
STATUTORY RULES OF NORTHERN IRELAND

2006 No. 425

The Manufacture and Storage of Explosives
Regulations (Northern Ireland) 2006

PART III

LICENSING AND REGISTRATION REQUIREMENTS

Explosives not to be manufactured without a licence

9.—(1) Subject to paragraph (2), a person shall not manufacture explosives unless he holds a licence for that manufacture and complies with the conditions of that licence.

(2) Paragraph (1) shall not apply to—

- (a) the manufacture of explosives for the purpose of laboratory analysis, testing, demonstration or experimentation (but not for practical use or sale) where the total quantity of explosives being manufactured at any time does not exceed 100 grams;
- (b) the making or unmaking of small arms ammunition, or the preparation of cartridges for use with firearms which are to be used at historical re-enactment events, where the total quantity of primer and propellant used at any one time does not exceed 2 kilograms and, for these purposes, the quantity of propellant used includes propellant removed from cartridges;
- (c) the preparation of shot firing charges in connection with their use;
- (d) the preparation, assembly, disassembly and fusing of firework displays at the place of intended use;
- (e) the preparation, assembly and fusing of fireworks, in quantities of no more than 10 kilograms at a time, at a site in relation to which a person holds a licence or certificate of registration for the storage of explosives, for the purpose of a firework display to be put on by that person;
- (f) the preparation, assembly and fusing of explosives commissioned for use in theatrical, television or cinematic special effects;
- (g) the reprocessing of an explosive to form a pharmaceutical product which is not in itself an explosive;
- (h) the mixing for immediate use of—
 - (i) ammonium nitrate with fuel oil; or
 - (ii) ammonium nitrate blasting intermediate with another substance, at a mine or quarry, to produce an explosive which is not cap-sensitive;
- (i) the use of desensitised explosives in the manufacture of products which are not in themselves explosives; or
- (j) the manufacture of explosives by a company which is a wholly-owned subsidiary of another company at a site in relation to which that other company holds a licence

to manufacture explosives and that manufacture by the wholly-owned subsidiary is in accordance with the conditions of that licence.

- (3) In this regulation—
- (a) in paragraph (2)(c), “shot firing charges” means charges used in shot firing operations; and
 - (b) in paragraph (2)(h), “cap-sensitive” means an explosive which gives a positive result when tested in accordance with the Series 5(a) test of the Manual of Tests and Criteria, fourth edition(1) supporting the United Nations Recommendations.

Explosives not to be stored without a licence or certificate of registration

10.—(1) Subject to paragraph (2), a person shall not store explosives unless he holds a licence or certificate of registration for their storage and complies with the conditions of that licence or certificate of registration.

- (2) Paragraph (1) shall not apply to—
- (a) the storage of one or more of the following—
 - (i) no more than 10 kilograms of black powder;
 - (ii) no more than 5 kilograms of—
 - (aa) shooters' powder;
 - (bb) any explosive or combination of explosives listed in Schedule 2; or
 - (cc) a combination of shooters' powder and any one or more of the explosives listed in Schedule 2;
 - (iii) no more than 15 kilograms of percussion caps or small arms ammunition or a mixture of them;
 - (b) the storage of no more than 7 kilograms of—
 - (i) Hazard Type 1 or 2 explosives; or
 - (ii) a combination of Hazard Type 1 or 2 explosives with explosives of another hazard type,
 for no longer than 24 hours;
 - (c) the storage of Hazard Type 3 or 4 explosives for no longer than 24 hours;
 - (d) the storage of no more than 100 kilograms of—
 - (i) Hazard Type 3 explosives consisting of fireworks;
 - (ii) shooters' powder; or
 - (iii) a combination of shooters' powder and Hazard Type 3 and 4 explosives consisting of fireworks,
 provided that the explosives are stored for no longer than 3 days in their place of intended use;
 - (e) the storage of—
 - (i) no more than 250 kilograms of Hazard Type 4 explosives provided that the explosives are stored for no longer than 3 days in their place of intended use; or
 - (ii) no more than 50 kilograms of Hazard Type 4 explosives consisting solely of fireworks, provided that the fireworks are stored for no longer than 21 days and are not for sale or for use at work;

- (f) the storage of desensitised explosives which have been allocated in accordance with the United Nations Recommendations the U.N. nos. 1336, 1337, 2059, 2555, 2556 or 2557; or
 - (g) the storage of explosives by a company which is a wholly-owned subsidiary of another company at a site in relation to which that other company holds a licence or certificate of registration to store explosives and that storage by the wholly-owned subsidiary is in accordance with the conditions of that licence or certificate of registration.
- (3) For the purpose of paragraph (2)—
- (a) no more than one of the exceptions listed in sub-paragraphs (a) to (e) of paragraph (2) may be relied on in relation to explosives stored at the same site at the same time, irrespective of the person who is storing them; and
 - (b) the quantities referred to in that paragraph are the maximum quantities of the explosives or explosive articles to which they respectively relate which may be present at a site at any one time.

Grant of licences

11.—(1) An application for a licence shall be made to the Secretary of State on a form approved for the purpose of this regulation by him.

(2) A licence, including the renewal of a licence, may be granted—

- (a) for such period not exceeding 3 years; or
- (b) for any period or without a time limit—
 - (i) in a case to which paragraph (4) applies; or
 - (ii) if the application relates only to the manufacture of ammonium nitrate blasting intermediate,as the Secretary of State determines.

(3) Subject to paragraph (4), the Secretary of State shall grant a licence unless any of the grounds for refusing to do so referred to in regulation 14 apply.

(4) Subject to paragraph (5), the procedure set out in regulation 12 for holding a public hearing shall apply.

(5) Paragraph (4) shall not apply to an application for a licence—

- (a) to store no more than 2000 kilograms of explosives to which paragraph (a)(i) or (b) of the definition of “explosive” in regulation 2(1) applies;
- (b) to store no more than 2000 kilograms of explosives to which paragraph (a)(i) or (b) of the definition of “explosive” in regulation 2(1) applies at a mine or within a harbour;
- (c) relating to the manufacture of explosives by means of on-site mixing;
- (d) relating to the manufacture of ammonium nitrate blasting intermediate; or
- (e) relating to the manufacture or storage of explosives by a person who wishes to carry on such manufacture or storage within a part of a site where another person already holds a licence for the manufacture or storage of explosives, and either—
 - (i) the application relates to manufacturing or storage activities which would be permitted at that part of the site under the existing licence; or
 - (ii) in the opinion of the Secretary of State, no significant new health and safety issues are raised by the application.

(6) The conditions of every licence shall specify—

- (a) the site and, within it, the places where the explosives may be manufactured or stored;

- (b) except in the case of desensitised explosives, the hazard type; and
- (c) the maximum quantity of explosives which may be manufactured, stored or otherwise present, as the case may be, at any one time at or in any place so specified.

(7) In addition to the matters specified in paragraph (6), a licence which is granted by the Secretary of State in cases where the public hearing procedure was required pursuant to paragraph (4)—

- (a) shall be granted subject to such conditions as the Secretary of State considers appropriate which relate to separation distances;
- (b) may be granted subject to such conditions as the Secretary of State considers appropriate which relate to—
 - (i) the construction, siting or orientation of any building (including any protective works around the building) where the activity will be undertaken; and
 - (ii) the activities which may be undertaken in specified buildings,and in this sub-paragraph—

“activity” means the manufacture or storage of explosives and it includes any handling, on-site transport, testing and disposal of explosives; and

“construction” means the materials used in, and the design of, a building; and

- (c) may, where the application was for both the manufacture and storage of explosives at the same site, cover both that manufacture and storage for the purposes of, respectively, regulations 9 and 10.

(8) In addition to the matters specified in paragraphs (6) and (7), where the Secretary of State grants a licence which relates to the storage of pyrotechnic articles at any site where those articles are to be offered for sale, the Secretary of State may attach such conditions to the licence as he considers appropriate which relate to—

- (a) the storage and display of those pyrotechnic articles in areas where they can be purchased;
- (b) the prevention of risk of fire arising in respect of those pyrotechnic articles; and
- (c) the safe use of fire escapes in that area.

(9) A licence granted pursuant to this regulation shall be in a form approved by the Secretary of State.

(10) In this regulation, “on-site mixing” means the mixing at any place of non-explosive substances or preparations to form an explosive for immediate use at that place.

Public hearing

12.—(1) Subject to regulation 14, where this regulation applies by virtue of regulation 11(4), the Secretary of State shall issue to the applicant a draft licence containing the conditions which the Secretary of State proposes to attach to the licence.

(2) Within 28 days of receiving the draft licence from the Secretary of State, the applicant shall—

- (a) have published in a newspaper circulating in the locality where he proposes to manufacture or store explosives a notice which shall—
 - (i) give details of the application;
 - (ii) invite representations on matters affecting the health and safety of persons other than the applicant’s employees to be made in writing to the Secretary of State within 28 days of the date that the notice is first published; and
 - (iii) give an address, within the district council area where the manufacture or storage of explosives is proposed, at which a copy of the application and draft licence may

be inspected and the address of the Secretary of State to which any representations must be sent; and

(b) take other reasonable steps to give that information to every person who resides, owns land or carries on a business or other undertaking within the public consultation zone.

(3) The Secretary of State shall send a copy of any representations referred to in paragraph (2)(a)(ii) to the applicant as soon as reasonably practicable after receiving them.

(4) In considering the representations, the Secretary of State shall have regard only to health and safety matters.

(5) Subject to paragraph (6), the Secretary of State shall, before deciding whether to grant a licence, hold a public hearing within 4 months of the date of his issuing to the applicant the draft licence referred to in paragraph (1).

(6) If, after the period of 28 days referred to in paragraph (2)(a)(ii) has elapsed, the Secretary of State has not received objections to the application, or has only received objections which in his opinion are frivolous or immaterial, he may grant a licence without holding a hearing.

(7) Not less than 28 days before the hearing referred to in paragraph (5), the Secretary of State shall have published in a newspaper circulating in the locality where the applicant proposes to manufacture or store explosives a notice which shall give details of the date, time and place fixed for the hearing and he shall send a copy of the notice to—

(a) the applicant; and

(b) any person who made representations referred to in paragraph (2)(a)(ii),

within 7 days from its publication.

(8) The Secretary of State shall notify the applicant of his decision within 7 days of making it.

(9) The applicant shall pay a fee to the Secretary of State for the performance by him of his functions under this regulation, which fee shall not exceed the sum of the costs reasonably incurred by the Secretary of State in performing those functions.

(10) In this regulation, “applicant” means the applicant for a licence or variation of a licence and “application” means his application.

Registration in relation to storage

13.—(1) Subject to paragraph (5), a person who wishes to store within one site at any one time no more than—

(a) 30 kilograms of explosives of any hazard type;

(b) 100 kilograms of Hazard Type 3 explosives;

(c) 100 kilograms of a combination of Hazard Type 3 explosives with explosives of Hazard Type 4;

(d) 250 kilograms of Hazard Type 4 explosives; or

(e) 250 kilograms of small arms ammunition and percussion caps and 30 kilograms of shooters' powder,

may apply to the Secretary of State on a form approved for the purpose of this regulation by him to be registered in respect of that storage.

(2) The Secretary of State shall register the applicant unless any of the grounds for refusing to do so referred to in regulation 14 apply.

(3) Where the Secretary of State registers an applicant, he shall issue to the applicant a certificate of registration, in a form approved for the purpose of this regulation by him.

(4) A registration, including the renewal of a registration, may be issued for such period not exceeding 3 years as the Secretary of State determines.

(5) For the purpose of paragraph (1), no more than one of the exceptions listed in sub-paragraphs (a) to (e) of paragraph (1) shall apply to explosives stored at the same site at the same time, irrespective of the person who is storing them.

(6) Where the registration relates to the storage of Hazard Type 4 pyrotechnic articles which are to be offered for sale at the site, the quantity of those pyrotechnic articles which may be kept for any period of time in a sales area at that site shall be restricted to the quantity determined in accordance with Schedule 3 and for these purposes and those of Schedule 3, “sales area” means an area where Hazard Type 4 pyrotechnic articles are sold and to which any person who is not an employee of the person who is registered in respect of the storage of those pyrotechnic articles has access.

(7) An application for registration may not be made in respect of the storage of explosives at a site at which the manufacture of explosives also takes place or is to take place except if a licence to manufacture explosives is not required by virtue of regulation 9(2).

(8) The quantities referred to in paragraph (1) are the maximum quantities of explosives or explosive articles to which they respectively relate which may be present at a site at any one time.

Refusal of licences, registration and draft licences

14.—(1) Subject to regulation 17, the Secretary of State shall—

- (a) refuse an application for a licence or registration; and
- (b) where regulation 12(1) applies, refuse to issue the draft licence referred to in it,

where paragraph (2) applies.

(2) This paragraph applies when the Secretary of State is of the opinion that—

- (a) the proposed site or, within it, any place in which explosives are proposed to be manufactured or stored is unsuitable for that manufacture or storage; or
- (b) the applicant is not a fit person—
 - (i) to manufacture explosives, in the case of an application for a licence to do so; or
 - (ii) to store explosives, in the case of an application for a licence or registration to do so.

(3) A refusal by the Secretary of State, pursuant to paragraph (1), to issue the draft licence referred to in regulation 12(1) shall be treated for the purposes of these Regulations as a refusal of an application for a licence and the provisions of regulation 17 shall apply to a refusal to issue a draft licence as if the references in that regulation to “refuse an application for a licence” included refusing to issue a draft licence.

Variation of licences

15.—(1) The Secretary of State may vary a licence—

- (a) where there is a change in circumstances such that the separation distances can no longer be maintained and a consequent reduction in the maximum quantity of explosives that may be stored is required;
- (b) (in cases where the public hearing procedure was required pursuant to regulation 11(4) before the grant of the licence) where there is a material change in circumstances so that a variation is necessary to ensure safety; or
- (c) in relation to any of the matters to which it relates, by agreement with the licensee.

(2) Subject to regulation 17, a licence may be varied on the grounds referred to in paragraph (1) (a) or (b) without the agreement of the licensee.

- (3) In cases where the public hearing procedure—
- (a) was required under regulation 11(4) before the grant of the licence; or
 - (b) would have been so required but for the operation of regulation 26(4) or (14),
- the provisions of regulation 12 shall apply in respect of a proposed variation referred to in paragraph (4).
- (4) A proposed variation for the purpose of paragraph (3) is one which—
- (a) relates to changes in the permitted quantities or types of explosive as a result of which the licensee could be required to maintain a separation distance greater than the separation distance required before the variation and, in the opinion of the Secretary of State, significant new health and safety issues are raised by that proposed variation; or
 - (b) would remove the period of the licence so that it would be unlimited as to time,
- and the Secretary of State shall refuse to vary a licence unless the procedure referred to in regulation 11(4) has been applied.
- (5) In this regulation any reference to varying a licence includes varying its conditions.

Revocation of licences and registration

- 16.**—(1) Subject to regulation 17, the Secretary of State may revoke a licence or registration—
- (a) where it appears to him on information obtained by him after the issue of a certificate of registration that the site at which the explosives are stored is unsuitable for that storage;
 - (b) where there has been a change in circumstances such that the site or, within it, any place in which explosives are manufactured or stored to which the licence or registration relates is no longer suitable for that manufacture or storage;
 - (c) where it appears to him on information obtained by him after the grant of the licence or issue of the certificate of registration that the licensee or registered person is not a fit person—
 - (i) to manufacture explosives, in the case of a person licensed to do so; or
 - (ii) to store explosives, in the case of a person licensed or registered to do so; or
 - (d) by agreement with the licensee or registered person.
- (2) A person whose licence or registration is revoked shall ensure that—
- (a) all explosives are removed from a site as soon as is practicable after revocation of a licence or registration in respect of that site;
 - (b) those explosives are deposited at a site which is the subject of a licence or registration which permits any storage resulting from that depositing or that suitable arrangements are made for the disposal of those explosives; and
 - (c) the licence or certificate of registration is returned to the Secretary of State within 28 days of the date from which the revocation takes effect pursuant to regulation 17(4).

Further provisions concerning refusals, variations and revocations

- 17.**—(1) Where the Secretary of State proposes to—
- (a) refuse an application for a licence or registration;
 - (b) vary a licence without the agreement of the licensee; or
 - (c) revoke a licence or registration,

he shall, before taking any such action, notify the applicant, licensee or registered person, as the case may be, of his proposed course of action and afford that person the opportunity of making representations to him about it, within a period of 28 days from the date of the notification.

- (2) Representations made for the purpose of paragraph (1) shall be made in writing.
- (3) Where the Secretary of State decides to—
 - (a) refuse an application for a licence or registration;
 - (b) vary a licence without the agreement of the licensee; or
 - (c) revoke a licence or registration,

he shall provide in writing to the applicant, licensee or registered person, as the case may be, the reasons for his decision.

(4) Where the Secretary of State varies a licence without the agreement of the licensee or revokes a licence or registration, that variation or revocation shall take effect from a date to be determined by the Secretary of State which shall be a date after the 28 day period referred to in paragraph (1).

Transfer of licences and registration

18.—(1) A licence or registration may be transferred in writing by the licensee or registered person to any other person who wishes to manufacture or store explosives in place of the licensee or registered person.

(2) Where the licensee or registered person wishes to transfer the licence or registration, he shall notify the Secretary of State of the name and address of the proposed transferee at least 28 days before the licence or registration is transferred.

Fees

19.—(1) Where any application in relation to a provision specified in column 1 of Schedule 4 is made to the Secretary of State for a purpose specified in column 2 of that Schedule, the fee specified in the corresponding entry in column 3 of that Schedule shall be payable by the applicant to the Secretary of State, except that in the case of an application referred to in column 2 of that Schedule for a licence to manufacture ammonium nitrate blasting intermediate, or to vary any such licence, the fee referred to in column 3 of that Schedule as an amount per hour worked—

- (a) shall be adjusted pro rata for a period worked of less than one hour; and
- (b) shall be payable prior to notification of the result of the application.

(2) A fee shall be payable by the applicant to the Secretary of State where the Secretary of State requires any work to be carried out by his specialist inspectors in connection with any application in respect of which a fee is payable by virtue of paragraph (1) for any purpose specified in column 2 of Schedule 4 for which there is a corresponding entry in column 4 of that Schedule, and the fee for the work in connection with such purpose shall be that specified in the corresponding entry in column 4 of that Schedule for each hour worked, adjusted pro rata for a period worked of less than one hour, and such fee shall be payable prior to the notification of the result of the application.

(3) Schedule 4 shall have effect subject to the Notes to it.

(4) Where any fee is to be assessed on the reasonable cost to the Secretary of State of carrying out any work under paragraph (1), he shall on receipt of the application first prepare and send to the applicant an estimate of that cost and shall, before carrying out the work, obtain confirmation from the applicant that he wishes the work to be carried out on the basis of that estimate of cost.

(5) Nothing in this regulation shall be construed as making a fee payable by a person in any of the capacities referred to in Article 40(4) of the 1978 Order.

Death, incapacity or bankruptcy

20.—(1) If a licensee or registered person dies or becomes incapacitated, a person manufacturing or storing explosives in accordance with the terms of the first-named person's licence or certificate of registration shall be treated as being licensed or registered in accordance with the first-named person's licence or certificate of registration until either—

- (a) the expiry of 28 days from such death or incapacity; or
- (b) the grant or refusal of a new licence or registration,

whichever is the earlier.

(2) If a licensee or registered person becomes bankrupt or, in the case of a company, goes into liquidation or receivership or has a receiving order made against it, any receiver, trustee in bankruptcy or liquidator shall be treated as being the licensee or registered person and shall notify the Secretary of State of his appointment within 28 days from such appointment.

Register and retention of documents

21.—(1) The Secretary of State shall—

- (a) maintain a register in accordance with Schedule 5; and
- (b) keep a copy of any licence granted or certificate of registration issued by him (together with a copy of the application for the licence or registration) for as long as the licence or registration remains valid.

(2) For the purposes of this regulation and Schedule 5, in a case where regulation 3(4) applies disapplying regulations 5 and 9 to 20, any reference to—

- (a) the Secretary of State or licensee shall be construed as a reference to the Secretary of State for Defence;
- (b) a licence granted shall be construed as a reference to the scheme referred to in regulation 3(4); and
- (c) separation distances shall be construed as a reference to the separation distances prescribed in the scheme approved by the Secretary of State for Defence.

Defences

22.—(1) In proceedings against a person for a contravention of regulation 9(1), which involves using a building or part of a building licensed for the manufacture of explosives for another manufacturing process not specified in the licence, it shall be a defence for that person to prove that—

- (a) that use was temporary;
- (b) that other process of manufacture involved explosive of the same, or a lower, hazard type than the explosives which the conditions of the licence permitted in that building or part of a building;
- (c) the maximum quantity of explosives in that building or part of a building at any one time permitted under the conditions of the licence was not exceeded; and
- (d) he informed the Secretary of State as soon as was reasonably practicable after the start of that use.

(2) In proceedings against a person for a contravention of regulation 10(1), it shall be a defence for that person to prove that the storage of explosives without a licence or certificate of registration, or in breach of a condition of a licence or certificate of registration, was caused by an emergency being an emergency which that person took all reasonable precautions and exercised all due diligence to avoid.

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(3) In proceedings against a person for a contravention of regulation 10(1) where it is alleged against that person that the storage concerned was for a period longer than a period (“the permitted period”) referred to in regulation 10(2)(b) to (e), it shall be for that person to prove that the storage concerned was for no longer than the permitted period.