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STATUTORY INSTRUMENTS

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**2005 No. 1082**

**The Manufacture and Storage of Explosives Regulations 2005**

**PART 3**

**LICENSING AND REGISTRATION REQUIREMENTS**

**Explosives not to be manufactured without a licence**

**9.—**(1) Subject to paragraph (2), no person shall 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, but nothing in this sub-paragraph shall be taken as authorising any acquisition or keeping of explosives for which an explosives certificate is required by virtue of regulation 7 of those Regulations, without such a certificate;
- (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 registration for the storage of explosives, for the purposes 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 terms and 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, third edition(1) supporting the United Nations Recommendations.

### **Explosives not to be stored without a licence**

**10.**—(1) Subject to paragraph (2), no person shall store explosives unless he holds a licence for their storage and complies with the conditions of that licence.

- (2) Paragraph (1) shall not apply to —
- (a) the storage of explosives by a person registered in accordance with regulation 11;
  - (b) 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 1 to the Control of Explosives Regulations 1991; or
      - (cc) a combination of shooters' powder and any one or more of the explosives listed in Schedule 1 to those Regulations;
    - (iii) no more than 15 kilograms of percussion caps or small arms ammunition or a mixture of them;
  - (c) 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;
  - (d) the storage of hazard type 3 or 4 explosives for no longer than 24 hours;
  - (e) the storage of no more than 100 kilograms of —
    - (i) hazard type 3 explosives consisting of fireworks;
    - (ii) shooters' powders; or
    - (iii) a combination of shooters' powders 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;
  - (f) the storage of —
    - (i) no more than 250 kilograms of hazard type 4 explosives provided that the explosives are stored for no more 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;

- (g) the storage of desensitised explosives which have been allocated in accordance with the United Nations Recommendations the U.N. nos. 2059, 2555, 2556, 2557, 1336 or 1337;
  - (h) 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 to store explosives and that storage by the wholly-owned subsidiary is in accordance with the terms and conditions of that licence.
- (3) For the purposes of paragraph (2) —
- (a) no more than one of the exceptions listed in subparagraphs (a) to (f) 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 they respectively relate to which may be present at a site at any one time.

### **Registration in relation to storage**

**11.—(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 licensing authority in whose area the storage will take place to be registered in respect of that storage.

(2) The licensing authority shall register the applicant unless any of the grounds for refusing to do so referred to in regulation 15 apply.

(3) Where a licensing authority registers an applicant, it shall issue the applicant with a certificate of registration, in a form approved for the time being for the purposes of this regulation by the Executive.

(4) A registration, not being a renewal of a registration, shall remain in force for such period not exceeding two years as the licensing authority determines, save that —

- (a) subject to sub-paragraph (b), where the applicant for the registration has been granted an explosives certificate, a registration may be granted for any period not exceeding the due expiry date of that explosives certificate where that date is later than that two year period; or
- (b) where the application for registration relates, whether solely or not, to the storage of smokeless powder, a registration may be granted for any period not exceeding three years.

(5) For the purposes 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 at a site of pyrotechnic articles which are to be offered for sale at that site, the amount 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 amount determined in accordance with Schedule 3 and for these purposes and those of Schedule 3, “sales area” means an area where

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) No application for registration may 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.

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

(9) A renewal of a registration may be granted for any period not exceeding one year, save that—

- (a) subject to sub-paragraph (b), where the applicant for the renewal has been granted an explosives certificate, a renewal of a registration may be granted for any period not exceeding the due expiry date of that explosive certificate where that date is later than that one year period; or
- (b) where the application for renewal of registration relates solely to the storage of smokeless powder, a renewal of registration may be granted for any period not exceeding three years.

### **Applications for licences and registration**

**12.** An application for a licence or registration shall be made to the licensing authority on a form approved for the time being for the purposes of this regulation by the Executive.

### **Grant of licences**

**13.—(1)** A licence, not being a renewal of a licence, may be granted for such period not exceeding two years as the licensing authority determines, save that —

- (a) subject to sub-paragraphs (b) and (c), where the applicant for the licence has been granted an explosives certificate, a licence may be granted for any period not exceeding the due expiry date of that explosives certificate if that date is later than that two year period;
- (b) subject to sub-paragraph (c), where the licence application relates, whether solely or not, to the storage of smokeless powder, a licence may be granted for such period not exceeding three years; or
- (c) in a case to which paragraph (3) applies, or the licence application relates only to the manufacture of ammonium nitrate blasting intermediate, a licence may be granted for any period or without a time limit.

(2) Subject to paragraph (3), the licensing authority shall grant a licence unless any of the grounds for refusing to do so referred to in regulation 15 apply.

(3) Subject to paragraph (4), where the Executive is the licensing authority, the procedure set out in regulation 14 for obtaining the assent of —

- (a) the local authority, or
- (b) each local authority where the proposed site which is the subject of the application for a licence is situated partly within the area of one local authority and partly within the area of another,

shall apply and the Executive shall refuse to grant a licence unless the local authority, or each local authority, as the case may be, has so assented.

(4) Paragraph (3) shall not apply —

- (a) where the Executive is the licensing authority in a case where the application is for a licence to store at a mine or within a harbour explosives of no more than 2000 kilograms to which paragraph (a)(i) or (b) of the definition of “explosive” in regulation 2(1) applies;
- (b) to an application for a licence relating to the manufacture of explosives by means of on-site mixing;

- (c) to an application for a licence relating to the manufacture of ammonium nitrate blasting intermediate; or
- (d) to an application for a licence 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 Executive or a local authority whose assent would otherwise be required, no significant new health and safety issues are raised by the application.
- (5) Every licence shall specify —
  - (a) the site and, within it, the places where the explosives may be manufactured or stored;
  - (b) the hazard type and maximum amount of explosive which may be manufactured, stored or otherwise present, as the case may be, at any one time at or in any place so specified.
- (6) In addition to the matters specified in paragraph (5), a licence which is granted by the Executive in cases where the assent of the local authority was required pursuant to paragraph (3)—
  - (a) shall be granted subject to such conditions as the Executive considers appropriate which relate to separation distances;
  - (b) may be granted subject to such conditions as the Executive 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 carried on; 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 “activities” shall be construed accordingly; and

“construction” means the materials used in, and the design of, a building; and
  - (c) may, where both the manufacture and storage of explosives at the same site was applied for, cover both that manufacture and storage for the purposes of, respectively, regulations 9 and 10.
- (7) In addition to the matters specified in paragraphs (5) and (6), where a licensing authority grants a licence which relates to the storage of pyrotechnic articles at any site where those articles are to be offered for sale, the licensing authority may attach such conditions to the licence as it considers appropriate which relate to —
  - (a) the storage and display of those articles in areas where they can be purchased;
  - (b) the prevention of risk of fire arising in respect of those articles; and
  - (c) the safe use of fire escapes in that area.
- (8) A licence granted pursuant to this regulation shall be in a form approved for the time being for the purposes of this regulation by the Executive.
- (9) A renewal of a licence may be granted for any period up to one year, save that —
  - (a) subject to sub-paragraphs (b) and (c), where the applicant for the renewal has been granted an explosives certificate, a renewal of a licence may be granted for any period not exceeding the due expiry date of that explosives certificate where that date is later than that one year period;

- (b) subject to sub-paragraph (c), where the licence renewal application relates solely to the storage of smokeless powder, a renewal of a licence may be granted for any period not exceeding three years; or
- (c) where paragraph (3) applied to the application for the original licence, or the application for the original licence related only to the manufacture of ammonium nitrate blasting intermediate, and the licence was granted for a certain period, a renewal of a licence may be granted for any period or without a time limit.

(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.

### **Local authority assent**

14.—(1) Where this regulation applies by virtue of regulation 13(3), the Executive shall, subject to regulations 15 and 18, issue the applicant with a draft licence containing the conditions, if any, which the Executive proposes to attach to the licence.

(2) The applicant shall as soon as reasonably practicable send a copy of the application and draft licence to the local authority in whose area the manufacture or storage is proposed to take place.

(3) Within 28 days of sending to the local authority the information specified in paragraph (2), the applicant shall —

- (a) cause to be published in a newspaper circulating in the locality where the manufacture or storage of explosives is proposed to take place 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 local authority within 28 days of the date that the notice is first published; and
  - (iii) give an address within the area of the local authority at which a copy of the application and draft licence may be inspected and the address of the local authority to which any representations must be sent; and

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

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

(5) In considering whether to assent, the local authority shall have regard only to health and safety matters.

(6) Subject to paragraph (7), the local authority shall, before deciding whether to assent to the application, hold a public hearing within 4 months of the date of its receipt of the copy of the application and draft licence referred to in paragraph (2).

(7) If, after the period of 28 days referred to in paragraph (3)(a)(ii) has elapsed, the local authority has received no objection to the application, or has only received objections which in its opinion are frivolous or immaterial, it may assent to the application without holding a hearing.

(8) Not less than 28 days before the hearing referred to in paragraph (6), the local authority shall publish notice of the date, time and place fixed for the hearing in a newspaper circulating in the locality and shall send a copy of the notice to —

- (a) the applicant;
- (b) any person who made representations referred to in paragraph (3)(a)(ii); and
- (c) the Executive,

within 7 days from its publication.

(9) The local authority shall notify the applicant and the Executive of its decision within 7 days of making it.

(10) Where the local authority fails to —

- (a) send a copy of the notice referred to in paragraph (8) to the Executive within 3 months from the date that a copy of the application and draft licence was sent to it pursuant to paragraph (2); or
- (b) notify the Executive of its decision in accordance with paragraph (9), within 2 months from the date of publication of the notice referred to in paragraph (8),

the Executive may make a written request to the local authority for it to state in writing whether it assents to the application.

(11) Where the local authority does not respond to the written request within 28 days from the date of the request, the local authority shall be deemed to have assented to the application.

(12) The applicant shall pay a fee to the local authority for the performance by that authority of their functions under this regulation, which fee shall not exceed the sum of the costs reasonably incurred by that authority in performing those functions.

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

#### **Refusals of licences, registration and draft licences**

**15.—**(1) Subject to regulation 18, the licensing authority shall —

- (a) refuse an application for a licence or registration; and
- (b) where regulation 14(1) applies, refuse to issue the draft licence referred to in regulation 14(1),

where paragraph (2) applies.

(2) This paragraph applies when the licensing authority is of the opinion that —

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

(3) A refusal by the licensing authority, pursuant to paragraph (1), to issue the draft licence referred to in regulation 14(1) shall be treated for the purposes of these Regulations as a refusal of an application for a licence and the provisions of regulation 18 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**

**16.—**(1) The licensing authority which grants a licence may vary it —

- (a) where there has been a change in circumstances such that the separation distances can no longer be maintained and a consequent reduction in the maximum amount of explosive that may be stored is required;
- (b) (where the Executive is the licensing authority in cases where the assent of the local authority was required pursuant to regulation 13(3) before the grant of the licence) where

there has been a material change in circumstances so that a variation is necessary to ensure safety; or

(c) in relation to any of the matters it relates to, by agreement with the licensee.

(2) A licence may be varied on the grounds referred to in paragraph (1)(a) or (b) without the agreement of the licensee, subject to regulation 18.

(3) Where the Executive is the licensing authority in cases where the assent of the local authority—

(a) was required under regulation 13(3) before the grant of the licence, or

(b) would have been so required but for the operation of regulation 27(4) or (13),

the provisions of regulation 14 shall apply in respect of a proposed variation referred to in paragraph (4).

(4) A proposed variation for the purposes 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 Executive or the local authority concerned, significant new health and safety issues are raised by that proposed variation;

(b) would increase the period of the licence by more than twelve months; or

(c) would remove the period of the licence so that it would be unlimited as to time,

and the Executive shall refuse to grant a varied licence unless the local authority, or each local authority in the case referred to in regulation 13(3), has so assented.

(5) In this regulation any reference to varying a licence includes varying its conditions.

### **Revocation of licences and registration**

**17.—**(1) The licensing authority which grants a licence or registers a person under regulation 11 may, subject to regulation 18, revoke that licence or registration —

(a) where there has been a change in circumstances such that the site or, within it, any place in which explosives are manufactured or stored which the licence or, as the case may be, registration relates to is no longer suitable for that manufacture or storage of explosives;

(b) where it appears to the licensing authority on information obtained by it after the grant of the licence or registration that the licensee or registered person is not a fit person —

(i) to store explosives, in the case of a registered person or a person licensed to store explosives; or

(ii) to manufacture explosives, in the case of a person licensed to manufacture explosives;

(c) 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 suitable arrangements are made for those explosives to be disposed of; and

(c) the licence or certificate of registration is returned to the licensing authority within 28 days of the date that the revocation takes effect pursuant to regulation 18(4).



### **Further provisions concerning refusals, variations and revocations**

**18.**—(1) Where a licensing authority 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,

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

(2) Representations made for the purpose of paragraph (1) may be made in writing, or both in writing and orally.

(3) Where the licensing authority 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,

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

(4) Where the licensing authority 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 licensing authority which shall be a date after the 28 day period referred to in paragraph (1).

### **Appeal against refusal or revocation of registration**

**19.** A person may appeal to the Secretary of State against a decision of a licensing authority to refuse to register him or to revoke his registration and the provisions of section 44(2) to (6) of the 1974 Act<sup>(2)</sup> (appeals in connection with licensing provisions) shall apply in respect of any such appeal.

### **Transfer of licences and registration**

**20.**—(1) A licence or registration may be transferred in writing by —

- (a) the licensee or person who is registered; or
- (b) the licensing authority which issued the licence or registration following the death or incapacity of the licensee or person who is registered,

to any other person who wishes to manufacture or store explosives in place of the licensee or the person who is registered.

(2) Where the licensee or person who is registered wishes to transfer the licence or, as the case may be, the registration, he shall notify the licensing authority which issued the licence or the registration of the name and address of the proposed transferee at least 28 days before the licence or registration is transferred.

### **Death, bankruptcy or incapacity**

**21.**—(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 registration

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(2) 1974 c. 37; section 44 is amended by the Employment Protection Act 1975 (c. 71), sections 116 and 125(3), Schedule 15, paragraph 13 and Schedule 18 and by the Tribunals and Inquiries Act 1992 (c. 53), section 18(1) and Schedule 3, paragraph 9.

shall be treated as being licensed or registered in accordance with the first-named person's licence or registration until either —

- (a) the expiration 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.

### **Registers and retention of documents**

**22.**—(1) The licensing authority shall —

- (a) maintain a register in accordance with Schedule 4;
- (b) keep a copy of any licence granted or certificate of registration issued by it (together with a copy of the application for the licence or registration) for as long as the licence or registration remains valid; and
- (c) (except where the Executive is the licensing authority), send to the Executive on request a copy of any part of the register or other document specified in this paragraph within such time as the Executive may direct.

(2) For the purposes of this regulation and Schedule 4, in the case to which regulation 3(5) applies disapplying regulations 5 and 9 to 21, any reference to —

- (a) the licensing authority or licensee shall be construed as a reference to the Secretary of State for Defence;
- (b) any licence granted shall be construed as a reference to the scheme referred to in regulation 3(5);
- (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**

**23.**—(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 permit in, as the case may be, 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 Executive 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 in breach of a condition of a licence was caused by an emergency being an emergency which that person took all reasonable precautions and exercised all due diligence to avoid.

(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)(c), (d), (e) or (f)(i) or (ii), it shall be for that person to prove that the storage concerned was for no longer than the permitted period.