EXPLANATORY MEMORANDUM TO

THE EXPLOSIVES REGULATIONS 2014

2014 No. 1638

AND

THE ACETYLENE SAFETY (ENGLAND AND WALES AND SCOTLAND) REGULATIONS 2014

2014 No. 1639

1. This explanatory memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instruments

2.1. The Regulations are primarily a consolidation of, parts of one Act and 31 legislative instruments regulating explosives and 11 legislative instruments regulating acetylene. In addition to the consolidation of existing regulations there are also new prohibitions, amendments and safety requirements to modernise, simplify and improve the consistency of approach to the regulation of these materials. These changes are explained in paragraph 7 below.

2.2. The inherently hazardous nature of explosives and compressed acetylene gas (and acetylene in other forms), means they can pose a high risk to those working with them and others who may be affected by an incident involving them. This potential for high risk warrants specific regulations to ensure risks are controlled and reduced to an acceptable level.

2.3. The Explosives Regulations 2014 (ER 2014) provide for the regulation of the manufacture, storage and acquisition of explosives by means of a series of defined duties, the granting of approvals and a system of licensing.

2.4. The Acetylene Safety (England and Wales and Scotland) Regulations 2014 (ASR 2014) regulate the manufacture, importation, sale, use and transportation of liquid, solid and compressed acetylene gas as well as the compression of that gas and the filling of cylinders with this gas by means of a series of defined duties, safety and licensing requirements.

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

3.1. None.

4. Legislative Context

4.1. These Regulations have been created as part of a general policy objective to consolidate sector specific health and safety legislation. The consolidation of legislation was identified in Professor Löfstedt's November 2011 review 'Reclaiming health and safety for all: An independent review of health and safety legislation': https://www.gov.uk/government/publications/reclaiming-health-and-safety-for-all-lofstedt-report , which also endorsed the desirable benefits of such a process with the aim of reducing the regulatory burden on business.

4.2. The underpinning legislation for both health and safety law in the acetylene sector and certain requirements in the explosives sector was the Explosives Act 1875 (the "1875 Act"). This link is being broken by the repeal of certain provisions of the 1875 Act and by the Regulations now covering health and safety matters. The Health and Safety at Work etc. Act 1974 ("HSWA") which may be found at: http://www.legislation.gov.uk/ukpga/1974/37 is the legislation under which the Regulations are mainly made as it also applies to these sectors. HSWA is the primary piece of legislation covering occupational health and safety in Great Britain. It ensures the right precautions are taken to reduce the risks of workplace dangers and provide a safe working environment for those who could be affected by certain activities and most pertinently; '*controlling, the keeping of explosives or highly flammable or otherwise dangerous substances and generally preventing the unlawful acquisition, possession and use of such substances..*' (Section 1(1) (c) of HSWA).

5. Territorial Extent and Application

5.1. The Regulations apply to Great Britain. However, The Explosives Regulations 2014 (ER 2014) extend to Northern Ireland in relation to the application of certain of its provisions relating to the importation of explosives.

5.2. Apart from certain regulations referred to in regulation 3 of the ER 2014 and regulation 1 of the The Acetylene Safety (England and Wales and Scotland) Regulations 2014 (ASR 2014), the Regulations apply outside Great Britain as sections 1 to 59 and 80 to 82 of the Health and Safety at Work etc. Act 1974 (the 1974 Act) apply by virtue of Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013. http://www.legislation.gov.uk/uksi/2013/240/made

5.3. Some of the instruments repealed or revoked in Schedule 3 of ASR 2014 extend to Northern Ireland, either wholly or only in so far as they apply to the importation of acetylene into Northern Ireland. The repeals and revocations of those instruments extend to Great Britain only.

6. European Convention on Human Rights

6.1. Mike Penning, the Minister of State for Disabled People, has made the following statement regarding Human Rights.

6.2. In my view the Explosives Regulations 2014 and the Acetylene Safety (England and Wales and Scotland) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1. The explosives and acetylene sectors are by nature fragmented and diverse, ranging from the storage and manufacture of large amounts of highly energetic and flammable material to individual hobbyists.

7.2. The following changes have been made to deliver the general policy objective whilst recognising advances in technology and better recognising potential risks associated with the explosives and acetylene sectors:

7.3. The Explosives Regulations 2014 (ER 2014) consolidate five sets of Regulations and in doing so, removes duplication in certain existing long standing national law and in addition, incorporates pre-existing legislation which implemented EU law and a long standing international treaty.

7.4. The ER 2014 also introduces licensing for the storage of ANBI bringing the arrangements for storage into line with the arrangements for manufacture. ANBI is an ammonium nitrate emulsion, suspension or gel that can be sensitised on site to become an explosive. Its typical use is in quarry blasting. It is generally safer in transport, storage and use than traditional explosives but there have been incidents where it has exploded following engulfment by fire. The intention of licensing ANBI storage is to ensure that bulk storage of this material is subjected to controls proportionate with the potential of such material to explode. This approach has been supported by stakeholders and consultation responses and HSE has met with all those existing companies that will be affected.

7.5. The Acetylene Safety (England and Wales and Scotland) Regulations 2014 (ASR 2014) consolidate and in doing so, remove duplication in existing long standing domestic law. However, one principal change is that ASR 2014 extend legal control to solid acetylene (Regulation 3 of ASR 2014) due to the inherent instability and hazard posed by this substance as well as advances in technology that now make that manufacture of solid acetylene relatively simple . There are no known practical uses for solid acetylene and so its prohibition has been supported by stakeholders and the consultation responses. There are no known costs associated with this prohibition.

7.6. Due to the high hazard potential of explosives and acetylene and the potential of explosives for misuse there is a necessity to maintain a level of regulatory control. These Regulations seek to preserve the standards for risk control

which are within existing legislative frameworks for both explosives and acetylene.

7.7. The explosives legislative framework has ensured that explosives facilities are appropriately located, and the risk of explosion, the marking, the acquisition, the transfer and the access to explosives is properly controlled. ER 2014 seeks to maintain these controls whilst reducing duplication and simplifying and structuring the requirements so they are easier to understand. In addition ER 2014 also seeks to reduce the regulatory burden without any decrease in protection by allowing Local Authorities to issue longer term licences where they are confident to do so. In addition to the changes noted above, there are other changes such as some of the distances to be maintained around explosives stores, and changes to the list of explosives whose acquisition does not require an explosive certificate, which takes account of new knowledge.

7.8. The existing acetylene legislative framework has ensured that: acetylene manufacturing and compression facilities are appropriately located; the risk of explosion is properly controlled when, for example, importing, manufacturing and storing compressed acetylene gas; and recognised standards and colouring for the equipment used with this gas are maintained.

7.9. (ASR 2014) reduce the regulatory burden without reducing safety protection. It does this by, for example: removing extensive and technically prescriptive restrictions for acetylene equipment and removing the need to obtain a licence when importing acetylene gas at certain pressures and instead relying on long standing European standards implemented in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009: http://www.legislation.gov.uk/uksi/2009/1348/contents/made

7.10. To reflect the establishment of the Office for Nuclear Regulation (ONR) as an independent regulator, the Regulations give responsibility to ONR (including as a Licensing Authority) on sites under their jurisdiction. These sites include licensed GB nuclear sites, authorised defence sites and new nuclear build sites (as defined in the Regulations).

7.11 Consolidation

The consolidation of the explosives regulations into The Explosives Regulations 2014 (ER 2014) focuses on manufacture, importation and storage of explosives and The Acetylene Safety (England and Wales and Scotland) Regulations 2014 (ASR 2014) on the manufacture, importation, storage, transportation, sale, use, compression of, and filling of cylinders with, acetylene. Both Regulations aim to simplify complex and overlapping legal duties that place unnecessary burden on those involved within these sectors as well as implementing a key recommendation within the Government's Löfstedt Review 2011.

8. Consultation outcome

8.1. HSE carried out a public consultation exercise on the proposed 2014 Regulations. The consultation was preceded by extensive stakeholder engagement to inform the draft regulations and enabled the consultation to run for 8 weeks between 30 July 2013 and 24 September 2013. The consultation document and response form were made available on the HSE webpage http://www.hse.gov.uk/consult/condocs/cd257.htm

8.2. The consultation for explosives was downloaded 1465 times and HSE received 37 responses. The responses were generally supportive (89%) and 11% indifferent however, some responses highlighted the need for:

- clarity in the definitions and interpretations contained within any new proposed regulations;
- licences to be proportionate to the risk posed;
- support/guidance to be available in the various aspects of the new; consolidated Regulations and;
- the need to maintain current legally enforceable standards.

8.3. These issues have been addressed by a number of changes to The Explosives Regulations 2014 (ER 2014) and the development of guidance in conjunction with stakeholders.

8.4. The consultation for acetylene was downloaded 1468 times and HSE received 23 responses. The responses were generally supportive or indifferent (43% supportive with 43% stating there was no change) however, some responses highlighted the need for:

- clarity in the definitions and interpretations contained within any new proposed regulations;
- clear concise guidance to support The Acetylene Safety (England and Wales and Scotland) Regulations 2014 (ASR 2014) and;
- the need to maintain and promote robust legally enforceable standards.

8.5. These issues have been addressed by a number of changes to ASR2014 and the development of guidance in conjunction with stakeholders.

9. Guidance

9.1. The Explosives Regulations 2014 (ER 2014) are supported by a new, central guidance document supplemented by supporting documents targeted at either specific sub-sectors or processes. These will be structured and signposted to reduce burdens where possible with simple easy access guidance for less complex sub-sectors. Those sub-sectors with highly complex and sophisticated needs will have access to more technical guidance. HSE has engaged with stakeholders and some of the sub-sector guidance will be published before the implementation of the Regulations by industry with HSE input. Procedural detail on applying for licenses etc will be supported by the HSE website including downloadable templates etc.

9.2. The Acetylene Safety (England and Wales and Scotland) Regulations 2014 (ASR 2014) will be supported by an update to the past HSE guidance leaflet on HSE's website: http://www.hse.gov.uk/fireandexplosion/acetylene.htm as well as signposting within the website to specific technical resources provided by trade associations and standards bodies.

10. Impact

10.1. The impact on business, charities or voluntary bodies arising from these Regulations is expected to be negligible. On 22 April 2014 the Regulatory Policy Committee (RPC) validated the One–in Two-out status of these Regulations as out of scope and the findings of the impact assessment are that this is a low cost measure for which there will be no net cost to business.

10.2. The impact on the public sector is also expected to be negligible.

10.3. Impact Assessments for the Regulations are attached and will be published alongside this Explanatory Memorandum on http://www.legislation.gov.uk/

11. Regulating small business

11.1 The Regulations apply to small businesses. This is due to the inherent high hazard potential of the materials to be controlled, which means they not only pose a risk to those handling them but could significantly impact upon those some distance away from the original undertaking. An assessment of the impact is included within the impact assessments.

11.2 Consultation via stakeholder working groups and professional bodies/trade associations allowed the view of small businesses to be considered. Sufficient transitional provisions have been included in the Regulations to allow small businesses to adapt to them. In addition, The Explosives Regulations 2014 (ER 2014) provides for the most common form of licence for small business to be issued for a longer period than previous Regulations permitted.

12. Monitoring & review

12.1 The main success criteria for these Regulations are that duty-holders will benefit from a consolidated legislative framework and will not have to consider so many statutory instruments or overlapping duties. The Regulations will also assist in reducing future policy costs in the administration of the regulatory framework.

12.2 There are also criteria where success will be determined from monitoring and reviewing the sectors' take up of increased flexibility in permissioning:

12.3 ER 2014 - The licensing period for the most common form of licence issued to small business will be determined in a more risk proportionate manner

extending the maximum period from 1-2 years to a maximum of 5 years. This is expected to save in the region of £1.5M in the next 10 years.

12.4 ASR 2014 - Duty holders will no longer have to sustain the delay and cost of seeking formal approval from HSE to approve cylinders or flame arrestors used with acetylene. Instead, reliance is placed on long standing European standards implemented in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 as well as long standing technical standards that HSE had been transposing into its approvals.

12.5 There are a number of aspects to how HSE will monitor the effects of any changes from the point of implementation. Feedback from key stakeholders will continue to be welcomed and considered with respect to any changes. HSE will also monitor and consider any duty holder (end-user) feedback that may be received directly from time to time. HSE intends to continue the operation of the Explosives Industry Forum in which HSE meets with industry, Government Departments Trades Unions and professional bodies to discuss issues relevant to explosive regulation.

12.6 HSE will continue to consider all feedback received that allows for qualitative assessment of these regulatory regimes including any information available from its field force and those of other regulators working in the explosives and acetylene sectors, in relation to businesses or subsectors failing to comply with the Regulations.

12.7 In addition to ongoing monitoring the Secretary of State will, under the Regulations, undertake a formal review of them after five years to determine the extent to which the objectives of these Regulations have been achieved and, if those objectives remain appropriate, whether they could be achieved with less regulation. A report of the findings of these reviews will be published within 5 years of the Regulations coming into force.

13. Contact

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