

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

5 OCTOBER 2020

1. REVOCATION OF EXPLOSIVES STORAGE LICENCE

Report of the Chief Fire Officer

RECOMMENDED

THAT the details of the revocation be noted.

2. PURPOSE OF REPORT

This report is submitted to inform the Authority of the revocation of an explosives storage licence as a result of prosecutions under the Health and Safety at Work etc. Act 1974.

3. BACKGROUND

- 3.1 This section of the report relates to Unit 3, Doal Trading Estate, Rolfe Street, Smethwick, and the prosecution pursued by this Authority against two defendants, Fireworks Direct (Midlands) Limited and Mandeep Singh Doal, who were fined and sentenced to immediate custody respectively for offences contrary to the Health and Safety at Work etc. Act 1974 (HASAWA) and The Regulatory Reform (Fire Safety) Order 2005 (FSO). Mr Mandeep Doal was also disqualified from being a director of a company for 5 years.
- 3.2 The matters were heard at Wolverhampton Crown Court on 20 May 2020 before His Honour Judge Berlin. The offences against each defendant included overstocking, failure to apply separation distances, failure to review the risk assessment and failure to maintain a working fire alarm.
- 3.3 As a result of the serious nature of the offences and the heavy awards of the court the Authority revoked the explosives (fireworks) storage licence issued to Mr Surjit Singh Doal (as a director of Fireworks Direct (Midlands) Limited) and Mandeep

Singh Doal.

4. **REVOCAATION**

- 4.1 The licence was revoked on 14 July 2020.
- 4.2 The reasons for revocation are based upon the offences which show that Mr Surjit Singh Doal and Mr Mandeep Doal are unfit persons to be licensed. Provision for revocation in the case of an unfit person is contained in the Explosives Regulations 2014; Regulation 23(1)(b)(i). All fireworks will have to be removed from site as soon as is practicable after revocation.
- 4.3 At the time of the offences Mr Surjit Doal and Mr Mandeep Doal were co-holders of the storage licence. At the time of the revocation Mr Surjit Doal was the current licensee.

5. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment has been carried out and is included in the Background Papers.

6. **LEGAL IMPLICATIONS**

- 6.1 The Health and Safety at Work etc. Act 1974 and Explosives Regulations 2014 in relation to the storage of fireworks place a general duty on duty holders to keep people safe from fire or explosion. The 1974 Act imposes a duty on Metropolitan Fire and Rescue Authorities to enforce the provisions of the Act in their areas.
- 6.2 In the case of revocation of a licence the aggrieved party may make representations to the licensing authority.
- 6.3. Representations were made by Mr Surjit Singh Doal's solicitor. A response was made by the Authority's legal advisers stating the decision to revoke stands. This has not been challenged further.
- 6.4 The revocation was undertaken through the Chief Fire Officer as per the Scheme of Delegations section 3.8 of the WMFRA constitution (2018).

7. **FINANCIAL IMPLICATIONS**

As a result of the need to take legal advice from Sandwell Legal Services and Mr Mark Jackson, who prosecuted on behalf of the Authority, the projected cost of the advice and written response should not exceed £1,000.

9. **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications arising from this report.

BACKGROUND PAPERS

Fire Safety Files

Authority Report – Result of Recent Fire Safety Prosecutions 22 June 2020. Document reference – AU/2020/June/10206205

Extracts of the Explosives Regulations 2014 – Pages 28 – 30

Equality Impact Assessment

The contact name for this report is Gary Taylor - telephone number – 0121 380 6006.

PHIL LOACH
CHIEF FIRE OFFICER

INITIAL EQUALITY IMPACT ASSESSMENT FORM

Name of policy/activity/project:

Revocation of Explosives Storage Licence for fireworks – Explosives Regulations 2014.

Is this a new or an existing policy/activity/project?

New.

Scope/timescales for project or activity (including review date):

The licence was revoked on 14 July 2014 due to 2 co-licencees being deemed to be unfit persons. [Regulation 23(1)(b)]. Representations were made but after taking legal advice the Authority's decision stood. The opportunity to appeal to the Secretary of State was not exercised.

Department/ Directorate:

Protection

Policy/project lead:

FSIO Mick Norton

Author of EIA:

FSIO Mick Norton

Outline of main aims of this activity/policy/project:

By revoking this licence the safety of the public and employees is being maintained. The revocation will also seek to deter those in the wider industry from flouting the law by storing excessive amounts of fireworks above quantities laid down in their respective licences.

Who will benefit/be affected by this policy/activity?

Of utmost priority is the protection of the public when entering premises storing fireworks. Others within the wholesale, distribution and retail sector of the fireworks industry will have a heightened awareness of the stance of this enforcing authority in relation excessive over-storage.

If an existing policy/activity, do you have any data of use by or impact on different groups which may raise concerns over an equality impact?

No evidence exists to raise concerns. This is the first revocation by this Authority using the legislation – Explosives Regulations 2014; Regulation 23. All procedures are laid down within the legislation. Those deemed unfit to store were informed of the procedure and one of the co-licensees did, in fact, make representations. [Regulations 23(3) and 23(4)]. A response was made by the Authority under Regulation 23(5). The second co-licensee is currently in prison and did not respond.

Does the activity have the potential to impact differently on groups due to a protected characteristic (race/ethnicity, gender, transgender, disability, religion & belief, age, sexual orientation, maternity/paternity) within:-

(a) Service users/community? Which groups are likely to be affected?

No.

(b) WMFS employees? (If yes who? Do you have information on the make up of staff affected? How many have a protected characteristic?)

None.

Does this activity make a positive contribution to our general or specific duties under the Equality Act 2010? If yes, please detail.

No. The appropriate procedures as laid down in Regulation 23 were followed.

Having reviewed the potential impact of the policy/activity listed above, I believe a full impact assessment is **NOT required**.

Justification:

No evidence of any potential risks to equality is highlighted by this legislative process.

Equality & Diversity Team comments:-

.....
.....
.....

Having reviewed the potential impact of the policy/activity listed above I believe a full impact assessment is **required**.

Justification:

.....
.....
.....

Equality & Diversity Team comments:-

.....
.....
.....

Please e-mail this completed form to the Equality and Diversity section. You will receive feedback and comments within 7 working days.

Explosives Regulations, Page 28

- (e) where the person is a body corporate, no director or secretary of the body corporate, and where the person is a Scottish firm, no partner in the firm, is a prohibited person;
- (f) where the application is for an explosives certificate relating only to acquisition of relevant explosives—
 - (i) it is not reasonably practicable for the applicant to be an occupier of a site for the storage of relevant explosives for which the person would be required to have a licence, and
 - (ii) either the relevant explosives will not be kept, or, if kept, the applicant will ensure that they are kept at a site where such storage is permitted pursuant to a licence or at a site occupied by the Secretary of State having responsibility for defence; and
- (g) where the application is for an explosives certificate relating to the keeping of relevant explosives, either—
 - (i) the applicant will ensure that the relevant explosives are kept at a site where the storage is permitted pursuant to a licence;
 - (ii) the relevant explosives will be kept at a site occupied on behalf of the Crown, or
 - (iii) in the case where the applicant does not hold a licence in respect of the storage of the relevant explosives, no licence is required to be held by the applicant in respect of that storage by virtue of regulation 7(2).

Refusal of a licence and draft licence and refusal of a renewal or transfer of a licence

20. (1) Subject to paragraphs (3) to (5), the licensing authority must— (a) refuse an application for a licence; and
- (b) where regulation 14(1) applies, refuse to issue the draft licence referred to in regulation 14(1), where paragraph (2) applies.
- (2) This paragraph applies where the licensing authority is of the opinion that—
- (a) the proposed 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
 - (b) the applicant is not a fit person—
 - (i) to store explosives, in the case of an application for a licence to store explosives; or (ii) to manufacture explosives, in the case of an application for a licence to do so.
- (3) Where a licensing authority proposes to refuse an application for— (a) a licence;
- (b) a renewal of a licence;
 - (c) a variation of a licence; or

- (d) a transfer of a licence; it must, before taking any 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.
- (4) Representations made for the purpose of paragraph (3) may be made in writing, or both in writing and orally. (5) Where the licensing authority decides to refuse an application for—
- (a) a licence;
 - (b) a renewal of a licence;
 - (c) a variation of a licence; or
 - (d) a transfer of a licence; it must provide the applicant with written reasons for its decision.

Explosives Regulations, Page 29

(6) A refusal by the licensing authority, pursuant to paragraph (1), to issue the draft licence referred to in regulation 14(1) is to be treated for the purposes of these Regulations as a refusal of an application for a licence.

PART 7

REVOCATION OF AUTHORISATIONS AND APPEALS AGAINST CERTAIN DECISIONS

Revocation and expiry of an explosives certificate

- 21 (1) A chief officer of police may revoke an explosives certificate which that chief officer of police has issued if, at any time, that chief officer of police is satisfied that the holder was not when the explosives certificate was issued, or is no longer, a fit person to hold an explosives certificate in the terms of that explosives certificate.
- (2) A chief officer of police must revoke an explosives certificate which that chief officer of police has issued if, at any time, that chief officer of police is satisfied that any of the conditions in paragraph (1) or (2) of regulation 19 was not met when the explosives certificate was issued, or is no longer met.
- (3) An explosives certificate ceases to be valid—
- (a) 5 years after the date of issue; or
 - (b) after such lesser time as may be stated therein; or
 - (c) after notice of revocation by the chief officer of police for the relevant police force has been served on the holder of the certificate, whichever happens first.
- (4) The holder of an explosives certificate must surrender it to the chief officer of police who issued it immediately after a notice of revocation has been served on that holder under paragraph

Appeals and applications to the Crown Court or Sheriff

22. (1) A person aggrieved by any decision of a chief officer of police to refuse an explosives certificate under regulation 19 or to revoke an explosives certificate under regulation 21 may appeal within 21 days of receiving notice of that decision.
- (2) An appeal under this regulation in England and Wales is to be to the Crown Court and in Scotland is to be to the sheriff by way of summary application.
- (3) The court hearing an appeal under this regulation may dismiss the appeal or allow the appeal and give directions to the chief officer of police to issue or restore the explosives certificate.
- (4) A prohibited person may apply to the Crown Court or, in Scotland, to the sheriff by way of summary application for an order that that person is no longer

a prohibited person and the court hearing any such application may make an order exempting that person from the provisions of these Regulations relating to a prohibited person.

Revocation of a licence

23. (1) The licensing authority which grants a licence may, subject to paragraphs (3), (4), (5) and (6), revoke that licence—
- (a) 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;
 - (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—

Explosives Regulations, Page 30

- (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.
- (2) A person whose licence is revoked must ensure that—
- (a) all explosives are removed from a site as soon as is practicable after revocation of a licence in respect of that site;
 - (b) those 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; and
 - (c) the licence is returned to the licensing authority within 28 days of the date that the revocation takes effect pursuant to paragraph (6).
- (3) Where a licensing authority proposes to revoke a licence, it must, before taking any 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.
- (4) Representations made for the purpose of paragraph (3) may be made in writing, or both in writing and orally.
- (5) Where the licensing authority decides to revoke a licence, it must provide in writing to the licensee the reasons for its decision.
- (6) Where the licensing authority revokes a licence, that revocation takes effect from a date to be determined by the licensing authority which must be a date after the 28 day period referred to in paragraph (3).

PART 8

LICENCES FOR SITES WHICH CEASE TO BE, OR BECOME, ONR REGULATED SITES

Licences for sites which cease to be ONR regulated sites

24. (1) Where this regulation applies a licence granted by, or treated as granted by, the ONR is to be treated on and after the relevant date as a licence granted by the relevant licensing authority.
- (2) This regulation applies where—
- (a) the site in respect of which the licence was granted ceases to be an ONR regulated site; and
 - (b) the licence mentioned in sub-paragraph (a) remained in force immediately before the relevant date. (3) In this regulation—
- (a) "relevant date" means, in relation to a site, the date on which the site ceased to be an ONR regulated site; and

- (b) "relevant licensing authority" means the licensing authority for the site determined in accordance with Schedule I, other than paragraph 4 of that Schedule, as if an application for a licence were to be made.

Licences for sites which become ONR regulated sites

- 25. (1) Where this regulation applies a licence granted by, or treated as granted by, a licensing authority (other than the ONR) is to be treated on and after the relevant date as a licence granted by the ONR.
- (2) This regulation applies where—