to take into account;
- damaged or deteriorated fireworks are likely to require segregation, again posing difficulties for some companies;
- some companies can only accept low hazard products;
- agreement by companies to assist may be subject to commercial terms.
- the fireworks should be in legal transport packages and have been classified. Please seek advice from the Explosives Inspectorate about the transport or storage of unclassified or damaged fireworks;

These companies may be prepared to assist with other types of explosives.

76. As local authorities are exempt from the licensing requirement of Regulation 10, there is nothing in principle to prevent a local authority (or authorities) from setting up its own storage. It is important to stress that the safety duties of the regulations, especially Regulations 4 and 5 would apply. HSE would be the enforcing authority in such circumstances.

Transport issues

77. If the fireworks are to be transported, the local authority will need to check that they have been classified. Some steps they can take (in order of action) are:

- ask those in possession of the fireworks if they have a Competent Authority Document (CAD) – or a certified copy of it. If the fireworks are marked with another known importer, check if they have a CAD;

- if there is no CAD, the List of Classified Explosives and Fireworks (LOCEF) can be consulted online at www.locef.co.uk;
- if the items are not listed in the online database then the local authority should check with the HSE Explosives Inspectorate's classification section (e-mail cad.explosives@hse.gsi.gov.uk or phone 0151 951 4024).

78. In the absence of a classification by a national Competent Authority or supporting test results, the HSE will normally assign classifications based on the default classification scheme. Details of the current scheme are appended to this guidance. It should be noted that classifications are based on the size and type of fireworks, not the category assigned under British Standard BS7114:1988.

79. If the fireworks are unclassified but in good condition and in transport packs, the fireworks may be transported under a generic HSE approval. If the fireworks are unclassified but in poor condition then discuss options with HSE's Explosives inspectorate.

80. The UN/European Commission agreements on the transport of dangerous goods ('ADR') set out detailed requirements for the transport of explosives. However there are simplified requirements for the transport of up to 500 kg net of Hazard Division 1.4 fireworks (normally the net explosive content of Hazard Division 1.4 fireworks may be deemed to equate to one quarter of gross weight, although there may be some exceptions to this. In cases of doubt, advice may be sought from HSE's Explosives Inspectorate). In cases involving up to 500 kg net, it would normally be straightforward for the local authority to transport the fireworks itself either using its own staff and transport, or a non-specialist contractor.

81. When the load is below the 500 kg threshold, it is necessary only to carry one 2 kg dry powder fire extinguisher (or an equivalent capacity for any other suitable extinguishing agent).

82. Additional requirements apply above the 500 kg threshold and to fireworks with a higher classification. In these circumstances it is advisable to use a specialist transport contractor (for further information about load thresholds see www.hse.gov.uk/cdg/pdf/c1-loadthresh.pdf).

83. Regulation 52 of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004 (the Carriage Regulations) states that if the vehicle used to move the fireworks is not an EX/II or EX/III explosives vehicle, then the fireworks must be put in a suitable container or in a separate load compartment (eg in the boot of a car).

Unclassified fireworks

84. If the fireworks have not been classified then it will be necessary to seek an authorization from HSE under regulation 36(7) of the Carriage Regulations. The conditions of the authorisation will depend on the type of fireworks and their condition. The authorisations will be valid for a period of time rather than for individual shipments.

85. In support of any request for an authorisation, the agency seeking an authorisation will need to provide the HSE with the following information:

- the name of the agency concerned ie Trading Standards Department, Fire Authority, police force etc;
- the duration of the transport activity
- as much detail as possible of the nature of the fireworks. Eg types (shells, rockets, roman candles etc), sizes, product names, details of the importer. This is necessary to enable the HSE to assign appropriate classifications to the fireworks.

Disposal

86. A licence is not required simply to dispose of fireworks. Nor does this necessarily have to be carried out at specialist facilities. However, they will need to be disposed of at a place and in a way that so far as is reasonably practicable does not create risks to the health and safety either of those involved in the disposal or of third parties (for example local residents). Firework display operators may be able to offer advice and assistance. HSE has issued guidance setting out the principles of safe disposal of explosives including fireworks *Guidance Note CS23 Disposal of explosives waste*.

87. Key points from this guidance are:

- items which might be propelled from a fire when they are burned, including rockets and some types of fireworks, should be contained during burning to prevent escaping debris. Fireworks may be adequately contained by burning them in a suitable steel mesh cage;
- the fire should be lit remotely;
- fireworks should not be added to a fire once it is burning and the fire should not be approached while there are visible signs of combustion. Once the fire has burnt out, the area should be hosed down and the debris raked out and examined to ensure that there are no unburnt fireworks.

Contacting the HSE

88. The HSE Explosives Inspectorate has three inspection teams, each with an assigned geographical area. The first point of contact, however is to telephone 0151 951 4025. Your call will then be transferred to the appropriate team.

89. HSE is not routinely able to respond outside office hours (0830 to 17.00, Monday to Friday). However, in cases of serious incidents or emergencies outside office hours, HSE may be contacted via a Duty Officer on 0151 922 9235. More information about contacting HSE out of hours, including examples of situations when it may be appropriate (or not) to contact the Duty Officer is at www.hse.gov.uk/contact/outofhours.htm

Aide-Memoire for enforcement powers under the Health and Safety at Work etc. Act 1974 and Explosives Act 1875

<i>HEALTH AND SAFETY AT WORK ETC ACT 1974</i>		
		Notes
	Section 20	
Entry	a) at any reasonable time (or in a situation which in the opinion of the inspector is/or may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter;	An inspector seeking to exercise any of the powers below must produce on request his instrument of appointment.
Take constable	b) to take with him a constable if he has reasonable cause to apprehend any serious obstruction;	It is suggested that a constable should always be present for entry to domestic premises.
Take other authorised person & equipment	c) to take with him i) any other person duly authorised by the inspector's enforcing authority, and ii) any equipment or materials required for any purpose for which the power of entry is being exercised;	
Carry out examination / investigation	d) to make such examination and investigation as may in	

	any circumstances be necessary;	
Preserve evidence	e) to direct that any premises the inspector is empowered to enter, or any part of them, or anything therein, be left undisturbed (generally or in particular respects) for so long as is reasonably necessary for (d) above;	
Take measurements	f) to take such measurements, photographs and make such recordings as necessary for (d) above;	
Take samples	g) to take samples of any articles or substances found on premises which he has power to enter;	
Remove source of danger	h) in the case of articles or substances which appear to him to have caused or to be likely to cause danger to health or safety, found in any premises which he has power to enter, to cause it to be dismantled or subjected to any process or test (but not to damage or destroy it unless necessary).	<p>Before exercising this power, an inspector must comply with a request from a person at the time present, and with responsibilities in relation to the premises, to carry out the operation in that person's presence unless the inspector considers that to do so would be prejudicial to the safety of the state, and</p> <p>the inspector must consult such persons as appear to him appropriate for the purposes of ascertaining what dangers there may be in such an operation.</p>

		{Ref. S.20 (4) & (5)}
Seize & detain	<p>i) to take possession of any article or substance aforementioned and detain it for the following purposes:</p> <p>i) To examine it or do anything in (h)</p> <p>ii) To ensure it is not tampered with before his examination is completed</p> <p>iii) To ensure it is available for evidence in criminal proceedings. In this situation, the officer either must leave with a responsible person or, if impracticable, fixed in a conspicuous position, a notice identifying the article or substance and stating that he has seized it. If practicable, a sample of the substance should be given to a responsible person, marked in a manner sufficient to identify it.</p>	<p>In taking possession of any article or substance, an inspector shall leave a notice of what he has done and if practicable leave a sample of any substance so taken with a responsible person {Ref.S.20 (6)}</p> <p>The seizure of explosives can create its own problems for Local Authority inspectors, with their carriage and disposal being subject to legal regulation from which they have no exemption.</p>
Require involuntary statement	<p>j) to require any person who the inspector has reasonable cause to believe to be able to give information relevant to (d) to answer (in the absence of persons other than a person nominated by him and any persons the inspector permits to be present) such questions as the officer thinks fit to ask, and to sign a declaration of the truth</p>	<p>Procedures with respect to the use of this power are given in the Health & Safety Executive Enforcement Handbook</p> <p>Such statements are not admissible in evidence against the person giving it or his/her spouse. {Ref. S.20(7)}</p>

	of his answers;	
Require production of & take copies of documents	<p>k) to require the production of, inspect, and take copies of or of any entry in:</p> <p>i) any books or documents which are required to be kept by virtue of any relevant statutory provisions,</p> <p><u>and</u></p> <p>ii) any other books or documents which it is necessary for him to see for the purposes of any examination or investigation;</p>	
Require provision of assistance	<p>l) to require any person to give such facilities and assistance with respect to any matter or things within that person's control or in relation to which that person has responsibilities, as are necessary to enable the inspector to exercise these powers;</p>	
Other power necessary	<p>m) any other power necessary for enforcement</p>	

Section 21		
Improvement Notice	Inspector may serve a notice requiring that the person on whom it is served remedies a contravention of the Act or any relevant statutory provision within a specified time	
Section 22		See relevant HELA circulars for guidance on the form and issue of such notices. {All but Sections 30, 31,32 & 80 of the Explosives Act 1875 and the Keeping of Fireworks Order 1959 are relevant statutory provision for the purpose of the Health & Safety at Work Act}
Prohibition notice	Inspector may serve a notice prohibiting any activities to which any relevant statutory provision applies and he is of the opinion that such activity would involve a serious risk of personal injury	
Section 25		
Render harmless any cause of imminent danger	If an inspector has reasonable cause to believe that any article or substance found on any premises, he has power to enter, is a cause of imminent danger of serious personal injury. He may seize it and cause it to be rendered harmless.	For procedures that must be followed with respect to the use of this power {including the need to take and leave samples of any substance involved and provision of a written report to a responsible person at the premises} see S.25 (2) & (3).

The Explosives Act 1875

Section 73

Section 73 of the Explosives Act gives **the police** a power to enter any place (which includes a building) and search for explosives when 'reasonable cause to believe that any offence has been or is being committed with respect to an explosive...or that any explosive is in any such place in contravention of this Act, or that the provisions of this Act are not duly observed in any such place'. Normally this requires a justices' warrant however, this power may be exercised without a warrant '*where it appears to a superintendent officer, or inspector or other officer of police of equal or superior rank that the case is one of emergency and that the delay in obtaining a warrant would be likely to endanger life*' [emphasis added].

For the avoidance of doubt it should be stressed that the references to '*inspector*' should be taken as a reference to a **police** inspector.

Section 74		
Seize & detain	An officer of the Local Authority may seize and detain any explosive or any ingredient of an explosive he has reasonable cause to believe is liable to be forfeited under the Act.	<p>Detailed provisions relating to the use of this power {including the emphasis on public safety, the need to acquire senior police or Health & Safety Executive authority to destroy the article seized and sampling requirements} are given in sub-sections 1 to 6 of Section 74.</p> <p>NB This power is only relevant to sections 30-32 and section 80 of the Explosives Act.</p>
Section 78		
Arrest without warrant	An Officer of the Local Authority may apprehend without warrant any person who is found committing any offence under the Act <u>and</u> which action tends to cause explosion or fire in or about a licensed explosives store.	