

<p><b>Title:</b> Second Post Implementation Review of the Explosives Regulations 2014</p> <p><b>PIR No:</b> HSE-PIR2024-002</p> <p><b>Original IA/RPC No:</b> HSE0083</p> <p><b>Lead department or agency:</b> Health and Safety Executive</p> <p><b>Other departments or agencies:</b> N/A Click here to enter text.</p> <p>Contact for enquiries: <a href="mailto:Shanyeya.White@hse.gov.uk">Shanyeya.White@hse.gov.uk</a></p>	<b>Post Implementation Review</b>
	<b>Date:</b> 10/09/2024
	<b>Type of regulation:</b> Domestic
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 01/10/2014
	<b>Recommendation:</b> Keep
<b>RPC Opinion? N/A Below de minimis</b>	

**1. What were the policy objectives of the measure? (Maximum 5 lines)**

The Explosives Regulations 2014 (ER2014) came into force on 1 October 2014 and brought together requirements from twenty legislative instruments into a single framework based around common topics such as the authorisation, safety, security and placing of explosives on the GB market. The consolidation was intended to aid clarity and reduce burdens on industry without reducing safety standards.

**2. What evidence has informed the PIR? (Maximum 5 lines)**

HSE conducted a targeted stakeholder consultation, circulating questions to a range of stakeholder organisations and industry representatives. The questions were promoted in industry bodies' forums and their social media channels, allowing a wide range of stakeholders the opportunity to contribute. In total 24 people responded.

**3. To what extent have the policy objectives been achieved? (Maximum 5 lines)**

The evidence from the research and analysis gathered for this Post Implementation Review (PIR) indicates the overall objectives are still being met and that ER2014 (as amended) remains fit for purpose. The majority of respondents confirmed there were no unintended consequences and no further opportunities for reducing burdens were identified. As a result, the regulations will remain in place.

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

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

Signed: **Edward Woolley**



Date: 23/08/2024

## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### 4. What were the original assumptions? (Maximum 5 lines)

Many of the proposals in the original consolidation were not expected to create significant costs as changes involved consolidating, clarifying, and simplifying regulations into an integrated explosive legislative suite. It was considered disproportionate to the scale of the project to re-estimate costs from the original impact assessment, The original cost was low (£0.15m).

### 5. Were there any unintended consequences? (Maximum 5 lines)

No, most respondents stated there were no unintended consequences. There were a few concerns from trading standards and local authorities related to non-compliance of storage requirements. Failure to comply with the regulations should result in enforcement action from Local Authority/Trading Standards. HSE is of the opinion that if any additional guidance is required this should be developed through industry liaison groups.

### 6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

The evidence did not identify any further opportunities for reducing burdens on business. As a result, ER2014 remains relevant, and no changes are recommended.

### 7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)

A comparison is not proportionate due to the low costs to business (£0.15m) and the indication from the evidence and analysis is that the regulations should be kept as they are.

## Second Post Implementation Review of the Explosives Regulations (ER2014)

### 1. Introduction

The Explosives Regulations 2014 (ER2014) as amended came into force on 1 October 2014. ER2014 implemented a recommendation of the 2011 Löfstedt review of health and safety legislation<sup>1</sup> in the UK: reducing the regulatory burden on business and regulators by consolidation, modernisation, clarification, and simplification of the legislation whilst retaining the existing levels of safety related to the sale, use, transportation, safety, storage, and licensing of explosives.

ER2014 was amended by the Explosives Regulations 2014 (Amendment) Regulations 2016), which implemented the European Union Directive 2014/28/EU<sup>2</sup>. The aim 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 to strengthen and modernise the conditions for doing this.

<sup>1</sup> <https://www.gov.uk/government/publications/reclaiming-health-and-safety-for-all-lofstedt-report>

<sup>2</sup> <https://www.legislation.gov.uk/eudr/2014/28/article/11>

Since the first PIR was published in 2019, there have been five further amendments to ER2014. Some of those amendments were administrative to ensure the regulations remained operable when the UK left the EU, whereas others included transitional arrangements that provided businesses with flexibility and more time to comply with rules relating to the UK developing a new conformity assessment mark (UKCA) and labelling of products.

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

A proportionate (light touch) approach to this PIR was taken as the policy objective of ER2014 was to simplify, modernise and consolidate existing legislation with minimal impact on industry. The initial 2019 PIR did not identify any significant issues arising from its implementation and ongoing engagement since, with all relevant stakeholders, has not identified any additional concerns.

A targeted consultation was deemed the most appropriate method of gathering stakeholder views and evidence was sought from the following sector representatives:

- The Civil Explosive Manufacturing and Importer Network (CEMIN).
- The Institute of Explosives Engineers
- The British Pyrotechnics Association
- The British Fireworks Association (BFA)
- The Explosives Industry Group (EIG)
- Fireworks Enforcement Liaison Group (FELG)
- National Police Chiefs Council – Fireworks Enforcement Liaison Working Group (NPCC-FELWG)

These organisations were identified as representing the vast majority of practitioners, businesses and regulators operating in the sector.

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

A survey was sent by direct email to gather views from all relevant stakeholders. The survey ran from 20 February 2024 to 8 March 2024. On 4 March 2024, HSE reminded stakeholders of the deadline. In addition, HSE chairs a forum for 8 Explosives sector representatives: The Civil Explosives, Manufacturers and Importers Network (CEMIN), where HSE provided members with the opportunity to provide and discuss verbal feedback. Sector reps agreed to promote the survey through their existing networks. The Institute of Explosive Engineers: an organisation for those working in the explosives industry and which actively fosters widespread communication between members, promoted the PIR survey through their social media channels, which has 1,400 followers.

HSE received 24 responses, 14 from the Trading Standards departments of Local Authorities, 3 from police authorities and 2 from explosives manufacturers.

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

There were no unintended consequences, major concerns or further opportunities for business simplification raised in relation to the long-standing measures or new changes

under this review. However, some respondents did have comments on compliance regarding the purchase and storage of fireworks/explosives including by hazard type. Decisions on storage of fireworks are for individual local authorities based on the assessment of an individual site. HSE is of the opinion that if any more guidance is required, it is likely to be adopted more readily if it is taken forward through the Fireworks Enforcement Liaison Group (FELG) of which HSE is a member. FELG is one of the main organisations that offer representation for practitioners and businesses within the industry

HSE considered that the findings of the first PIR, subsequent amendments to ER2014, the initial estimated costs and operational experience, and stakeholder insights gained over the last five years could, together with the 2024 survey results, be utilised to sufficiently assess whether the regulations remain relevant and deliver their intended objectives.

There was little evidence of suggestions to reduce burdens for business. However, some respondents did have comments around reducing the administrative burden on Local Authorities/Trading Standards, an issue the HSE is already aware of, and will be considered in future reviews of the Health and Safety and Nuclear (Fees) Regulations.

The responses to the consultation indicate the regulations remain fit for purpose.

### **Responses to the consultation:**

#### Question 1: Are The Explosive Regulations 2014 (as amended) fit for purpose?

On simplification, eleven out of nineteen respondents who provided feedback to question one agreed ER2014 (as amended) is fit for purpose. A further two respondents agreed but described the regulations as 'too complex.'

Overall, only one respondent found the regulations were not fit for purpose.

Five out of nineteen respondents who provided feedback to question one indicated that the regulations could benefit from some minor improvement but did not specify that they were unfit for purpose. This included some police authorities who raised concerns about aspects of the regulations being difficult to understand for those enforcing them as well as explosive licence holders themselves: suggestions included increasing the amount of explosives a police force is allowed to store legally; for HSE to introduce more measures to ensure that Firearms Licence holders do not stockpile ammunition; and for new explosives certificates to feature photos of licence holders.

Under regulation 8 of ER2014 (as amended) a Recipient Competent Authority document (RCA) must be acquired before any civil explosives are transferred domestically. This function is delegated to each individual police authority in GB via an Agency Agreement for them to issue the RCA on HSE's behalf which they do at the same time they issue an Explosives Certificate which provides assurance of a person's suitability to acquire or acquire and keep explosives. Under reg 4 (2) of ER 2014, an explosives certificate must be in a form approved for the time being for the purposes of this regulation by the Executive therefore no change is required to the regulations if the police and HSE wish to change the current format. HSE is already in discussions with the police to discuss their specific storage requirements.

HSE work closely with the Police Explosives Liaison Officers (ELOs) community and individual police authorities through the National Police Chiefs Council (NPCC): a long-established forum. HSE will continue to work collaboratively with the NPCC to help improve

duty holders' understanding of the regulatory obligations under ER2014. HSE work collaboratively with the Home Office to support the delivery of the Police Explosives Liaison Officers (ELOs) training programme and has already offered to develop initiatives for ELOs that will introduce effective networking opportunities across police authority boundaries and ensure ELOs' knowledge of explosives and the regulations remains updated.

Two respondents from Trading Standards/Local Authorities highlighted increased instances of non-compliance with fireworks licence requirements: for example, buying and storing fireworks in greater amounts than retailers are permitted and/or storing hazard-type fireworks they are not actually licensed for. This is an issue related to non-compliance of licence requirements and enforcement of the regulations. Whilst qualitative research can provide a rich understanding of the experience of those who participated and may highlight themes that might apply more widely, this evidence alone is insufficient to measure the prevalence of the issue.

Question 2: Have any unintended consequences of ER2014 (as amended) and subsequent SI amendments emerged over the last five years?

Nine of sixteen respondents who provided feedback to question two stated no unintended consequences of ER2014 (as amended) had emerged since the last PIR.

Concerns were raised from four Trading Standards/Local Authority responders and one fireworks importer related to the purchase and storage of fireworks/explosives including by hazard type. The most common scenario identified was fireworks retailers attempting to circumvent the law: creating fire risks by purchasing multiple shipments of fireworks that weigh less than 5 kilos thereby avoiding the need to acquire a licence to purchase more than 5 kilos in one transaction. Regulation 7 of ER2014 states manufacturers are required to obtain a license for the storage of explosives. This depends on the type of product and duration the item is being kept on the premises. Failure to comply with the regulations results in enforcement action from Local Authority/Trading Standards.

One explosives manufacturer raised concerns about how hazard-type procedures impacted their production processes. Although there is no clear quantitative measurement for when a product becomes Hazard Type 2/3 or 4, there is existing guidance that includes clear criteria for classification that should be applied for production purposes.

Question 3: Are there any further opportunities for reducing burdens on business?

The responses to this question were varied. Most did not provide any response at all.

The two comments from Local Authority Trading Standards departments related to explosive storage and separation distances by hazard type, which indicated some responders may not fully understand the legislation or the reasoning behind it and should refer to the guidance already provided by HSE.

Further comments from two more Trading Standards/Local Authority responders suggest that efforts should be made to reduce the burden of administering explosives licences on Local Authorities; one responder suggests removing the requirement for some applicants to provide street plans.

The ER 2014 (as amended) require licences to include conditions specifying the site and, within it, the places where the explosives may be stored. In consultation with stakeholders, street plans were identified as the appropriate method to capture this information, as they define the boundary of the site as defined in its context providing certainty to the licensee,

enforceability for the licensing authority and important information for the emergency services. Local authorities have application forms that allow licences to be renewed without a street plan being resubmitted.

The remaining comments were diverse, ranging from suggestions from police authorities about simplifying the application process, which is perceived as an administrative procedure (but also includes an assessment of the person, the place and the environment the products will be allocated to); and HSE providing guidance to retailers with temporary stores. However, subsector guidance is already available on HSE's website.

One Local Authority stated the cost of processing licences is not covered in the current fee structure. This will be addressed in future reviews of the Health and Safety and Nuclear (Fees) Regulations.

## **5. 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 and they remain fit for purpose.

In the previous PIR, there was some suggestion that stakeholders were not aware of the available guidance to support compliance. HSE has continued to take an active role in Fireworks Enforcement Liaison Group (FELG) and all other stakeholder bodies providing advice and where appropriate promoting its guidance. HSE similarly offers support and promotes its guidance with individual enforcing authorities and duty holders who contact it.

There were also suggestions that the licensing process needed reviewing. HSE considered the responses to the previous PIR and incorporated relevant responses into the follow-up to its fundamental review of explosives licensing. It has published its guidance for its inspectors on the decisions they would be expected to make when considering applications for licences to support other regulators as well as applicants for a new or varied licence. HSE will continue to work with all licensing authorities to ensure duty holders understand their obligations under ER2014 through the availability of clear accessible guidance and consistent communications.

As a result, the regulations will remain in place.