



## 1 Introduction

This guidance note details the procedure to be followed by an Inspector, where it is suspected that stocks of fireworks are in excess of those permitted by law. Serious overstocking may result in legal action being taken against the occupier of the licenced premises. It is therefore of vital importance that the stock is quantified by a system that will be accepted by the Criminal Courts as proof 'beyond reasonable doubt' that the permitted quantities were being exceeded.

## 2 Stock Checking Procedures

### 2.1 Assessment

This stage relies on the inspector to make a judgement as to whether the quantity of fireworks in stock exceeds the level permitted. In making this assessment, it should be borne in mind that 1000kg of mixed fireworks will stack to about shoulder height, onto three industrial 48" x 40" pallets. Alternatively, an assessment can be made by counting the number of cartons and in this respect >130 packages would be indicative exceeding the 1000kg limit. This rule of thumb would not apply where, for example, the fireworks are predominantly rockets or roman candle combination (cakes) as the weights are considerably less and greater respectively.

All fireworks from 05 July 2017 must carry the CE mark BS EN 19547, BS7114 stock is no longer permitted and is illegal to display, offer for sale to members of the public.

All CE marked stock carries the Net Explosive Content (Nec) weight of explosive powder content on the product, therefore it is simpler to quantify the amount of explosives held.

Inspectors will need to be aware of the possibility of some of the fireworks being dummies for display purposes, these should not be mixed in cabinets with live products and may be on open display in the shop and must carry the words "dummy Fireworks".

### 2.2 Inventory Check

If it appears from an initial assessment that the premises may be over-stocked, the inspector should then carry out an inventory check. The occupier of the premises or his representative should be notified of, and invited to witness (but not interfere with) the inventory check. Checking the permitted amount on the licence against what is in stock. Inventory checking will simply involve itemising (FSFRM005 - Sharepoint). The inventory check should continue until it is clearly demonstrated that the stock is in excess of the permitted quantities.

If overstocking is to a small extent and this is a first offence by the occupier at that premises and the occupier appears ready to make the necessary improvements, then it is appropriate to give a verbal warning to the occupier at the time and as soon as practicable thereafter in writing, of the offence. The occupier should be instructed to put a stock control system in place as per the requirements of the Explosives Regulations 2014 (ER14) to prevent a repetition of the breach. An Improvement Notice is an appropriate method of ensuring better management of stock is adopted in the future.

If when taking an inventory check, it is clear that the stock is in excess of the permitted levels and there is history of repeated non-conformance on the system. The inspector should contact the Fire Protection Department or Duty Officer for assistance.

The retailer should be able to give the inspecting officer a breakdown of what stock he has along with receipts for purchases showing the Nec of all the products purchased.

### **3 Dangerous Conditions**

Whilst over-stocking is an offence contrary to section 22 of the Explosives Act 1875, the fact that the permitted quantities are being exceeded has safety implications and depending on the quantity of fireworks and the location/condition of the storage place, it may be desirable to remove the fireworks in the interests of public safety<sup>(3)</sup>. Section 74 of the Explosives Act 1875 and section 25 of the Health & Safety at Work etc Act 1974 make provision for this course of action. It must be proved beyond reasonable doubt that the fireworks are live fireworks and not dummy fireworks where it is intended that the retailer may be prosecuted, take samples and ask TS to attend to demonstrate consistency and fire the samples taking photographs and statements.

The occupier should firstly be asked to remove the excess fireworks within a reasonable amount of time (this depends where they are to be taken to and the amount of Nec). If this can be agreed then no other immediate action needs be taken other than issuing an Improvement Notice for non-compliance. If no agreement can be reached to the Inspector's satisfaction or if the agreement once reached, is not carried out, then the inspector should consider the seizure and removal of the fireworks for protection of the public, and as evidence photographs, invoices, and delivery notes, should be taken.

The inspector may be able to arrange for collection from the supplier of the fireworks to remove the overstocking this would be at the cost to the retailer for the removal & storage.

If the Inspector has to resort to seizure, it will be necessary to arrange the removal of the fireworks (by a competent carrier) to a pre-arranged place of lawful storage. It must be recognised that it may not be possible to arrange commercial storage either at short notice or at a convenient location and this difficulty should be borne in mind before the fireworks are seized.

A record of all items seized for retention should be agreed and signed by the retailer to corroborate what has been removed from the premises, use form SFFRM045.

The obvious location for the storage of quantities in excess of 1 tonne of fireworks would be at premises licensed under the Explosives Regulations 2014 (ER14). It should be noted, however, that manufactured finished fireworks must be classified and authorised to be legally transported or stored by any commercial organisations. The manufacturer/distributor should be approached for a copy of the relevant Competent Authority Approval Document, failing this the Health & Safety Executive should be able to advise on whether the fireworks are classified and authorised to be transported. Prior to transporting, the fireworks must be correctly packaged in approved and certified EU cartons; the manufacturer/distributor will be able to advise on this matter where there is doubt.

Black Cat Fireworks Ltd have indicated in a willingness to help this Authority with the storage, and disposal of fireworks, a fee will be charged to cover their costs.

### **4 Goods in Transit**

The question may arise as to whether the fireworks are in storage or transit.

If, for instance, the fireworks are located in the designated storeroom and onward distribution is to take place at a later date, the goods can safely be deemed to be in storage. Where, for example, a consignment of fireworks is received at a licenced premises and then despatched in the same working day, the goods (irrespective of weight) can be considered to be in transit and should not be included in the stock check and must be transported as soon as reasonably practicable to their destination. Invoices/delivery notes should confirm the date and possibly the time of day that the goods were received.

The decision as to whether the fireworks are in transit or storage is for the Inspector to make on the evidence available. Goods arriving at the licenced premises and being held there should generally be considered to be in storage unless proven otherwise.

Supporting evidence by way of photographs, video footage and invoices/delivery notes should be obtained wherever possible, and if necessary by using section 20 HSWA powers.

Notes:

<sup>(1)</sup> *Where there is an instance of serious over-stocking, an inspector would be open to criticism of neglecting his/her duties if he/she did take action to remedy the situation.*

<sup>(2)</sup> *For the purposes of this paper, the public safety implications are in connection with quantity of fireworks and their location only. The actions to be taken by an inspector where fireworks are found to be unsafe or improperly labelled or packaged are not covered by this guidance note.*

<sup>(3)</sup> *After seizure, the responsibility for the safe and legal carriage/storage of the fireworks rests with the inspector.*