

CHAPTER 2

EXPLOSIVES LEGISLATION

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1 EXPLOSIVES LEGISLATION

1.1 Introduction

1.1.1 The manufacture, classification, packaging, labelling, storage, processing and transportation of explosives are covered by a very wide spectrum of legislation, UK domestic, European Union, and International. The purpose of this chapter is not to replicate all of the legislation, its intention is only to draw the user's attention to the more pertinent pieces of legislation, and highlight any relevant points. This edition of JSP482 includes a number of hyperlinks to the original legislation, which will include any updates as amending legislation is drafted.

1.1.2 Users should be aware of other generic legislation which is relevant and covered in detail in JSP375 and other JSP's including:

- (1) The Health and Safety at Work Act 1974, as amended
- (2) The Occupiers Liability Act 1974
- (3) The Control of Substances Hazardous to Health 2002 (COSHH)
- (4) The Workplace (Health Safety and Welfare) Regulations 1992
- (5) The Provision and Use of Work Equipment Regulations 1998 (PUWER)
- (6) The Control of Major Accident Hazards Regulations 1999 (COMAHR)
- (7) The Regulatory Reform (Fire Safety) Order 2005
- (8) The Management of Health and Safety at Work Regulations 1999
- (9) The Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)
- (10) Dangerous Substances and Explosives Atmospheres Regulations 2003

1.1.3 The MOD is to comply with all aspects of Health and Safety legislation. The Secretary of State for Defence Guiding Principles statement in JSP815 (September 2010) applies equally to Explosives Legislation.

1.1.4 It should be noted that there is a major review being undertaken of UK Explosives Legislation, this was launched in 2010. This is being conducted by the UK Health and Safety Executive. This is referred to as the “Explosives Legislation Review” (ELR). The following statement by the HSE has been released:

- (1) HSE is working with other regulators and the explosives sector to review all health and safety explosives legislation, with the aim of reducing the regulatory burden on business through clarification and simplification.
- (2) The review will deliver an integrated and modernised suite of legislation and guidance in 2015, reducing the burden on business and providing a sound legislative foundation for the explosives sector of the future.
- (3) Explosives legislation has grown over time leading to a fragmented set of requirements with multiple sets of regulations and subsequent amendments, which has led to an increase in regulatory burden.

1.1.5 It should be noted that members of DSEA/DOSR are fully engaged in the ELR process. The main elements of the ELR under review are:

- (1) Explosives Act 1875
- (2) Classification and Labelling of Explosives Regulations 1983 (CLER)
*This has been revoked by the progress of the ELR * (The classification of Military Explosives and labelling is now covered in the carriage regulations)
- (3) Dangerous Substances in Harbour Areas Regulations 1987
- (4) Control of Explosives Regulations 1991 (COER)
- (5) Placing on the Market and Supervision of Transfers of Explosives Regulations 1993 (POMSTER)
- (6) Marking of Plastic Explosives for Detection Regulations 1996
- (7) Manufacture and Storage of Explosives Regulations 2005 (MSER)
- (8) Identification and Traceability of Explosives Regulations 2010 (ITOER)

1.1.6 The paragraphs below provide details of the principal legislation applicable to explosives.

1.2 The Explosives Act 1875 and 1923

<http://www.legislation.gov.uk/ukpga/Vict/38-39/17/section/80>

<http://www.legislation.gov.uk/ukpga/Geo5/13-14/17>

1.2.1 The Explosives Act 1875 and 1923 (EA75) and subsequent Orders in Council made under the Acts are not applicable to Crown Establishments with the exception that any person who enters an explosives area without permission, or any person within an explosive area committing an act liable to cause an explosion without proper authority is subject to instant arrest.

1.2.2 Under the ELR, HSE has revoked certain outdated parts of these acts, the main elements now being incorporated into the Manufacture and Storage of Explosives Regulations 2005. Under the ELR a decision has yet to be made if the 1875/1923 acts can be revoked in total and a single more simplified Regulation be introduced to consolidate any relevant remaining parts.

1.3 The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (Carriage Regulations 2009)

<http://www.legislation.gov.uk/ukxi/2009/1348/note/made>

& The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations (Amendment) 2011 (Carriage Regulations 2011)

<http://www.legislation.gov.uk/ukxi/2011/1885/made>

1.3.1 The Carriage Regulations 2009 (SI 2009 No1348) came into force on 01 July 2009. These regulations are aligned to ADR, A European agreement covering the classification, packaging, labelling and transport of all classes of dangerous goods. It also details the duties by all participants in the supply chain, including loaders, packers, hauliers' etc.

1.3.2 ADR is reviewed and published every two years (next issue comes into force July 2013) by the United Nations Economic Commission for Europe (UNECE).

1.3.3 The Carriage Regulations 2009 implement ADR2009 they refer directly to ADR and there are some additional or alternative requirements to ADR for the UK.

1.3.4 The Carriage Regulations 2009 place general duties on everyone with a role in the carriage of dangerous goods, and specific duties on those in the transport chain, i.e. consignors, carriers, loaders, packers, etc. The main duties are now covered by a single regulation, namely Regulation 5.

1.3.5 The Carriage Regulations 2011 (SI 2011 No1885) are amending regulations to the 2009 SI, and implement ADR 2011. CDG2011 should be read in conjunction with the CDG2009 and the Department for Transport "Carriage of Dangerous Goods" Approved Derogations and Transitional Provisions publication of April 2012.

<http://www.dft.gov.uk/publications/carriage-of-dangerous-goods-approved-derogations-transitional-provisions/>

1.3.6 JSP800 Volume 4b details the MOD arrangements in implementing the Carriage Regulations, including class 1 Explosives, and offers advice and guidance to ensure that Units and users remain in compliance with the statutory requirements.

1.4 Dangerous Substances in Harbour Area Regulations (DSHAR) 1987

<http://www.legislation.gov.uk/ukxi/1987/37/contents/made>

1.4.1 Statutory Instrument 37/1987 regulates all classes of Dangerous Goods including explosives (Class 1) for carriage, loading, unloading and storage in harbours and harbour areas. It is supported by an Approved Code of Practice (ACOP). In accordance with DSHAR Regulation 5, the regulations apply to all harbours and harbour areas in Great Britain including any premises or activities in the territorial waters of Great Britain, including any premises or activities in the territorial waters of Great Britain to which the HSW Act applies. The regulations do not apply to nuclear weapons or their components.

1.4.2 The Secretary of State for Defence may, in the interests of national security by a certificate in writing, exempt from all or any requirements or prohibitions imposed by these Regulations-

(1) Her Majesty's forces;

(2) visiting forces within the meaning of any of the provisions of Part 1 of the Visiting Forces Act 1952

(3) any headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964

(4) any person engaged in the carriage, keeping or supply of any military explosives, if that person is under the direct supervision of a representative of the Ministry of Defence,

and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time.

1.5 **Manufacture and Storage of Explosives Regulations (MSER)**

<http://www.legislation.gov.uk/ukxi/2005/1082/contents/made>

1.5.1 MSER provides guidance on the regulations on the manufacture and storage of explosives. These regulations cover the manufacture storage and handling of all explosives – this includes: blasting explosives; propellants; detonators and detonating cord; fireworks and other pyrotechnic devices; ammunition; and other explosive articles such as airbags and seat belt pre-tensioners.

1.5.2 The activities covered include manufacture of explosives and intermediate products for on-site mixing, storage, and other handling operations such as: fusing of fireworks; the assembly of fireworks displays from components; filling shotgun cartridges.

1.5.3 The regulations do not cover the transport or use of explosives.

1.5.4 MOD has a disapplication from certain parts of MSER, for instance the regulations covering the licensing of premises. JSP 482 incorporates those aspects of MSER which are applicable and details any alternative arrangements for the MOD where MOD is disappplied.

1.6 **The Control of Explosives Regulations 1991 (COER)**

<http://www.legislation.gov.uk/ukxi/1991/1531/contents/made>

1.6.1 The Control of Explosive Regulations (COER) 1991, Statutory Instrument 1531/1991, including amendments made under the Manufacture and Storage of Explosives Regulations 2005 (MSER 2005), places duties on those with responsibility for explosives. The relevant regulations are:

(1) Regulation 7 - Acquisition and keeping of explosive

Regulation 7 requires those acquiring or keeping explosives to hold valid COER Certification.

The crown is disappplied from this regulation, see regulation 3 (4).

The disapplication does not apply to civilian organisations contracted by the MOD, unless a specific exemption has been given.

COER Certification can be held by an individual, but will normally be applied for in the Company Name. It must nominate a single individual within the Company as the responsible person. It must list all the UN Numbers that are to be acquired or acquired and kept, less those exempted in Schedule One to COER. The Company is required to declare, to the police, all individuals who will have free access to the explosives. Providing that the Company holds the required certification Company Staff acting in the course of their duties on behalf of the Company are not require to hold individual certificates. COER Certification does not apply to transport operators who acquire the explosives only for the purpose of being the carrier.

COER Certification must be in accordance with Schedule 2 to COER, which provides the form of words to be used. Certificates take one of two forms, "Acquire Only" or "Acquire and Keep". A certificate to "Acquire Only" is valid for one year and a certificate to "Acquire and Keep" is valid for three years.

Any change in Company name or named individuals will require a new certificate.

Where the acquiring/acquiring and keeping of explosives is limited to the UN Numbers listed in Schedule One to COER or are regulated or prohibited by virtue of the Firearms Act, then no COER certification is required.

(2) Regulation 8 – Transfer of explosives

Regulation 8 places duties on people who may transfer explosives to others. It requires persons to satisfy themselves that the transferee has the appropriate COER certification. There are exceptions if the transfer is to outside the UK, to Northern Ireland where the Explosive Regulations (Northern Ireland) 1970 apply, or to an offshore installation in controlled water.

The crown is not disapplied from this regulation. However, the regulation does not apply if the transferee is disapplied from regulation 7, see 1.16.1 (a) above, or for transfers from one employee to another of the same company.

(3) Regulation 9 – Restrictions on prohibited persons

Regulation 9 places duties on both employers and individuals.

Employers - No employer shall knowingly employ a prohibited person in a position where he handles or has control of any explosive or any restricted substance.

Individuals - No prohibited person shall acquire, handle or have control of any explosive or restricted substance.

Control includes indirect activities such as organising movements of explosives.

Prohibited persons are defined in Regulation 2 (1).

In the course of their duties members of Her Majesty's forces are disapplied from this regulation. This does not include civilian employees of the MoD.

(4) Regulation 11 – Licensed occupier to appoint person responsible for security of explosives

Regulation 11 requires the occupier of a licensed site to appoint one individual to be responsible to him for ensuring that adequate precautions are taken at that site to secure explosives against loss.

The crown is not disapplied from this regulation.

(5) Regulation 12 – Making preservation and production of records

The crown is not disapplied from this regulation. However, the MoD operates a stringent accounting system. While it does not meet all the requirements of regulation 12, the civilian enforcing authority acknowledges it provides robust control and is deemed as satisfying the requirements.

(6) Regulation 13 – Reporting loss

Regulation 13 requires any loss of explosive to be reported to the chief officer of police for the police area in which the loss was discovered.

The crown is not disapplied from this regulation.

1.6.2 The above is intended to highlight areas of COER of which HoEs must be aware. For the full requirement of the legislation reference must be made to the regulations and associated guidance.

1.7 Fire Arms Act 1968 (as amended)

<http://www.legislation.gov.uk/ukpga/1968/27>

1.7.1 The Firearms Act 1968 (as amended) places duties on those with responsibility for weapons and ammunition. The weapons and ammunition are defined within the act and regulated by either Section 1, 2 or 5 of the act. A brief guide is given below:

(1) Section 1 – Firearms

- (a) Weapons
- (b) Rifled weapons – (not handguns)
- (c) No max calibre
- (d) All weapons single shot except in .22rf
- (e) Shotguns >3 cartridge capacity
- (f) Some signalling devices (eg 16mm flare pistol military version only)
- (g) Various requirements relating to barrel length, overall length
- (h) Powerful air weapons
- (i) Ammunition
- (j) Any round manufactured to be fired from a rifled weapon (eg ball or ball/tracer rounds)
- (k) Solid shot/rifled slug shotgun cartridges
- (l) Blank ammunition >1” diameter
- (m) Expanding heads only for .22rf for vermin and any lawful CF calibre for deer
- (n) Does not include HE, AP, DU, Incendiary, Tear Producing, or Expanding (other than above)

(2) Section 2 - Shotguns

- (a) Weapons
- (b) Smooth bored weapons – shotguns
- (c) Max diameter 2”
- (d) Capacity max 3 cartridges (2 in mag 1 in chamber)
- (e) Can be “self loading”
- (f) Other requirements relating to, barrel length, type of action
- (g) Ammunition
- (h) Shotgun cartridges - generally >6 shot
- (i) Max diameter 2”

(3) Section 5 – Prohibited weapons

- (a) Weapons
- (b) Handguns
- (c) Auto & Semi-Auto weapons (other than Sect 1 or 2) of any calibre
- (d) Disguised weapons
- (e) Incapacitating weapons – stun guns & CS sprays etc

- (f) Mortars
- (g) Rocket Launchers (hand held or guided systems)
- (h) HE, AP, DU, Tear producing, Expanding, Incendiary - rounds, shells, grenades (hand, rifle or rocket propelled), mortar bombs,
- (i) Any GM with warheads as above
- (j) Torpedoes with warheads as above
- (k) Free fall munitions not included

1.7.2 The MoD is disappplied from much of the act but the following duties remain.

(1) Section 3 -Transfers of weapons or ammunition

It is an offence to transfer section 1 or 2 ammunition or weapons to anyone, other than a Registered Firearms Dealer (RFD), unless the other person holds the required certification to hold the transferred items.

R.F.D.

- (a) Certificate granted to individuals or corporate bodies
- (b) Allows possession, purchase, acquisition, manufacture, sale or transfer of Section 1 & 2 weapons and ammunition as a business or part of a business
- (c) Issued by Chief of Police where applicant resides and requires additional registrations in other force areas where applicable
- (d) Valid 3 years
- (e) May have specific conditions attached relating to security, numbers of weapons, places used for testing etc
- (f) Has specific record keeping requirements
- (g) Would normally be required by Section 5 Authority holders.

(2) Section 5 – Prohibited weapons

A person commits an offence if, without the authority of the Defence Council, or in Scotland the Scottish Ministers he has in his possession, or purchases or acquires, or manufactures, sells or transfers section 5 weapons. This is referred to a Section 5 Authority.

The Authority allows possession, purchase, acquire, manufacture, sell or transfer of prohibited weapons and will detail:

- (a) the specific munitions authorised by reference to the relevant Sub Paragraph of the act
- (b) specific quantities authorised and the storage location
- (c) what the Company is authorised to do with the munitions and any limitations
- (d) Validity period – normally 3 years
- (e) a named individual in a company responsible for the authority

Providing that the Company holds the required Section 5 Authority, Company Staff acting in the course of their duties on behalf of the Company do not require holding individual certificates. Carriers are not exempt from the requirement . The only exception for carriers is a company flying Section 5 Prohibited Weapons from one MoD controlled airfield to another MoD controlled airfield does not need Section 5 Authority. Company staff are required, when transporting munitions, to hold a letter of authority from the Company and a copy of the Section 5 Authority.

(3) Section 21 - Possession of firearms by persons previously convicted of crime.

Paragraph 5 - It is an offence for a person to sell or transfer a firearm or ammunition to, or to repair, test or prove a firearm or ammunition for, a person whom he knows or has reasonable ground for believing to be prohibited by this section from having a firearm or ammunition in his possession. Relevant convictions are given in paragraphs (1) to (3) of Section 21.

1.7.2 The above is intended to highlight areas of the Firearms Act of which HoEs must be aware. For the full requirement of the legislation reference must be made to the Act.

1.8 Placing on the Market and Supervision of Transfers of Explosive Regulations 1993 (POMSTER)

<http://www.legislation.gov.uk/ukxi/1993/2714/contents/made>

1.8.1 The Regulations, Statutory Instrument 2714/1993, are mainly concerned with safety requirements for explosives and security controls on their transfer. They apply to explosives intended for use in the civil sector. Except for Article 10, the Regulations implement, in Great Britain, Council Directive 93/15/EEC of 5 April 1993 on the Harmonisation of the Provisions on the Placing on the Market and Supervision of Explosive for Civil Uses (the 'Civil Uses' directive)

1.8.2 The transfer controls require competent authorities to approve movements of explosives within, through and between Member States. These controls supplement domestic security controls on acquisition and keeping of explosives in the Control of Explosives Regulations 1991 (COER).

1.8.3 Ammunition regulated or prohibited by virtue of the Firearms Act 1968, pyrotechnics and any explosives which it is shown are intended for the lawful use by the armed forces or policy of any country are exempt.

1.8.4 Explosives transferred outside the MOD for disposal are not considered to be intended for the lawful use of the armed forces. If the disposal is by destruction, regulation 8, "Transfer of Explosives" applies. If the disposal is by means other than destruction, the explosives are being placed on the market and POMSTER fully applies.

1.8.5 The main requirements of regulation 8 are:

(1) before transfer of any explosive covered by the Regulations can take place, including movements wholly within GB, the consignee must obtain the written approval of the competent authority for the country where the transfer will terminate -HSE in the case of movements terminating in GB. The recipient competent authority document ('transfer document'), or a certified true copy, must accompany the explosives throughout their journey.

(2) the person responsible for the transfer, normally the consignor or shipping agent, is required to notify the relevant authorities of the Member States through which the movement will take place to obtain their approval. HSE is the relevant authority for Great Britain.

(3) no person may supply explosives unless they are satisfied that the recipient has obtained the necessary transfer document.

1.9 Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR)

<http://www.legislation.gov.uk/ukxi/2002/2776/contents/made>

1.9.1 The Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR) are concerned with protection against risks from fire, explosion and similar events arising from dangerous substances used or present in the workplace. They set minimum requirements for the protection of workers from fire and explosion risks related to dangerous substances and potentially explosive atmospheres.

1.9.2 The key requirements in DSEAR are that risks from dangerous substances are assessed and eliminated or reduced.

1.9.3 The Secretary of State for Defence may, in the interests of national security, by a certificate in writing, exempt -

- (1) any of Her Majesty's Forces,
- (2) any visiting force,
- (3) any member of a visiting force working in or attached to a headquarters, or
- (4) any person engaged in work involving dangerous substances, if that person is under the direct supervision of a representative of the Secretary of State for 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 at any time by a certificate in writing, except that, where any such exemption is granted, suitable arrangements shall be made for the assessment of the risk to safety created by the work involving dangerous substances and for adequately controlling the risk to persons to whom the exemption relates.

1.9.4 Further information can be found in JSP 375 Leaflet 56.

1.10 Identification and Traceability of Explosives Regulations 2010 (ITOER)

<http://www.legislation.gov.uk/ukxi/2010/1004/contents/made>

1.10.1 The Identification and Traceability of Explosives Regulations 2010 (ITOER) require that explosives for civil uses are uniquely identified and can be traced from the production site through to their final use. This is to help prevent misuse and theft and help authorities trace the origin of lost or stolen explosives. The Regulations implement EC Directive 2008/43/EC. This regulation came into force April 2012.

- (1) ITOER applies to every explosive **except:**
 - (a) pyrotechnics, for example flares or fireworks
 - (b) ammunition
 - (c) unpackaged explosives transported and delivered for direct unloading into the blast-hole, for example in pump trucks
 - (d) explosives produced in-situ for immediate use
 - (e) explosives for legal use **by the military** or police
- (2) The main duties of the Regulations are:
 - (a) Product identification – explosives manufactured in or imported into Great Britain shall be uniquely marked with an alphanumeric code and barcode

- (b) Record keeping – any person who manufactures, imports, distributes or acquires or keeps any explosives included in the Regulations must keep a record of the explosives:
- (c) for a period of 10 years and provide the enforcing authority with contact details so that information in their records can be accessed at any time

1.10.2 Although MOD are broadly exempt from these regulations the matter of disposal or military sales of items when no longer required by MOD may pose some problems. This matter is being addressed via HSE and the ELR process which is still under review.