
STATUTORY INSTRUMENTS

2005 No. 1082

The Manufacture and Storage of Explosives Regulations 2005

PART 1

INTRODUCTION

Citation and commencement

1.—(1) These Regulations may be cited as the Manufacture and Storage of Explosives Regulations 2005 and, except as provided by paragraph (2), shall come into force on 26th April 2005.

(2) The repeal by these Regulations of sections 40(8) and 103 of the 1875 Act comes into force only with the coming into force of the repeal of section 32 of that Act by the Fireworks Act 2003(1).

Interpretation

2.—(1) In these Regulations —

“the 1875 Act” means the Explosives Act 1875(2);

“the 1974 Act” means the Health and Safety at Work etc. Act 1974;

“ammonium nitrate blasting intermediate” means non-sensitised mixtures of, primarily, ammonium nitrate and other substances which are not themselves explosive, such as oxidisers and fuels, intended to produce a blasting explosive only after further processing prior to use and classified in accordance with the United Nations Recommendations as falling within Class 5.1;

“black powder” means an intimate mixture, with or without sulphur, of charcoal or other carbon with potassium nitrate or sodium nitrate, whether the mixture is in meal, granular, compressed or pelletised form, being an explosive substance allocated in accordance with the United Nations Recommendations the U.N. nos. 0027 or 0028;

“centre point”, in relation to a store or a building, means the centre point of the store or building determined as far as is reasonably possible;

“Class 1” means Class 1 in respect of explosives or the classification of dangerous goods as set out in the United Nations Recommendations;

“desensitised explosive” means —

- (a) a solid explosive substance which has been wetted with water or alcohol or diluted with one or more other substances; or
- (b) a liquid explosive substance which has been dissolved or suspended in water or one or more other substances,

to form a homogeneous mixture so as to suppress its explosive properties and which, without that treatment, would be classified in accordance with the United Nations Recommendations as falling within Class 1;

(1) 2003 c. 22.

(2) 1875 c. 17 (38 & 39 Vict.); relevant amending instruments are [S.I.1974/1885](#) and [1987/52](#).

“disposes”, in relation to explosives and explosive-contaminated items, means destroying the explosives or explosive-contaminated items or otherwise rendering them harmless;

“the Executive” means the Health and Safety Executive;

“explosive” means —

- (a) any explosive article or explosive substance which would —
 - (i) if packaged for transport, be classified in accordance with the United Nations Recommendations as falling within Class 1; or
 - (ii) be classified in accordance with the United Nations Recommendations as —
 - (aa) being unduly sensitive or so reactive as to be subject to spontaneous reaction and accordingly too dangerous to transport, and
 - (bb) falling within Class 1; or
- (b) a desensitised explosive,

but it does not include an explosive substance produced as part of a manufacturing process which thereafter reprocesses it in order to produce a substance or preparation which is not an explosive substance;

“explosive article” means an article containing one or more explosive substances;

“explosives certificate” has the same meaning as in the Control of Explosives Regulations 1991(3);

“explosive substance” means a substance or preparation, not including a substance or preparation in a solely gaseous form or in the form of vapour, which is —

- (a) capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings; or
- (b) designed to produce an effect by heat, light, sound, gas or smoke, or a combination of these as a result of a non-detonative, self-sustaining, exothermic chemical reaction;

“firearm” has the same meaning as it is given in section 57(1) of the Firearms Act 1968(4);

“fireworks” means the explosive articles allocated in accordance with the United Nations Recommendations any of the U.N. nos. 0333 to 0337;

“harbour” means a harbour which is within the jurisdiction of a harbour authority and includes—

- (a) the areas of water within the jurisdiction of that harbour authority; and
- (b) land within the jurisdiction of, or occupied by, the harbour authority and used in connection with the loading and unloading of ships,

but does not include the areas of water which are within the jurisdiction not only of the harbour authority but also of another harbour authority and which are used primarily by ships using berths within the harbour of that other harbour authority;

“harbour authority” has the same meaning as in the Harbours Act 1964(5);

“hazard type” means any of hazard type 1 explosive, hazard type 2 explosive, hazard type 3 explosive or hazard type 4 explosive;

“hazard type 1 explosive” means an explosive which, as a result of, or as a result of any effect of, the conditions of its storage or process of manufacture, has a mass explosion hazard;

(3) S.I. 1991/1531, to which there are amendments not relevant to these Regulations.

(4) 1968 c. 27.

(5) 1964 c. 40; “harbour authority” is defined in section 57(1).

“hazard type 2 explosive” means an explosive which, as a result of, or as a result of any effect of, the conditions of its storage or process of manufacture, has a serious projectile hazard but does not have a mass explosion hazard;

“hazard type 3 explosive” means an explosive which, as a result of, or as a result of any effect of, the conditions of its storage or process of manufacture, has a fire hazard and either a minor blast hazard or a minor projectile hazard, or both, but does not have a mass explosion hazard;

“hazard type 4 explosive” means an explosive which, as a result of, or as a result of any effect of, the conditions of its storage or process of manufacture, has a fire hazard or slight explosion hazard, or both, with only local effect;

“headquarters” means a headquarters for the time being specified in Schedule 2 to the Visiting Forces and International Headquarters (Application of Law) Order 1999(6);

“Her Majesty’s Forces” means any of the naval, military or air forces of the Crown, whether raised inside or outside the United Kingdom and whether any such force is a regular, auxiliary or reserve force, and includes any civilian employee of the Ministry of Defence attached to those forces;

“licence” means a licence for the manufacture or storage of explosives granted under regulation 13 and includes a varied licence;

“licensee” means a person who has been granted a licence under regulation 13 and includes a person to whom a licence is transferred and a person treated under regulation 21 as being licensed;

“licensing authority” has the meaning assigned to it by Schedule 1;

“local authority” means in relation to —

- (a) the City of London, the Common Council for the City of London;
- (b) an area in the rest of London, the London Borough Council for that area;
- (c) an area where there is a fire and rescue authority, that authority;
- (d) the Isles of Scilly, the Council of the Isles of Scilly;
- (e) an area in the rest of England, the county council for that area or where there is no county council for that area, the district council for that area;
- (f) an area in Scotland, the council for the local government area; and
- (g) an area in Wales, the county council or the county borough council for that area;

“manufacture” includes —

- (a) in relation to explosive articles, their repair, modification, disassembly or unmaking;
- (b) in relation to explosive substances, their reprocessing, modification or adaptation;

but it does not include the packing, unpacking, re-packing, labelling or testing of explosives or the division of an amount of explosives stored in bulk into smaller amounts and the placing of those smaller amounts into containers;

“mine” means an excavation or system of excavations, including all such excavations to which a common system of ventilation is provided, made for the purpose of, or in connection with, the getting, wholly or substantially by means involving the employment of persons below ground, of minerals (whether in their natural state or in solution or suspension) or products of minerals;

“non-sensitised” means giving a negative test result when subjected to Test Series 8 of the Manual of Tests and Criteria, third edition(7), supporting the United Nations Recommendations;

(6) S.I. 1999/1736.

(7) ISBN 92 - 1 - 1390680.

“percussion caps” means items intended for use in small arms ammunition allocated in accordance with the United Nations Recommendations the UN nos. 0044, 0377 or 0378;

“police force”, for the purposes of regulations 3(4)(d) and (6)(b), 5(3)(d) and 27(6), includes—

- (a) the police force known as the British Transport Police Force⁽⁸⁾;
- (b) the special constables appointed as special constables under section 3 of the Special Constables Act 1923⁽⁹⁾ on the nomination of the United Kingdom Atomic Energy Authority⁽¹⁰⁾; and
- (c) the constabulary to be known as the Civil Nuclear Constabulary by virtue of section 52(1) of the Energy Act 2004⁽¹¹⁾;

“preparation” means a mixture of two or more substances or a solution of any substance or substances;

“propellant” means a deflagrating explosive used as a propellant in firearms;

“public consultation zone” means the area around the store or proposed store, or the building where the manufacture of explosives takes place or is proposed to take place, which, from the centre point of the store or building, has a radius equivalent to double the greatest separation distance required by virtue of these Regulations to apply in the case of that store or building;

“pyrotechnic” means an explosive article or substance of a kind designed to produce an effect by heat, light, sound, gas or smoke, or a combination of any of these, as a result of non-detonative, self-sustaining, exothermic chemical reactions;

“quarry” has the meaning assigned to it by regulation 3 of the Quarries Regulations 1999⁽¹²⁾;

“registered” in relation to a person, means a person registered in respect of the storage of explosives under regulation 11 and includes a person treated under regulation 21 as being registered;

“registration” save in regulation 22 and Schedule 4 means registration under regulation 11 and

“certificate of registration” means a certificate issued under regulation 11(3);

“renewal of a licence” or “renewal of a registration” means respectively the granting of a licence or registration to follow a previous licence or registration without any amendment or gap in time.

“separation distance” means the distance between the store or the building in which explosives are, or are to be, manufactured and a building, or other place in or at which people are or are likely to be present either all the time or from time to time;

“ship” includes every description of vessel used in navigation;

“shooters' powder” means —

- (a) black powder,
- (b) smokeless powder, or

(8) Established by section 20 of the Railways and Transport Safety Act 2003 (c. 20) as of 1st July 2004, replacing the British Transport Police Force which comprised constables appointed under section 53 of [British Transport Commission Act 1949](#) (12 & 13 Geo c. xxix).

(9) 1923 c. 11.

(10) The United Kingdom Atomic Energy Authority (“UKAEA”) nominates persons to be special constables under section 3 of the Special Constables Act 1923 (c. 11) as extended by paragraph 1 of the second Schedule to the Emergency Laws (Miscellaneous Provisions) Act 1947 (c. 10), Schedule 3 to the Atomic Energy Authority Act 1954 (c. 32) and Schedule 1, paragraph 4, to the Nuclear Installations Act 1965 (c. 57). The power of this Authority so to nominate special constables is prospectively repealed by the Energy Act 2004, section 197(9) and Schedule 23; section 52(1) of that Act provides, as of 1st March 2005, for the Civil Nuclear Police Authority to secure the maintenance of an efficient and effective constabulary to be known as the Civil Nuclear Constabulary; this constabulary is to replace the special constables nominated by UKAEA.

(11) 2004 c. 20.

(12) S.I. 1999/2024.

(c) any other substance or preparation based on potassium nitrate or nitro cellulose, whether in powder, pelletised or granular form, used, or to be used, as a propellant;

“site” means the whole area under the control of the same person and, for these purposes —

(a) all places adjoining each other under the control of the same person shall be treated as a whole area; and

(b) two or more areas under the control of the same person separated only by a road, railway or inland waterway shall be treated as a whole area;

“small arms ammunition” means the explosive articles allocated in accordance with the United Nations Recommendations the U.N. nos. 0012, 0014 or 0055 which are intended exclusively for use in small arms;

“smokeless powder” means an explosive substance allocated in accordance with the United Nations Recommendations the U.N. nos. 0160 or 0161;

“a store” means a building, enclosed area or metal structure in which explosives are, or are to be, stored;

“substance” means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour;

“U.N. no.” means United Nations Serial Number, that is to say one of the four-digit numbers devised by the United Nations as a means of identification of types of explosives in accordance with the United Nations Recommendations;

“United Nations Recommendations” means the United Nations Recommendations on the Transport of Dangerous Goods (based on those originally prepared by the United Nations Committee of Experts on the Transport of Dangerous Goods considered by the Economic and Social Committee of Experts at its twenty-third session (Resolution 645G (XXIII) of 26 April 1957))(13) as revised or reissued from time to time;

“visiting force” has the same meaning as it does for the purposes of any provision of the Visiting Forces Act 1952(14);

“water-based”, in relation to explosives, means explosives which are based on water and ammonium nitrate and allocated in accordance with the United Nations Recommendations the U.N. no. 0241; and

“wholly-owned subsidiary” has the same meaning as it is given by section 736(2) of the Companies Act 1985(15).

(2) For the purposes of these Regulations, and subject to regulation 3(7), the manufacture or storage of ammonium nitrate blasting intermediate shall be deemed to be the manufacture or storage of an explosive.

(3) For the purposes of measuring of any distance required to be a separation distance by virtue of these Regulations, the distance to be measured shall be the horizontal distance between the outside edge of the store or the building in which the explosives are, or are to be, manufactured and the nearest point of the building or other place which the separation distance applies to.

(4) Any reference in these Regulations to the quantity of an explosive shall be construed as a reference to the net mass of explosive substance and, in the case of any pyrotechnic article, the net mass of the explosive shall, for the purposes of these Regulations, be deemed to be one quarter of the gross mass of the pyrotechnic article or, where the manufacturer, importer or supplier specifies a different net mass amount on the pyrotechnic article, its packaging or a document accompanying the pyrotechnic article, that amount.

(13) Current edition (1997): ISBN 92-1-139057 5.

(14) 1952 c. 67.

(15) 1985 c. 6; section 736 is substituted by the Companies Act 1989 (c. 40), section 144(1).

(5) For the purposes of these Regulations and subject to paragraph (6), “storage” in relation to explosives means their possession for any period after their manufacture, save for —

- (a) any period during which they are being prepared at any place for use at that place; and
- (b) any period during which they are being transported beyond the place where they are stored.

(6) Subject to paragraph (7), where, during any transport of any explosive beyond the place where it is stored, that explosive is, or is to be, kept at any place for more than twenty-four hours, that keeping shall be treated as storage within the meaning of these Regulations and the provisions of these Regulations shall apply to that keeping accordingly, notwithstanding any application of the provisions of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004⁽¹⁶⁾ to that transporting.

(7) Paragraph (6) shall not apply to explosives in respect of which there is in existence an explosives licence granted under regulation 36(1) of the Dangerous Substances in Harbour Areas Regulations 1987⁽¹⁷⁾.

(8) The performance of any function given to the chief officer of police under these Regulations may be delegated by him, to such an extent and subject to such conditions as he may specify —

- (a) to a member of the police force in respect of which he is the chief officer of police;
- (b) to a person employed to assist that police force as mentioned in section 15 of the Police Act 1996⁽¹⁸⁾ (civilian employees); or
- (c) to a person employed or appointed in relation to that police force as mentioned in section 9 of the Police (Scotland) Act 1967⁽¹⁹⁾ (civilian employees),

and any such delegation shall be made in writing by that chief officer of police.

(9) For the purposes of these Regulations, save for paragraph 45(3)(f) of Schedule 5, “chief officer of police” —

- (a) in relation to England and Wales, has the same meaning as in section 101(1) of the Police Act 1996; and
- (b) in relation to Scotland, means the person appointed to the office of chief constable pursuant to section 4 of the Police (Scotland) Act 1967⁽²⁰⁾; and

in relation to an area, means the chief officer of police for that area and includes a member of a police force to whom the performance of any of his functions under these Regulations has been delegated pursuant to paragraph (8).

(10) Any reference in the definitions in this regulation of “desensitised explosive”, “explosive substance”, “pyrotechnic” or “substance” to liquid, gas, gaseous form or vapour, means, respectively, liquid, gas, gaseous form or vapour at normal atmospheric temperature and pressure.

Application

3.—(1) Except as provided for in paragraph (8), these Regulations shall apply —

- (a) in Great Britain; and

⁽¹⁶⁾ S.I. 2004/568.

⁽¹⁷⁾ S.I. 1987/37, to which there are amendments not relevant to these Regulations.

⁽¹⁸⁾ 1996 c. 16; section 15 is amended by the Greater London Authority Act 1999 (c. 29) section 325 and Schedule 27, paragraph 74(1) to (4); section 101(1) is amended by the Greater London Authority Act 1999, sections 312(1)(a) and (b), (2) and (3), 423 and Schedule 34, Part VII and the Anti-terrorism, Crime and Security Act 2001, section 101, Schedule 7, paragraphs 20 and 27.

⁽¹⁹⁾ 1967 c. 77; section 9 is amended by the Police and Magistrates' Courts Act 1994 (c. 29), section 49, and by the Criminal Justice (Scotland) Act 2003 (asp7), section 76(1) to (3).

⁽²⁰⁾ 1967 c. 77; section 4(3) is repealed by the Local Government (Scotland) Act 1973, sections 146(4), 237(1) and Schedule 29.

- (b) outside Great Britain as sections 1 to 59 and 80 to 82 of the 1974 Act apply by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2001(21).
- (2) Regulations 4 to 25 shall not apply to —
 - (a) any activity to which Part IX of the Dangerous Substances in Harbour Areas Regulations 1987 (explosives) applies;
 - (b) any activity to which the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004 apply, apart from any activity which is to be treated as storage by virtue of regulation 2(6);
 - (c) the master or crew of a ship or to the employer of such persons in respect of the normal shipboard activities of a ship's crew which are carried out solely by the crew under the direction of the master and in this sub-paragraph the reference to the normal shipboard activities of a ship's crew shall include —
 - (i) the construction, reconstruction or conversion of a ship outside, but not inside, Great Britain; and
 - (ii) the repair of a ship save repair when carried out in dry dock;
 - (d) the transport of explosives by air;
 - (e) an offshore installation within the meaning of regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995(22);
 - (f) a mine which is, for the time being, solely used for, or in connection with, the getting of minerals or ensuring the safety of another mine.
- (3) Regulations 8 and 10 shall not apply to —
 - (a) a constable in the execution of his duties;
 - (b) an inspector appointed under section 19 of the 1974 Act in the performance of his functions;
 - (c) a customs officer in the performance of his functions.
- (4) Regulation 10 shall not apply to —
 - (a) the Executive;
 - (b) a local authority;
 - (c) the Commissioners of Customs and Excise;
 - (d) a police force; and
 - (e) a person employed as mentioned in section 15 of the Police Act 1996 (civilian employees) or section 9 of the Police (Scotland) Act 1967 (employees other than constables) who, in either case, is duly authorised in writing by the chief officer of police to store explosives.
- (5) Regulations 5 and 9 to 21 shall not apply to the manufacture or storage of explosives, at any site under the control of the Secretary of State for Defence, or held for the purposes of a visiting force or headquarters, under a scheme approved by him which —
 - (a) provides for their safe manufacture and storage; and
 - (b) prescribes —
 - (i) separation distances, or
 - (ii) a combination of separation distances and other safety measures,

(21) S.I. 2001/2127.

(22) S.I. 1995/738, amended by S.I. 2002/2175.

which are designed to ensure a standard of safety which is equivalent to that ensured by the separation distances prescribed by regulation 5 and Schedule 2.

- (6) Regulations 5 to 21 and 24 shall not apply to explosives —
- (a) seized by a constable in the execution of his duties,
 - (b) received by a police force from a member of the public; or
 - (c) which, for reasons of public safety or protection of property, are undergoing ordnance disposal by —
 - (i) persons under the direction of a member of Her Majesty's Forces or civilian employees of the Ministry of Defence authorised in writing by the Secretary of State for Defence to carry out ordnance disposal; or
 - (ii) persons under the direction of a constable or authorised in writing by the chief officer of police to carry out ordnance disposal.
- (7) In relation to the application of these Regulations to ammonium nitrate blasting intermediate by virtue of regulation 2(2), regulations 10 and 11 shall not apply to the storage of ammonium nitrate blasting intermediate.
- (8) To the extent that these Regulations concern the importation of pyrotechnics into the United Kingdom, they shall extend to Northern Ireland⁽²³⁾.

PART 2

SAFETY REQUIREMENTS

Fire and explosion measures

- 4.—(1) Any person who manufactures or stores explosives shall take appropriate measures —
- (a) to prevent fire or explosion;
 - (b) to limit the extent of fire or explosion including measures to prevent the spreading of fires and the communication of explosions from one location to another; and
 - (c) to protect persons from the effects of fire or explosion.

(2) For the purposes of paragraph (1), the reference to the manufacture or storage of explosives shall be deemed to include a reference to any handling, on-site transport and testing of explosives which is associated with that manufacture or storage.

(3) In this regulation, “fire or explosion” means unplanned fire or explosion at the site of manufacture or storage.

Separation distances

5.—(1) Subject to paragraphs (2) and (3), every person who stores explosives at a site shall ensure that the relevant separation distance prescribed by Schedule 2 is maintained between a store and a building or other place not within that site to which that Schedule applies.

(2) Paragraph (1) shall not apply to desensitised explosives or explosives which are stored under a licence granted by the Executive in cases where the assent of the local authority was required pursuant to regulation 13(3).

(23) By virtue of section 84(1) of the Health and Safety at Work etc. Act 1974, Parts I and IV of the Act extend to Northern Ireland “so far as may be necessary to enable regulations under section 15 to be made and operate for the purpose mentioned in paragraph 2 of Schedule 3”, which includes, as a subject matter for such regulations, prohibiting the import into the United Kingdom of articles or substances of any specified description.

(3) Paragraph (1) shall not apply to the storage of explosives where the total quantity of explosives stored at a site, excluding, in the case of sub-paragraph (b), any amount of small arms ammunition, does not exceed —

- (a) 100 grams;
- (b) 30 kilograms of shooters' powder and 300 grams of percussion caps;
- (c) 200 detonators and —
 - (i) 5 kilograms of water-based explosive and detonating cord; or
 - (ii) 5 kilograms of water-based explosive or detonating cord; or
- (d) in the case of explosives kept by a police force —
 - (i) 4 kilograms of explosive kept for the purpose of training dogs used for the detection of explosives; and
 - (ii) 30 kilograms of explosives kept for the purposes of ordnance disposal;

and the explosives are stored in a safe and suitable place with all due precautions for public safety.

(4) Every person to whom the duty under paragraph (1) applies shall ensure that the separation distance referred to in paragraph (5) is maintained between a store and any building on the site in which the store is situated which is used either for accommodation or for work, but not including any building used for work which is normally unoccupied by any person and is not a store.

(5) The separation distance referred to in paragraph (4) is that which is equal to half the relevant separation distance determined in accordance with Schedule 2.

(6) Every person who, in a case to which paragraph (3) of regulation 13 applies, is granted a licence to manufacture or store explosives shall ensure that the local planning authority in whose area the manufacture or storage takes place is, within 28 days of the licence being —

- (a) granted; or
- (b) varied in a way which affects the separation distances required to be maintained,

given a plan of the site and its immediate surrounding area showing the separation distances required to be maintained pursuant to the licence or varied licence.

(7) “Local planning authority” in paragraph (6), in relation to an area —

- (a) in England and Wales has the same meaning as it has in Part I of the Town and Country Planning Act 1990⁽²⁴⁾ save that, where there is more than one local planning authority, it means the district planning authority for the district;
- (b) in Scotland means the council for the local government area.

Disposal of explosives and decontamination of explosive-contaminated items

6.—(1) Any person who disposes of explosives shall ensure, so far as is reasonably practicable, that they are disposed of safely.

(2) Any person who decontaminates explosive-contaminated items shall ensure, so far as is reasonably practicable, that they are decontaminated safely.

Employment of young persons

7. No person who manufactures or stores explosives shall permit a person between the age of 16 years and 18 years to work in that manufacture or storage except under appropriate supervision.

(24) 1990 c. 8; Part I was amended by the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) section 187(1) and Schedule 21, paragraphs 28 and 29, the Local Government (Wales) Act 1994 (c. 19) sections 18(2) to (6), 19(1) and (4) and 66(8) and Schedule 18, and the Environment Act 1995 (c. 25) sections 67(1), 78 and 120(1) and (3) and Schedule 10, paragraph 32(1) and (2) and Schedule 24.

Unauthorised access

- 8.**—(1) No person shall —
- (a) without the permission of the occupier, enter —
 - (i) any store in or at a site;
 - (ii) any building used for the manufacture of explosives in or at a site, or
 - (iii) any site with clearly marked boundaries at which explosives are stored or manufactured,operating under a licence or registration; or
 - (b) having so entered, refuse to leave that site when requested to do so by a constable or the occupier, his employee or agent.
- (2) Where following a request referred to in paragraph (1)(b) the person who has entered that place without permission refuses to leave that site, a constable or the occupier, his employee or agent may remove that person from the site using reasonable force, if necessary.
- (3) “Enter” for the purposes of this regulation, includes entering onto a roof of a store or a building in which explosives are manufactured.

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(25) 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(26) (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,

(26) 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.

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 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.

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(27).

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

(27) 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.

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.

(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(28) 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(29); 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(30); 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.

(28) S.I. 1967/1485.

(29) 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.

(30) S.I. 1979/1378.

(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 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(31) 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(32)) 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(33) shall continue in force.

(19) For the purposes of this regulation —

- (a) “deemed licence” means —

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

(32) S.I. 1993/2714.

(33) Rev. VII, p 39.

- (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
 - (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.

Signed by authority of the Secretary of State

4th April 2005

Chris Pond
Parliamentary Under-Secretary of State
Department for Work and Pensions