

**EXPLANATORY MEMORANDUM TO
THE MANUFACTURE AND STORAGE OF EXPLOSIVES REGULATIONS
(NORTHERN IRELAND) 2006**

2006 No. 425

1. This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Regulations repeal most of the Explosives Act 1875 (the 1875 Act) and revoke 34 items of secondary legislation and replace them with a modern health and safety regime in relation to the manufacture and storage of explosives.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Regulations make substantial changes to previous legislation. The paragraphs below on the legislative and policy background give more information on this.

3.2 A fee is payable under existing legislation for a licence to manufacture or store explosives or to register premises to store explosives. Provision for these fees is made in regulations (the Explosives (Licensing of Stores and Registration of Premises) Variation of Fees Regulations (Northern Ireland) 1985) made under Article 40(2) of the Health and Safety at Work (Northern Ireland) Order 1978 (the 1978 Order). Increases in the fees in the new Regulations are above the rate of inflation as the fees have not been raised for many years and have been significantly out of line with costs. The increases will allow for full economic cost recovery of performing chargeable statutory functions (as required by HM Treasury Guidelines in relation to fees), which has not been achieved in the past. Businesses were consulted on the fee increases and made no comment. It is proposed that fees will increase annually in line with inflation from April 2008.

3.3 The Regulations correct errors in the Explosives (Fireworks) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 147) as previously reported by the Joint Committee on Statutory Instruments (Session 2001-02, Thirty-First Report).

4. Legislative Background

4.1 In Northern Ireland explosives are a matter reserved to the United Kingdom government. It is for the Secretary of State for Northern Ireland, therefore, to meet obligations created by Articles 3 and 53 of the 1978 Order to replace the 1875 Act with health and safety regulations and an approved code of practice.

4.2 The Regulations leave certain provisions of the 1875 Act in place, such as section 30, which prohibits the sale of fireworks in the street or other public place, and section 80, which prohibits the throwing of fireworks in a thoroughfare. The

regulatory regime in relation to acetylene under the Act and linked to subordinate legislation remains. Section 53 concerning the appointment of Government inspectors (and related sections) is also retained temporarily due to reference to that section in the Terrorism Act 2000 in relation to police powers to stop, search and enter.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland.

5.2 The Regulations are closely based on and do not differ materially from the Manufacture and Storage of Explosives Regulations 2005 apart from the fact that the Secretary of State is the sole licensing authority in Northern Ireland as explosives are a reserved matter.

6. European Convention on Human Rights

The Secretary of State for Northern Ireland has made the following statement regarding Human Rights:

In my view the provisions of the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006 are compatible with the Convention rights.

7. Policy Background

7.1 The 1875 Act is one of the few major pre-Health and Safety at Work Order pieces of legislation that is still in operation. The Regulations meet the obligations under Article 3(2) of the 1978 Order to replace progressively pre-1978 legislation.

7.2 While the 1875 Act has stood the test of time well in ensuring that explosives facilities are appropriately located and that the risk of explosion is properly controlled, there have been significant changes in industry and the wider economy. The Regulations maintain the strengths of the existing framework but they also modernise the law and reduce its complexity. The law has been made easier to understand by replacing not only most of the 1875 Act but also a great deal of secondary legislation. The Regulations take account of new knowledge on explosion effects, which will increase the separation distances that must be maintained around some explosives stores. They will also strengthen the framework where necessary, for example there is provision for the Secretary of State to refuse or revoke licences and registrations.

7.3 Consultation on the Regulations was carried out with existing licensees and registered persons, central and local government, section 75 Equality groups etc. between 1 June and 31 August 2006. One adverse comment was received from the Gun Trade Guild NI who wanted the quantity of explosives that firearms dealers could keep under regulation 13(1)(e) (registration in relation to storage) increased for economic reasons. However, they were advised that the quantities that may be kept under that regulation have been set so that firearms dealers will not need to maintain separation distances by virtue of an exception in regulation 5(3)(b).

7.4 The Regulations will be supported by an Approved Code of Practice and guidance (ACOP) to help businesses comply with the law. The ACOP will be issued by the Health and Safety Executive for Northern Ireland (the Executive) in accordance with Article 18 of the Health and Safety at Work (Northern Ireland) Order 1978. The

Secretary of State will issue a press release announcing the new Regulations, a notice will be published in the Belfast Gazette and existing licensees and registered persons, and other interested parties will be informed of their coming into operation. Guidance will be available for customers in hard copy and also on the Internet.

8. Impact

8.1 A full Regulatory Impact Assessment (RIA) in respect of these Regulations was not prepared as, in principle, the Regulations should have a very similar impact in Northern Ireland to that in Great Britain, with due allowance for differences of scale between the two jurisdictions. A comparison of the Northern Ireland costs and benefits against the costs and benefits associated with the Great Britain Regulations was prepared. The RIA Declaration and the Northern Ireland Costs and Benefits document are attached to this memorandum.

9. Contact

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