
STATUTORY INSTRUMENTS

2005 No. 1082

The Manufacture and Storage of Explosives Regulations 2005

PART 4

**PROHIBITIONS CONCERNING CERTAIN
EXPLOSIVES AND MISCELLANEOUS PROVISIONS**

Prohibition concerning the manufacture, storage and importation of certain explosives

24.—(1) Subject to paragraph (2), no pyrotechnic which consists of —

- (a) sulphur; or
- (b) phosphorus,

mixed with chlorate of potassium or other chlorates or which contains any such mixture shall be manufactured, stored or imported.

(2) This regulation does not apply to any pyrotechnic named in a list, approved by the Executive, of pyrotechnics falling within the description referred to in paragraph (1).

(3) A contravention of paragraph (1) concerning importation shall be punishable only under the 1974 Act⁽¹⁾.

Prohibition concerning the acquisition and supply of fireworks

25.—(1) No person shall —

- (a) acquire more than 50 kilograms of fireworks unless he (“Person A”) or another person holds a valid licence or certificate of registration for the storage by Person A of those fireworks; or
- (b) sell or otherwise transfer to any person (“Person B”) more than 50 kilograms of fireworks unless Person B shows a valid licence or certificate of registration for the storage by Person B of those fireworks, to the person selling or otherwise transferring the fireworks.

(2) This regulation does not apply to a person who is transporting fireworks on behalf of another person.

Power to grant exemptions

26.—(1) Subject to paragraph (2), the Executive may, by a certificate in writing, exempt any person or class of persons or any explosive or class of explosives from any requirement or prohibition imposed by these Regulations, and any such exemption may be granted subject to such conditions and to a limit of time and may be revoked in writing at any time.

(1) By virtue of section 15 of, and paragraph 2(1) of Schedule 3 to, the 1974 Act, Regulations under section 15 can specify, in a case where an act or omission in relation to importation of articles or substances of any specified description constitutes an offence under the 1974 Act and the Customs and Excise Acts 1979, the Act under which the offence is to be punished.

(2) The Executive shall not grant any such exemption unless, having regard to the circumstances of the case, and in particular to —

- (a) the conditions, if any, which it proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any enactment which apply to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

(3) The Secretary of State for Defence may, in the interests of national security, by a certificate in writing, exempt any of Her Majesty's Forces, any visiting force, any headquarters or any civilian employee or class of civilian employees of the Ministry of Defence from all or any of the requirements or prohibitions imposed by these Regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by the said Secretary of State by a further certificate in writing at any time.

Savings and transitional provisions

27.—(1) A licence, amending licence, continuing certificate or store licence granted or issued under, as the case may be, section 8, 12, 14 or 15 of the 1875 Act or a licence granted under article 3 of the Ammonium Nitrate Mixtures Exemption Order 1967(2) which was valid immediately before the relevant date shall be deemed to be a licence granted under regulation 13 and shall continue in force, notwithstanding the repeal by these Regulations of those provisions, on its existing terms and conditions, subject to —

- (a) any variation under regulation 16(1)(a) to (c);
- (b) any variation for the purpose of requiring the licensee to maintain a separation distance greater than a separation distance which is required before the variation; or
- (c) its expiry on the date it was due to expire or its revocation under regulation 17, whichever is the sooner.

(2) A registration effected under section 21 of the 1875 Act which was valid immediately before the relevant date shall be deemed to be a registration under regulation 11 and shall continue in force, notwithstanding the repeal by these Regulations of the said section 21, until the date it was due to expire or it is revoked, whichever is the sooner.

(3) Where the manufacture or storage of explosives at any place —

- (a) was immediately before the relevant date exempt from—
 - (i) the provisions of the 1875 Act by virtue of section 97 of that Act(3); or
 - (ii) the requirement for a licence in respect of such manufacture or storage under that Act by virtue of an exemption certificate granted under the Explosives Act 1875 (Exemptions) Regulations 1979(4); and

(b) is not manufacture or storage which regulation 3(5) relates to,

the person carrying on such manufacture and storage shall be deemed to hold a licence granted by the Executive under regulation 13 with an expiry date of 6th April 2008.

(4) In a case to which paragraph (3) applies, regulation 13(3) shall not apply in relation to an application for a licence made to, and received by, the Executive before 6th April 2008.

(5) In relation to the application of these Regulations to the manufacture of any ammonium nitrate blasting intermediate by virtue of regulation 2(2), where a person is manufacturing any ammonium

(2) S.I. 1967/1485.

(3) 1875 c. 17 (38 & 39 Vict.); section 97 was amended by the Statute Law Revision (No. 2) Act 1893 (56 & 57 Vict. c.14), the Statute Law Revision Act 1966 (c. 5), S.I 1964/488 and 1989/615.

(4) S.I. 1979/1378.

nitrate blasting intermediate on the relevant date, regulations 9, 12, 13, and 15 to 23 shall not apply to that manufacture by that person until 6th April 2008.

(6) The requirements of regulation 5 and Schedule 2 shall not apply until 6th April 2008 to a police force storing explosives.

(7) The requirements of regulation 5 and Schedule 2 shall not apply until 6th April 2010 to a person who stores explosives in respect of which storage there is a deemed registration in force on the relevant date.

(8) The requirements of regulation 5 and Schedule 2 shall not apply until 6th April 2008 to a person who stores explosives in respect of which storage there is a deemed licence in force on the relevant date.

(9) A person who —

- (a) has a deemed licence in respect of the storage of explosives, or
- (b) has a deemed licence which has expired and been replaced by a licence granted under regulation 13 in respect of that storage,

may apply at any time to the Executive, which shall be the licensing authority, for a licence in respect of that storage, to replace that existing one, which provides for different separation distances to apply in respect of that storage to any which would otherwise apply on and after 6th April 2008 under regulation 5 and Schedule 2.

(10) A licence applied for pursuant to paragraph (9) shall not be granted by the Executive unless the Executive is satisfied that it would not be reasonably practicable for the applicant to comply with the separation distances required by regulation 5 and Schedule 2 to which the application relates.

(11) Where, on the relevant date, a person holds more than one deemed licence, each relating to the storage of explosives at separate places within the same site and the aggregate total of explosives allowed to be stored at that site pursuant to those deemed licences exceeds 2 tonnes, that person shall apply before 6th April 2008 to the Executive, which shall be the licensing authority, for a licence to replace those deemed licences for the storage of any explosives that he wishes to store at that site; and, on the date that a licence is granted pursuant to such an application, any such deemed licence shall be treated as revoked under regulation 17 as from that last mentioned date.

(12) Where, before the relevant date, a person would not have been required to apply for a licence under the 1875 Act because he was manufacturing or storing explosives in a part of premises already licensed under that Act to cover that manufacture or storage but, by virtue of regulation 9(1) or 10(1) he would need to hold a licence in respect of such manufacture or storage on and after that date —

- (a) he shall be deemed to hold a licence granted under regulation 13 containing the same terms and conditions as the existing licence until 6th April 2008 or the expiry of that existing licence, whichever is the sooner; and
- (b) he shall have until that earliest date to apply for a licence under these Regulations in respect of such manufacture or storage carried on by him thereafter.

(13) Regulation 13(3) shall not apply in relation to an application for a licence which paragraph (9), (11) or (12) relates to, save where —

- (a) if the licence applied for were to be granted, it would result in an increase in the quantity, or a change in the hazard type, of any explosive presently permitted at the site under a deemed licence; or
- (b) the application is received by the Executive after 6th April 2006; or
- (c) the application is for a licence to replace a deemed licence which was, before the relevant date, a store licence granted by a local authority under section 15 of the 1875 Act on or after 6th May 2005.

(14) Where an application for a licence pursuant to section 6 of the 1875 Act⁽⁵⁾ has been made to, and received by, the Executive before the relevant date and the application has not been refused nor a licence granted by that date, the application shall be deemed to be an application for a licence under these Regulations and the provisions of these Regulations shall apply to the application, subject to the paragraph (15) in relation to the application of any requirements of regulations 13(3) and 14 to any such licence application.

(15) In relation to the application of the requirements of regulations 13(3) and 14 to an application which paragraph (14) relates to —

- (a) a draft licence approved by the Executive pursuant to section 6 of the 1875 Act before the relevant date shall be deemed to be a draft licence for the purposes of regulation 14(1);
- (b) where notice under section 7 of the 1875 Act in respect of the application and of the time and place at which the local authority will be prepared to hear the applicant has been published before the relevant date —
 - (i) the provisions of regulation 14(3) and (8) relating to notices shall not apply, and
 - (ii) if the hearing to which the notice relates would be held or continue to be held on or after the relevant date, it may continue to be so held and it shall be deemed to be a hearing for the purposes of regulation 14;
- (c) where a notice under section 7 of the 1875 Act referred to in sub-paragraph (b) has not been published before the relevant date, regulation 14(3) shall have effect as if after “paragraph (2)” there were inserted “or within 28 days of the coming into force of these Regulations, whichever is the later.”;
- (d) the assent to the application by the local authority pursuant to section 7 of the 1875 Act, or the assent by both local authorities to the application where the assent of both is required under that section, given before the relevant date shall be deemed to be assent for the purposes of regulations 13(3) and 14 and the Executive shall grant a licence under regulation 13 which accords with the draft licence approved by the Executive pursuant to section 6 of the 1875 Act, with the addition, if the assent was on conditions submitted to by the applicant, of the additional restrictions and precautions required by those conditions.

(16) An application for an amending licence under section 12 of the 1875 Act which is made to and received by, but not decided by, the Executive before the relevant date, shall be deemed to be an application for a variation of a licence under these Regulations and the provisions of these Regulations shall apply to the application accordingly.

(17) Despite the repeal by these Regulations of section 40 of the 1875 Act, paragraph (9) of that section (as it had effect before the commencement of Schedule 4 to the Placing on the Market and Supervision of Transfers of Explosives Regulations 1993⁽⁶⁾) shall continue to apply to acetylene as it applied before the commencement of these Regulations.

(18) Notwithstanding the repeal by these Regulations of sections 40(4) and 50 of the 1875 Act, Order in Council (No. 9) of 27th November 1875 relating to the Sale of Explosive⁽⁷⁾ shall continue in force.

(19) For the purposes of this regulation —

- (a) “deemed licence” means —
 - (i) any licence, amending licence, continuing certificate or store licence deemed by virtue of, as the case may be, paragraph (1) or (12) to be a licence granted under regulation 13; and

⁽⁵⁾ Section 6 was amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974 (S.I. 1974/1885).

⁽⁶⁾ S.I. 1993/2714.

⁽⁷⁾ Rev. VII, p 39.

- (ii) a licence deemed to be held by a person pursuant to paragraph (3);
and “deemed licensee” shall be construed accordingly;
- (b) “deemed registration” means a registration deemed by virtue of paragraph (2) to be a registration under regulation 11;
- (c) “licence under the 1875 Act” in paragraph (12) means any of —
 - (i) a licence;
 - (ii) an amending licence; or
 - (iii) a continuing certificate,
granted or issued, as the case may be, under section 8, 12 or 14 of the 1875 Act and “licensed under that Act” and “existing licence” shall be construed accordingly; and
- (d) “relevant date” means the date when these Regulations come into force.

Repeals, revocations and amendments

28.—(1) The primary legislation specified in Part 1 of Schedule 5 and the secondary legislation specified in Part 2 of that Schedule shall be amended in accordance with the provisions of that Schedule.

(2) The primary legislation specified in column 1 of Part 1 of Schedule 6 shall be repealed to the extent specified in column 3 of that Schedule.

(3) The secondary legislation specified in column 1 of Part 2 of Schedule 6 shall be revoked to the extent specified in column 3 of that Schedule.