

DERBYSHIRE COUNTY COUNCIL**MEETING WITH CABINET MEMBER, HEALTH AND COMMUNITIES****22 December 2014****Report of the Strategic Director, Health and Communities****SAFE STORAGE AND SUPPLY OF FIREWORKS****1. Purpose of the report:**

To inform the Cabinet Member, Health and Communities of activities undertaken during 2014 to keep the public safe from the potential harm from fireworks; and to provide details of recent changes in the legislation relating to the safe storage of fireworks.

2. Information and analysis:

- 2.1. The County Council is responsible for enforcing the provisions of the Health and Safety at Work Act that are intended to ensure that the public are not put at risk from explosives, particularly fireworks. The legislation, which has recently changed, dates back to the 1875 Explosives Act and requires retailers to ensure that fireworks are stored safely; that the public does not have access to fireworks stored on their premises; and to take active steps to identify and minimise the risk of fire or explosion and the spread of fire.
- 2.2. Explosives legislation is largely expressed in terms unfamiliar to those outside the industry. Confusingly, the legal framework applying to fireworks is formed by general explosives legislation together with other specific requirements for fireworks – unfortunately this means that the law is not easily simplified. Quantities are expressed in terms of the Net Mass of Explosive (NME) – this is the amount of explosive in a product rather than its total weight. For fireworks (only) the NME can be assumed to be a quarter of their total weight unless their NME is specified.
- 2.3. A second factor to be observed in discussing controls on explosives is their classification in terms of the hazard they present. For the purposes of the Explosives Regulations, four Hazard Types (HT) are used to indicate the nature of the hazards posed by different explosives with Hazard Type 1 (or HT1) having the highest blast danger, whilst HT4 explosives have a much lower blast danger but still present a significant local fire hazard. Fireworks mainly fall into HT4 but some larger examples are classed as HT3. This latter point is significant because explosives of different Hazard Types when stored together are collectively assigned into the higher classification. For example, 200kg of HT4 with 50kg of HT3 is classified as 250kg HT3. The amount of explosive together with the Hazard Type determines whether separation

distances need to be maintained between explosive stores and facilities like dwellings and public thoroughfares.

- 2.4. The consequences of having HT3 explosives present is that only smaller amounts of fireworks can be stored in typical retail premises. Up to 250kg of HT4 can be stored without needing to maintain a separation distance. Strikingly, however, only 25kg of HT3 can be stored before separation distances of at least 7 metres must be maintained. Storage of more than this quantity of explosive would generally require the use of a separate explosives store away from the public sale and display area. This has implications for the retail sector where space is limited and fireworks are generally a seasonal product.
- 2.5. The storage of explosives (particularly retail quantities of fireworks) is subject to licensing by the County Council, whereas explosive manufacture and storage of high explosives/large quantities are activities licensed by the Health and Safety Executive (HSE). The Police also have a licensing role under the legislation for the storage of explosives requiring an explosives certificate, such as gunpowder. Authorities can refuse to grant a licence for two reasons; if it is considered that, either the applicant is not a fit and proper person to store explosives, or that the premises identified for storage are unsuitable for the intended purpose.
- 2.6. A principal change brought about by the new legislation has been to remove a simplified form of Licensing termed 'Registration' which used to be appropriate for persons (particularly retailers selling fireworks) who wished to store up to either 250kg of HT4 or 100kg of HT3 explosive only. There is now only one form of storage licence and, in future, licence applicants must detail the type and quantity of explosive to be kept and provide a location plan or map of the site. If it is intended to store more than 12.5kg of fireworks on a shop floor, the applicant must also include a floor plan. Most Derbyshire firework sellers were able to avoid this requirement in 2014 as their previous storage authorisation (Licence or Registration) was renewed before the 2014 requirements came into effect on 01 October this year. It is anticipated that the more onerous requirements now required will give rise to many business queries when new licences are applied for in 2015, particularly as licensing authorities will be able to apply individual conditions, where considered necessary, on a storage licence.
- 2.7. A further change is that Licences, where requested, can be issued for any (yearly) period of up to 5 years where considered appropriate by the licensing authority. This has the advantage of reducing administrative burdens for businesses and authorities and may provide some cost savings should licence fees be increased in future years.
- 2.8. The main aim of explosives legislation as it relates to fireworks is to control the amount of fireworks that can be stored and how they should be stored to ensure that the risk of unauthorised access and ignition is minimised. Persons keeping explosives have a legal duty to assess and manage the risks of fire

and explosion. If a business has more than 5 employees then the risk assessment must be in writing. HSE have made a checklist available on their website: <http://www.hse.gov.uk/explosives> and our Inspectors refer businesses to this template.

2.9. Regulations made under the Fireworks Act 2003 allow the sale of fireworks only during 'permitted periods' Most retailers store and sell fireworks for the three week period around 05 November and one or more of the other permitted periods, specifically these are;

- During the period beginning 15 October and ending on 10 November,
- During the period beginning 26 December and ending on 31 December,
- Three days immediately before, and on, the day of Diwali,
- Three days immediately before, and on, the first day of Chinese New Year.

2.10. Specialist businesses wishing to supply fireworks outside these periods must apply to the County Council for an 'annual sales licence'. This 'sales' licence is in addition to the storage licence which is always required when other than very small quantities of explosives are being kept for the purpose of sale. Only three Derbyshire businesses are likely to request renewal of their annual sales licence (which cost £500) to enable them to supply fireworks all year round.

2.11. As in previous years, the Division has prioritised visits to check compliance at firework retailers: new businesses; those that have previously been found to be non-compliant; and those that have been the subject of complaint. Some 118 retailers sought a licence to store fireworks this year which is slightly less than the 137/138 for the previous two years. 72 premises (61%) were visited and 37 (51%) were unsatisfactory in some regard. 31 (43%) of the unsatisfactory businesses related to incorrect storage of fireworks, and whilst the majority of issues were addressed at the time of the visit, the continuing level of incorrect storage highlights the need for businesses to be independently checked in order to ensure that members of the public are not put at risk.

2.12. It is often found by inspectors that inexperienced employees who only deal with explosives for short periods of time are frequently found to be unaware of the fire and explosion risks and consequent danger to persons present on or near the premises. The type of issues detected included the following:

- Inadequate staff training and risk-assessment, meaning that employees were not aware of the danger posed by the presence of explosives and consequently not taking appropriate measures and precautions to avoid the risk of fire and explosion.

- Excess quantities of fireworks being stored without maintaining the necessary separation distances. (This problem has been more widespread this year as manufacturers have increased the types of fireworks that are classed as HT3 with many retailers not being aware of the higher risks and consequent safety provisions that are necessary).
- Excess quantities being stored in sales areas in which the public may be present and fireworks not safely stored in these areas – either not secured or presenting an elevated fire risk due to the presence of flammable items or sources of ignition. All of these infringements mean that persons on the premises are at greater risk of harm from fire or explosion, should an incident occur.
- Dangerous storage in stock areas, such as keeping fireworks adjacent to fire escapes, again raising the likelihood of harm in the event of a fire or explosion.

2.13. Staff at each shop were given verbal and written advice at the time of the visit and letters of advice and/or warning to the relevant responsible person followed. Two potentially serious complaints relating to incorrect storage of fireworks were received, one of which resulted in a joint operation with a neighbouring trading standards authority and the Police – although reassuringly, no problems with fireworks in Derbyshire were detected as a result. Enquiries are continuing with regards another local retailer that was found to be storing fireworks incorrectly and who also was found to be selling fireworks outside of the permitted dates. This operator faces further enforcement action and the possibility of the revocation of their storage licence. If this course of action is sustained, the revocation must be declared in any future application to an authority for either a storage licence under the Explosives Regulations 2014 or an annual sales licence under the Firework Regulations 2004

2.14. Further details of activities under-taken are provided in the appendix to this report.

3. Other considerations:

In preparing this report the relevance of the following factors has been considered; prevention of crime and disorder, equality of opportunity, financial, legal, human resources, environmental, health, property and transport considerations.

4. Background papers:

None

5. Key Decision:

No

6. Call-in:

Is it required that call-in be waived for any decision on this report?
No

7. Officer's recommendation:

That the Cabinet Member, Health and Communities notes the report.

**David Lowe
Strategic Director
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Appendix - Fireworks / Explosives Project 2014-15

Background:

Currently in Derbyshire 118 premises are licensed to store explosives. This compares to 138 licensed premises the previous year. Details of the type of premises registered/licensed for the past three years is provided below.

Type of Storage Licence/Registration	2012-13	2013-14	2014-15
New premises Registered	17	21	7
Renewals of Registrations	85	87	82
Renewals of Registrations (under historic 'mode B' storage limits)	13	10	7
New Licences (pre-2014 Regulations)	2	1	1
Renewals of Licences	11	12	10
Registrations to store explosives other than fireworks (e.g. various cartridges and air bag activators)	9	7	7
New Licences issued under The Explosives Regulations 2014 (Registration no longer available)	N/A	N/A	4
Total	137	138	118
Annual Sales Licence (Fireworks Regulations 2004)	4	4	3

Activities Undertaken:

The Division wrote to all local businesses that had either previously applied for a registration or licence to store and sell fireworks reminding them that their existing storage registration/licence would expire on 30th September and advising them of the new requirements of The Explosives Regulations 2014. Advice was given to all new applicants on safe and compliant storage of fireworks.

Trading Standards staff from the Safety section attended a training course on the new Regulations in September and a programme of visits was undertaken between 15 October 2014 and 5 November 2014. Premises were selected for inspection by looking at the previous history of the premises and included:

- All premises with a new registration or licence
- All premises with previous storage infringements
- All premises that we received complaints about
- Premises that had not been visited in recent years due to confidence acquired from previous compliant inspections.
- Premises not renewing their registration that were visited to check no fireworks were present.

The purpose of the visits was to check:

- the safe storage of fireworks
- compliance with licence requirements
- that the fireworks were of an approved category and bore the UK/CE mark
- the satisfactory completion of a written risk assessment, where required
- that the statutory notice at point of sale was displayed.

As with previous years, a variety of issues with the storage of fireworks were identified and the responsible person advised both verbally and by way of a visit report. Where necessary, this was also followed up with an advisory or warning letter depending on the severity of non-compliance. The number of visits conducted by District and the number and percentage of premises to be unsatisfactory in some way and/or to have incorrect storage of fireworks, is provided below.

District	Premises Licensed for storage of explosives	Premises visited	%	Unsatisfactory visits	%	Non-compliant storage	%
Amber Valley	22	10	45%	5	50%	3	30%
Bolsover	8	4	50%	1	25%	1	25%
Chesterfield	23	17	74%	5	29%	4	24%
Derbyshire Dales	13	6	46%	6	100%	5	83%
Erewash	15	11	73%	5	45%	4	36%
High Peak	14	5	36%	3	60%	3	60%
North East Derbyshire	12	11	92%	7	64%	7	64%
South Derbyshire	11	8	73%	6	75%	5	63%
Total	118	72	61%	37	51%	31	43%

Although many of these issues pose a risk to public safety, most were remedied at the time. As a consequence of the non-compliant issues, 24 letters of warning and/or advice were issued. This means that if similar problems are found in the future, the authority can take more formal action.

To encourage the public to seek to deal with established retailers, a list of retail premises licenced to store fireworks was placed on the Derbyshire County Council Website and included those persons licensed to sell fireworks all year round.

Links to other websites giving advice on safe firework use and the firework safety code were also placed on the website alongside guidance on reporting unauthorised traders. A press release was issued alerting consumers to the retail firework period and signposting them to the website. Details of all premises registered /licenced with this department for firework storage were sent to Derbyshire Fire and Rescue Service to ensure that fire fighters would be aware of the known risks associated with the presence of explosives.

The Division also responded to complaints from the public about firework safety and storage issues and investigated where appropriate. These included:

- Persons allegedly selling fireworks using the social media site Facebook, prompting concerns over the whereabouts and safety of any fireworks being kept for this purpose.
- A joint operation with a neighbouring authority and the Police into a person who was allegedly storing and hawking fireworks - including category 4 (professional use-only) fireworks.

- A business thought to be displaying fireworks openly outside the premises

Summary

There has been a significant increase in problems with unsafe and non-compliant storage of fireworks reflected in the number of letters of warning issued and the letters of advice sent.

An increasing number of premises were storing Hazard Type 3 fireworks alongside Hazard Type 4 fireworks requiring separation distances to be adhered to and a storage licence for a larger explosive amount. None of the premises concerned could meet the required separation distances to ensure safe and compliant firework storage. In all cases the storage was rendered safe, mostly by stock being removed from the site and being returned to suppliers.

Storage problems were still a major issue with licence holders failing to adopt previous advice that had been given to them. This included some traders that have had storage licences for a number of years.

Major issues with firework storage could mean that some licence holders have conditions applied to their licences next year. Licences will also only be issued for a year where there have been problems with safe and compliant storage, legislation allows for them to be granted for up to 5 years.

The number of premises licenced for firework storage had fallen from the previous year by 20.