

EXPLANATORY MEMORANDUM TO
THE MANUFACTURE AND STORAGE OF EXPLOSIVES AND THE HEALTH AND
SAFETY (ENFORCING AUTHORITY) (AMENDMENT AND SUPPLEMENTARY
PROVISIONS) REGULATIONS 2007

2007 No. 2598

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. The Manufacture and Storage of Explosives and the Health and Safety (Enforcing Authority) (Amendment and Supplementary Provisions) Regulations 2007 (“the Amending Regulations”) amend the Manufacture and Storage of Explosives Regulations 2005 (S.I. 2005/1082) (“the 2005 Regulations”) and the Health and Safety (Enforcing Authority) Regulations 1998 (S.I. 1998/494) (“the 1998 Regulations”). The amendments correct errors in relation to the meaning of “local authority” for the purposes of the 2005 Regulations and also tie the meaning of “local authority” for the purposes of regulation 4(7) to (10) of the 1998 Regulations to that in the 2005 Regulations. The Amending Regulations also include supplementary provisions for matters linked to the amendments.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. See Legislative Background.

3.2. The Amending Regulations also correct two drafting errors in the 2005 Regulations which were reported by Joint Committee on Statutory Instruments in its 4th Report of Session 2005 – 2006. A copy of the relevant sections of the report is attached at Annex 1.

4. Legislative Background

4.1. Schedule 1 to the 2005 Regulations defines “licensing authority” for the purposes of those Regulations. Under that Schedule, a “local authority” is a licensing authority. Regulation 2(1) of those Regulations defines “local authority” and, in relation to England, a fire and rescue authority is included as a local authority.

4.2. The 2005 Regulations provided a new regime for the licensing of the manufacture and storage of explosives, based upon and replacing many of the provisions of the Explosives Act 1875. In England, the Explosives Act 1875 was enforced by HSE in respect of the manufacture and storage of larger quantities of explosives and a combination of county councils and London boroughs in relation to the storage of smaller amounts of explosives. However, [for reasons that go back to local government reorganisation in the mid 1980s, in the old metropolitan counties (West Midlands, Greater Manchester, Merseyside, Northumberland, Tyne and Wear, West Yorkshire and South Yorkshire) these responsibilities were carried out by the fire and civil defence authorities as they were then known.

4.3. In 2004, changes made by the Civil Contingencies Act 2004 (c. 36) meant that those old fire and civil defence authorities became fire and rescue authorities (referred to as “metropolitan county fire and rescue authorities”) and the definition of “local authority” in the 2005 Regulations was intended to reflect this. However, the omission of the words “metropolitan county” before “fire and rescue authority” in

that definition meant that enforcement and licensing responsibilities were inadvertently extended to all fire and rescue authorities and not just those metropolitan county ones. This extension (and knock-on effects on the licensing role for county councils and district councils) was not intended and has only recently been appreciated. This has created a particular problem in areas where there is a combined fire and rescue authority which is a separate organisation from the county council. The mistake has led to confusion and errors in relation to explosives licensing and registration and the amendments seek to remedy this and to restore the definition of “local authority” to what was intended.

- 4.4 On consequence of this error relates to the local authority assent procedure under regulation 13(3) of the 2005 Regulations. This requires that the local authority should give its assent before the Health and Safety Executive (“HSE”) may itself grant an explosives licence. There are 12 cases in which HSE has granted a licence under the 2005 Regulations where it received the assent of the county council when, because of the effect of the error in the definition of “local authority”, the assent of the fire and rescue authority was required. These licences were therefore improperly granted. To provide for the legal soundness of such licences for the future, the amendments include provision ensuring that such licences will have effect as if the correct assent had been obtained.
- 4.5 The 1998 Regulations provide for the dividing up of the enforcement of health and safety legislation between HSE and local authorities. Those Regulations include their own definition of “local authority” for those purposes. That definition is not the same as that in the 2005 Regulations and so a local authority under the 1998 Regulations might not also be a licensing authority under the 2005 Regulations. Regulation 4(7) to (11) of the 1998 Regulations make specific provision for the enforcement of the 2005 Regulations. The meaning of local authority for that enforcement should reflect the definition of those words under the 2005 Regulations, as it the local authorities under the 2005 Regulations which will have the licensing role. The Amending Regulations accordingly amend regulation 4(11) to achieve this.

5. Extent

- 5.1 The Amending Regulations apply to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Background: size and nature of the problem

- 7.1 Local authority associations were consulted on the 2005 Regulations and it was agreed that those Regulations should retain the mix of enforcement authorities which existed under the old Explosives Act 1875 regime. As a result, enforcement responsibility was left with the fire and civil defence authorities in the metropolitan counties. In other areas of England, outside London, the enforcement and licensing responsibilities were allocated to the county councils where these still existed or district councils in areas where they had taken over the functions of county councils following reorganisation of local government. (In Wales and Scotland there is only one tier of local government). This view was supported by the local government associations and other stakeholders.

- 7.2 The problem created by the error in the definition of “local authority” in the 2005 Regulations affects about 60 local authorities. It is very difficult to estimate the number of licences and registrations that are affected. The number could be several thousand. However, the vast bulk of these would in any event come up for renewal in October and therefore will be replaced by renewal licences or registrations granted by a local authority consistent with the original policy intention. The regulations provide for the small number that do not, by ensuring that they will have effect as if granted by the correct authority.

Objectives

- 7.3 The objectives of the amending regulations are simply to correct the original omission and to remedy the consequences of that omission both for holders of licences and registrations granted under the regulations and for the local authorities with responsibility for their enforcement.

Consultation

- 7.4 Due to the need to take urgent action in time for the forthcoming firework season, it was not possible to have a full 12-week formal consultation. However, the original regulations were subject to extensive consultation and the amending regulations are intended to ensure that the original regulations reflect the outcome of that consultation.
- 7.5 The affected authorities have been informed of the problem and given the opportunity to comment on the amending regulations. There have also been consultations with the industry, the Chief Fire Officers Association, and with the local authority associations.

Guidance

- 7.6 HSE intend to publish a commentary (see Annex 2) on the effect of the amending regulations.

Consolidation

- 7.7 At this stage there are no plans to produce consolidated regulations.

Importance

- 7.8 The amending regulations are of importance to anyone wanting to store fireworks in the affected local authority areas, as well as to the affected authorities themselves. Without the amendment there is a real risk of disruption in both the licensing of storage of fireworks and enforcement of the 2005 Regulations.

8. Impact

- 8.1 The amending regulations are cost-neutral in that they simply ensure that the original regulations operate as intended. They do not therefore involve additional work or expense either for those with duties under the 2005 Regulations or for local authorities.
- 8.2 An Impact Assessment pro-forma is attached at Annex 3.

9. Contact

Andy Miller at the Health and Safety Executive can answer any queries regarding these Regulations:

tel: 0207 717 6345 email: andy.miller@hse.gsi.gov.uk

**Extracts from the Joint Committee on Statutory Instruments Fourth Report of Session 2005-6
(HL Paper 46, HC 35-iv – page 7)**

4 S.I. 2005/1082: report for defective drafting

Manufacture and Storage of Explosives Regulations 2005 (S.I. 2005/1082)

4.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted.

4.2 Regulation 2(1) defines “registration” as meaning, save in regulation 22 and Schedule 4, registration under regulation 11. In fact, the expression has the same meaning in those provisions and the italicised words ought not to have been included. Regulation 9(2)(a) refers to “regulation 7 of those Regulations” but does not identify which Regulations they are. Paragraph 22 of Schedule 5, which amends regulations made in 1906, contains a subparagraph(a) but no further sub-paragraphs, giving the misleading impression that something has been omitted by mistake.

4.3 In a memorandum printed at Appendix 5[below], the Department for Work and Pensions acknowledges all these errors and undertakes to correct the first two at the earliest opportunity. The Committee accordingly reports these Regulations for defective drafting, acknowledged by the Department.

S.I. 2005/1082: memorandum from the Department for Work and Pensions

Manufacture and Storage of Explosives Regulations 2005 (S.I. 2005/1082)

1. By letter dated 12th July 2005, the Joint Committee on Statutory Instruments has requested a Memorandum on the following points:

(1) What meaning does “registration” have in regulation 22 and Schedule 4 (see the definition of that expression in regulation 2(1))?

(2) The reference to “those Regulations” in regulation 9(2)(a) is presumably intended to be a reference to the Control of Explosives Regulations 1991. Why is this not made clear?

(3) In paragraph 22 of Schedule 5, has something been omitted after sub-paragraph (a)?

2. On the first point, “registration” in regulation 22 and Schedule 4 should mean registration under regulation 11. The words “save in regulation 22 and Schedule 4” in the definition of “registration” in regulation 2(1) should have been removed from that definition.

3. On the second point, the reference to “those Regulations” is indeed a reference to the Control of Explosives Regulations 1991 and this should have been made clear in regulation 9(2)(a).

4. On the third point, nothing has been omitted after sub-paragraph (a) in paragraph 22 of Schedule 5. It was unnecessary to have created this sub-paragraph as the amendment could have been included in paragraph 22 without any sub-paragraph.

5. The Department will amend the Regulations at the earliest opportunity for the first two points.

14th July 2005

The Manufacture and Storage of Explosives and the Health and Safety (Enforcing Authority) (Amendment and Supplementary Provisions) Regulations 2007 - commentary

| Regulation 2 amendments to the Manufacture and Storage of Explosives Regulations 2005 (“the 2005 Regulations”) | |
|---|--|
| <p>Regulation 2(1) – amendment to the Manufacture and Storage of Explosives Regulations 2005</p> <p>In regulation 2(1) —</p> <p>...in the definition of “local authority”, in paragraph (c), before “fire and rescue authority” insert “metropolitan county”; and</p> | <p>This amendments rectifies the original omission of the words ‘metropolitan county’</p> <p>The amended regulation would read:</p> <p>“local authority” means in relation to —</p> <p>(a) the City of London, the Common Council for the City of London;</p> <p>(b) an area in the rest of London, the London Borough Council for that area;</p> <p>(c) an area where there is a metropolitan county fire and rescue authority, that authority;</p> <p>(d) the Isles of Scilly, the Council of the Isles of Scilly;</p> <p>(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;</p> <p>(f) an area in Scotland, the council for the local government area; and</p> <p>(g) an area in Wales, the county council or the county borough council for that area;</p> |
| <p>In regulation 2(1) —</p> <p>...in the definition of “registration”, omit “save in regulation 22 and Schedule 4</p> | <p>The amended regulation would read</p> <p>“registration” means registration under regulation 11 and “certificate of registration” means a certificate issued under regulation 11(3);</p> <p>This amendment meets a commitment made to the Joint Committee on Statutory Instruments.</p> |
| <p>In regulation 9, in paragraph (2)(a), for “those Regulations” substitute “the Control of Explosives Regulations 1991”.</p> | <p>This amendment also meets a commitment made to the Joint Committee on Statutory Instruments.</p> |
| Regulation 3: Amendments to the Health and Safety (Enforcing Authority) Regulations 1998 (“the 1998 Regulations”) | |
| <p>Regulation 4(11) of the 1998 Regulations is amended by the insertion of “local authority,” after “licensing authority,”.</p> | <p>This amendment ensures that the definition of local authority in the 2005 Regulations is used for the purposes of regulation 4(7) to (1) of the 1998 Regulations.</p> |

| Regulation 4: Supplementary provisions | |
|--|---|
| <p>(1) Paragraph (2) applies in the case of licences granted by the Executive under regulation 13 of the 2005 Regulations before the commencement of these Regulations to which the assent of a fire and rescue authority was required pursuant to regulation 13(3) but the assent of a local authority other than a fire and rescue authority was obtained instead.</p> <p>(2) Where this paragraph applies, the licence granted shall have effect after the commencement of these Regulations as if the assent of the relevant fire and rescue authority had been duly obtained.</p> | <p>The 2005 Regulations require that the local authority should give its assent to most licences granted by HSE. The omission from the definition of local authority means that in areas where there is a combined fire authority, the assent of that authority is required. There have been 10 licences granted by HSE since 2005 where the relevant county or district council gave its assent when that assent should have been given by the fire and rescue authority. This provision will ensure that those licences have effect as if the correct assent had been obtained.</p> |
| <p>(3) Paragraph (4) applies in the case of a licence or registration granted by a local authority other than a fire and rescue authority under, respectively, regulation 13 and 11 of the 2005 Regulations before the commencement of these Regulations, where the authority which had the power to grant the licence or registration was the fire and rescue authority instead.</p> <p>(4) Where this paragraph applies the licence or registration shall have effect after the commencement of these Regulations as if it had been granted by the fire and rescue authority.</p> | <p>This provision will ensure that any licences granted by county and district councils which continue after the 1 October, will have effect as if granted by the correct authority..</p> |
| <p>(5) In respect of a site in relation to which a person has been granted such a licence or registration as is referred to in paragraph (3), regulation 4(7)(a) of the 1998 Regulations shall have effect as if it provided that the enforcing authority shall be the local authority which, before the commencement of these Regulations, granted the licence or registration.</p> | <p>Under the 1998 Regulations, the authority which has the power to issue licences or registrations is also the enforcing authority for the 2005 Regulations. This regulation ensures that where a county or district council had granted a licence or registration, instead of a fire and rescue authority, it will be the enforcing authority for the 2005 Regulations.</p> |
| <p>(6) Where before the commencement of these Regulations a fire and rescue authority, other than a metropolitan county fire and rescue authority, was an enforcing authority for the purposes of regulation 4(7) of the 1998 Regulations, the county council or, if there is none, the district council shall be the enforcing authority in place of the fire and rescue authority in relation to the matters referred to in sub-paragraphs (a) to (c) of regulation 4(7) of the 1998 Regulations in the area of that county or district council, as the case may be.</p> | <p>This provision is to ensure that in cases where a fire and rescue authority had granted a licence or registration, that the county council or district council would take over enforcement responsibilities from the 1 October</p> |

Summary: Intervention & Options

Department /Agency:
**Health and Safety
Executive**

Title:
**Impact Assessment of The Manufacture and Storage
of Explosives and the Health and Safety (Enforcing
Authority) (Amendment)**

Stage: Final Proposal

Version: Final

Date: 30/8/2007

Related Publications:

Available to view or download at:

<http://www.hse.gov.uk/ria/index.htm>

Contact for enquiries: Andy Miller HSE

Telephone: 020 7717 6345

What is the problem under consideration? Why is government intervention necessary?

The regulations are intended to correct an omission in the Manufacture and Storage of Explosives Regulations 2005 (SI 2005/1082))

What are the policy objectives and the intended effects?

The intention when the regulations were drafted was to give enforcement responsibilities to the metropolitan county fire and rescue authorities and in other areas outside London to give them to the county council or unitary authority. However, the words 'metropolitan county' were omitted from the definition of local authority with the effect that the regulations gave enforcement and licensing responsibilities to fire and rescue authorities including combined fire and rescue authorities. The amendment is intended to give effect to the original policy decision.

What policy options have been considered? Please justify any preferred option.

The other options would be for the combined fire and rescue authorities to undertake the enforcement and licensing functions under the regulations themselves, or for them to arrange for the relevant local authorities to carry out the work on their behalf. This option would bring with it additional one-off and continuing costs. It would also not address the issue of licences and registrations granted in the affected areas which are invalid. Holders of these licences would be forced to reapply for their licences and registrations with the additional costs this would involve..

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

We intend to review the original regulations in 2010.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Bill McKenzie (Lord McKenzie of Luton) Date: 5th September 2007

Summary: Analysis & Evidence

| | |
|--------------------------------------|---|
| Policy Option: Final proposal | Description: Costs and benefits of the amending regulations and supplementary provisions |
|--------------------------------------|---|

| | | | | |
|--|---|--|------------------------|-----|
| COSTS | ANNUAL COSTS | Description and scale of key monetised costs by 'main affected groups' The amending regulations are simply to amend an omission in the existing regulations. | | |
| | One-off (Transition) Yrs | | | |
| | £ 0 | | | |
| | Average Annual Cost (excluding one-off) | | | |
| | £ 0 | | Total Cost (PV) | £ 0 |
| Other key non-monetised costs by 'main affected groups' | | | | |

| | | | | |
|---|--|--|---------------------------|-----|
| BENEFITS | ANNUAL BENEFITS | Description and scale of key monetised benefits by 'main affected groups' | | |
| | One-off Yrs | | | |
| | £ 0 | | | |
| | Average Annual Benefit (excluding one-off) | | | |
| | £ 0 | | Total Benefit (PV) | £ 0 |
| Other key non-monetised benefits by 'main affected groups' | | | | |

Key Assumptions/Sensitivities/Risks

| | | | |
|-----------------|-------------------|----------------------------------|--|
| Price Base Year | Time Period Years | Net Benefit Range (NPV) £ | NET BENEFIT (NPV Best estimate) £ |
|-----------------|-------------------|----------------------------------|--|

| | | | | |
|---|----------------------|------------|-------------|------------|
| What is the geographic coverage of the policy/option? | Great Britain | | | |
| On what date will the policy be implemented? | 1 October 2007 | | | |
| Which organisation(s) will enforce the policy? | Local authorities | | | |
| What is the total annual cost of enforcement for these organisations? | £ no additional cost | | | |
| Does enforcement comply with Hampton principles? | Yes | | | |
| Will implementation go beyond minimum EU requirements? | N/A | | | |
| What is the value of the proposed offsetting measure per year? | £ 0 | | | |
| What is the value of changes in greenhouse gas emissions? | £ 0 | | | |
| Will the proposal have a significant impact on competition? | No | | | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro 0 | Small 0 | Medium 0 | Large 0 |
| Are any of these organisations exempt? | No | No | N/A | N/A |

| | | | |
|---|-----|-----------------------|-----|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase - Decrease) | |
| Increase of | £ 0 | Decrease | £ 0 |
| | | Net Impact | £ 0 |

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

It was agreed, after consultation with the local authority associations and other stakeholders, that the Manufacture and Storage of Explosives Regulations (MSER) should retain the mix of enforcement authorities which had existed under the old Explosives Act 1875 regime. As a result, enforcement responsibility was left with the fire and civil defence authorities in the metropolitan counties. In other areas of England, outside London, the enforcement and licensing responsibilities were allocated to the county councils where these still existed, or district councils in areas where they had taken over the functions of county councils following reorganisation of local government. (In Wales and Scotland there is only one tier of local government).

An error in the definition of local authority has meant that in about 60 areas of England, the enforcement responsibilities were allocated to the fire and rescue authority rather than to the relevant local authority. This error has only recently come to light and in the period since MSER came into force the local authorities in these areas have been carrying out the functions which they believed they held – the functions which it had been intended they should discharge.

The amending regulations will correct the original error. They will not therefore result in additional burdens either for local authorities or for stakeholders, but simply ensure that local authorities have the powers to carry out work they have already been doing.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

| Type of testing undertaken | <i>Results in Evidence Base?</i> | <i>Results annexed?</i> |
|----------------------------|----------------------------------|-------------------------|
| Competition Assessment | Yes | Yes |
| Small Firms Impact Test | Yes | Yes |
| Legal Aid | Yes | Yes |
| Sustainable Development | Yes | Yes |
| Carbon Assessment | Yes | Yes |
| Other Environment | Yes | Yes |
| Health Impact Assessment | Yes | Yes |
| Race Equality | Yes | Yes |
| Disability Equality | Yes | Yes |
| Gender Equality | Yes | Yes |
| Human Rights | Yes | Yes |
| Rural Proofing | Yes | Yes |

Annexes

Competition –

There are no implications for competition

Small Firms Impact Test –

The proposals create no costs or burdens for small firms

Legal Aid

Not applicable – the proposals do not create new criminal sanctions or civil penalties

Sustainable development

The proposals have no implications for sustainable development.

Environmental Impact

The policy will not:

- lead to a change in the emission of greenhouse gases;
- be vulnerable to the predicted effects of climate change;
- impact significantly on air quality;
- involve a material change to the appearance of the landscape or townscape;
- change either the degree of water pollution or levels of abstraction of water or exposure to flood risk;
- disturb or enhance habitat or wildlife;
- affect the number of people exposed to noise or the levels to which they are exposed

Health Impact Assessment

The policy will have no significant impact on human health by virtue of its effects on the following wider determinants of health: income; crime; environment; transport; housing; education; employment; agriculture; or social cohesion

The policy will have no significant impact on any of the following lifestyle related variables: physical activity; diet; smoking, drugs, or alcohol use; sexual behaviour; accidents and stress at home or work

The policy will not impact on any of the variables that influence the probability of an individual becoming more or less healthy.

The policy will not result in a significant demand on any of the following health and social care services: primary care; community services; hospital care; need for medicines; accident or emergency attendances; social services; a

health protection and preparedness response; likely contacts with health and social service provision.

Race Equality Impact Assessment

The consequences of the policy will not differ according to people's racial group, for example, because they have particular needs, experiences or priorities?

There is no reason to believe that people could be affected differently by the proposed policy, according to their racial group, for example in terms of access to a service, or the ability to take advantage of proposed opportunities.

There is no evidence that any part of the proposed policy could discriminate unlawfully, directly or indirectly, against people from some racial groups.

There is no evidence that people from some racial groups may have different expectations of the policy in question.

The proposed policy is unlikely to affect relations between certain racial groups, for example because it is seen as favouring a particular group or denying opportunities to another.

The proposed policy likely to damage relations between any particular racial group (or groups) and HSE.

The policy is not relevant to the race equality duty.

Carbon assessment –

The proposals have no significant impact on emissions of greenhouse gases

Disability Impact Assessment

This policy has no impact on disability equality.

Gender Impact Assessment

The proposals will not affect man and women differently, or have any impact positive or negative on life chances or on gender stereotyping.

Human Rights –

The proposals will not engage with anyone's convention rights.

Rural proofing

The proposals will not have any significant differential impact in rural areas