

# Blackburn with Darwen Borough Council

**Adopted 4 August 2017**

## **FIREWORK LICENSING POLICY**

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## 1 INTRODUCTION

### 1.1 The Policy

This document states Blackburn with Darwen Borough Council's policy on the regulation of the storage of explosives under the Explosives Regulations 2014 and the Fireworks Regulations 2004 in its capacity as the relevant licensing authority (and the expressions "Council" and "local authority" shall be construed accordingly).

### 1.2 The Law

Legislation requires anyone storing less than 2000kg of explosives to obtain a licence from the licensing authority. Where a person wishes to store more than 2000kg of explosives the application should be made to the Health and Safety Executive.

The Explosives Regulations 2014 include a set of authorisations which allow activities that without an authorisation would be against the law.

Because of the potential for explosives to cause both accidental and deliberate harm to people, damage or destruction of property and infrastructure and disruption to wider daily life the licensing authority will only grant a licence where it is satisfied that certain requirements are met. These are that the premises used to store the explosives are suitable and that the person applying for a licence is a fit person to hold one.

## 2 TYPES OF LICENCE

2.1 A licence issued under the Explosives Regulations 2014 permits the storage of up to 2000kg of fireworks and their sale during the permitted periods of 15 October to 10 November; 26 to 31 December and 3 days before Diwali and Chinese New Year. Fireworks include sparklers.

2.2 A licence can last for up to 5 years or any lesser period of time determined by the licensing authority. Reductions in the period of the licence might include short term leases or, where there is a questionable history or unproven track record of the applicant.

2.3 Anyone who wishes to supply fireworks outside the normal permitted periods will also need to make a separate application for a licence to under the Fireworks Regulations 2004.

### 3 SUITABILITY OF SITE

3.1 In making decisions on whether or not a site is suitable the authority will consider each site on its own merits. In particular, Regulation 27 and Schedule 5 of the 2014 regulations specify mandatory separation distances from the store to other sensitive land uses depending on the type of store and the quantity and hazard type of the fireworks.

3.2 The Health and Safety Executive state the following examples of when a site might not be suitable:

- 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).

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.

#### 4 SUITABILITY OF APPLICANT

- 4.1 A local authority must determine whether the applicant is a fit person to safely store and handle explosives.
- 4.2 In determining this the Rehabilitation of Offenders Act 1974 is applicable. The authority may have regard to unspent convictions. Any previous convictions will be considered in relation to the relevance of the storage and sale of explosives. The Authority will also consider any non-compliance with any other regulatory regimes. For this reason the Authority will consult with the Police and Lancashire Fire and Rescue Service before issuing a licence. All application forms will be forwarded to Lancashire Constabulary and Lancashire Fire and Rescue Service. To allow for this consultation to take place it is recommended that applicants submit an application form well in advance of the date from which they wish to sell fireworks. It could take upto 6 weeks from receiving an application form to issue of licence.
- 4.3 There is no automatic barrier to being considered a fit person; however the following may be considered factors in determining that a licence applicant is not a fit person to hold an explosives licence:
1. A previous history of non-compliance with explosives licensing requirements, including refusal and revocation of previous Licenses or Registrations, a history of persistent minor breaches of the regulations without improvement. A history of relevant Improvement and Prohibition Notices for health and safety offences.
  2. A previous history of non-compliance with Health and Safety Legislation.
  3. Breaches of the Pyrotechnics Articles (Safety) Regulations 2010 in relation to the following;
    - a. Age related sales
    - b. The supply of articles that require specialist knowledge to people who do not meet that requirement.
    - c. Dishonestly representing themselves as a person with specialist knowledge.
  4. Breaches of the Firework Regulation 2004 in relation to selling or exposing for sale outside the recognised selling periods.
  5. Unspent criminal convictions relating to dishonesty.
  6. Unspent criminal convictions relating to the supply of age related products and or controlled substances.

7. Unspent criminal convictions relating to offences against the person, firearms, terrorism or health and safety.
- 4.4 The information supplied in the licence application form may, where appropriate, be shared with other relevant bodies such as the police, other local licensing authorities or the Health and Safety Executive. Applicants have the right to request a copy of any personal information and to have any inaccuracies corrected.

## 5 LICENCE CONDITIONS

- 5.1 Every licence must include conditions which specify—
  - (a) the site and, within it, the places where the explosives may be stored,
  - (b) the hazard type, if any, the description and maximum amount of explosives which may be stored or otherwise present.
- 5.2 In addition, at any site where pyrotechnic articles (which includes fireworks) are to be offered for sale, the licensing authority may attach conditions which relate to:
  - (a) the storage and display of those articles in areas where they can be purchased;
  - (b) the prevention of risk of fire arising in respect of those articles; and
  - (c) the safe use of fire escapes in that area.

## 6 APPLICATION PROCEDURES

### 6.1 Application

An application for a Storage Licence under the Explosives Regulations 2014 must be made on the form prescribed by the Health and Safety Executive.

The following documents must be submitted with the application form:

- a). A plan to a scale sufficient to show the location of the site in relation to its surroundings (i.e. named or numbered roads, hamlets, villages or geographical features). Where the site does not have a postal address this should normally be a minimum scale of 1:25000.
- b). If the store is subject to separation distances an Ordnance Survey Siteplan (or similar) map showing the location of the store and distances to any neighbouring buildings.

c). Where more than 12.5kg of fireworks are to be stored or displayed on a shop floor, a floor plan of the sales area.

d). Where it's intended to store, process or manufacture explosives within a building that is also used for other purposes a floor plan showing the places within the building where the storage, processing or manufacturing will take place.

## 6.2 Renewal

Where a renewal application has been refused – the licence expires when no appeal has been made under section 44 (1) of the Health and Safety at Work Act or any such appeal has resulted in confirmation of the refusal.

## 6.4 Transfer

A licence may be transferred by the licensing authority to any other person who wishes store explosives in place of the licensee and who applies to the licensing authority for the transfer.

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

## 6.5 Fee

The application must be accompanied by the appropriate fee. Details of current fees can be found on the Health and Safety Executive's website. <http://www.hse.gov.uk/explosives/licensing/fees.htm>

Where a renewal application is made it means the granting of a licence where a previous licence of the same kind is in place without any amendment or gap in time.

If a licence application is refused then the fee is not refunded if a 1 year fee has been paid. Where an applicant has applied for a licence for more than 1 year any fee paid in excess of the current fee for a 1 year licence will be refunded.

## 7 VARIATION OF LICENCE

7.1 Where a licensing authority proposes to vary a licence without the agreement of the licensee it must, before taking any such action, notify the licensee of its proposed course of action. The licensing authority must give the licensee the opportunity of making representations, in writing, or both in writing and orally to the licensing authority about it, within a period of 28 days from the date of the notification.

7.2 Where the licensing authority decides to vary a licence without the agreement of the licensee it must provide the licensee with written reasons for its decision.

7.3 Where the licensing authority varies a licence without the agreement of the licensee, that variation takes effect from a date to be determined by the licensing authority which must be a date after the 28 day period allowed for representations to be made.

## 8 RIGHT TO MAKE REPRESENTATIONS

8.1 If the Council proposes to refuse an application, renewal or to revoke/vary a licence a notice shall be issued to the applicant/licensee setting out what the authority proposes to do and the reasons for this. The notice shall also state that within 28 days the applicant/licensee can either:

- a) make representations about the proposal, or
- b) inform the authority that the applicant/licensee wishes to do so.

Should this period expire and the applicant/licensee has not made representations or informed the authority of their wish to do so the authority may refuse the application, or revoke or vary the licence.

If, within the period specified, the applicant/licensee informs the authority that they wish to make representations, the authority shall allow a reasonable period to make representations and may refuse the application or revoke or vary the licence if they fail to make representations within that period.

If the applicant/licensee notifies the authority that they wish to make oral representations, the authority shall give them the opportunity of appearing before, and being heard by, the person appointed by the authority.

### 8.2 Notice of Decision

If the application is refused, or the licence is revoked or varied, notice shall be given to the applicant/licensee setting out the decision and the reasons for it. The notice shall also state that the applicant/licensee may appeal against the decision.

### 8.3 Appeals

A person 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. Guidance on the appeal process is available on the Health and Safety Executive's website

at: <http://www.hse.gov.uk/explosives/licensing/refusalsrevocationsappeals.pdf>

## 9 ENFORCEMENT AND OFFENCES

Blackburn with Darwen Borough Council is the enforcing authority for the purposes of these regulations. The regulations are made under the Health and Safety at Work Act 1974 with failure to comply with the provisions of the Regulations being offences under the Health and Safety at Work Act 1974.

## 10 REVOCATION OF LICENCE

- 10.1 The licensing authority may revoke a licence where there has been a change in circumstances such that the site or, within it, any place in which explosives are stored no longer suitable for that storage or 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 explosives; or by agreement with the licensee.
- 10.2 Where a licensing authority proposes to revoke a licence it must notify the licensee of its proposed course of action and allow that person the opportunity of making representations, in writing, or both in writing and orally to the licensing authority about it, within a period of 28 days from the date of the notification.
- 10.3 Where the licensing authority decides to revoke a licence, it must provide in writing to the licensee the reasons for its decision.
- 10.4 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 allowed for representations to be made.
- 10.5 A person whose licence is revoked must:
- a). ensure that all explosives are removed from a site as soon as is practicable after revocation of the licence;
  - b). place those explosives at a site which has a relevant licence or make suitable arrangements for those explosives to be disposed of;
  - c). return the licence to the licensing authority within 28 days of the date that the revocation takes effect;

## 11. SALE OF FIREWORKS TO UNDER 18 YEAR OLDS

- 11.1 It is an offence to sell fireworks to under 18 year olds. The legislation which applies is Pyrotechnics Articles (Safety) Regulations 2010 which prohibit the supply of category 2 (outdoor use - confined areas) and category 3 (outdoor use - large open areas) fireworks to any person under the age of 18. The Regulations prohibit the

supply of category 1 (indoor use low hazard low noise - party poppers etc) fireworks to any person under the age of 16.

- 11.2 Blackburn with Darwen Borough Council recommends that as with other age restricted products, a Challenge 25 policy is adopted by licence holders. This means that if a person appears to be under the age of 25 they will be asked to verify that they are over 18, by showing proof of age.

We recommend that licence holders register with <http://www.agecheck.co.uk>. This is likely to be free of charge for shops in Blackburn with Darwen.

- 11.3 Blackburn with Darwen Borough Council will make attempted undercover test purchases, with under age volunteers, to check whether or not licence holders sell fireworks to under 18s.

- 11.4 It's a requirement that notices be displayed at premises to regarding the prohibition on sale of fireworks to children. The notices should comply with the following requirements:

- measuring no less than 420mm by 297mm (A3 standard paper size)
- letters are no less than 16mm high
- Wording:
  - 'It is illegal to sell category F2 or F3 fireworks or sparklers to anyone under the age of eighteen'; and
  - 'It is illegal for anyone under the age of eighteen to possess Category F2 or F3 fireworks in a public place.'