



## Explosives Regulations 2014 Policy

This policy was approved by City of York Council on 8 October 2015

### Contact Us

Should you have any comments as regards this policy please send them via email or letter to the following address:

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## Introduction

1. City of York Council is a unitary authority covering an area of 105 square miles and a population of 198,000. It comprises the urban area of York that is surrounded by many small rural and semi-rural settlements covered by parish councils.
2. There are currently 35 premises licensed to store explosives in the City of York area, a majority of these are supermarkets and convenience stores.
3. This authority consulted the following parties in relation to this policy:
  - North Yorkshire Fire & Rescue Service
  - North Yorkshire Police
  - Health & Safety Executive
  - City of York Council Public Protection Section
  - Premises currently licensed (as of May 2015)
  - Councillors
4. Our consultation took place between 14 May 2015 to 30 June 2015.
5. The policy was approved at a meeting of the Full Council on 8 October 2015.
6. The Explosives Regulations 2014 (2014 Regs) defines explosives to mean –
  - (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 –
      - 1) being unduly sensitive or so reactive as to be subject to spontaneous reaction and accordingly too dangerous to transport, and
      - 2) 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.

7. City of York Council (the Council) is the licensing authority under Schedule 1, Section 1(a) (ii) of the 2014 Regs, in relation to an application for a licence for the storage within one site of no more than 2000 kilograms of explosives to which paragraph (a) (i) or (b) of the definition of explosives applies.
8. The council issues licences which authorise the storage of explosives.
9. The permitted sale periods as a dutyholder for fireworks are –
  - during the period beginning on the 15<sup>th</sup> October and ending on the 10<sup>th</sup> November;
  - during the period beginning on the 26<sup>th</sup> December and ending on the 31<sup>st</sup> December;
  - on the first day of the Chinese New year and the three days immediately proceeding;
  - on the day of Diwali and the three days immediately proceeding.
10. All application will be processed in accordance with the 2014 Regs.
11. Application forms and licences are specified by the Health and Safety Executive (HSE).

## **Grant and Renewal**

12. Applicants can be an individual, company or partnership. They must be a fit person.
13. Licences can be granted or renewed for a period of up to five years.
14. The Council will take a proportionate, risk-based approach when dealing with licence applications and the duration of the licence requested. This approach will recognise the nature of the business and the likely lifetime of the licensed site, for example pop up shops and freehold retails.
15. Licences will only be issued to new retailers with no inspection or enforcement history for a maximum period of one year. In the case of pop up shops this period may be limited to to the sales period for fireworks as detailed in paragraph nine.

16. If requested as part of the application, licences will be issued to new site where the dutyholder can demonstrate robust safety management systems and has a good history of compliance at another licensed site for a maximum period of one year. This will enable the dutyholder to demonstrate robust safety management systems at the newly licensed site.
17. Licences will only be issued to existing licensed sites with a mixed or poor history of compliance for a maximum period of one year.
18. Licences will only be issued to existing licensed sites:
  - that have a history of regularly requiring advice;
  - where minor breaches have been identified at inspections: or
  - that has for example high (relevant) staff turnover for a maximum period of one year.

## Conditions

19. Any conditions can be imposed on a licence. Every licence must include conditions that specify:
  - the site and, within it, the places where the explosives may be stored, or, in the case of the licence to manufacture explosives, where they may be manufactured;
  - the hazard type, if any, the description and maximum amount of explosives which may be stored or otherwise present, at any one time at any place so specified.

For licences which relate to the storage of pyrotechnic articles at any site where those articles are to be offered for sale, conditions may be attached considered appropriate which relate to:

- the storage and display of those article in areas where they can be purchased;
  - the prevention of risk of fire arising in respect of those articles; and
  - the safe use of fire escapes in that area.
20. The council expects licence holders to comply with the legal requirements of the 2014 Regs and any relevant guidance issued by the HSE.

## Variations

21. The Licensing Authority may vary the licence –
  - a) where there has been a change in circumstances such that the separation distances can no longer be maintained and the consequent reduction in the maximum amount of explosive that may be stored is required; or
  - b) in relation to any of the matters it relates to, by agreement with the licensee.
22. A licence may be varied without the agreement of the licensee. The licensee must be given written reasons to afford the licensee the opportunity of making representations to the licensing authority about it, within a period of 28 days from the date of the notification. Representation can be made in writing, or both in writing and orally.
23. If the licence is varied without the agreement of the licensee, the variation takes effect from a date to be determined by the licensing authority which must be a date after the 28 day period for representations.

## Transfer

24. The licensing authority must grant the application for the transfer of a licence unless it is of the opinion that the applicant is not a fit person to store explosives.

## Notifications

25. The licensing authority will notify North Yorkshire Fire and Rescue Service, North Yorkshire Police and the Environmental Health Services of all applications granted.

## Fees

26. Fees are set by the Health and Safety (Fees) Regulations and are variable dependant on the amount of explosives to be stored and safety distances. See details of fees for explosives certificates and licences:  
[www.york.gov.uk/PetroleumAndExplosivesLicenceFees](http://www.york.gov.uk/PetroleumAndExplosivesLicenceFees) .

## Death, Bankruptcy or Incapacity of a Licensee

27. If a licensee dies or becomes incapacitated, the licence will

remain in force until either –

- (a) the expiration of a period of 60 days starting with the date of such death or incapacity;
  - (b) the grant or refusal of a new licence; or
  - (c) the transfer of, or refusal to transfer, a licence whichever is the earlier.
28. If a licensee becomes bankrupt or, in the case of a company, goes into liquidation, administration or receivership or has a receiving order made against it, any liquidator, administration, receiver or trustee in bankruptcy is to be treated as being the licensee.

## **Refusal of Grant, Renewal or Transfer of Licence**

29. The licensing authority must refuse an application for a licence where they are of the opinion that –
- (a) the applicant is not a fit person-
    - i) to store explosives, in the case of an application for a licence to store explosives.
30. Where the licensing authority proposes to refuse an application it must, before taking such action, notify the applicant of its proposed course of action and afford that applicant the opportunity of making representations to the licensing authority about it, within a period of 28 days from the date of the notification.
31. Representation may be made to the licensing authority in writing, or both in writing orally.
32. Where the licensing authority decides to refuse an application it must provide the applicant with written reasons for its decision.

## **Revocation**

33. The licensing authority may revoke the licence –
- (a) where there has been a change in circumstances such as 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 the manufacture or storage;
  - (b) 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-

- i) to store explosives, in the case of a person licensed to store explosives; or
  - ii) to manufacture explosives, in the case of a person licensed to manufacture explosives; or
- (c) by agreement with the licensee.
34. A person whose licence is revoked must ensure that –
- (a) all explosives are removed from site as soon as practicable after revocation of a licence in respect of that site;
  - (b) those explosives are deposited at a licensed site, or suitable arrangements are made for those explosives to be disposed of; and
  - (c) the licence is returned to the licensing authority within 28 days of the date that the revocation takes effect.
35. Where the licensing authority proposes to revoke the licence, it must, before taking such action, notify the licensee of its proposed course of action and afford that person the opportunity of making representations to the licensing authority about it, within a period of 28 days from the date of the notification.
36. Representation may be made in writing, or both in writing or orally.
37. Where the licensing authority decides to revoke a licence, it must provide in writing to the licensee the reason for its decision.
38. Where the licensing authority revokes the licence, that revocation takes effect from a date to be determined by the licensing authority which must be a date after the 28 day representation period.

## **Site Inspections and Enforcement Visits**

39. Site inspection will be undertaken:
- (a) prior to the grant of a licence;
  - (b) if required, following the grant of a licence;
  - (c) prior to or following the renewal of a licence: and

(d) if information is received that the licence holder is operating outside the requirements of the licence.

40. Enforcement visits will be undertaken to unlicensed premises.

## Local Authority Assent Procedure

41. Where the relevant licensing authority is the Health and Safety Executive or the Office for Nuclear Regulation, that authority must issue the applicant with a draft licence containing conditions which the licensing authority proposes to attach to the licence. The applicant must as soon as reasonably practicable send a copy of the application and draft licence to the local authority (the council) in whose area the manufacture or storage is proposed to take place.
42. Within 28 days of sending to the council the applicant must –
- (a) publish in a newspaper circulating in the locality a notice which must –
    - i) give details of the applications;
    - 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 council within 28 days of the date that the notice is first published; and
    - iii) give an address within the area of the council at which a copy of the application and draft licence may be inspected, and the address of the council 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. **NOTE** "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.
43. The council must send a copy of any representations to the applicant as soon as reasonably practicable after receiving them.
44. In considering whether to assent, the council must have regard only to health and safety matters.



45. If relevant representations are received, and before deciding whether to assent to the application, the council will hold a public hearing within 4 months of the date of its receipt of the copy of the application and draft licence. The hearing panel will be made of 3 Members of the Gambling, Licensing and Regulatory Committee.
46. If after the 28 day period has elapsed and if no representation have been received, or the only representations received are classed frivolous or immaterial, it may assent to the application without holding a hearing.
47. Not less than 28 days before the hearing the council must publish notice of the date, time and place for the hearing in a newspaper circulating in the locality and send a copy of the notice to –
  - (a) the applicant;
  - (b) the person who made representation;
  - (c) the relevant licensing authority within 7 days from its publication
48. The council must notify the applicant and the relevant licensing authority of its decision within 7 days of making it.
49. Failure to –
  - (a) send a copy of the notice to the relevant licensing authority within 3 months from the date that a copy of the application and draft licence was sent to it; or
  - (b) notify the relevant licensing authority of its decision within 2 months from the date of publication of the notice,that licensing authority may make a written request to the local authority for it to state in writing whether it assents to the application. If the council does not respond to the written request within 28 days from the date of the request, the local authority is deemed to have assented to the application.
50. A fee is payable to the council, which must not exceed the sum of the costs reasonably incurred by the authority in performing those functions.

## **Registers and Retention of Documents**

51. The council must –
  - (a) maintain a register containing the following information –

- i) the name of the licensee;
- ii) the licensee's permanent address, unless the licensee's home address is the licensee's only permanent address;
- iii) the address of the site where the explosives are manufactured or stored;
- iv) the hazard type if any, the description and maximum amount of explosive which may be stored or otherwise present to any one time in any place which is specified in the licence;
- v) the nature of the business of the licensee and the intended use of the explosives;
- vi) the kind of explosives manufactured or stored;
- vii) where separation distances are required to be maintained around the store or the building where explosives are manufactured, a plan in a suitable scale sufficient to show those separation distances;
- viii) a map in a suitable scale sufficient to show the location of any store; and
- ix) the kind of store concerned, including the material out of which it is constructed.

the council will be keep this information electronically.

- (b) keep a copy of any licence granted, together with a copy of the application for the licence, for as long as the licence remains valid; and
- (c) send to the HSE on request a copy of any part of the register or other document specified above within such time as the HSE may direct.

## **Annex 1 - Useful Links**

- [Explosives Regulations 2014](#)
- [Health and Safety Executive](#)
- [Guidance on Regulations - Safety provisions](#)
- [Guidance on Regulations - Security provisions](#)
- [Advice for anyone selling fireworks](#)
- [Managing for health and safety \(HSG65\)](#)
- [Fire and explosion](#)