

<b>Title:</b> Explosives Regulations (ER2014) Post Implementation Review (PIR) Report <b>PIR No:</b> PIR001  <b>Original IA/IPC No:</b> HSE 0083  <b>Lead department or agency:</b> Health and Safety Executive  <b>Other departments or agencies:</b> N/A Click here to enter text.  Contact for enquiries: <a href="mailto:Debbie.Hart@hse.gov.uk">Debbie.Hart@hse.gov.uk</a>	<b>Post Implementation Review</b>
	<b>Date:</b> 30/07/2019
	<b>Type of regulation:</b> Domestic and EU
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 01/10/2014
	<b>Recommendation:</b> Keep
<b>RPC Opinion:</b> N/A	

### 1. What were the policy objectives of the measure?

ER2014 implemented the recommendations of the Löfstedt Review of Health and Safety. It consolidated the existing legal framework that regulates sale, use, transportation, storage and licensing of explosives and also EU derived requirements on product safety, traceability and transfers. The policy objective was to reduce administrative burdens on business; adding clarity whilst maintaining safety. ER2014 was amended by the Explosives Regulations 2014 (Amendment) Regulations 2016 (ERAR2016). The PIR covers ER2014 (as amended).

### 2. What evidence has informed the PIR?

A 'medium-touch', proportionate approach was taken to inform this PIR. HSE encouraged stakeholders and an Industry representative group, to promote an online 8-week survey hosted by HSE. The survey was advertised on the Explosives Communities Database reaching 32,677 members, with 42 people completing the survey. Views from HSE inspectors have been sought and HSE's Enforcement and Prosecution data has also been reviewed.

### 3. To what extent have the policy objectives been achieved?

The evidence from the research and analysis gathered for this PIR suggests that the overall objectives of the regulations have been met. Stakeholder feedback gained from the survey states that the updated regulations are clear and it is useful having one point of reference. As a result, the regulations will remain in place and be reviewed again in 5 years to check that they continue to be relevant and deliver their intended objectives.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

Signed: 

Date: 30/07/2019

## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### **4. What were the original assumptions?**

The majority of the proposals in the consolidation were not expected to create significant costs as many of the changes involved consolidating, clarifying and simplifying the Regulations into an integrated explosive legislative suite (-£0.15m in 2009 prices). The consolidation incorporated the ITOER regulations which were expected to have minimal costs (-£0.02m in 2009 prices). ERAR2016 did not intend to substantively alter the law and as a result were expected to have minimal costs (£0.05m in 2014 prices).

### **5. Were there any unintended consequences?**

There were perceptions of unintended consequences, such as costs associated with installation of tracking and traceability equipment, as a result of the implementation of ITOER during HSE's research. However, although evidence in this area was specifically sought in the PIR, it was not possible to secure evidence of the scale or nature of these costs during the research exercise.

### **6. Has the evidence identified any opportunities for reducing the burden on business?**

No evidence of opportunities to further reduce burden on business have been identified. However, some respondents expressed the desire for more guidance and HSE will respond by raising awareness of the existing guidance through industry networks.

### **7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business?**

This PIR was completed before the UK left the EU and therefore was limited to testing whether the policy objectives of the consolidation had been met. All EU derived provisions are currently being considered as part of the UK's transition period work. Any wider review of requirements in these regulations may also be considered in the light of stakeholder comments received through the Reforming Regulation Initiative.

<b>Title:</b> Explosives Regulations (ER2014) Post Implementation Review (PIR) Report <b>Lead department or agency:</b> Health and Safety Executive <b>Other departments or agencies:</b> None <b>Contact for enquiries:</b> Debbie Hart (Tel 0203 028 4524)  <a href="mailto:Debbie.Hart@hse.gov.uk">Debbie.Hart@hse.gov.uk</a>	<b>Post Implementation Review</b>
	<b>Source of intervention: UK</b>
	<b>Type of regulation: Domestic and EU</b>
	<b>Type of review: Statutory</b>
	<b>Date of implementation: 01/10/2014</b>

## Introduction

The Explosives Regulations 2014 (ER2014) (the Regulations) came into force on 1<sup>st</sup> October 2014. This was following a recommendation by Professor Löfstedt in his report 'Reclaiming health and safety for all: An independent review of health and safety legislation' for HSE to simplify its legislative framework. The key aim of ER2014 was to consolidate explosives legislation into a single set of regulations to modernise, and, where practicable, simplify the legislative arrangements.

ER2014 brought together the requirements of over twenty legislative instruments into a framework based around common topics such as authorisation, safety, security and placing on the market.

It is a statutory requirement within ER2014 to undertake a Post Implementation Review (PIR) within 5 years of them coming into force. The purpose of a PIR is to evaluate whether or not the intended objectives of the regulations have been met and, in this case, to determine if the regulations in place are still the best way to regulate explosives.

ER2014 was amended by the Explosives Regulations 2014 (Amendment) Regulations 2016 (ERAR2016), which implemented the recast Directive 2014/28/EU. The aim of the recast was to provide further clarity on the legal requirements for placing industrial products, which included explosives for civil use, on the market as well as strengthen and modernise the conditions to do this.

This PIR has reviewed ER2014 (as amended by ERAR2016). It has also reviewed legislative changes introduced through the Identification and Traceability of Explosives Regulations 2013 (ITOER). ITOER introduced tracking and traceability requirements for civil explosives in GB, implementing relevant EU Directives (Directive 2008/43/EC, amended by Directive 2012/4/EU). ITOER contained a statutory review requirement but, due to the upcoming ER2014 consolidation exercise, it was agreed at that time to merge the reviews into this single PIR as the ITOER provisions would then form part of ER2014.

This is a report on the evidence gathered from stakeholders, HSE inspectors and enforcement data held by HSE to review if the regulations achieved their objectives and whether stakeholders had experienced any additional costs because of the regulations.

### 1. What were the policy objectives and the intended effects?

The objectives of ER2014 were to consolidate, modernise, and, where practicable, update and simplify the previous legislative arrangements into a single set of regulations. It also extended

site licensing of Ammonium Nitrate Blasting Intermediate (ANBI) to include storage of the material (manufacturing of ANBI was already licenced).

The intention of the consolidation was to aid clarity and reduce burdens on industry without reducing safety standards. The consolidation exercise covered one Act, ten pieces of secondary legislation and fifteen exemption certificates. Legislation included domestic, EU derived and international requirements.

The consolidation included the EU derived provisions on tracking and traceability requirements of civil explosives in Great Britain (set out in ITOER). These were introduced following the Madrid train bombings to ensure better traceability and record keeping of civil explosives being placed on the EU market. These requirements were set out in Directive 2008/43/EC, amended by Directive 2012/4/EU.

The consolidation also provided the opportunity to review the supporting guidance and the 'Approved Code of Practice to the Manufacture and Storage of Explosives Regulations 2005 (L139)'; guidance relating to the security of explosives (HSE Circular 1/2005); and guidance on the placing of civil use explosives on the market (L66) were withdrawn, being replaced by updated "L series" guidance.

ER2014 was subsequently amended in 2016 to implement the recast of the civil use explosives Directive (2014/28/EU). The recast was part of a package of reforms known as the 'New Legislative Framework' (NLF). Civil use explosives was one of nine Directives reviewed under the NLF. The objectives of the NLF were to clarify the roles of economic operators (i.e. manufacturers, importers and distributors), increase the requirements on notified bodies who issue the CE mark, and provide new powers to enable market surveillance authorities (MSAs), such as HSE, to 'withdraw' or 'recall' products that present a risk. The recast did not intend to substantively alter or review the law. However, some changes in scope did arise as a consequence. All EU derived provisions are currently being considered as part of the UK's transition period work.

## **2. Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.**

A 'medium level' approach was taken in the research of this PIR. The justification being that the Regulations were not considered to have a high impact but did make some minor changes to the authorisation and licensing regime as part of the consolidation. This approach also reflected the estimated costs in the Impact Assessment (IA) of ER2014 (£1.5M over a 10-year period).

Licensing of smaller storage sites (<2000kg) falls to Local Authorities, Fire and Rescue Services and the Police. These sites will range from individuals storing explosives for their own use e.g. gamekeepers, to major retailers selling fireworks/ party goods. Extending licensing requirements for the storing of ANBI impacted on c.19 sites.

An online survey was identified as the most proportionate way to gather views. This was completed via HSE's explosives web communities' platform as this is a well-established method which HSE uses to communicate with stakeholders.

HSE's Economic Analysis and Social Research Unit also offered one to one interviews with the relevant trade associations and specific industry representatives. HSE Inspectors were also interviewed as part of this process with intelligence from HSE's enforcement data also being reviewed.

The online survey ran from 21 February 2018 until 18 April 2018 and was advertised regularly on the Explosives ebulletin Communities Database reaching 32,677 members with further promotion being carried out by the relevant trade associations.

The survey sought to gather views from duty holders and other stakeholders on the effectiveness of the regulations to inform the PIR. The key focus of the research was to explore i) whether the objectives of the consolidation had been achieved ii) whether the consolidation of the regulations had any positive or negative impacts on stakeholders iii) how effective they are in making the licence application process easier; and iv) the costs and benefits of the changes.

The evidence gathered focused on the main changes to the legislation from the consolidation exercise. It also focussed on areas where there were stakeholder perceptions that the regulations may have had unintended cost implications; namely ITOER.

### **3. Describe the principal data collection approaches that have been used to gather evidence for this PIR.**

- The survey was uploaded and completed via HSE's on-line web communities' portal and ran from 21 February 2018 until 18 April 2018.
- The survey was advertised on the Explosives ebulletin Communities Database reaching 32,677 members, from this 279 people clicked onto the link with 124 people accessing the explosives survey.
- The survey was promoted through trade associations, HSE teams and other regulators. Notifications were sent to all e community members informing members the survey was live and a reminder was sent a week before the survey closed. This reminder was also shared by direct mail drops through stakeholder networks.
- The survey received 42 responses (completed to a level that analysis could be taken) from across the sector, ranging from micro businesses to large organisations.
- HSE Economic Analysis and Social Research Unit also completed two one-to-one interviews with the relevant stakeholders and also with HSE Inspectors.
- HSE's Enforcement/Prosecution data has also been analysed.

### **4. To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?**

The responses received indicate that the Regulations have achieved the intended objectives around consolidation and modernisation and, to a lesser extent, simplification. There was no evidence to suggest the consolidation of ER2014 or later amendments in ERAR2016 had led to unintended costs although stakeholders did suggest the production line costs associated with the ITOER changes were higher than the IA originally suggested. HSE attempted to further explore and refine this response by contacting relevant dutyholders from a network group that regularly works with HSE. HSE was able to conduct two one-to-one interviews that indicated the costs to implement ITOER had been underestimated in the impact assessment. Given there were only 2 interviews, it is not possible to state with confidence that these costs were representative across the sector.

The survey received 42 responses and these represented a fairly even split between public and private sector organisations. Those who responded from the public sector were mainly from Local Authorities (LAs) and those from the private sector were mainly manufacturers and others performing a variety of roles, such as explosives managers and safety roles.

The majority of respondents agreed that ER2014 had achieved its objectives around consolidation (n=37) and modernisation (n=32) and to a lesser extent simplification (n=24). A key theme in the comments to these questions was that ER2014 contains broadly the same

requirements as the previous legal framework so there is little difference to duty holders between the regulations.

Of those who responded to this question, respondents were more likely to agree that the consolidated regulations are the best way of maintaining safety standards in the sector (n=29) than to disagree with this statement (n=9).

17 respondents felt that they had seen some benefits to their organisation because of the consolidation of the ER2014, compared to 12 who had encountered some negative impacts.

Positive comments supported the achievement of ER2014's objectives around consolidation, modernisation and simplification. Negative comments suggested that stakeholders would find further clarification helpful in some areas such as what terms like 'civil' and 'relevant' explosives mean, what needs to be resubmitted when renewing a licence or whether the schedules could be made clearer.

Most of the feedback received relating to the revised licensing procedures was positive, with some stating it reduced administrative burdens. Conversely, some respondents mentioned that the licensing procedures can be confusing. Some Local Authorities' also thought some of the changes had increased administration and reduced revenue. However, no further information was provided on this.

Respondents agreed that ER2014 adequately provides a framework which allows for the most up to date and safe working practice for activities involving explosives. Only seven respondents disagreed with this statement. Comments suggested that clarification around sector guidance and which documents should be used alongside the regulations would be helpful, along with clarification on what hazard types separation distances applied to.

The majority of respondents also agreed that the actions required of duty holders were proportionate to the risks being managed, although one did comment that licensing was unnecessarily complicated.

A general theme across the questions included comments about the regulations no longer being supported by a single ACOP which some stakeholders indicated would be preferable. It was suggested by one respondent that further guidance on end use and testing would be beneficial. Two respondents mentioned concerns around the retail sector, one felt that ER2014 might cause confusion for them in relation to separation distances and the other raised a concern around the level of fireworks which can be supplied to retailers and the need for an enforceable recording system. When asked about product safety requirements, again, more guidance on what was required was the main theme in the comments.

The vast majority of respondents felt that ER2014 is neither easier nor harder to understand (n=21) or somewhat easier to understand (n=16) than the previous regulatory requirements. Only one person felt the regulations were harder to understand. Feedback from the same person was they 'did not know' if the consolidated regulations adequately provide a framework which allows for the most up to date and safe working practices for activities involving explosives. No further evidence was given to support the answers.

When reviewing HSE's enforcement data, there has been a slight increase in enforcement action since ER2014's implementation. The statistics were analysed for the 5 years prior to ER2014 coming into force and 5 years after. Although there were 3 more cases of enforcement action after ER2014 (33 prior and 36 after) this maybe as a result of a change in approach but does not indicate a decrease in standards. Inspectors views echoed those found in the research with stakeholders, in that as little had fundamentally changed in the legal requirements there had been a limited impact on their regulatory role.

**5a. Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA).**

This PIR focussed on three sets of regulations:

- The Identification and Traceability of Explosives Regulations 2013 (ITOER).
- The Explosives Regulations 2014; and
- The Explosives Regulations (Amendment) Regulations 2016.

The ITOER IA estimated the costs for a basic labelling and recording system for production lines producing explosives per year. One-off setup and capital costs (per line) were estimated to be £24,500, and ongoing annual costs per line £19,000. These estimates were based on information by the only company in the UK manufacturing relevant explosives at the time the IA was written.

ER2014 was not expected to create significant costs, as many of the changes involved consolidating, clarifying and simplifying the Regulations into an integrated legislative package. They were not expected to fundamentally alter longstanding approaches to explosives safety and security.

The ER2014 IA estimated there would be a benefit to industry from the reduction in administration and paperwork resulting from a move to extend the life of Local Licensing Authority licences to store explosives, such as fireworks, from one to five years. However, these benefits were not significant.

The ERAR2016 IA estimated there would be some costs to business from the Explosives Notified Body passing the costs of accreditation to them, and for the introduction of the explicit requirement that civil use explosives placed on the market by manufacturers, or used for their own purposes, must be CE marked. The costs for both requirements were estimated to be £172,000 and £155,000 respectively over the 10-year appraisal period.

There were a number of benefits discussed in the ERAR2016 IA, such as the improvement of safety standards however it was not possible to quantify or monetise these.

HSE looked at all regulatory changes in their entirety and allowed duty holders to discuss any costs they had experienced across all the changes. The regulatory change that was estimated in the IA to have the biggest cost impact was the introduction of tracking and traceability systems as a result of ITOER.

**5b. What have been the actual costs and benefits of the regulation and its effects on business?**

The analysis for this PIR supports the conclusions of the IA's for ER2014 and ERAR2016; no respondents to the survey stated additional costs had arisen from the changes to the regulations.

There is an indication that the conclusions of the ITOER IA may not have reflected the costs once the changes had been fully introduced by industry. However, the evidence provided through the PIR research was not sufficient to enable an alternative cost estimate to be produced which would be representative across the sector. Most of the respondents to the survey, when asked if they required the tracking equipment discussed in the ITOER IA, did not. However, none of the respondents to the survey were able to provide more accurate estimates, or information about what was required. HSE did receive some anecdotal evidence through stakeholder engagement to suggest the one-off and ongoing costs for ITOER are underestimated in the ITOER IA. We

interviewed two stakeholders, who both said the costs to implement ITOER had been significantly higher for their businesses.

Despite requesting assistance from more duty holders, no others agreed to provide this information. Therefore, it is not possible to determine how common these costs are across the sector, and to what extent they may be higher than estimated in the ITOER IA.

A small number of respondents to the survey (n=3) suggested they had experienced other significant costs as a result of the consolidation through ER2014.

The ER2014 consolidation estimated minor costs from redefining Ammonium Nitrate Blasting Intermediate (ANBI) under its international hazard definition and introducing site licensing for the storing of ANBI. One respondent to the survey noted they had experienced savings as a result of ER2014. The consolidation estimated there would be some benefits to industry from a reduction in administration and paperwork. However, the respondent did not provide an explanation for the savings, and therefore it is not possible to determine which specific regulatory change the savings are a result of. We did not find any substantial evidence from the survey or the stakeholder interviews that would allow us to make a robust re-estimation.

ERAR2016 was the most recent regulatory change, and there were a number of costs estimated in the ERAR2016 IA. However, no feedback was provided about costs reported in research for the PIR, or any indication of which specific regulatory change the costs were associated with, therefore it is not possible to determine whether the estimations in the ERAR2016 IA, or in the responses were accurate or not.

We have explored all practical and proportionate avenues in trying to find out more information about the impacts of the changes in regulations. The assessment made is based on all the evidence we could reasonably obtain. While the findings are not statistically significant, we believe that all stakeholders who wished to, have been offered the chance to comment and so the findings are considered to be fit for purpose. HSE also continues to engage with industry through its civil explosives manufacturer and importer network and through other one to one forums providing further opportunities to discuss any concerns

## **6. Assessment of risks or uncertainties in evidence base / Other issues to note**

The PIR looked at the most recent changes to the regulations i.e. the consolidation objectives (ER2014), the recast objectives (ERAR2016) and the traceability objectives (ITOER).

The main limitation of the research evidence is the lack of responses received to the survey on the costs of implementation. Only a small number of respondents provided answers to the cost questions and most of those who did respond did not quantify the costs or savings they had experienced. Of the small number who did quantify costs, little to no explanation was given of what the costs involved. Some respondents felt that the estimated costs from the ITOER IA were inaccurate but did not leave further explanation for their comments or provide better estimates.

To refine the evidence obtained from the survey on ITOER, further information was sought from the HSE's industry stakeholder group. When speaking with the duty holders, all of them agreed that the survey responses reflected their understanding of the impact of the changes and suggested that the actual costs to comply with changes for production lines were significantly higher than estimated. However, only two duty holders have been able to provide HSE with actual estimates, of which one is not a manufacturer in the UK.

Despite requesting assistance from more duty holders, no others agreed to provide this information. Therefore, it is not possible to determine how common these costs are across the sector, and to what extent they may be higher than estimated in the ITOER IA.



Some comments received as part of this review were around the processing of licences and how this is managed. These comments have been incorporated into HSE's continual improvements process for explosives licensing and so will be addressed as part of that process.

## **7. Lessons for future Impact Assessments**

Whilst it was suggested that costs relating to ITOER were underestimated there was no evidence to confirm this. For future Impact assessments (IA's) more thorough stakeholder engagement would be undertaken to establish more effective baselines from which to review impact.

## **8. What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)**

The evidence from the research and analysis gathered for this PIR suggests that the overall objectives of the regulations have been met. Stakeholder feedback gained from the survey states that the updated regulations are useful, and it is useful having one point of reference.

There was some suggestion that stakeholders were not aware of the available guidance to support compliance. HSE will revisit this as part of future work with the relevant industry network group and the Fireworks Enforcement Liaison Group (FELG).

There were also suggestions that the licensing process needed reviewing. A review had already been undertaken through HSE's Explosives Licensing review project. The additional issues raised here will be considered as part of follow up to that project.

One unintended consequence has been identified during the course of this review; the perception of cost impacts resulting from the ITOER regulations. While it is suggested that this cost was greater than the cost detailed in the IA, it was a one-off cost to business upon their implementation rather than ongoing costs. HSE would therefore be unable to make any changes which would reduce that impact at this stage.

As a result, the regulations will remain in place and be reviewed again in 5 years to check they continue to be relevant and deliver their intended objectives. This is notwithstanding any transition period changes which are required. Any wider review of requirements in these regulations may also be considered in the light of stakeholder comments received through the Reforming Regulation Initiative.