

MANUFACTURE AND STORAGE OF EXPLOSIVES: SUMMARY AND COMMENTARY

This commentary is intended to be read alongside the regulations. You can download a copy from <http://www.hmsso.gov.uk>.

Key features of the regulations

1. The regulations seek to preserve the strengths of the existing legislative framework for the regulation of manufacture and storage of explosives. This framework has ensured that explosives facilities are appropriately located and that the risk of explosion is properly controlled.
2. The key safety requirements of the regulations also apply to the Ministry of Defence: the Crown was exempt from the Explosives Act 1875, although MoD operated a licensing system that was intended to offer a standard of safety at least equivalent to that required under the Explosives Act. The Forestry Commission and other Crown bodies will also be subject to the regulations. However, unlike MoD which has its own licensing scheme, they will need (from April 2008) to register or obtain a licence in the same way as a private sector organisation.
3. The main requirements of the regulations are as follows:
 - anyone manufacturing or storing explosives must take appropriate measures to prevent fire or explosion; to limit the extent of any fire or explosion should one occur; and protect persons in the event of a fire or explosion. These are the key requirements of the regulations and are backed up by extensive guidance in the Approved Code of Practice;
 - in most cases a separation distance must be maintained between the explosives building and neighbouring inhabited buildings. This is intended to ensure that risks to those living or working in the area are kept to an acceptable level. If there is development in this separation zone then the quantity that may be kept must be reduced;
 - with certain exceptions a licence is required for the manufacture or storage of explosives. HSE licenses manufacturing activities because of the greater risks involved. HSE also licenses larger explosives storage facilities. In most cases, stores holding less than two tonnes of explosives are either licensed or registered by the local authority or the police;
 - HSE may not grant a licence for a manufacturing facility or, in most cases, store until the local authority has given its assent (normally following a public hearing). This is an important safeguard in the present system that is to be retained.
4. The regulations retain the fundamental features of the existing framework but introduced a number of changes. These include the following:
 - the system of separation distances around explosives sites has been reviewed to take into account new knowledge and to base the distances on an explicit risk criterion;

- enforcement responsibilities have been rationalised so that the police now enforce both safety and security requirements at certain stores holding high explosives. This proposal, which was agreed supported by all the local authority associations as well as the Home Office and the Association of Chief Police Officers, will have undoubted efficiency benefits, especially at more remote stores where inspections involve considerable travelling. Local authority staff then concentrate on inspection of premises holding fireworks - numerically these make up the overwhelming majority of licensed stores and registered premises.

Fireworks

5. The controls on the safety of storage of explosives have an important role in support of regulatory controls on the supply of fireworks. DTI have the policy lead on issues concerning the supply of fireworks. The Fireworks Regulations 2004 introduced a licensing system for the sale of fireworks. Anyone wishing to supply fireworks outside certain exempt periods must obtain a licence from their local authority. The local authority can only grant a licence if the person holds a storage licence or registration certificate. The local authority may also refuse a licence if the person has committed an offence under certain key provisions of the Explosives Act 1875 or an offence in relation to the use, storage or keeping of fireworks under the Health and Safety at Work Act (which would include breaches of MSER).

6. Further guidance on the Firework Regulations can be obtained from DTI.

7. The new regulations introduce some important changes aimed at rectifying some of the weaknesses of the old legislation. These changes are as follows:

- licensing authorities have the power to refuse, revoke or modify licences in certain circumstances;
- the regulations introduce a new duty prohibiting supply of fireworks to anyone unable to produce proof that they do have a licensed or registered store available;
- the limits on the amount of fireworks that can be kept without a licence or registration are tightened. Under the Explosives an unlimited quantity of fireworks could be kept for up to 14 days. There was concern over the potential for abuse. These concerns have been addressed, while at the same time the limit has been set so that members of the public and voluntary organisations holding small firework displays will not have to register with the local authority.

Regulation 2: Interpretation

Regulation 2 defines the terms used in the regulations, including

- “explosive”,
- “fireworks”,
- “manufacture”,

and defines the usage of terms in the regulations eg that ammonium nitrate blasting intermediate is to be treated as though it were an explosive, and that quantities refer to net explosive content – ie the weight of the explosive contained in the article and not the weight of the article as a whole.

Points to note:

- definition of 'explosive' – the definition of explosive includes desensitised explosives (explosives that have been diluted to make them safer to transport);
- definition of 'manufacture' – perhaps the most important change from the Explosives Act is that the regulation explicitly says that 'breaking bulk' is not an act of manufacture;
- definition of 'site' – a site is defined as the whole area under a person's control. This has two important implications: first, two stores at a site which together hold more than the maximum quantity permitted under a registration would require a licence; second if the total is more than two tonnes (net explosive mass) then they would require a licence from HSE;
- quantity of explosive (paragraph 2). All references to quantities in the regulations are to the net mass of explosive contained in the articles. In the case of pyrotechnic articles including fireworks, this is taken as a default, to be one quarter of the gross weight of the article. However, the manufacturer/importer/supplier may provide information that allows a different net mass to be used. (Please note it is an offence to knowingly provide false information);
- definition of 'local authority'. The regulations maintain the present allocation of enforcement responsibilities in England as between fire authorities and other local authorities. The definition has also been drafted to provide for those areas of England where there is a unitary authority. (In Scotland and Wales the unitary authority is the local authority for the purposes of these regulations).
- definition of storage. Explosives are taken to be in storage unless they are being prepared for use or they are in transport. The safety duties of regulation 4-8 may apply even though the storage of the explosives is exempt from the requirement for a licence or registration. This is an important change from the Explosives Act;
- the regulations use the term 'hazard type' to differentiate between different groups of explosive. Hazard Type 1 is the most hazardous and Hazard type 4 is the least hazardous. In general terms the hazard type equates to the Hazard Division used in classification. However, there may be circumstances when, depending on the method of storage and the degree of confinement, the hazard type will differ. [HSE will be producing guidance on this issue];
- the term 'shop goods firework' is not used in the regulations. In general terms, the large majority of fireworks sold by retailers to members of the public fireworks will be Hazard Type 4. However, there will be some fireworks that can legally be sold to the public (ie British Standard 7114 Category) 3

that will be Hazard Type 3. these are generally likely only to be sold by specialist retailers because of the tighter licensing and separation distance requirements that will apply. [HSE will be producing further guidance on the relationship between Hazard types and the British Standard Categories];

- weight of explosive. All quantities quoted in the regulations are based on the net mass of explosive contained in the article. This is an important change from the approach taken under the Explosive Act and is intended to ensure that all explosives are treated on a comparable basis. In the case of pyrotechnic articles the net mass is deemed to be one quarter of the gross weight of the article. However, this is a default and if the supplier has provided information on the net mass contained in the articles then this may be used instead.

Regulation 3: Application

Regulation 3 makes the regulations applicable in Great Britain (similar regulations will apply in Northern Ireland). Certain official organisations such as the Police are exempted from some of the requirements. Explosives in transport are also exempt.

Regulation 3 also includes important provisions on the application of the regulations to the Ministry of Defence. The primary safety duty of the regulations, Regulation 4, applies to the MoD. However Regulation 3(5) disapplies the licensing and certain other provisions from MoD sites provided that these sites are part of a scheme of safety measures designed to achieve an equivalent standard to that prescribed in the civilian sector. The effect of these provisions is to recognise the MoD's own licensing system while making it explicitly subject to the test of ensuring equivalent safety standards.

Points to note:

- while Regulation 3 exempts police forces and others from the requirements to hold a licence or registration for the storage of explosives, the safety duties in Regulations 4-8 continue to apply.

Regulation 4: Fire and explosion measures

Regulation 4 sets out the general requirements ie

- to prevent fire and explosion
- to prevent communication of any fire or explosion, and
- to protect people from any effects of fire or explosion.

This regulation is supported by a comprehensive Approved Code of Practice.

Points to note:

- this regulation applies even where the storage is exempt from licensing

requirements;

- an Approved Code of Practice has a particular legal status. It is open to the someone who has a duty under the regulations to choose not to follow the guidance and to comply with the regulation in another way. However, in the event of a prosecution, they would need to be able to demonstrate that the alternative was at least as safe as the method set out in the ACoP.

Regulation 5: Separation distances

Regulations 5 specifies separation distances to be maintained between places manufacturing or keeping explosives, and inhabited buildings and other places where people may be affected, such as pedestrian and transport routes. The distances are set out in the tables in Schedule 2. Distances vary according to

- the hazard types and quantities of the explosives being kept;
- the construction of the storage place; and
- how many dwellings are within the area around the storage place.

The regulation does not apply to specified types of explosives in small quantities.

Points to note:

- the separation distances required will depend on the amount of explosive kept in the store and **not** the total amount stored on site. For example a site might have 3 storage buildings each holding one tonne (net mass of explosives). While it would require a licence from HSE because of the total amount stored on the site, the separation distance around each store would be the relevant distance for 1 tonne of whichever hazard type was kept there (stores holding more than one hazard type of explosives are treated as if they held the aggregate quantity of the highest hazard type);
- small arms ammunition is not exempt from the regulation! The separation distance will depend on the hazard type.

Regulation 6: Disposal of explosives and decontamination of explosive-contaminated items

Regulation 6 requires that explosives are disposed of safely and decontamination is carried out safely.

Points to note

- this is a new duty;
- the allocation of enforcement responsibilities for this regulation is different from the general allocation of responsibilities under these regulations. If (say)

the illegal disposal takes place at a licensed site then the licensing authority would be the enforcing authority. However if the site is not licensed, then the enforcing authority would be the authority that would normally have enforcement responsibilities under the regulations. For example, if explosives were disposed of on a construction site then HSE would be the enforcing authority.

Regulation 7: Employment of young persons

Regulation 7 prohibits the employment of young persons to work with explosives except under supervision.

Regulation 8: Unauthorised access

Regulation 8 prohibits people from entering sites used for the manufacture and storage of explosives without permission and makes it an offence to refuse to leave when asked to do so.

Points to note

- someone entering a site without permission is still committing an offence even if they leave when asked.

Regulation 9: Explosives not to be manufactured without a licence

Regulation 9 requires that no one manufacture explosives without a licence granted by the Health and Safety Executive (HSE). Exceptions are given for manufacture within defined conditions that do not justify a manufacture licence, where issue of a licence would not be practicable, or where manufacture is covered by other legislation.

Points to note:

- under these regulations it is the *person* that is licensed to carry out the manufacturing activity. This is in contrast to the Explosives Act approach where it is the *factory* that is licensed;
- 'person' means an individual or a company (or in Scotland only, a partnership). Where a company is undertaking the manufacturing activity then it is the company that must obtain a licence;
- the regulation provides a number of exemptions from the need to hold a licence. However it is important to note that the safety duties in Regulations 4-8 continue to apply;
- some of the exemptions from licensing reflect the existing provisions in the Explosives Act. However a number are new. These include dispensations for:
 - preparation of firework displays and special effects and fusing fireworks

at a licensed or registered site;

- preparation of firework displays and special effects at the point of use (eg adding fuses)
 - on-site mixing of ammonium nitrate-based explosives;
 - reprocessing explosives to produce a pharmaceutical product;
 - reprocessing desensitised explosives to produce product that is not an explosive.
- the mixing of ammonium nitrate-based explosives at a mine or quarry for immediate use is exempt from the need for a licence. A licence would be needed for mixing at (say) a civil engineering site – or if the explosives are not for immediate use

Regulation 10: Explosives not to be stored without a licence

Regulation 10 requires that explosives are not stored without a licence from HSE, the local authority or chief officer of police in the place where the store is located. There are exceptions for small quantities and temporary storage.

Points to note:

- again, under these regulations it is the *person* that is licensed to store explosives. This is in contrast to the Explosives Act approach where it is the *magazine or store* that is licensed;
- ‘person’ means an individual or a company (or in Scotland only, a partnership). Where a company is storing explosives then it is the company that must obtain a licence or registration;
- there are a number of important changes from the Explosives Act. These include
 - the regulations provide an explicit exemption from licensing and registration for temporary storage of up to 24 hours;
 - there are exemptions for temporary on-site storage for re-enactment events and firework displays;
- the ‘private use’ allowances that were previously included in the Control of Explosives Regulations are now included here. However there are some important changes:
 - with the exception of the allowance for the storage of fireworks for up to 21 days, the allowances now apply to all storage irrespective of whether the items are for sale or supply. The allowance of most general relevance is Regulation 10(2)(b)(ii)(bb) which permits the storage of up to 5 kgs net of any explosive listed on Schedule 1 of COER. This would apply to fireworks and pyrotechnics and would include such items as Christmas crackers, party poppers, toy caps, marine flares, and car airbags;

- the previous allowance for storage of fireworks has been changed to set a quantity limit and to restrict the allowance to Hazard Type 4 fireworks. The time limit has been extended. The fireworks must not be for sale or for use at work;
- the allowances for shooters' powders etc under Regulation 10(2) remain unchanged from the current 'allowances under the Control of Explosives Regulations;
- again, although the regulation exempts from the need for a licence or registration Regulations 4-8 still apply

Regulation 11: Registration in relation to storage

Regulation 11 allows people to register storage with the local authority or chief officer of police as an alternative to a licence. This option is available only where the quantity of explosive being stored is below the specified limits.

Points to note:

- a person with a registration is exempted by Regulation 10(2)(a) from the requirement to hold a licence to store explosives. A person storing without a registration or storing more than the quantities specified in this regulation would be committing a breach of Regulation 10;
- Regulation 11(9) does not explicitly state that it is for the local authority to determine the duration of the renewal (cf Regulation 11(4) or 13(1)). This was an unintentional inconsistency. In any event the regulation does not impose any duty on the licensing authority to issue a licence or registration for less than one year. A similar point applies to Regulation 13(9);
- there is no equivalent under the new regulations to the old Mode A and Mode B registered store. This has two particular implications:
 - it is no longer possible to have a Mode B store inside a building with a separately-registered Mode A outside. Under MSER both stores are covered by the same registration and the combined total that can be kept in both stores taken together is subject to the quantity limit set out in Regulation 11;
 - potentially the whole of these amounts can be kept inside a building. However, this is subject to the conditions set out in paragraph 313 of the ACoP, where fireworks are kept in a building containing or adjoining residential accommodation. If these conditions are not met (for example if there are no adequate means to ensure that the occupants can escape in safety) then it would be open to the licensing authority to take enforcement action and/or refuse/revoke the registration on the grounds that the place is not suitable for the storage of explosives.

Regulation 12: Applications for licences and registration

Regulation 12 requires that applications are made to the relevant licensing authority. These are detailed in Schedule 1. In broad terms they are:

- HSE for manufacture, and storage of more than two tonnes, or for the storage of less than two tonnes where the prescribed separation distances cannot be met;
- the police for storage of up to two tonnes where any of the explosives require an explosives certificate (mainly blasting explosives and gun powder);
- the local authority for storage of up to two tonnes of other explosives – primarily fireworks. For historical reasons, in England, the local authority will depend on the area; in certain areas it will be the Fire and Rescue authority while in other areas it will be the County Council or London Borough. In Scotland and Wales the local authority is the unitary authority.

Regulation 13: Grant of licences

Regulation 13 contains provisions on the grant of licences and licence conditions. The applicant must obtain the assent of the local authority before a licence can be granted by HSE. Regulation 14 deals with the procedure the applicant must follow in order to obtain assent.

Points to note:

- the period of up to two years is intended to allow licences or registrations to be granted for so that they come up for renewal on the licensing authority's common renewal date. For example if (say) licences/registrations would be normally be renewed in September, someone applying in June might be granted a 21-month licence/registration;
- the police may grant licences/registrations for up to 3 years to coincide with explosives certificates;
- the points made about Regulation 11(9) also apply to Regulation 13(9);
- a template licence/registration certificate is available from the HSE website;
- Schedule 3 specifies the maximum amount that may be kept in the sales area of registered premises. This limit applies irrespective of the overall amount stored on the premises. The licensing authority may grant a *licence* permitting a larger amount to be stored see Regulation 13(7).

Regulation 14: Local authority assent

In most cases, the assent of the local authority is required before HSE can grant a licence. Regulation 14 sets out the procedures to be followed by the local authority in considering whether to give assent.

Points to note:

- in contrast to the Explosives Act the assent process is explicitly restricted to health and safety issues. Other issues should only be considered as part of the planning process;

Regulation 15: Refusals of licences, registration and draft licences

Regulation 15 describes the grounds on which a licensing authority can refuse a licence.

Points to note

- the regulation requires the licensing authority to refuse a licence if in its opinion either the site is not suitable for storage of explosives or the applicant is not a fit person. It is important to note that the regulation does **not** require the licensing authority to confirm the suitability of the site or the fitness of the applicant before granting the licence or registration. It does **not** therefore require the licensing authority to carry out an inspection visit before granting a licence or to undertake background checks. It is suggested that in most cases an inspection visit would be carried out before the grant of a licence but that normally only a proportion (if any) of registered premises would be visited prior to issue of the registration certificate. It is of course assumed that the compliance with the terms of the registration would be checked during a subsequent inspection visit;
- as noted above, in the case of corporate applications it is the company that must obtain the licence. If a company is refused a licence or registration, or has its licence or registration revoked, on the grounds that it is not a fit person it cannot circumvent that refusal or revocation by arranging for one of its employees to apply for an individual licence.

Regulation 16: Variation of licences

Regulation 16 sets out powers and procedures available to a licensing authority to vary a licence.

Points to note:

- paragraph 4 sets out the process for determining whether a variation to a licence granted by HSE should be subject to the assent process. It is open to HSE and the local authority to agree that a licence variation does **not** raise significant new safety issues and therefore does not require an assent hearing. However both parties need to agree on this point. If there is no agreement then an assent hearing will be required.

Regulation 17: Revocation of licences and registration

Regulation 17 sets out powers available to a licensing authority to revoke a licence or registration. It also requires the person whose licence is revoked to return the licence to the licensing authority and remove the explosives from the site.

Regulation 18: Further provisions concerning refusals, variations and revocations

Regulation 18 requires the licensing authority, where it wishes to refuse or revoke a licence, to set out its reasons and allow the licensee/applicant to make representations.

Regulation 19: Appeal against refusal or revocation of registration

Regulation 19 gives an applicant or licensee powers of appeal to the Secretary of State when an application is refused or a licence or registration is revoked.

Points to note

This regulation only refers to registrations because section 44 of the Health and Safety at Work Act already provides a right of appeal in connection with licences.

Regulation 20: Transfer of licences and registration

Regulation 20 sets out powers for a licence or registration to be transferred by the current holder to another person.

Regulation 21: Death, bankruptcy or incapacity

Regulation 21 sets out powers for another person to take over the licence temporarily where the original holder of the licence or registration dies, ceases trading due to bankruptcy, or becomes incapacitated.

Regulation 22: Registers and retention of documents

Regulation 22 requires the licensing authority to maintain records of the licences issued (special procedures apply to the Ministry of Defence who have their own licensing system). Schedule 3 sets out in more detail the information to be held by the licensing authority and specifies which information is available to the public on request.

Regulation 23: Defences

Regulation 23 sets out defences available against prosecution where a breach of the Regulations was necessitated by an emergency or the defendant is able to demonstrate that the explosives were being kept in

accordance with one of the provisions of Regulation 9 allowing temporary storage without a licence for certain permitted periods.

Points to note:

- paragraphs 1 and 2 carry forward defence provisions from the Explosives Act. Paragraph 3 is a new provision;
- the standard of proof required of the defendant in such cases is on the balance of reasonable probability rather than beyond a reasonable doubt;

Regulation 24: Prohibition concerning the manufacture, storage and importation of certain explosives

Regulation 24 prohibits pyrotechnics containing sulphur or phosphorus with potassium or other chlorates unless the pyrotechnics have been listed by HSE as approved.

Points to note:

- the regulation carries forward provisions of the Explosives Act;
- the list referred to in paragraph 2 will be available on the HSE website .

Regulation 25: Prohibition concerning the acquisition and supply of fireworks

Regulation 25 prohibits the acquisition of more than 50kg net mass of fireworks unless the person acquiring the fireworks has a licensed or registered storage place. It also prohibits the supply of that quantity of fireworks unless the recipient has a licence or registration to keep explosives.

Points to note

- paragraph 2 requires the seller of fireworks to ask the buyer to produce a valid licence or registration. This may be at the time of sale (or agreement to supply) or at the time of transfer/delivery – or both.

Regulation 26: Power to grant exemptions

Regulation 26 gives powers to HSE to grant exemptions from the regulations provided health and safety will not be prejudiced. Powers of exemption are also granted to the Secretary of State for Defence to grant exemptions in the interests of national security. The text of any exemptions will be posted on the HSE website (at the moment there are none!).

Regulation 27: Savings and transitional provisions

Regulation 27 provides for the period of transition between the system of licensing and registrations under the old legislation and the new system being introduced by the regulations.

Points to note

- existing licences and registrations continue to be valid until their renewal date (if they have one);
- the amendments to the Health and Safety (Fees) Regulations 2005 set fees depending on whether a licence or registration is a renewal or a new licence/registration. A renewal licence or registration is defined as ‘..a licence or registration to follow a previous ... licence or registration without any amendment or gap in time’. In other words if a person held an Explosives Act licence or registration on the 26 April and they then apply for a licence or registration under MSER, this should be treated as a renewal unless there has been a change in the circumstances affecting the licence or registration (eg change in the quantity or type of explosive, or store location);
- the Regulation 27(2) also states that those organisations who were previously exempt from the need to hold a licence or registration are deemed to hold an HSE licence to either manufacture or store until April 2008. This will apply to the Forestry Commission and other government organisations even when their stores hold less than 2 tonnes of explosive. After April 2008 the relevant local licensing authority (either the police or local authority) will take over licensing and enforcement responsibilities);
- licence applications that are going through the assent process do not need to go back to square one;
- the transitional provisions also give a period of grace for certain people affected by the changes in the regulations. These include:
 - those who were previously exempt from the Explosives Act (eg the police and ‘Government Factories’);
 - anyone required to increase the separation distances around their store;
 - anyone with two or more local authority-licensed stores at a site who must now apply to HSE for a licence because the stores together hold more than two tonnes net mass of explosives;

Regulation 28: Repeals, revocations and amendments

Regulation 28 revokes the old legislation and provides for amendments to existing legislation.

SCHEDULES

Schedule 1

Schedule 1 sets out responsibilities of the licensing authorities under the regulations.

Points to note

- the major change from the Explosives Act is that the police will take over responsibility for licensing and enforcement for high explosives, black powder and smokeless powder;
- HSE will take over responsibility for licensing and enforcement for any stores in harbour areas or at mines;
- local authorities will retain responsibility for fireworks and other pyrotechnic articles;
- where both types of explosive are stored, the police will have responsibility
- the regulations provide for HSE to issue licences for storage of less than two tonnes net mass of explosives in place of local authorities and the police. It is important to note that all such licences would be subject to the assent process – it is therefore intended that this route would only be available where the licensee could not meet the separation distance tables and was able to agree alternative safety measures with HSE. This is only likely to be the case in every exceptional cases.

Schedule 2 sets out the separation distances to be maintained to comply with Regulation 5;

Points to note;

The major changes from the Explosives Act are that:

- the Divisions A to E have been replaced by tables with a greater number of steps;
- there are different tables depending on the store construction and mounding;
- there are increased separation distances in certain circumstances where there are a large number of homes around the store. It should be emphasised that, given that most stores holding high explosives are at quarries which are remote from population centres, these high density distances are only likely to be relevant in very exceptional circumstances;
- in certain cases no high-density distance is given and the space in the table is blank. In these cases the low-density distance should be used;
- the requirements on the distances to be maintained from pedestrian and traffic routes have also been amended to take into account the traffic density.

A heavily-used road would attract a greater distance than a lightly-used road. A footpath that is only occasionally used might not attract any distance at all.

Schedule 3 sets out the maximum quantities of pyrotechnic articles that may be kept in the sales area of retail premises under a registration.

Points to note:

- under the present legislation there is a single maximum irrespective of the size of the shop. This provision relates the amount that may be kept to the size of the shop;
- there is further flexibility in that a greater quantity may be stored under a licence from the local authority – the licence might well require additional safety measures such as the fitting of a sprinkler system;
- a maximum of 250 kg (net mass) of pyrotechnics including fireworks can be kept at registered premises. This includes both the amount held on the shopfloor and the amount held in a store at the rear. If a shop wishes to hold more than 250 kg in total then it would need to have a licence rather than a registration.

Schedule 4 sets out the requirements on the keeping of information by licensing authorities and access by the public to that information. The schedule provides for greater rights of access to information about stores holding fireworks and similar items because these items are less attractive to terrorists. Access to information about explosives that are likely to be attractive to terrorists is more restricted.

Points to note:

- the requirements on disclosure of information in paragraph 3 of the Schedule are subject to paragraph 7. This means for example that there is no requirement to disclose information on the storage of fireworks if they are being stored at a place for less than four weeks, or if the quantity involved is less than 2 tonnes. This effectively exempts all local-authority-licensed or registered stores. However, it is important to note that the requirements of the Freedom of Information Act will apply.

Schedule 5: sets out amendments to primary and secondary legislation. Most of these amendments update references in other legislation so that they refer to the Manufacture and Storage of Explosives Regulations rather than to the Explosives Act.

Points to note

The most important amendments are the amendments to the

- Control of Explosives Regulations. Schedule 1 to the regulations has been amended to include desensitised explosives;
- Reporting of Injuries and Dangerous Occurrences Regulations. These carry forward certain Explosives Act reporting requirements;
- Health and Safety (Enforcing Authority) Regulations. The basic principle established by these amendments is that the relevant licensing authority is also the enforcing authority. This applies even if the explosives are being stored without a licence or registration. The amendment to the Enforcing Authority Regulations gives the licensing authority enforcement responsibilities in respect of domestic premises: HSE would be the enforcing authority for manufacture and for storage of more than 2 tonnes in other cases the enforcing authority would be the local authority;
- Section 23 of the Explosives Act has been amended so that it requires occupiers of explosives sites to take due precautions to prevent unauthorised access to the explosives (previously it also covered preventing fire and explosion). The enforcing authority for this provision is the licensing authority.

Schedule 6 lists repeals and revocations.

Points to note:

Some sections of the Explosives Act are to be retained. There are four sections of the Explosives Act 1875 which are not relevant statutory provisions under the Health and Safety at Work Act. These are:

- sections 30-32. These set out requirements on the sale of explosives particularly section 30 which prohibits the sale of fireworks in the street or in other public places. This remains important in the control of the illegal supply of fireworks;
- Section 80. This prohibits the throwing of fireworks in a thoroughfare. Again this remains of relevance.

The proposals do not therefore repeal these provisions and leave in place a number of other sections that are necessary for the operation and enforcement of these provisions as well as the Explosives Substances Act which also depends on the Explosives Act.