



Explosive Licensing

FS2-016

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Cornwall Fire and Rescue Service,
Protection (Business Fire Safety)

Current Document Status

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Version History

Date	Version	Author/Editor	Comments
01/05/2018	Draft document	WM Joe Garcia	First draft for consultation

Comprehensive Impact Assessment Record

Date	Type of assessment conducted	Stage/level completed (where applicable)	Summary of actions taken decisions made	Completed by	Impact Assessment review date
01/05/2018	Full	Draft	NFA	WM Joe Garcia	01/05/2018

Document retention

Document retention period	This document is aligned to legislation and guidance, and therefore should be kept until further notice, and updated whenever legislation or guidance changes.
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Summary

Cornwall Fire and Rescue Service are the licensing authority for the storage of explosives up to 2000kg under the [Explosive Regulations 2014](#) (ER2014).

The aim of this policy is to set out how we manage explosive licence applications with regard to issuing and refusing of licence applications, and ensure we have due regard to the ER2014 and the [Health and Safety at Work etc. Act 1974](#) (HASAWA 1974) and the guidance issued by the Health and Safety Executive (HSE).

This policy sets out the following:

- 1. Applying for an explosives licence**
- 2. The refusal to issue an explosives licence by the Fire Authority**
- 3. Explosive licence refusal – Incomplete application form**
- 4. Explosive licence refusal – Unsuitable site**
- 5. Explosive licence refusal – Unfit person**
- 6. Revocation**
- 7. Appeals regarding explosive licence applications**
- 8. Exchange of information**

This policy will be published on the intranet (SIS) for internal use and guidance, and externally on the Business fire safety webpages for members of the public.

1. Applying for an explosives licence

With certain exceptions, a licence is required for the storage and/or manufacture of explosives. HSE licences manufacturing activities and larger explosives stores. Smaller stores, holding less than 2 tonnes of explosives, are usually licensed by HSE or registered with the local authority (Cornwall Fire and Rescue Service) or the police. Before storing explosives, you will generally need a licence from the appropriate licensing authority.

For details and guidance on applying for an explosives licence, please refer to www.cornwall.gov.uk/explosives

2. The refusal to issue an explosives licence by the Fire Authority

Regulation 20 of ER2014 requires a licensing authority to refuse an application for a licence, or to refuse to issue a draft licence (where an

application covered by the assent requirements of the regulations has been made to HSE or ONR) where the licensing authority is of the opinion that:

- The proposed site (**unsuitable 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
- **The applicant is not a fit person** to manufacture or store explosives

The Regulation also makes provision for refusals of renewals, transfers and variations of licences.

Where a licensing authority proposes to refuse an application for a licence, a renewal, a variation or transfer of a licence it must, before taking any action, notify the applicant of its proposed course of action.

The licensing authority must give the applicant the opportunity of making representations about it. The representations may be made in writing, or both in writing and orally, to the licensing authority within a period of 28 days from the date of the notification.

If the licensing authority decides to refuse the application, it must provide the applicant with written reasons for its decision.

3. Explosives licence refusal – Incomplete application form

If Cornwall Fire and Rescue Service refuse your explosives application for a licence, this may be due to one of the following reasons:

- Incomplete information provided
- Errors or incorrect information provided
- Missing plan or incomplete plan
- Correct licence fee not provided with application

4. Explosives licence refusal - Unsuitable site

In making its decision on whether or not a site was suitable a licensing authority would be expected to consider each site on its own merits.

A licensing authority's decision might for example be due to:

- Bulk storage of flammable substances at or in the immediate area of a site so that there would be a substantial risk that an explosion at the store would cause a fire in the flammables, or a fire involving the flammables could spread to an explosives building.

- The presence of hazardous substances at or in the immediate area of the site so that there is a significant risk that an explosion at the site would cause the release of hazardous substances into the wider area.
- Proximity of telecommunications transmitters where there is a significant risk that the electromagnetic energy from the transmitters could initiate an explosion in the explosives.
- The presence of methane at the site or at an adjoining site (for example from a landfill site) so that there is a significant risk that a fire or explosion involving methane could spread to the explosives.
- The presence at or in the immediate area of the site of gas pipelines or high-voltage electricity supply so that there would be a significant risk that an explosion involving the explosives would result in significant 'knock-on' consequences.
- The presence of vulnerable sections of the population (young children, the sick or elderly) in the immediate area of the site (for example, if a building housing a school, hospital or old people's home were immediately adjoining an explosives site).
- Storage of explosives where separation distances in ER2014 Regulation 27 and Schedule 5 cannot be met.
- Even if the separation distance requirements are met under the ER2014 the licensing authority may also refuse a licence if it believes that the storage would present an unacceptable risk to people living in adjoining residential premises.

5. Explosives license refusal - Unfit person

In considering whether a person is fit or not, the licensing authority will be primarily concerned to consider whether it has evidence to give it reasonable grounds for believing that the person cannot be relied upon to manufacture or store the explosives:

- In compliance with the terms of their licence
- Without risk to public safety

In considering this, the licensing authority will be primarily looking at evidence of breaches of the licence or of other relevant permissions or legislation.

Examples of behaviours that might identify a person as being unfit to hold a licence (or a corporate body when the controlling mind of that body is considered) would include:

- The supply of relevant explosives to people who do not have an explosives certificate or who are prohibited persons

- Breaches of the Pyrotechnic (Articles) Safety Regulations 2010 in relation to e.g.
 - Age related sales
 - The supply of articles requiring specialist knowledge to people who do not meet those requirements.
 - Dishonestly representing themselves as a person of specialist knowledge
- Breaches of the Fireworks Regulations 2004 in relation to the requirement for a licence to expose fireworks for supply outside the recognised sales periods
- Breaches of the Explosives Regulations 2014
- Breaches of the Health and Safety at Work etc. Act 1974
- A history of criminal offences relating to dishonesty
- A history of criminal offences relating to the supply of:
 - Age related products
 - Controlled substances
- A history of criminal offences relating to offences against the person
- A history of criminal offences relating to firearms
- A history of criminal offences related to terrorism
- A history of criminal offences that demonstrate a lack of regard for people's safety or the rule of law

Criminal convictions would not be expected to automatically disqualify someone from being granted a licence. The licensing authority will only consider whether:

- On the evidence in its possession
- In the circumstances of any breach or conviction
- It has any reason to believe that the applicant is not a fit person

Licensing authorities should only take account of convictions that are not 'spent' for the purposes of the Rehabilitation of Offenders Act 1974.

For a brief guidance on 'How long do I have to disclose my criminal record for?' (The Rehabilitation of Offenders Act 1974, updated 2014) refer to the guidance at <http://hub.unlock.org.uk/knowledgebase/detailedguideroa/>

6. Revocation

Regulation 23 of the ER2014 allows the licensing authority which grants a licence to, revoke that licence:

- 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 relates to is no longer suitable for that manufacture or storage
- Where it appears to the licensing authority on information obtained by it after the grant of the licence that the licensee is not a fit person to store or manufacture explosives
- By agreement with the licensee

A person whose licence is revoked must ensure that all explosives are removed from a site as soon as is practicable after revocation of the site's licence and that either;

- The explosives are deposited at a site which is the subject of a licence which permits any storage resulting from that depositing
- Or suitable arrangements are made for those explosives to be disposed of

They must also ensure that the licence is returned to the licensing authority within 28 days of the date that the revocation takes effect (to be determined by the licensing authority).

Where we propose to revoke a licence and we are the licensing authority, we will before taking any action, notify the applicant of its proposed course of action.

We will also give the licence applicant an opportunity to make a representation about it. The representations may be made in writing, or both in writing and orally to the licensing authority, within a period of 28 days from the date of the notification.

If we decide to revoke the application or licence, we will provide the applicant with written reasons for its decision.

If we are not the licensing authority, we will provide the licensing authority of any relevant details that could cause an explosive licence to be revoked.

7. Appeals regarding explosive licence applications

We aim to carry out all our activities in a way that supports you and your business to ensure safety. We are always willing to discuss our actions or why we have acted in a particular way or made particular requirements. If you think we have (in some way) got it wrong for you, we would like to know.

For guidance on how you can challenge our decisions or standards please refer to our Appeals, Challenges and Complaints (FS2-014) policy which is available online at www.cornwall.gov.uk/firepolicy.

You if you feel aggrieved by the decision of a licensing authority to refuse or revoke a licence can appeal to the Secretary of State under section 44 of the Health and Safety at Work etc. Act 1974. Section 44 is detailed below for your guidance.

HASAWA 1974, Section 44 - Appeals in connection with licensing provisions in the relevant statutory provisions.

(1) Any person who is aggrieved by a decision of an authority having power to issue licences under any of the relevant statutory provisions, may appeal to the Secretary of State:

- (a) Refusing to issue him a licence, to renew a licence held by him, or to transfer to him a licence held by another;
- (b) Issuing him a licence on or subject to any term, condition or restriction whereby he is aggrieved;
- (c) Varying or refusing to vary any term, condition or restriction on or subject to which a licence is held by him; or
- (d) Revoking a licence held by him,

(2) The Secretary of State may, in such cases as he considers it appropriate to do so, having regard to the nature of the questions which appear to him to arise, direct that an appeal under this section shall be determined on his behalf by a person appointed by him for that purpose.

(3) Before the determination of an appeal the Secretary of State shall ask the appellant and the authority against whose decision the appeal is brought whether they wish to appear and be heard on the appeal and—

- (a) The appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard as aforesaid;
- (b) The Secretary of State shall, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of so doing.

(4) The Tribunals and Inquiries Act 1992 shall apply to a hearing held by a person appointed in pursuance of subsection (2) above to determine an appeal as it applies to a statutory inquiry held by the Secretary of State, but as if in section 10(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State included a reference to a decision taken on his behalf by that person.

(5) A person who determines an appeal under this section on behalf of the Secretary of State and the Secretary of State, if he determines such an

appeal, may give such directions as he considers appropriate to give effect to his determination.

(6) The Secretary of State may pay to any person appointed to hear or determine an appeal under this section on his behalf such remuneration and allowances as the Secretary of State may with the approval of the Minister for the Civil Service determine.

(7) In this section—

(a) "Licence" means a licence under any of the relevant statutory provisions...

8. Exchange of information

Where Cornwall Fire and Rescue Service are not the licensing authority and it is discovered that a site or person is deemed not suitable to store explosives and/or hold an explosives licence, we will inform the relevant licensing authority e.g. HSE or Police so that any necessary action can be taken to ensure the safe use and storage of explosives.

Management

Policy management

Cornwall Fire and Rescue Service, Protection (Business fire safety) is responsible for the management of this document.

Breaches and non-compliance

Litigation and/or adverse media coverage affecting the reputation of the service.

How the impact of the policy will be measured

Very few licences are revoked or refused. Therefore monitoring the impact of this policy will be monitored by Protection Policy and any impacts discussed during the quarterly Protection team meetings.

Evaluation and review

This policy will be reviewed after 12 months of implementation, or following any complaint regarding the refusal or any other matter regarding the issue of explosive licences.

This policy will then revert to a periodic review every 3 years and whenever there is a change in the ER2014 legislation or guidance issued by the HSE.

Document information

Contacts

Policy prepared by Joe Garcia, **Watch Manager**, Cornwall Fire and Service, 01/05/2018

Further information

- Health and Safety at Work etc. Act 1974 - www.legislation.gov.uk/ukpga/1974/37/contents
- Explosive Regulations 2014 - www.legislation.gov.uk/uksi/2014/1638/contents/made
- Appeals, Challenges and Complaints (FS2-014) - www.cornwall.gov.uk/firepolicy
- Guidance for applying for an explosives licence - www.cornwall.gov.uk/explosives
- HSE guidance regarding explosives - www.hse.gov.uk/explosives/index.htm
- The Rehabilitation of Offenders Act 1974 (updated 2014) - <http://hub.unlock.org.uk/knowledgebase/detailedguideroa/>

Alternative formats

If you would like this information in another format please contact:

Cornwall Council, County Hall, Treyew Road, Truro TR1 3AY

Telephone: **0300 1234 100** email: enquiries@cornwall.gov.uk

www.cornwall.gov.uk

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