



**CONSULTATION ON THE
PYROTECHNIC ARTICLES
(SAFETY) REGULATIONS 2009**

AUGUST 2009

CONSULTATION ON LEGISLATION TO IMPLEMENT THE DIRECTIVE ON THE PLACING ON THE MARKET OF PYROTECHNIC ARTICLES

Explanation of the wider context for the consultation and what it seeks to achieve

This consultation sets out the Government's legislative approach for the transposition of the European Directive on the placing on the market of pyrotechnic articles, 2007/23/EC (the Directive).

The Directive deals with the harmonisation of standards and the safety of pyrotechnic articles placed on the market in Europe. The Directive covers fireworks, theatrical pyrotechnics, and other pyrotechnic articles which include car air-bag detonators and restraint systems, nail guns and shroud cutters. It does not generally deal with the use of these items and it does not cover military and civil use explosives or marine equipment.

The Directive will harmonise safety standards for pyrotechnics across the EU while allowing Member States to retain existing national prohibitions and restrictions on possession, use and sale of particular categories of fireworks justified on grounds of public order, security, safety or environmental protection. The implementation will be through secondary legislation attached at Annex C, the Pyrotechnic Articles (Safety) Regulations 2009, which will replace the Fireworks Safety Regulations 1997 (as amended).

The proposed UK legislation, which has to be in place by 4 January 2010 is intended to reflect the wording and structure of the Directive as closely as possible.

Although the closing date for the consultation is 27th October 2009 BIS would welcome any early responses.

The Regulations will be made using, among other powers, the power to make safety regulations under section 11 of the Consumer Protection Act 1987. That section requires the Secretary of State to consult with various interests, together with a specific requirement where the regulations affect goods suitable for use at work with the Health and Safety Executive. This consultation document, which will be made available to stakeholders, together with other formal and informal contacts satisfies that consultation requirement.

Issued: 4 August 2009

Respond by: 27 October 2009

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This consultation is relevant to: the pyrotechnics industry, regulatory bodies covering the industry, local authorities and fire safety services

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1. Executive Summary

The European Commission described the Directive as aiming to address four issues:

- i) Ensuring the free movement of pyrotechnic products within the EU,
- ii) Improving the protection of consumers and professionals,
- iii) Contributing to the reduction of injuries, and
- iv) Harmonising the safety requirements applicable in different Member States.

Scope

1.1 The Directive addresses the four objectives above. It covers fireworks, theatrical pyrotechnics, and other pyrotechnic articles which include car air-bag detonators and restraint systems, nail guns and shroud cutters. It does not generally deal with the use of these items, although prohibitions and restrictions in national law on possession, use and sale of pyrotechnic articles have to be justified on grounds of public order, security or safety or environmental protection. It does not cover military, civil and aerospace industry use explosives nor marine equipment and ammunition.

1.2 It covers the standards for these articles, and imposes certain restrictions on their supply, in the case of category 1, 2 and 3 fireworks and category T1 and P1 pyrotechnic articles there are standard age limits, although Member States are at liberty to have lower limits on grounds of public order, security or safety. More hazardous articles must only be supplied to “persons with specialist knowledge”. We discuss the definition of that expression in more detail in the Section 3.

1.3 The draft Regulations follow the wording and structure of the Directive as closely as possible to aid clarity since, for example, it will be necessary for many readers to refer to the underlying Directive in certain cases. The main effect of the Regulations will be on the manufacturing aspects of the industry and the supply of fireworks. The UK will retain a number of specific prohibitions on the supply of certain types of firework, mainly because of safety concerns. Schedule 3 to the draft Regulations set out definitions of the fireworks which are affected by the specific prohibitions in Schedule 3. We would welcome views as to the suitability and adequacy of those definitions (Annex A question 1). The draft Regulations do not affect existing UK rules on the use of fireworks, set out in the Fireworks Regulations 2004 and the Fireworks (Scotland) Regulations 2004, which include rules on the allowed times for use and penalties for misuse, nor is it intended to affect the practical operations of users of pyrotechnics other than fireworks.

1.4 Whilst pyrotechnic articles include theatrical pyrotechnics and other pyrotechnic articles, such as, car air-bag detonators, fireworks represent the majority use of such articles within the EU. Legislation on the marketing and use of such articles is currently determined nationally throughout the EU, and the UK has currently in place substantial regulations on the standards for fireworks, times of use, and age-related rules on their purchase.

1.5 We are consulting people involved in the industries and public sector organisations affected by the proposals primarily to avoid unintended consequences of the wording in the draft Regulations, although of course much of the wording follows directly from the Directive. We are therefore seeking the views of manufacturers, importers and users of such articles along with those of enforcement agencies and safety services.

1.6 We are seeking views on:

- a. how we intend to implement the Directive (but not views on the Directive itself which was agreed in the European Parliament and Council and published in May 2007) and
- b. the draft Impact Assessment.

2. Responses and timetable

How to respond

2.1 When responding please state whether you are responding as an individual or whether you are representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

2.2 The closing date for all responses is 27 October 2009

A response can be submitted by letter or fax, but preferably by email to:

Email: tony.edenbrown@bis.gsi.gov.uk

Tony Eden-Brown
BIS
Consumer & Competition Policy
1 Victoria Street
London SW1H 0ET
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2.3 A list of consultation questions can be found at Annex A

2.4 A list of those organisations consulted is at **Annex B**. We would welcome suggestions of others who may wish to be involved in this consultation process.

2.5 Help with queries

Questions about the policy issues raised in the document can be addressed to:

Tony Eden-Brown / David Southerland
Department for Business, Innovation and Skills
Email: tony.edenbrown@bis.gsi.gov.uk / david.southerland@bis.gsi.gov.uk
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2.6 Additional copies

You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from:

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2.7 Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

2.8 Issues relating to the consultation process

If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

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More information on the Code of Practice on Consultation is in **Annex F**.

3. The Proposal

3.1 The Directive is aimed primarily at harmonization of standards, thereby ensuring free movement and improving safety across the EU across the whole range of pyrotechnics. Recognising there are highly different regulatory approaches and market mechanisms for different types of pyrotechnic articles in different Member States, the draft Regulations split the treatment of category 1, 2 and 3 fireworks i.e. those available to the general public (in Part 2 of the draft Regulations) from category 4 fireworks which are only available to professional users and other pyrotechnic articles (Part 3 of the Regulations).

3.2 However certain obligations are imposed on manufacturers and importers of all pyrotechnic articles, including the requirement to have all type tested by a third-party "notified body", as well as any testing they may undertake themselves. Part 4 of the Regulations deal with the requirements for appointment as a notified body and the fees it can charge.

3.3 The draft Regulations introduce a number of concepts that are already in place in the UK. The main one of these being age limits for purchasing fireworks. The Directive specifies standard age limits for different categories of fireworks, which are lower than presently permitted in the UK. However it also explicitly permits Member States to retain or introduce different age limits on grounds of public security or safety. The Government believes that the UK should maintain its existing age limits for the purchase of fireworks. Part 2 of the draft Regulations, deals with fireworks which are available to the general public, and lays down requirements for labelling and retains the existing UK minimum age limits of 18 for the purchase of category 2 and 3 fireworks and 16 for the purchase of those of category 1. (Annex A question 2).

3.4 Similarly the text allows Member States to control the possession, use or supply of category 2 and 3 fireworks on the grounds of public security, order or safety or environmental protection. Again, the Government believes that many of the existing requirements and prohibitions we have on the supply of fireworks such as bangers and air bombs must be maintained. These restrictions have led to reduced public nuisance and injuries. Regulation 21 of the draft Regulations lists those fireworks within category 2 and 3, which are specifically prohibited from general sale under existing legislation and which will continue to be prohibited for general sale. The names of some fireworks have been altered to update them in line with existing or forthcoming standards. For the most part this represents no change. Certain prohibitions have been removed since they are dealt with adequately under the Directive regime, for example, there is no list of particular weights and sizes of fireworks which are prohibited, because the forthcoming harmonised standard will cover such issues. The existing prohibition on non-listed fireworks has been removed, since we believe this is more appropriate to prohibit specifically fireworks whose risk is known in the light of the Directive and forthcoming harmonised standard. We intend to retain the prohibition on breaking up selection packs of fireworks as we believe this has been a contributory factor in reducing anti-social use of fireworks ((Annex A question 3). Part 2 of the Regulations will enter into force on 4 July 2010.

3.5 Part 3 of the draft Regulations deals with all other pyrotechnic articles, including category 4 (display) fireworks, which may only be supplied to and used by persons with specialized knowledge. The definition of a person with specialist knowledge has not been narrowly defined as the range of articles covered is wide and the knowledge necessary varies significantly according to the article in question, especially in relation to articles other than fireworks and theatrical pyrotechnics. We believe it is necessary to have a flexible approach which relies on such persons being able to demonstrate to suppliers their experience, training and having valid insurance. We have also sought not to impose a significant increase in the regulatory burden. Part 3 of the Regulations will enter into force on 4 July 2013. (Annex A questions 4 and 5).

3.6 It has been brought to our attention that the introduction of the term minimum safety distance on a category 4 firework or T2 pyrotechnic article could preclude their safe use within those distances by persons with specialist knowledge. Although the Directive specifies minimum distance, the precise requirements will also depend on the harmonised standard which is not yet in existence. We would therefore welcome views on how we should word the Regulations on the labelling of these articles, (Annex A question 6).

3.7 Enforcement of the Regulations will fall primarily to the Health & Safety Executive and the Health and Safety Executive for Northern Ireland in respect of categories of pyrotechnics falling outside of category 1, 2 and 3 fireworks. Legislation on the safety of fireworks intended for sale to the general public (category 1, 2 and 3) is enforced by local authority Trading Standards Departments using powers under the Consumer Protection Act 1987 (and district councils in Northern Ireland). This will continue to be the case. (Annex A question 7).

3.8 At present the Firework Safety Regulations 1997 are enforced by the testing of samples of fireworks when they enter the country or as they are found in the retail supply chain. Under the requirements of the draft Regulations the manufacturer will need to go to a 'notified body' to have the product certified as complying with the Directive. This will therefore result in additional costs to industry.

3.9 The Directive will permit the free movement of pyrotechnic articles that conform to the harmonised European Standard or to the essential safety requirements in the Directive, except where the particular type is prohibited within the UK or a particular requirement applies.

Further detail on the drafting of the draft Regulations

3.10 As noted above the approach has been to follow the wording and structure of the Directive as far as possible.

3.11 In various cases the draft Regulations require the reader to refer to the Directive, for example in relation to content of Annexes 2 (conformity assessment procedures) and 3 (minimum criteria to be taken into account for notified bodies). Those Annexes are particularly technical in nature and are also subject to amendment by the European Commission under its comitology procedure. The references in the draft Regulations refer to those Annexes as amended from time to time.

3.12 The definitions used in the draft Regulations are predominantly those used in the Directive. Some of the language has been tailored (though as little as possible) to reflect the fact that the draft Regulations are made partially using the power under the Consumer Protection Act 1987, thus rather than refer to a persons "placing a product on the market", these Regulations refer to a person "supplying" a product. That approach applies even in Part 3 which is made under the power to implement European obligations under the European Communities Act 1972.

3.13 The Directive excludes police forces, fire departments and armed forces. We would welcome comments on the references to UK bodies falling within the Directive expressions- we have made detailed provision in regulation 3 of the draft Regulations. (Annex A question 8).

3.14 The free movement provision in Article 6(1) of the Directive reflects the freedom of movement of goods, one of the EC's four freedoms, enshrined in the Treaty of Rome. The provision in the draft Regulations provides that articles which comply with all legally binding measures of a Member State other than the United Kingdom are in compliance with the relevant Part of the draft Regulations. As is permitted by EC law including the Directive, the draft Regulations apply certain UK provisions to such articles, for example, requiring those articles to comply with certain specific labelling provisions, allowing for enforcement and making clear that notwithstanding compliance with the rules of another Member States certain fireworks are

nevertheless prohibited in the United Kingdom. Provisions which fall within article 6(1) are justified on grounds of safety or public order. (Annex A question 9).

3.15 In the labelling provision an article for supply in the United Kingdom must be labelled in English. Articles for supply to other Member States must include labelling information in the official language of such Member States and with the relevant age limits for that State. This provision retains the existing UK rule that a packet of category 2 sparklers must include a warning that it is not to be given to children under 5 years of age. This requirement applies to fireworks from other Member States and is justified on grounds of safety.

3.16 Part 2 of the draft Regulations applies to categories 1, 2 and 3 fireworks (consumer fireworks) which come into force on 4th July 2010. To avoid confusion these provisions are separate from those which apply to category 4 fireworks, theatrical pyrotechnic articles and other pyrotechnic articles which come into force on 4th July 2013. Part 2 of the draft Regulations are to be enforced by weights and measures authorities (and district councils in Northern Ireland), with a back up power for enforcement by the Secretary of State. Part 3 of the draft Regulations are to be enforced by the Health and Safety Executive and the Health and Safety Executive of Northern Ireland. In addition weights and measures authorities and district councils in Northern Ireland will have a power to enforce Part 3. There will need to a mechanism in the draft Regulations to avoid dual enforcement by both the Health and Safety authorities and local authorities. The enforcement powers under Part 2 are those set out in the Consumer Protection Act 1987, plus in addition enforcers will have the ability to use specific provisions of the General Product Safety Regulations, in particular where it is necessary for a product to be withdrawn or recalled from the market. The enforcement powers for the Health and Safety Executive are provisions of the Health and Safety at Work Act 1974 which are applied with modifications set out in schedule 4 to the draft Regulations.

3.17 The draft Regulations revoke the Fireworks (Safety) Regulations 1997 and their amendments, together with one provision about noisy fireworks of the Firework Regulations 2004, since that issue is covered by the essential safety requirements in Annex 1 to the draft Regulations.

3.18 The draft Regulations also include transitional provision permitting fireworks which are lawful to supply immediately before the coming into force of Part 2 to continue to be supplied, in accordance with the transitional provision concerning national authorisations in Article 21(5) of the Directive. However, articles which take advantage of that transitional provision do not benefit from the freedom of movement provisions. There is a similar transitional provision for category 4, theatrical and other pyrotechnic articles. In addition a saving provision applies the existing law to fireworks which fall within the transitional provision, since as a result of the revocation of the existing safety regulations it would otherwise be the case that a whole category of fireworks would have no regulation applied to them.

3.19 The Regulations are presently drafted taking into account legislation covering Great Britain, however the intention will be for them to cover Northern Ireland as well. The intention in relation to Northern Ireland will be to preserve the current prohibition in Regulation 4(1) of the Explosives (Fireworks) Regulations 2002 on the possession, purchase, sale, acquisition, handling or use of fireworks by a person, without a licence, other than a government inspector, constable or a representative of an enforcing authority. There would need to be amendments to the 2002 Regulations and additions to the draft Regulations to reflect the enforcement authorities in Northern Ireland. For example, the exceptions from the draft Regulations would need to refer to the Police Service of Northern Ireland and its reserve and the Northern Ireland Fire and Rescue Board. The enforcement provisions will need to refer to district councils, rather than weights and measures authorities and the Health and Safety Executive of Northern Ireland will need to be added for the enforcement of the Regulations in Northern Ireland, together with suitably tailored enforcement provisions for district councils and the Health and Safety Executive of Northern Ireland.

3.20 An Impact Assessment of the effects of the introduction of these Regulations is at Annex D, a copy of European Directive 2007/23EC at Annex E, and a draft of the proposed Regulations at Annex C.

Background

3.21 Fireworks, the largest product group affected by the proposal, are controlled by a number of pieces of legislation. In Great Britain the safety of fireworks is controlled by The Fireworks (Safety) Regulations 1997 (SI 1997 No. 2294) as amended. The use of fireworks is controlled by the Fireworks Regulations 2004 as amended (SI 2004 No. 1836) and the Fireworks (Scotland) Regulations 2004. The manufacture and storage of fireworks and other explosives is controlled by The Manufacture and Storage of Explosives Regulations 2005 (SI 2005 No. 1082). The transportation of pyrotechnic articles is covered by The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (SI 2009 No.1348). In Northern Ireland use and safety is dealt with under the Explosives (Fireworks) Regulations 2002.

3.22 The Directive requires legislative action to implement its provisions in the UK. The Directive will be implemented in the United Kingdom using the powers under section 11 of the Consumer Protection Act 1987 and section 2(2) of the European Communities Act 1972. Under section 11 of the 1987 Act the Secretary of State may make such provisions, as he considers appropriate to ensure, amongst other things, that goods are safe and that the appropriate information relating to safety is given. The Health and Safety at Work Act 1974 will relate to the provisions of the Directive in relation to pyrotechnic articles used in the work place, in effect everything but category 1, 2 and 3 fireworks. In relation to Northern Ireland separate provision in the draft Regulations will be needed to deal with specific provisions of Northern Ireland legislation as set out above.

Devolution

3.23 This is a reserved area both for Scotland and for Northern Ireland. There is no Welsh competence in this field. Although the devolved administrations will have various interest in the regulations and will be consulted on their content.

Market surveillance

3.24 The Directive sets out specific provision in relation to pyrotechnic articles. To complement the specific regime introduced for pyrotechnic articles by the Directive, the Regulation on accreditation and market surveillance 765/2008 (RAMS) will introduce a general regime for market surveillance and accreditation. Where the Directive includes a specific rule, the rules in RAMS will not apply to pyrotechnic articles.

What happens next?

4.1 The Government will consider all responses to this consultation, to see if any technical adjustments to the draft Regulations are necessary in order to prepare for the draft Regulations to be made and published prior to 4th January 2010 and to enter into force on 4 July 2010 as required by the Directive.

Annex A: Summary of Questions

Question 1: Are the definitions of fireworks, set out in schedule 3, which are subject to prohibitions suitable and adequate?

Question 2: Should the UK retain its existing age limits on the purchase of category 1 fireworks?

Question 3: Should we retain the prohibition on breaking up selection packs?

Question 4: What are your views on the provisions defining who is a person with specialist knowledge?

Question 5: Should there be three separate tests for a person with specialist knowledge?

Question 6: Should the requirement for the marking of a minimum safety distance be maintained for category 4 fireworks and T2 pyrotechnics?

Question 7: Is there further provision necessary in relation to enforcement and market surveillance?

Question 8: Are there other authorities that need to fall within the Directive, the provisions of which exclude the armed forces, police forces or fire departments?

Question 9: Is the way the free movement provisions works clear; is other provision necessary and in what way could it be justified?

Question 10: Can you provide any evidence to help inform the Impact Assessment?

Annex B: Acknowledgements and Organisations consulted:

We would like to thank all the organisations, both governmental and non-governmental, as well as individual experts who have greatly assisted in the development of this consultation.

The consultation document has been sent formally to the following organisations:

Association of Chief Police Officers
Association of Chief Police Officers (Scotland)
Association of Stage Pyrotechnicians
The Blue Cross
British Firework Association
British Pyrotechnic Association
British Standards Institution
Chief and Assistant Chief Fire Officers Association
Department for Transport
DCLG
Dogs Trust
Explosive Industries Group CBI
Fireworks Enforcement Liaison Group
Fire Brigades Union
Health & Safety Executive
Health & Safety Executive for Northern Ireland
Health & Safety Laboratory
Home Office
HM Revenue & Customs
LACORS
Ministry of Defence
National Campaign for Firework Safety
National Consumer Fireworks Association
Northern Ireland Office
The Scottish Government
Trading Standards Institute

ANNEX C

Version 2.43 – 30 July 2009 DRAFT – SUBJECT TO CHANGE

S T A T U T O R Y I N S T R U M E N T S

2009 No.

CONSUMER PROTECTION

Pyrotechnic Articles (Safety) Regulations 2009

<i>Made</i>	- - - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- - -	***

[The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to [pyrotechnic articles][*assuming designation*].

The Secretary of State, in exercise of the powers conferred by section 11 of the Consumer Protection Act 1987(a) [*and by section 2(2) of European Communities Act 1972(b)*], makes the following Regulations.

In accordance with section 11(5) of that Act the Secretary of State has consulted the organisations which appear to be representative of interests substantially affected by these Regulations, other persons considered appropriate and the Health and Safety Executive.

PART 1

General

Citation, commencement, revocation and extent

1.—(1) These Regulations may be cited as the Pyrotechnic Articles (Safety) Regulations 2009 and, except as provided for in paragraphs (2) and (3), come into force on 4th July 2010.

(2) Part 3 comes into force on 4th July 2013.

(3) Regulation 43 (appointment of notified body) comes into force on [December 2009] and regulation 2 [and] for the purpose of regulation 43 coming into force.

(4) [Northern Ireland – see discussion in consultation document].

Interpretation

2.—(1) In these Regulations—

-
- (a) c.43.
(b) c.68.

the “Act” means the Consumer Protection Act 1987;

the “1974 Act” means the Health and Safety at Work etc. Act 1974(a);

“CE marking” means the CE marking applied in accordance, as the case may be, with Regulation 12 or 30;

“the Directive” means Directive 2007/23/EC of the European Parliament and of the Council of 23rd May 2007 on the placing on the market of pyrotechnic articles(b);

“distributor” means a person, other than a manufacturer or an importer, in the supply chain who makes a pyrotechnic article available on the market in the course of that person’s business;

“firework” means a pyrotechnic article intended for entertainment purposes;

“importer” means a person established in the Community who makes a pyrotechnic article originating from a third country available on the Community market for the first time in the course of that person’s business;

“weights and measures authority” means an authority falling within section 27(1)(a) of the Act;

“manufacturer” means a person who designs or manufactures a pyrotechnic article, or who causes such an article to be designed and manufactured, with a view to—

- first making it available on the Community market, and
- its distribution and use, distribution or use, whether for payment or free of charge,

under the name or trademark of that person;

“other pyrotechnic articles” means pyrotechnic articles falling within Article 3(1)(c) of the Directive, including pyrotechnic articles for vehicles;

“person with specialist knowledge” means, as the case may be, a person falling within regulation 40, 41 or 42 (persons with specialist knowledge);

“pyrotechnic article” means any article containing explosive substances or an explosive mixture of substances designed to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions;

“pyrotechnic articles for vehicles” means components of safety devices in vehicles which contain pyrotechnic substances used to activate these or other devices;

“supply” includes offering to supply, agreeing to supply, exposing for supply and possession for supply, and related expressions shall be construed accordingly;

“theatrical pyrotechnic article” means a pyrotechnic article designed for indoor or outdoor stage use, including film and television productions or similar use.

“UK notified body” means a body to carry out the conformity assessment procedures and any other tasks referred to in regulation 43.

(2) In these Regulations, a reference to a category in relation to a pyrotechnic article is a reference to a category referred to in Schedule 1 (categories of pyrotechnic articles) to these Regulations.

Scope and exclusions of Regulations

- 3.—(1)** These Regulations apply to pyrotechnic articles.
- (2)** These Regulations do not apply to—
 - (a)** pyrotechnic articles intended for non-commercial use by—
 - (i)** the armed forces,

(a) c.37.

(b) OJ L154, 14.06.2007, p.1.

- (ii) a police authority, or constables or persons employed by an authority,
 - (iii) a police force within the meaning of the Police (Scotland) Act 1967(a), or constables or persons employed by it;
 - (iv) British Transport Police Force, or constables or persons employed by it,
 - (v) Ministry of Defence Police Force, or constables or persons employed by it,
 - (vi) Civil Nuclear Constabulary, or constables or persons employed by it,
 - (vii) a police force for a port or airport in the United Kingdom or with a specialised function within the United Kingdom, or constables or persons employed by it;
 - (viii) Serious Organised Crime Agency, or constables or persons employed by it,
 - (ix) Scottish Drug Enforcement Agency, or constables or persons employed by it,
 - (x) a fire and rescue authority within the meaning of section 1 of the Fire and Rescue Services Act 2004(b), or persons employed by an authority, or
 - (xi) a fire and rescue authority within the meaning of section 1 of the Fire (Scotland) Act 2005(c), or persons employed by an authority;
- (b) equipment falling within the scope of Council Directive 96/98/EC of 20th December 1996 on marine equipment(d);
- (c) pyrotechnic articles intended for use in the aerospace industry;
- (d) percussion caps intended specifically for toys falling within the scope of Council Directive 88/378/EEC of 3rd May 1988 concerning the safety of toys(e);
- (e) explosives falling within the scope of Council Directive 93/15/EEC of 5th April 1993 on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses(f);
- (f) ammunition, meaning projectiles and propelling charges and blank ammunition used in portable firearms, other guns and artillery.

(3) A constable or person employed by a police authority, police force or a fire and rescue authority referred to in paragraph (2) is a person or constable who is under the direction and control of a chief officer or chief constable of police or a fire and rescue authority, as the case may be, and acting in that capacity.

PART 2

Category 1, 2 and 3 fireworks

Scope of Part 2

4. This Part does not apply to category 4 fireworks, theatrical pyrotechnic articles or other pyrotechnic articles.

Categorisation

5. A manufacturer must categorise a firework as category 1, 2 or 3 as referred to in paragraph 1(a), (b) or (c) of Schedule 1 (categories of pyrotechnic articles) according to—

- (a) its type of use; or

- (a) c.77. Section 3 was substituted by the Police and Magistrates' Courts Act 1994, section 47(1); subsections (3) and (4) were inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006, (2006 asp 10), section 48.
- (b) c.21. Section 1 was amended by the Civil Contingencies Act 2004, section 32(1), Schedule 2, paragraph 10(1) and (2).
- (c) 2005 asp 5.
- (d) OJ No L046, 17.02.97, p25.
- (e) OJ No L187, 16.7.1988, p.1.
- (f) OJ No L121, 15.05.93. p20.

- (b) its purpose and level of hazard, including its noise level.

Safety obligations of manufacturers

6.—(1) No manufacturer or, where regulation 7(1)(b) applies, no importer shall supply a category 1, 2 or 3 firework unless the firework—

- (a) complies with the essential safety requirements set out in paragraph 1, 2 and, if applicable, in paragraph 4 of Schedule 2 (essential safety requirements);
- (b) has been submitted to a UK notified body or a body notified to the European Commission under Article 10 of the Directive (notified bodies);
- (c) has passed a conformity assessment in accordance with regulation 11 (conformity assessment procedures) carried out by a notified body referred to in sub-paragraph (b);
- (d) has affixed to it a CE marking; and
- (e) complies with the labelling requirements set out in regulation 14 (labelling requirement).

(2) A firework built by a manufacturer for its own use which complies with the law applicable to such a firework (excluding these Regulations) need not comply with this regulation.

Safety obligations of importers

7.—(1) Where a manufacturer of a category 1, 2 or 3 firework is not established within the Community, the importer of the category 1, 2 or 3 firework shall—

- (a) ensure the manufacturer has complied with the obligations under these Regulations in relation to a category 1, 2 or 3 firework, which would apply if the manufacturer were established within the Community, or
- (b) comply with the obligations under Part 2 of these Regulations, which would apply if the importer were a manufacturer established within the Community.

(2) An importer may be held liable for contravention of any obligation referred to in paragraph (1).

Safety obligations of distributors

8.—(1) A distributor shall act with due care in relation to a category 1, 2 or 3 firework.

(2) The duty of a distributor referred to in paragraph (1) shall in particular include a requirement to check that a category 1, 2 or 3 firework bears the CE marking and is accompanied by required documents.

Harmonised standards for category 1, 2 or 3 fireworks

9.—(1) A category 1, 2 or 3 firework which complies with a standard of a Member State which implements a harmonised standard adopted for the purposes of Article 8 of the Directive (harmonised standards) is in conformity with the essential safety requirements set out in Schedule 2 to these Regulations.

(2) “Harmonised standard” has the meaning given in Article 2(9) of the Directive.

Free movement

10.—(1) Subject to paragraph (2), a category 1, 2 or 3 firework which complies with all legally binding measures of a Member State, other than the United Kingdom, which fully implement the Directive is in conformity with Part 2 of these Regulations.

(2) Paragraph (1)—

- (a) does not apply to the prohibitions in regulation 21 (prohibitions on supply of category 2 or 3 fireworks);

- (b) is without prejudice to the duty of a distributor under regulation 8 (safety obligations of distributors);
- (c) does not prevent the exercise by enforcement authorities of powers referred to in regulation 19 (enforcement actions);
- (d) is without prejudice to the prohibitions in regulation 15 (prohibition on supply of category 1, 2 or 3 fireworks); and
- (e) is without prejudice to the requirement for a firework to comply with regulation 14(2) and (7) (labelling requirements).

Conformity assessment procedures

11.—(1) For the assessment of conformity of category 1, 2 or 3 fireworks the manufacturer or, where regulation 7(1)(b) applies, the importer shall follow, and comply with the obligations of, one of the following procedures—

- (a) the EC type-examination (Module B) procedure referred to in Annex II, Section 1 and, at the choice of the manufacturer, either—
 - (i) the conformity to type (Module C) procedure referred to in Annex II, Section 2;
 - (ii) the production quality assurance (Module D) procedure referred to in Annex II, Section 3; or
 - (iii) the product quality assurance procedure (Module E) procedure referred to in Annex II, Section 4;
- (b) the unit verification (Module G) procedure referred to in Annex II, paragraph 5.

(2) References in paragraph (1) to the expression “Annex II” refer to Annex II to the Directive, as amended from time to time.

Obligation to affix the CE marking

12.—(1) After successful completion of a conformity assessment using one of the procedures prescribed by regulation 11 (conformity assessment procedure), manufacturers (or where regulation 7(1)(b) applies) importers shall visibly, legibly and indelibly affix the CE marking to category 1, 2 or 3 fireworks.

(2) Where it is not possible to comply with paragraph (1) the CE mark shall be affixed to an identification label attached to the firework or to the packaging.

(3) Where paragraph (2) applies, an identification label must be designed to make its reuse impossible.

(4) The CE marking must take the form set out in Annex IV to the Directive (conformity marking).

(5) Any other marking may be affixed to a category 1, 2 or 3 firework, providing the visibility and legibility of the CE marking is not impaired.

(6) No person shall affix to a category 1, 2 or 3 firework a marking or inscription which may confuse a third person as to the meaning of the CE marking.

(7) In relation to a category 1, 2 or 3 firework, the application of the CE marking in accordance with these Regulations indicates that the firework is presumed (which presumption shall be rebuttable) to conform to other Community legislation that applies to category 1, 2 or 3 fireworks and requires the affixing of a CE marking.

Prohibition on improper use of the CE marking

13.—(1) No person shall affix a CE marking to a category 1, 2 or 3 firework that does not conform to the requirements of these Regulations.

(2) Where it comes to the knowledge of a weights and measures authority that a person has affixed a CE marking to a category 1, 2 or 3 firework which does not conform to the requirements of these Regulations the weights and measures authority shall inform the Secretary of State.

(3) Where paragraph (2) applies, the Secretary of State shall inform the European Commission.

Labelling requirement

14.—(1) No manufacturer, or where regulation 7(1)(b) applies, no importer shall supply a category 1, 2 or 3 firework unless it is visibly, legibly and indelibly labelled in the official language of the each of the Member States in which the firework is supplied to a consumer.

(2) A category 1, 2 or 3 firework for supply to a consumer in Great Britain must be labelled in English.

(3) The labelling shall include, at least—

- (a) the name and address of the manufacturer;
- (b) where the manufacturer is not established in the Community, the name of the manufacturer and the name and address of the importer;
- (c) the name, type and category of the firework;
- (d) the minimum age limits, in accordance with regulation 15 or the limits of those Member States in which the firework is supplied to the consumer;
- (e) instructions for use;
- (f) for a category 3 firework, the year of production;
- (g) the net explosive quantity of active explosive material; and
- (h) where appropriate, the minimum safety distance.

(4) In addition, the labelling of a category 1 firework shall include, where appropriate, at least—

- (a) the statement “for outdoor use only”; and
- (b) a minimum safety distance.

(5) In addition, the labelling of a category 2 firework shall include at least—

- (a) the statement “for outdoor use only”; and
- (b) where appropriate, the minimum safety distance.

(6) In addition, the labelling of a category 3 firework shall include at least—

- (a) the statement “for outdoor use only”; and
- (b) the minimum safety distance.

(7) The labelling of the packet in which a category 2 sparkler is contained shall include the words “Warning: not to be given to children under 5 years of age”.

(8) If a category 1, 2 or 3 firework does not provide sufficient space for the labelling requirements in paragraphs (2) to (6), the information shall be provided on the smallest piece of packaging of the firework.

(9) Paragraph (8) shall not prevent providing information on other packaging of the firework.

(10) This regulation does not apply to a firework falling within regulation 16 or 17 (exceptions for trader fairs, etc and research and development).

(11) In this regulation, “sparkler” means a rigid wire article partially coated along one end with slow-burning pyrotechnic composition, with or without an ignition head and designed to be held in the hand the principal effect of which is to emit sparks, with or without aural effects (other than report).

Prohibition on supply of category 1, 2 or 3 fireworks

15.—(1) No person shall supply a category 2 or 3 firework to any person under the age of eighteen years.

(2) No person shall supply a category 1 firework to any person under the age of sixteen years.

Exception for trade fairs, exhibitions and demonstrations

16.—(1) Where paragraph (2) is complied with, nothing in these Regulations prevents the showing and using at trade fairs, exhibitions and demonstrations for the marketing of pyrotechnic articles of a firework which does not comply with Part 2 of these Regulations.

(2) While a firework within paragraph (1) is being shown or used a clear and visible sign must indicate—

- (a) the name and date of the trade fair, exhibition or demonstration;
- (b) that the firework does not conform with Part 2 of the Regulations; and
- (c) that the firework is not for sale, until brought into conformity with the Regulations.

Exception for research and development

17.—(1) Where paragraph (2) is complied with, nothing in these Regulations prevents the use or free movement of a firework which does not comply with Part 2 of these Regulations which was manufactured for the purpose of research, development and testing.

(2) In relation to a firework within paragraph (1) a clear and visible sign must indicate that—

- (a) the firework does not conform with Part 2 of the Regulations; and
- (b) it is not available other than for purposes of research, development and testing.

Market surveillance and enforcement

18.—(1) It shall be the duty of every weights and measures authority to enforce Part 2 of these Regulations within its area.

(2) In addition, the Secretary of State may enforce Part 2 of these Regulations.

(3) Weights and measures authorities shall carry out regular inspections in relation to category 1, 2 or 3 fireworks at storage and manufacturing sites and following entry into the Community.

(4) A weights and measures authority in England or Wales shall have the power to investigate and prosecute for an alleged contravention of any provision imposed by or under these Regulations which was committed outside its area in any part of England or Wales.

(5) Actions of weights and measures authorities and the Secretary of State under this regulation shall take due account of the presumption (which presumption shall be rebuttable) that category 1, 2 or 3 fireworks marked with a CE marking are in conformity with the essential safety requirements.

Enforcement actions

19.—(1) A weights and measures authority under the duty referred to in regulation 18 (market surveillance), and the Secretary of State under the power referred to in that regulation, may use any provisions relating to enforcement of the Act to enforce Part 2 of these Regulations.

(2) This paragraph applies where a weights and measures authority or, where appropriate, the Secretary of State becomes aware that a category 1, 2 or 3 firework—

- (a) bearing a CE marking; and
- (b) accompanied by the EC declaration of conformity (as required by the relevant module of the conformity assessment procedure in Annex 2 of the Directive); and
- (c) used in accordance with its intended purpose,

is liable to endanger the health and safety of persons.

(3) Where paragraph (2) applies a weights and measures authority shall take, and the Secretary of State may take, such of the appropriate actions as is most appropriate in the circumstances against the manufacturer, importer or distributor as the case may be.

(4) The appropriate actions include—

- (a) in relation to the Secretary of State, serving a prohibition notice (within the meaning of section 13(1)(a) of the Act) on the manufacturer, importer or distributor in question;
- (b) serving a notice to warn (within the meaning of section 13(1)(b) of the Act);
- (c) serving a suspension notice (within the meaning of section 14 of the Act);
- (d) serving a withdrawal notice (within the meaning of regulation 14 of the General Product Safety Regulations 2005(a)); or
- (e) serving a recall notice (within the meaning of regulation 15 of the General Product Safety Regulations 2005).

(5) For the purposes of taking the appropriate actions referred to in paragraph (4)(d) and (e) regulations 14, 15, 16, and 17 of the General Product Safety Regulations 2005 shall be applied.

(6) In each case where an appropriate action referred to in paragraph (4)(d) or (e) is relevant, the conditions for serving the notice in question otherwise applicable under the General Product Safety Regulations 2005 are met.

(7) For the purpose of applying the provisions referred to in paragraph (5), a “producer” referred to in those provisions is a “manufacturer” or an “importer” and a “distributor” referred to in those provisions has the meaning in specified in regulation 2.

(8) Where a weights and measures authority takes any action under paragraph (3) it shall as soon as practicable notify the Secretary of State, specifying its reasons for taking the action.

(9) Where a weights and measures authority has notified the Secretary of State under paragraph (8), it shall as soon as practicable notify the Secretary of State of any modification or lifting of any such measure.

(10) Where the Secretary of State is notified under paragraph (8), the Secretary of State shall inform the European Commission and other relevant Member States of the action.

(11) This paragraph applies where the Secretary of State has sufficient reason to believe that a category 1, 2 or 3 firework presents a serious risk to the health or safety of persons in the Community.

(12) Where paragraph (11) applies the Secretary of State shall—

- (a) inform the European Commission and other Member States of that risk;
- (b) perform an appropriate evaluation; and
- (c) inform the European Commission and other Member States of the background for and the results of the evaluation.

Requirements regarding prohibitions, restrictions and withdrawals

20.—(1) Any measure taken by a weights and measures authority or the Secretary of State which has the effect of prohibiting or restricting the placing on the market or withdrawal from the market of a category 1, 2 or 3 firework must comply with the requirements in paragraph (2).

(2) The requirements are—

- (a) the measure must state the exact grounds on which it is based;
- (b) the party concerned must be informed, without delay, of—
 - (i) the measure,

(a) S.I. 2005/1803.

- (ii) the remedies available to that party, and
 - (iii) the time limits to which the remedies are subject; and
- (c) subject to paragraph (3), the party concerned must have an opportunity to put forward its views in advance.
- (3) The requirement in paragraph (2)(c) does not apply if consultation is not possible because of the urgency of the measure to be taken, as justified in particular by public health or safety requirements.
- (4) In paragraph (1) “placing on the market” has the meaning in the first sentence of Article 2(2) of the Directive.

Prohibitions on supply of category 2 or 3 fireworks

- 21.**—(1) No person shall supply a category 2 or 3 firework of the following description—
- (a) an aerial wheel;
 - (b) a banger, flash banger or double banger;
 - (c) a jumping cracker;
 - (d) a jumping ground spinner;
 - (e) a spinner;
 - (f) a mini rocket;
 - (g) a shot tube—
 - (i) which produces a report as its principal effect, previously known as an air bomb; or
 - (ii) the inside diameter of which is greater than 30mm, previously known as a shell-in-mortar;
 - (h) a battery containing bangers;
 - (i) a combination (other than a wheel) which includes one or more bangers.
- (2) Paragraph (1)(a) does not prohibit the supply of a category 2 or 3 firework as part of a wheel.
- (3) Paragraph (1) does not prohibit the supply of a category 2 or 3 firework to a person with specialist knowledge falling within regulation 40 or 41.
- (4) No person who carries on a business involving, to whatever extent, the supply of fireworks by retail shall supply a category 2 or 3 firework which has been removed, caused to be removed, or that person knows to have been removed from a pack of fireworks, intended for retail sale as a single unit, made up of the same or different types of fireworks.
- (5) Schedule 3 (definitions of fireworks in regulation 21) shall have effect.

PART 3

Category 4 fireworks, theatrical pyrotechnic articles and other pyrotechnic articles

Scope of Part 3

- 22.** This Part does not apply to category 1, 2 or 3 fireworks and a reference in this Part to a “pyrotechnic article” does not include a reference to a category 1, 2 or 3 firework.

Categorisation

- 23.**—(1) A manufacturer must categorise a pyrotechnic article as falling within in a category referred to in paragraph 1(d), 2 or 3 of Schedule 1 (categories of pyrotechnic articles) according to—
- (a) its type of use; or

- (b) its purpose and level of hazard, including its noise level.

Safety obligations of manufacturers

24.—(1) No manufacturer or, where regulation 25(1)(b) applies, no importer shall supply a pyrotechnic article unless the article—

- (a) complies with the essential safety requirements set out in paragraph 1 and, if applicable, in paragraphs 3 and 4 of Schedule 2 (essential safety requirements);
- (b) has been submitted to a UK notified body or a body notified to the European Commission under Article 10 of the Directive (notified body);
- (c) has passed a conformity assessment in accordance with regulation 29 (conformity assessment procedure) carried out by a notified body referred to in sib-paragraph (b);[(2)(g)];
- (d) has affixed to it a CE marking; and
- (e) complies with the labelling requirements set out, as the case may be, in regulation 32 or 33 (general labelling requirements and labelling requirements for pyrotechnic articles for vehicles).

(2) A category 4 firework built by a manufacturer for its own use which complies with the law applicable to such a firework (excluding these Regulations) need not comply with this regulation.

Safety obligations of importers

25.—(1) Where a manufacturer of a pyrotechnic article is not established within the Community, the importer of the article shall—

- (a) ensure the manufacturer has complied with the obligations under these Regulations in relation to the article, which would apply if the manufacturer were established within the Community, or
- (b) comply with the obligations under Part 3 of these Regulations, which would apply if the importer were a manufacturer established within the Community.

(2) An importer may be held liable for contravention of any obligation referred to in paragraph (1).

Safety obligations of distributors

26.—(1) A distributor shall act with due care in relation to a pyrotechnic article.

(2) The duty of a distributor referred to in paragraph (1) shall in particular include a requirement to check that a pyrotechnic article bears the CE marking and is accompanied by required documents.

Harmonised standards

27.—(1) A pyrotechnic article which complies with a standard of a Member State which implements a harmonised standard adopted for the purposes of Article 8 of the Directive (harmonised standards) is in conformity with the essential safety requirements set out in Schedule 2 to these Regulations.

(2) “Harmonised standard” has the meaning given in Article 2(9) of the Directive.

Free movement

28.—(1) Subject to paragraph (2), a pyrotechnic article which complies with all legally binding measures of a Member State, other than the United Kingdom, which fully implement the Directive is in conformity with Part 3 of these Regulations.

(2) Paragraph (1)—

- (a) is without prejudice to the duty of a distributor under regulation 26 (safety obligations of distributors);
- (b) does not prevent the exercise by enforcement authorities of powers referred to in regulation 38 (enforcement actions);
- (c) is without prejudice to the prohibitions in regulation 34 (prohibition on supply of pyrotechnic articles); and
- (d) is without prejudice to the requirement for a pyrotechnic article to comply with regulation 32(2)(labelling requirements).

Conformity assessment procedures

29.—(1) For the assessment of conformity of pyrotechnic articles the manufacturer or, where regulation 25(1)(b) applies, the importer shall follow, and comply with the obligations of, one of the following procedures—

- (a) the EC type-examination (Module B) procedure referred to in Annex II, Section 1 and, at the choice of the manufacturer, either—
 - (i) the conformity to type (Module C) procedure referred to in Annex II, Section 2;
 - (ii) the production quality assurance (Module D) procedure referred to in Annex II, Section 3; or
 - (iii) the product quality assurance procedure (Module E) procedure referred to in Annex II, Section 4;
- (b) the unit verification (Module G) procedure referred to in Annex II, paragraph 5; or
- (c) insofar as it concerns category 4 fireworks, the full product quality assurance procedure (Module H) referred to in Annex II, Section 6.

(2) References in paragraph (1) to the expression “Annex II” refer to Annex II to the Directive, as amended from time to time.

Obligation to affix the CE marking

30.—(1) After successful completion of a conformity assessment using one of the procedures prescribed by regulation 29 (conformity assessment procedures), manufacturers (or where regulation 25(1)(b) applies) importers shall visibly, legibly and indelibly affix the CE marking to pyrotechnic articles.

(2) Where it is not possible to comply with paragraph (1) the CE mark shall be affixed to an identification label attached to the pyrotechnic article or to the packaging.

(3) Where paragraph (2) applies, an identification label must be designed to make its reuse impossible.

(4) The CE marking must take the form set out in Annex IV to the Directive (conformity marking).

(5) Any other marking may be affixed to a pyrotechnic article, providing the visibility and legibility of the CE marking is not impaired.

(6) No person shall affix to a pyrotechnic article a marking or inscription which may confuse a third person as to the meaning of the CE marking.

(7) In relation to a pyrotechnic article, the application of the CE marking in accordance with these Regulations indicates that the article is presumed (which obligation shall be rebuttable) to conform to other Community legislation that applies to pyrotechnic articles and requires the affixing of a CE marking.

Prohibition on improper use of the CE marking

31.—(1) No person shall affix a CE marking to a pyrotechnic article that does not conform to the requirements of these Regulations.

(2) Where it comes to the knowledge of the Health and Safety Executive or a weights and measures authority that a person has affixed a CE marking to a pyrotechnic article which does not conform to the requirements of these Regulations the Health and Safety Executive or the weights and measures authority, as the case may be, shall inform the Secretary of State.

(3) Where paragraph (2) applies, the Secretary of State shall inform the European Commission.

General labelling requirement

32.—(1) No manufacturer or, where regulation 25(1)(b) applies, no importer shall supply a pyrotechnic article unless it is visibly, legibly and indelibly labelled in the official language of the each of the Member States in which the pyrotechnic article is supplied to a consumer.

(2) A pyrotechnic article for supply to a consumer [in Great Britain/ in the United Kingdom] must be labelled in English.

(3) The labelling of a pyrotechnic article shall include, at least—

- (a) the name and address of the manufacturer;
- (b) where the manufacturer is not established in the Community, the name of the manufacturer and the name and address of the importer;
- (c) the name, type and category of the pyrotechnic article;
- (d) the minimum age limits, in accordance with regulation 34(4) or the limits of those Member States in which the firework is supplied to the consumer;
- (e) instructions for use;
- (f) in relation to a category 4 firework, the year of production;
- (g) the net explosive quantity of active explosive material; and
- (h) where appropriate, the minimum safety [distance/information].

(4) In addition, the labelling of a category 4 firework shall include at least—

- (a) the statement “for use only by persons with specialist knowledge”; and
- (b) minimum safety [distance/information].

(5) In addition, the labelling of a category T1 theatrical pyrotechnic article shall include, where appropriate, at least—

- (a) the statement “for outdoor use only”; and
- (b) a minimum safety [distance/information].

(6) In addition, the labelling of a category T2 theatrical pyrotechnic article shall include at least—

- (a) the statement “for use only by persons with specialist knowledge”; and
- (b) a minimum safety [distance/information].

(7) If a pyrotechnic article does not provide sufficient space for the labelling requirements in paragraphs (2) to (6), the information shall be provided on the smallest piece of packaging of the article.

(8) Paragraph (7) shall not prevent providing information on other packaging of the firework.

(9) This regulation does not apply to—

- (a) pyrotechnic articles falling within regulations 35 or 36 (exceptions for trade fairs etc. and for research and development); or
- (b) pyrotechnic articles for vehicles.

Labelling requirements for pyrotechnic articles for vehicles

33.—(1) A manufacturer or, where regulation 25(1)(b) applies, an importer shall ensure that pyrotechnic articles for vehicles are labelled in accordance with this regulation.

(2) The labelling of pyrotechnic articles for vehicles shall include—

- (a) the name of the manufacturer;
- (b) where the manufacturer is not established in the Community, the name of the importer;
- (c) the name and type of the article; and
- (d) the safety instructions.

(3) If an article does not provide sufficient space for the labelling requirements in paragraph (2), the information shall be provided on the packaging of the article.

(4) A safety data sheet completed in accordance with Article 31 of Regulation 1907/2006/EC(a) of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), shall be supplied to professional users—

- (a) in the language requested; and
- (b) on paper or, provided the addressee has the means to receive the information, electronically.

Prohibition on supply of pyrotechnic articles

34.—(1) No person shall supply a category 4 firework, except to a person with specialist knowledge falling within regulation 40.

(2) No person shall supply a category T2 theatrical pyrotechnic article, except to a person with specialist knowledge falling within regulation 41.

(3) No person shall supply a category P2 other pyrotechnic article, except to a person with specialist knowledge falling within regulation 42.

(4) No person shall supply a category T1 theatrical pyrotechnic article or a category P1 other pyrotechnic article to a person under the age of eighteen years.

Exception for trade fairs, exhibitions and demonstrations

35.—(1) Where paragraph (2) is complied with, nothing in these Regulations prevents the showing and using at trade fairs, exhibitions and demonstrations for the marketing of pyrotechnic articles of a pyrotechnic article which does not comply with Part 3 of these Regulations.

(2) While a pyrotechnic article within paragraph (1) is being shown or used a clear and visible sign must indicate—

- (a) the name and date of the trade fair, exhibition or demonstration;
- (b) that the pyrotechnic article does not conform with Part 3 of the Regulations; and
- (c) that the pyrotechnic article is not for sale, until brought into conformity with the Regulations.

Exception for research and development

36.—(1) Where paragraph (2) is complied with, nothing in these Regulations prevents the use or free movement of a pyrotechnic article which does not comply with Part 3 of these Regulations which was manufactured for the purpose of research, development and testing.

(2) In relation to a pyrotechnic article within paragraph (1) a clear and visible sign must indicate that—

(a) OJ No L

- (a) the article does not conform with Part 3 of the Regulations; and
- (b) it is not available other than for purposes of research, development and testing.

Market surveillance and enforcement

37.—(1) It shall be the duty of the Health and Safety Executive to enforce Part 3 of these Regulations.

(2) The Health and Safety Executive shall carry out regular inspections within Great Britain in relation to category 4 fireworks, theatrical pyrotechnic articles and other pyrotechnic articles at storage and manufacturing sites and following entry into the Community.

(3) For the purposes of enforcement of Part 3 of these Regulations by the Health and Safety Executive Schedule 4 shall have effect.

(4) In addition weights and measures authorities may enforce Part 3 of these Regulations.

(5) Where a weights and measures authority in England and Wales exercises the power in paragraph (4), it may investigate and prosecute for an alleged contravention imposed by or under these Regulations which was committed outside its area in any part of England or Wales.

(6) Actions of the Health and Safety Executive and of a weights and measures authority under this regulation shall take due account of the presumption (which presumption shall be rebuttable) that pyrotechnic articles marked with a CE marking are in conformity with the essential safety requirements.

Enforcement actions

38.—(1) The Health and Safety Executive under the duty referred to in regulation 37(1) (market surveillance) may use any of the provisions referred to in Schedule 4 to enforce these Regulations.

(2) For the purposes of enforcement of Part 3 of these Regulations by a weights and measures authority, an authority may use any provisions relating to enforcement of the Act to enforce Part 3 of these Regulations.

(3) This paragraph applies where the Health and Safety Executive or a weights and measures authority becomes aware that a pyrotechnic article—

- (a) bearing a CE marking;
- (b) accompanied by the EC declaration of conformity (as required by the relevant module of the conformity assessment procedure in Annex 2 of the Directive); and
- (c) used in accordance with its intended purpose,

is liable to endanger the health and safety of persons.

(4) Where paragraph (3) applies, the Health and Safety Executive shall take action under Schedule 4.

(5) Where paragraph (3) applies, a weights and measures authority may take action as if regulation 19(4) to 19(7) applied to pyrotechnic articles under this Part.

(6) Where the Health and Safety Executive or a weights and measures authority takes any action under this regulation it shall as soon as practicable notify the Secretary of State, specifying its reasons for taking the action.

(7) Where the Health and Safety Executive or a weights and measures authority has notified the Secretary of State under paragraph (6), it shall as soon as practicable notify the Secretary of State of any modification or lifting of any such measure.

(8) Where the Secretary of State is notified under paragraph (6), the Secretary of State shall inform the European Commission and other relevant Member States of that action.

(9) This paragraph applies where the Secretary of State has sufficient reason to believe that a pyrotechnic article presents a serious risk to the health or safety of persons in the Community.

(10) Where paragraph (9) applies the Secretary of State shall—

- (a) inform the European Commission and other Member States of that risk;
- (b) perform an appropriate evaluation; and
- (c) inform the European Commission and other Member States of the background for and the results of the evaluation.

Requirements regarding prohibitions, restrictions and withdrawals

39.—(1) Any measure taken by the Health and Safety Executive or a weights and measures authority which has the effect of prohibiting or restricting the placing on the market or withdrawal from the market of a pyrotechnic article must comply with the requirements in paragraph (2).

(2) The requirements are—

- (a) the measure must state the exact grounds on which it is based;
- (b) the party concerned must be informed, without delay, of—
 - (i) the measure,
 - (ii) the remedies available to that party, and
 - (iii) the time limits to which the remedies are subject; and
- (c) subject to paragraph (3), the party concerned must have an opportunity to put forward its views in advance.

(3) The requirement in paragraph (2)(c) does not apply if consultation is not possible because of the urgency of the measure to be taken, as justified in particular by public health or safety requirements.

(4) In paragraph (1) “placing on the market” has the meaning in the first sentence of Article 2(2) of the Directive.

Persons with specialist knowledge for category 4 fireworks

40.—(1) A person with specialist knowledge for category 4 fireworks is any individual who—

- (a) has undertaken training, in relation to category 4 fireworks, recognised in the fireworks business;
- (b) can show experience of having used category 4 fireworks; and
- (c) can show evidence of valid liability insurance covering use of category 4 fireworks.

(2) The training referred to in paragraph (1)(a) includes such training recognised in the pyrotechnics business of any Member State.

(3) The experience referred to in paragraph (1)(b) includes experience gained anywhere in the world.

(4) The “valid liability insurance” referred to in paragraph (1)(c) may be in the name of the individual in question or the employer of that person.

(5) A person with specialist knowledge also includes—

- (a) any person whose trade or business (or a significant part of whose trade or business) is the supply of category 4 fireworks, for the purpose of supplying them in accordance with these Regulations;
- (b) any person employed by or under or acting on behalf of a weights and measures authority proposing to make a test purchase (as referred to by section 28 of the Act), where the authority—
 - (i) has enforcement powers, conferred by or under any enactment, applying to the firework in question; and
 - (ii) before that person purchases the goods, informs the supplier that the purchase is to be made for the purposes of ascertaining whether any provision made by or under

any enactment and relating to the safety of the goods has been contravened in relation to those goods;

(c) any person who is—

- (iii) in business as a supplier of goods designed and intended for use in conjunction with a category 4 firework; and
- (iv) intends to use the category 4 firework solely for the purposes of testing it to ensure that, when used in conjunction with fireworks of the same type, it will perform its intended function or comply with any provisions made by or under any enactment and relating to the safety of such goods.

Persons with specialist knowledge for category T2 theatrical pyrotechnic articles

41.—(1) A person with specialist knowledge for category T2 theatrical pyrotechnic articles is any individual who—

- (a) has undertaken training, in relation to category T2 theatrical pyrotechnic articles, recognised in the theatrical profession;
- (b) can show experience of having used category T2 theatrical pyrotechnic articles; and
- (c) can show evidence of valid liability insurance covering use of category T2 theatrical pyrotechnic articles.

(2) In paragraph (1)(a)—

- (a) the training includes such training recognised in the theatrical profession of any Member State; and
- (b) “the theatrical profession” means the profession related to indoor and outdoor stage productions and includes film and television or similar productions.

(3) The experience referred to in paragraph (1)(b) includes experience gained anywhere in the world.

(4) The “valid liability insurance” referred to in paragraph (1)(c) may be in the name of the individual in question or the employer of that person.

(5) A person with specialist knowledge also includes—

- (a) any person whose trade or business (or a significant part of whose trade or business) is the supply of category T2 theatrical pyrotechnic articles, for the purpose of supplying them in accordance with these Regulations;
- (b) any person employed by or under or acting on behalf of a weights and measures authority proposing to make a test purchase (as referred to by section 28 of the Act), where the authority—

- (i) has enforcement powers, conferred by or under any enactment, applying to the firework in question; and
- (ii) before that person purchases the goods, informs the supplier that the purchase is to be made for the purposes of ascertaining whether any provision made by or under any enactment and relating to the safety of the goods has been contravened in relation to those goods;

(c) any person who is—

- (i) in business as a supplier of goods designed and intended for use in conjunction with a category T2 theatrical pyrotechnic article; and
- (ii) intends to use the category T2 theatrical pyrotechnic article in question solely for the purposes of testing it to ensure that, when used in conjunction with articles of the same type, it will perform its intended function or comply with any provisions made by or under any enactment and relating to the safety of such goods.

Persons with specialist knowledge for category P2 other pyrotechnic articles

42.—(1) A person with specialist knowledge for category P2 other pyrotechnic articles is any individual who—

- (a) has undertaken training, in relation to category P2 other pyrotechnic articles, recognised in the industry to which the pyrotechnic article in question relates;
- (b) can show experience of using category P2 other pyrotechnic articles; and
- (c) can show evidence of valid liability insurance covering use of category P2 other pyrotechnic articles.

(2) The training referred to in paragraph (1)(a) includes such training recognised in the industry to which the pyrotechnic articles in question relates of any Member State.

(3) The experience referred to in paragraph (1)(b) includes experience gained anywhere in the world.

(4) The “valid liability insurance” in paragraph (1)(c) may be in the name of the individual in question or the employer of that person.

(5) In relation to a category P2 other pyrotechnic article for vehicles a person with specialist knowledge includes an appropriately experienced individual employed by a person regulated by the Vehicle and Operating Standards Agency.

(6) A person with specialist knowledge also includes—

- (a) any person whose trade or business (or a significant part of whose trade or business) is the supply of category P2 other pyrotechnic articles, for the purpose of supplying them in accordance with these Regulations;
- (b) any person employed by or under or acting on behalf of a weights and measures authority proposing to make a test purchase (as referred to by section 28 of the Act), where the authority—
 - (i) has enforcement powers, conferred by or under any enactment, applying to the firework in question; and
 - (ii) before that person purchases the goods, informs the supplier that the purchase is to be made for the purposes of ascertaining whether any provision made by or under any enactment and relating to the safety of the goods has been contravened in relation to those goods;
- (c) any person who is—
 - (iii) in business as a supplier of goods designed and intended for use in conjunction with a category P2 other pyrotechnic article; and
 - (iv) intends to use the category P2 other pyrotechnic article in question solely for the purposes of testing it to ensure that, when used in conjunction with articles of the same type, it will perform its intended function or comply with any provisions made by or under any enactment and relating to the safety of such goods.

PART 4

Conformity assessment etc.

Process of appointment of notified bodies etc.

43.—(1) The Secretary of State may appoint for the purposes of Article 10 of the Directive (notified bodies) any corporate or other body as a body which is to carry out the conformity assessment procedures and any other tasks, and if the Secretary of State so appoints a body, the appointment shall specify the tasks which the body is to carry out.

(2) A body may be appointed as a UK notified body only if it is a body in relation to which the minimum criteria set out in Annex III for the assessment of notified bodies are met.

(3) The Secretary of State may vary the tasks that a UK notified body may carry out, and if the Secretary of State makes a variation, those varied tasks will be the tasks which it is appointed to carry out.

(4) The Secretary of State may restrict or revoke any appointment of a UK notified body under paragraph (1) if—

- (a) the body so requests; or
- (b) the Secretary of State considers the body no longer meets the minimum criteria referred to in paragraph (2).

(5) Before—

- (a) making a variation under paragraph (3); or
- (b) restricting or revoking an appointment under paragraph (4),

other than at the request of the UK notified body, the Secretary of State shall give the body an opportunity to make representations in writing and shall take into account any such representations as are made.

(6) Where the appointment of a UK notified body is revoked the conformity assessments and any related documents made by the body remain valid, unless it is established that there is an imminent and direct risk to health and safety.

(7) For the purposes of deciding whether or not a body is one in respect of which the criteria set out in Annex III are met as respects the tasks which the body wants to carry out, or carries out, the Secretary of State may arrange for the inspection of—

- (a) any premises occupied or plant or equipment used in connection with the carrying out of any such task; or
- (b) any premises occupied or plant occupied or plant or equipment used by a manufacturer where the body is undertaking any task in relation to that manufacturer,

and the Secretary of State may take into account for the purposes of the decision the results of any such inspection and any refusal to afford facilities or assistance as are reasonably required in order to carry out any such inspection.

(8) The Secretary of State may request that a UK notified body supply any or all relevant information and documents, including budgetary documents, necessary to enable the Secretary of State to verify that the body meets the criteria set out in Annex III and the body shall supply the Secretary of State any and all relevant information or document so requested.

(9) The reference to Annex III in paragraphs (2), (7) and (8), is a reference to Annex III to the Directive as amended from time to time.

Fees

44.—(1) A UK notified body may charge such fees in connection with, or incidental to, carrying out its functions under an appointment under regulation 43 (process of appointment of notified bodies) as it may determine, provided that such fees shall not exceed the sum of—

- (a) the costs incurred or to be incurred by the body in performing the relevant function; plus
- (b) an amount on account of profit which is reasonable in the circumstances having regard to—
 - (i) the character and extent of the work done or to be done by the body on behalf the person submitting the article for assessment; and
 - (ii) the commercial rate normally charged on account of profit for that work or similar.

(2) A UK notified body may require the payment of fees or a reasonable estimate of fees in advance of carrying out the work by the person submitting the article for assessment.

PART 5

Proceedings, transition and revocations, etc.

Proceedings

45. In England and Wales a magistrates' court may try an information in respect of an offence under section 12 of the Act arising from a contravention of these Regulations if the information is laid within twelve months from the time when the offence was committed and in Scotland summary proceedings for such an offence may be brought at any time within twelve months from the time when the offence was committed.

Transitional provisions in relation to category 1, 2, 3 or 4 fireworks

46.—(1) Subject to paragraphs (3) and (4), nothing in these Regulations prevents the supply of a category 1, 2 or 3 firework that it is lawful to supply in Great Britain immediately before 4th July 2010.

(2) Subject to paragraphs (3) and (4), nothing in these Regulations prevents the supply of a category 4 firework that it is lawful to supply in Great Britain under the regulations referred to in regulation 49(1)49(2).

(3) Paragraph (1) applies to a category 1, 2, 3 or 4 firework until 3rd July 2017.

(4) No person shall supply a category 1, 2, 3 or 4 firework falling within paragraph (1) for use in the territory of a Member State outside the United Kingdom.

Transitional provisions in relation to theatrical pyrotechnic articles and other pyrotechnic articles

47.—(1) Subject to paragraphs (2) and (3), nothing in these Regulations prevents the supply of a theatrical pyrotechnic article and an other pyrotechnic article that it was lawful to supply in Great Britain before 4th July 2013.

(2) Paragraph (1) applies to a theatrical pyrotechnic article or an other pyrotechnic article until 3rd July 2017.

(3) No person shall supply a theatrical pyrotechnic article or an other pyrotechnic article falling within paragraph (1) for use in the territory of a Member State outside the United Kingdom.

Contravention of the regulations

48. Notwithstanding that they are made partly in exercise of powers other than those conferred by section 11 of the Act, these Regulations shall be regarded for all purposes relating to enforcement by a weights and measures authority or the Secretary of State (whether by criminal proceedings, notices or otherwise) as safety regulations as defined in the Act, and any provision of these Regulations made under those other powers shall be regarded for those purposes as a safety provision as defined in the Act.

Revocations, amendments and savings

49.—(1) Subject to paragraph (4), the Fireworks (Safety) Regulations 1997(a) are revoked.

(2) Subject to paragraph (4), the Fireworks (Safety)(Amendment) Regulations 2004(b) are revoked.

(3) Subject to paragraph (4), in the Firework Regulations 2004(a), omit regulation 8 (prohibition of supply of excessively loud category 3 fireworks).

(a) S.I. 1997/2294, amended by S.I. 2004/1372.

(b) S.I. 2004/1372.

(4) The provisions of the Fireworks (Safety) Regulations 1997 and regulation 8 of the Firework Regulations 2004 continue to apply for all purposes in relation to fireworks falling within regulation 46 and to a theatrical pyrotechnic article or other pyrotechnic article falling within regulation 47 that amounts to a firework.

Name
Minister for [Further Education, Skills, Apprenticeships and Consumer Affairs]
2009 Department for Business Innovation & Skills

SCHEDULE 1

Regulation 5 and 23

Categories of pyrotechnic articles

1. Fireworks—

- (a) category 1: fireworks which present a very low hazard and negligible noise level and which are intended for use in confined areas, including fireworks which are intended for use inside domestic buildings;
- (b) category 2: fireworks which present a low hazard and low noise level and which are intended for outdoor use in confined areas;
- (c) category 3: fireworks which present a medium hazard, which are intended for outdoor use in large open areas and whose noise level is not harmful to human health;
- (d) category 4: fireworks which present a high hazard, which are intended for use only by persons with specialist knowledge (commonly known as fireworks for professional use) and whose noise level is not harmful to human health.

2. Theatrical pyrotechnic articles—

- (a) category T1: pyrotechnic articles for stage use which present a low hazard;;
- (b) category T2: pyrotechnic articles for stage use which are intended for use only by persons with specialist knowledge.

3. Other pyrotechnic articles—

- (a) category P1: pyrotechnic articles other than fireworks and theatrical pyrotechnic articles which present a low hazard;
- (b) category P2: pyrotechnic articles other than fireworks and theatrical pyrotechnic articles which are intended for handling or use only by persons with specialist knowledge.

SCHEDULE 2

Regulation 6 and 24

Essential Safety Requirements

Essential safety requirements

1.—(1) Each pyrotechnic article must attain the performance characteristics specified by the manufacturer to the UK notified body or a body notified to the European Commission under Article 10 of the Directive in order to ensure maximum safety and reliability.

(a) S.I. 2004/1836.

(2) Each pyrotechnic article must be designed and manufactured in such a way that it can be disposed of safely by a suitable process with minimum effect on the environment.

(3) Each pyrotechnic article must function correctly when used for its intended purpose.

Each pyrotechnic article must be tested under realistic conditions. If this is not possible in a laboratory, the tests must be carried out under the conditions in which the pyrotechnic article is to be used.

The following information and properties, where applicable, must be considered or tested:

- (a) design, construction and characteristic properties, including detailed chemical composition (mass and percentage of substances used) and dimensions;
- (b) the physical and chemical stability of the pyrotechnic article in all normal, foreseeable environmental conditions;
- (c) sensitivity to normal, foreseeable handling and transportation;
- (d) compatibility of all components as regards their chemical stability;
- (e) resistance of the pyrotechnic article to moisture where it is intended to be used in humid or wet conditions and where its safety or reliability may be adversely affected by moisture;
- (f) resistance to low and high temperatures, where the pyrotechnic article is intended to be kept or used at such temperatures and its safety or reliability may be adversely affected by cooling or heating of a component or of the pyrotechnic article as a whole;
- (g) safety features intended to prevent untimely or inadvertent initiation or ignition;
- (h) suitable instructions and, where necessary, markings in respect of safe handling, storage, use (including safety distances) and disposal in the official language or languages of the recipient Member State;
- (i) the ability of the pyrotechnic article, its wrapping or other components to withstand deterioration under normal, foreseeable storage conditions;
- (j) specification of all devices and accessories needed and operating instructions for safe functioning of the pyrotechnic article.

During transportation and normal handling, unless specified by the manufacturer's instructions, the pyrotechnic articles should contain the pyrotechnic composition.

(4) Pyrotechnic articles must not contain—

- (a) commercial blasting agents, except for black powder or flash composition;
- (b) military explosives.

(5) The various groups of pyrotechnic articles must at least also comply with the following requirements.

A. Fireworks

2.—(1) The manufacturer must assign fireworks to different categories according to, as the case may be, regulation 5 or 23 characterised by net explosive content, safety distances, noise level, or similar. The category must be clearly indicated on the label.

(2) For category 1 fireworks, the following conditions must be met—

- (a) the safety distance must be at least 1 metre. However, where appropriate, the safety distance may be less;
- (b) the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance;
- (c) category 1 must not comprise bangers, banger batteries, flash bangers and flash banger batteries;
- (d) throwdowns in category 1 must not contain more than 2.5 mg of silver fulminate.

(3) For category 2 fireworks, the following conditions must be met—

- (a) the safety distance must be at least 8 metres. However, where appropriate the safety distance may be less;
- (b) the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance.

(4) For category 3 fireworks, the following conditions must be met—

- (a) the safety distance must be at least 15 metres. However, where appropriate the safety distance may be less;
- (b) the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance.

(5) Fireworks may only be constructed of materials which minimise risk to health, property and the environment from debris.

(6) The method of ignition must be clearly visible or must be indicated by labelling or instructions.

(7) Fireworks must not move in an erratic and unforeseeable manner.

(8) Fireworks of category 1, 2 and 3 must be protected against inadvertent ignition either by a protective cover, by the packaging, or by the construction of the article. Fireworks of category 4 must be protected against inadvertent ignition by methods specified by the manufacturer.

B. Other pyrotechnic articles

3.—(1) Pyrotechnic articles must be designed in such a way as to minimise risk to health, property and the environment during normal use.

(2) The method of ignition must be clearly visible or must be indicated by labelling or instructions.

(3) The pyrotechnic article must be designed in such a way as to minimise risk to health, property and the environment from debris when initiated inadvertently.

(4) Where appropriate, the pyrotechnic article must function properly until the ‘use by’ date specified by the manufacturer.

C. Ignition devices

4.—(1) Ignition devices must be capable of being reliably initiated and be of sufficient initiation capability under all normal, foreseeable conditions of use.

(2) Ignition devices must be protected against electrostatic discharge under normal, foreseeable conditions of storage and use.

(3) Electric igniters must be protected against electromagnetic fields under normal, foreseeable conditions of storage and use.

(4) The covering of fuses must be of adequate mechanical strength and adequately protect the explosive filling when exposed to normal, foreseeable mechanical stress.

(5) The parameters for the burning times of fuses must be provided with the article.

(6) The electrical characteristics (for example, no-fire current, resistance) of electric igniters must be provided with the article.

(7) The wires of electric igniters must be sufficiently insulated and must be of sufficient mechanical strength, including the solidity of the link to the igniter, taking account of their intended use.

SCHEDULE 3

Regulation 21

Definitions of fireworks in regulation 21

For the purposes of regulation 21 the following expressions mean—

“aerial wheel” means tubes containing propellant charges and sparks, flame or noise-producing pyrotechnic composition (or all three), the tubes being fixed to a supporting structure, the principal effect of which is rotation and ascent, with emission of sparks and flames, producing a visual or aural effect (or both) in the air;

“banger” means a firework (other than a firework falling within regulation 21(1)(g)(i))—
which comprises a non-metallic tube which contains pyrotechnic composition [and has a fuse]; and

whose functioning principally involves report;

“battery” means an assembly which includes two or more fireworks of the same type and which has one point of ignition;

“combination” means an assembly, other than a battery, which includes two or more fireworks and which has one point of ignition;

“double banger” means a firework (other than a firework falling within regulation 21(1)(g)(i))—
which comprises a non-metallic tube containing two portions of pyrotechnic composition connected by a delay fuse; and

whose functioning principally involves one report, followed by ascent and a further report;

“flash banger” means a firework (other than a firework falling within regulation 21(1)(g)(i))—
which comprises a non-metallic tube containing metal-based pyrotechnic composition; and

whose functioning principally involves report and a flash of light;

“jumping cracker” means a paper tube containing black powder, folded back on itself several times and bound together, the principal effect of which is reports in succession with jumping motions;

“jumping ground spinner” means a non-metallic tube containing gas and sparks producing pyrotechnic composition, with or without whistling pyrotechnic composition, the principal effect of which is rotation on the ground frequently interrupted by a jumping motion and emission of sparks and flame, with or without an aural effect (other than report);

“mini-rocket” means a firework which is designed so that, on functioning, it propels itself into the air and which comprises a body or motor—
which contains pyrotechnic composition or pyrotechnic units; and

the outside diameter of which, at the point where the diameter is greatest, is less than 12 millimetres; or

if equipped with a stick or sticks for the purposes of stabilising its flight—

where the firework is intended to be supplied singly, whose overall length (including the length of any such sticks) is less than 900 millimetres or (not including the length of any such sticks) is less than 195 millimetres; or

where the firework is intended to be supplied in a primary pack, whose overall length (including the length of any such stick or sticks) is less than 400 millimetres or (not including the length of any such stick or sticks) is less than 125 millimetres; or

where the firework is intended to be supplied in a selection pack, whose overall length (including the length of any such stick or sticks) is less than 300 millimetres;
or

if not equipped with a stick or sticks for the purposes of stabilising its flight—
 whose overall length is less than 300 millimetres; and
 is intended to be supplied singly or in a primary pack;

“spinner” means a tube containing pyrotechnic composition, with or without aerofoils attached, the principal effect of which is rotation and ascent with the emission of sparks, flames or both, with or without aural effect (other than report);

“wheel” means an assembly—
 which includes a tube or tubes containing pyrotechnic composition;
 which is designed to be attached to a support and to rotate about a fixed point or axis and which is provided with a means of attaching it securely to such a support so that it can so rotate; and
 whose functioning involves rotation around a fixed point and the emission of sparks and flames, with or without aural effect.

SCHEDULE 4

Regulation 37

Enforcement powers under Part 3

Powers of Health and Safety Executive

- 1.** In relation to the enforcement of Part 3 of the Regulations by the Health and Safety Executive—
 - (a) sections 19 to 28, 33 to 35, 38, 39, 41 and 42 of the 1974 Act shall apply as modified by paragraph 2; and
 - (b) sections 36(1) and (2) and 37 of that Act shall apply in relation to offences under section 33 as applied in relation to these Regulations and modified by paragraph 2.
- 2.** For the purposes of the enforcement of these Regulations by the Health and Safety Executive the provisions specified in paragraph 1 shall apply as if—
 - (a) references to “relevant statutory provisions” were references to those provisions as modified by this paragraph and to these Regulations;
 - (b) references to an “enforcing authority” were references to the Health and Safety Executive;
 - (c) reference to the “field of responsibility” of an enforcing authority, however expressed, were omitted;
 - (d) in section 20, subsection (3) were omitted;
 - (e) section 22, as well as permitting an inspector to serve a prohibition notice in the circumstances specified in section 22(2), permitted an inspector to serve a prohibition notice in any case where—
 - (i) a manufacturer, or where regulation 25(1)(b) applies, an importer, has failed to comply with the requirements of these Regulations in relation to the CE marking; and
 - (ii) the manufacturer or importer, as the case may be, has been served with an improvement notice under section 21 in respect of that failure and has continued to fail to comply after the period for remedying the contravention specified in the improvement notice;
 - (f) in section 23, subsections (3), (4) and (6) were omitted;
 - (g) in section 33, in subsection (1), the whole of paragraphs (a) to (d) were omitted;

- (h) in section 34—
 - (i) paragraphs (a) and (b) of subsection (1) were omitted; and
 - (ii) in subsection (3) for “six months” there were substituted “twelve months”; and
- (i) in section 42, omit subsections (4) and (5).

Forfeiture: England and Wales

3.—(1) In England and Wales, the Health and Safety Executive may apply under this paragraph for an order for the forfeiture of any pyrotechnic articles on the grounds that there has been a contravention of regulation 24, 25, 26 or 30.

- (2) An application under this paragraph may be made to a magistrates’ court—
 - (a) where proceedings have been brought in that court for an offence in relation to some or all of the pyrotechnic articles under the provisions of the 1974 Act as applied and modified by paragraph 1 of this Schedule; and
 - (b) by way of complaint, where no application for the forfeiture of the pyrotechnic articles has been made under paragraph (a) or (b).

(3) Where the Executive makes an application under sub-paragraph (1) it shall serve a copy of the application on any person appearing to it to be the owner of, or otherwise to have an interest in, a pyrotechnic article to which the application relates, together with a notice giving that person the opportunity to appear at the hearing of the application to show cause why a pyrotechnic article should not be forfeited.

(4) Any person on whom notice is served under sub-paragraph (3) and any other person claiming to be the owner of, or otherwise interested in, a pyrotechnic article to which the application relates shall be entitled to appear at the hearing of the application and show why a pyrotechnic article should not be forfeited.

- (5) The court shall not make an order for the forfeiture of a pyrotechnic article—
 - (a) if any person on whom notice is served under sub-paragraph (3) does not appear, unless service of the notice on that person is proven; or
 - (b) if no notice under sub-paragraph (3) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The court shall make an order under this paragraph for the forfeiture of any pyrotechnic articles only if satisfied that there has been a contravention in relation to the pyrotechnic articles of regulation 24, 25, 26 or 30.

(7) A court may infer for the purposes of this paragraph that there has been a contravention of regulation 24, 25, 26 or 30 in relation to any pyrotechnic article if satisfied that one or more of those regulations has been contravened in relation to pyrotechnic articles which are representative of the pyrotechnic articles (whether by reason of its being of the same design or part of the same consignment or batch or otherwise).

(8) Any person aggrieved by an order made under this paragraph by a magistrates’ court, or by a decision of such court not to make such an order, may appeal against that order or decision in England and Wales, to the Crown Court and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of an order pending the making and determination of any appeal (including any application under section 111 of the Magistrates’ Courts Act 1980(a)).

(9) Subject to sub-paragraph (10), where any pyrotechnic articles are forfeited under this paragraph they shall be destroyed in accordance with such directions as the court may give.

(10) On making an order under this paragraph a magistrates’ court may, if it considers it appropriate to do so, direct that the pyrotechnic articles to which the order relates shall (instead of

(a) c.43.

being destroyed) be released, to such person as the court may specify, on condition that that person—

- (a) does not supply those pyrotechnic articles to any person otherwise than as scrap (that is to say, for the value of materials included in the articles rather than for the value of the articles themselves); and
- (b) complies with any order to pay costs or expenses which has been made against that person in the proceedings for the order for forfeiture.

Forfeiture: Scotland

4.—(1) In Scotland a sheriff may make an order for forfeiture of any pyrotechnic articles in relation to which there has been a contravention of any provision of regulation 24, 25, 26 or 30—

- (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”)(a); or
- (b) where a person is convicted of any offence in respect of any such contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under sub-paragraph (1)(a) shall serve on any person appearing to the procurator-fiscal to be the owner of, or otherwise to have an interest in, a pyrotechnic article to which the application relates a copy of the application, together with a notice giving that person the opportunity to appear at the hearing of the application to show cause why a pyrotechnic article should not be forfeited.

(3) Service under sub-paragraph (2) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the 1995 Act.

(4) Any person upon whom a notice is served under sub-paragraph (2) and any other person claiming to be the owner of, or otherwise to have an interest in, a pyrotechnic article to which an application under this paragraph relates shall be entitled to appear at the hearing of the application to show cause why a pyrotechnic article should not be forfeited.

(5) The sheriff shall not make an order following an application under sub-paragraph (1)(a)—

- (a) if any person on whom notice is served under sub-paragraph (2) does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under sub-paragraph (2) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff shall make an order under this paragraph for the forfeiture of any pyrotechnic article only if satisfied that there has been a contravention in relation to the pyrotechnic articles of regulation 24, 25, 26 or 30.

(7) The sheriff may infer for the purposes of this paragraph that there has been a contravention of regulation 24, 25, 26 or 30 in relation to any pyrotechnic articles if satisfied that one or more of those regulations has been contravened in relation to pyrotechnic articles which are representative of the pyrotechnic articles (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(8) Where an order for the forfeiture of any pyrotechnic article is made following an application by the procurator-fiscal under sub-paragraph (1)(a), any person who appeared, or was entitled to appear, to show cause why it should not be forfeited may, within twenty-one days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 182(5)(a) to (e) of the 1995 Act shall apply to an appeal under this sub-paragraph as it applies to a stated case under Part 10 of that Act.

(9) An order following an application under sub-paragraph (1)(a) shall not take effect—

- (a) until the end of the period of twenty-one days beginning with the day after the day on which the order is made; or

(a)

- (b) if an appeal is made under sub-paragraph (8) within that period, until the appeal is determined or abandoned.
- (10) An order under sub-paragraph (1)(b) shall not take effect—
- (a) until the end of the period within which an appeal against the order could be brought under the 1995 Act; or
 - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (11) Subject to sub-paragraph (12), pyrotechnic articles forfeited under this paragraph shall be destroyed in accordance with such directions as the sheriff may give.
- (12) The sheriff may direct the pyrotechnic articles to be released to such person as the sheriff may specify, on condition that that person does not supply it to any person otherwise than as scrap (that is to say, for the value of materials included in the articles rather than for the value of the articles themselves).

EXPLANATORY NOTE

(This note is not part of the Regulations)

ANNEX D

Summary: Intervention & Options		
Department /Agency: BIS	Title: Impact Assessment of Implementation of Directive 2007/23/EC Placing on the market of pyrotechnic articles	
Stage: Consultation	Version: 1	Date: 30 July 2009
Related Publications: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:154:0001:0021:EN:PDF		

Available to view or download at:

http://www.

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What is the problem under consideration? Why is government intervention necessary?

Pyrotechnic articles are potentially hazardous. However, the hazardous nature of an article is not readily discernible by consumers, particularly in the case of fireworks. This asymmetry of information, without credible and proper safety testing procedures in place, could result in dire consequences such as personal injury and in the longer term the complete loss of markets for such products. For these reasons all EU member states impose conformity requirements on fireworks manufactured within and imported in to the country. For example, in the UK fireworks conform to British Standard BS7114. These standards vary country to country, inhibiting legal free movement of articles around the EU.

What are the policy objectives and the intended effects?

The European Commission proposed a Directive in 2005 which would harmonise standards with the primary aims of ensuring the free movement of pyrotechnic products within the EU, improving the overall protection of consumers and professionals, contributing to the reduction in accidents and harmonising the safety standards across the EU. The Directive would go further than covering just fireworks and extend to theatrical pyrotechnics for films etc, and car air bag detonators and restraint systems and other miscellaneous articles.

What policy options have been considered? Please justify any preferred option.

The only option considered in terms of costs and benefits is option 2, to implement the Directive through regulations. This is to illustrate the costs and benefits versus 'no change'. Should the UK not implement the Directive through regulations, the UK would face infraction proceedings and ultimately be subject to a fine.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The EU Commission will continue to compare accident data in order to assess the effectiveness of the Directive. The Commission will also monitor the costs for fireworks and automotive pyrotechnics approvals across Member States in order to ensure cost savings can be realised by those companies which are active on the EU market. The compliance of industry and importers with the requirements of the Directive will also be monitored. Within the EU, coordinated market surveillance activities including random testing of products available on the market will play a role in ensuring that products meet essential safety requirements.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option: 2

Description: Introducing new UK regulations and amending the existing UK regulatory regime.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Transition cost of obtaining approval by Notified Bodies of 50,000 product types currently estimated to be on sale in the EU which could result in upward pressure on prices to consumers. Although these costs would accrue gradually between now and 2017.
	One-off (Transition)	Yrs	
	£ 312k – 3.13m	8	
	Average Annual Cost (excluding one-off)		
	£ Not estimated		Total Cost (PV) £ 2.15m – 21.5m
Other key non-monetised costs by 'main affected groups' Ongoing costs of obtaining approval of new firework types from third party Notified Bodies. Requirements relating to accreditation and market surveillance could increase HSE, HSE NI and Trading Standards Enforcement costs. One off costs related to labelling changes. Additional costs related to Category 4 articles.			
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Although benefits could accrue in the form of downward pressure on prices through lower manufacturer costs and greater retail competition, this is difficult to estimate.
	One-off	Yrs	
	£ Not estimated	1	
	Average Annual Benefit (excluding one-off)		
	£ Not estimated		Total Benefit (PV) £ Not estimated
Other key non-monetised benefits by 'main affected groups' Ongoing benefits related to easier enforcement, reduced costs to UK manufacturers and importers, particularly as Chinese manufacturers might be better able to exploit economies of scale in firework production, and increased intra-EU trade and competition could result in downward pressure on prices to consumers. Cost reductions for UK manufacturers of automotive pyrotechnic articles.			

Key Assumptions/Sensitivities/Risks The main risk is that the Directive will result in higher cost pyrotechnic articles, particularly fireworks, in the UK with no attendant safety benefits to UK consumers.

Price Base Year 2009	Time Period Years 8	Net Benefit Range (NPV) £ -2.15m to -21.5m	NET BENEFIT (NPV Best estimate) £ -11.8m
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What is the geographic coverage of the policy/option?	Europe-wide/UK-wide			
On what date will the policy be implemented?	04 January 2010			
Which organisation(s) will enforce the policy?	TSO, HSE, HSENI			
What is the total annual cost of enforcement for these organisations?	£ Unknown			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	Yes			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of £ 0	Decrease of £ 0	Net Impact	£ 0

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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Evidence Base (for summary sheets)

A. Strategic overview

1. Within Europe most countries currently have national legislation and standards which classify pyrotechnic articles. The variations are wide ranging and as a consequence the European Commission proposed harmonisation of these with the aim of addressing four major issues:
 - i) Ensuring the free movement of pyrotechnic products within the EU,
 - ii) Improving the protection of consumers and professionals,
 - iii) Contributing to the reduction of injuries, and
 - iv) Harmonising the safety requirements applicable in different Member States.
2. Directive 2007/23 finally adopted extends the regime to all these pyrotechnic articles and will require their type testing by a notified body. It essentially complements similar legislation in place for civil explosives.
3. Recognising the differences in the markets between fireworks which are available to the general public, (and for which standards have largely been developed) and the remainder of pyrotechnic articles, the provisions for category 1, 2 and 3 fireworks will be applied from 4 July 2010, and the provisions relating to other pyrotechnic articles from 4 July 2013, primarily allowing time for harmonised standards to be agreed. All existing products on the market which comply with existing rules will be allowed to remain on the market until 2017.
4. The Directive also recognises that different Member States have totally different traditions in the use of fireworks. It therefore allows individual Member States to retain bans on particular types of fireworks for sale to the general public on safety or security grounds and on the same criteria to maintain existing age limits on the supply of pyrotechnic articles.

B. The issue

5. Pyrotechnic articles (eg fireworks) are designed to produce effects such as the generation of gas, light, noise or smoke by chemical means. Fireworks and automotive occupant restraint systems (eg car air bags and seat belt pre-tensioners), represent two of the major uses of such articles within the EU.
6. Pyrotechnical articles are potentially hazardous. However, the hazardous nature of an article is not readily discernible by consumers, particularly in the case of fireworks. This asymmetry of information, without credible and proper safety testing procedures in place, could result in dire consequences such as personal injury and in the longer term the complete loss of markets for such products. For these reasons all EU Member States impose safety requirements on pyrotechnic articles manufactured within, and imported in to, the country. For example, in the UK fireworks conform to British Standard BS7114/BS EN 14035. These standards vary from country to country, inhibiting the legal free movement of these articles around the EU.
7. Further, there is considerable variation in the rate of accidents among the Member States due to the varying regulatory systems for pyrotechnic articles.

C. Objectives

8. The European Commission proposed a Directive in 2005 which would harmonise standards with the aims referred to in paragraph 1. The Directive would go further than covering just

fireworks and extend to theatrical pyrotechnics for films etc, and car air bag detonators and restraint systems and other miscellaneous pyrotechnic articles such as bird-scarers.

D. Options identification

9. The options considered at the time the Directive was originally proposed were:

Option 1

- 10. To do nothing, resist the Directive and maintain national laws.** This would have been the UK's preferred option if it had not won concessions in the negotiations on the Directive allowing Member States to maintain parts of their existing national legislation on pyrotechnic articles. These elements relate to controls on the minimum age at which a person can be supplied fireworks, fireworks for professional use and controls on which fireworks can be supplied (this allows the UK to maintain the bans on certain fireworks being sold to consumers e.g. bangers and mini rockets).

Option 2

- 11. To implement the Directive through regulation.** Virtually all members of the EU have national regulations in place on the supply and use of fireworks. It was accepted that most would want to maintain much of their existing legislation but the harmonising effect of the Directive would otherwise allow the 2% of both fireworks made in Member States and the 98% of fireworks imported from China to be freely traded. As Member States would be allowed to maintain restrictions on the types of fireworks sold on their market, the increase in cross-border trade in fireworks is likely to be limited. However, many types of fireworks will be allowed free movement across EU borders possibly resulting in increased intra-EU trade, greater competition and ultimately lower prices to consumers.

Option 3

- 12. To use voluntary measures.** The option of voluntary measures at the Member State level was considered unlikely to work, given existing tough national requirements on fireworks and other pyrotechnic articles that are adhered to rigorously by UK companies. It was also recognised that issues relating to product safety and use by consumers were not the most suitable areas for implementation via industry voluntary measures.
13. Following the adoption of the Directive by the European Parliament and Council the UK is left with option 2, to implement the Directive through regulation.

E. Options analysis

14. The only option considered in terms of costs and benefits is option 2, to implement the Directive through regulations. This is to illustrate the costs and benefits versus 'no change'. Should the UK not implement the Directive through regulations, the UK would be in breach of its duties under the Treaty of Rome and face infraction proceedings and ultimately be subject to a fine.

Fireworks

15. The majority of fireworks (98%) sold in the EU are imported from China with a very small proportion (2%) manufactured in the EU. Those fireworks which are manufactured in the EU are generally category 4 (professional use) fireworks¹. The UK has only one firework manufacturer.

¹ See p2 http://ec.europa.eu/enterprise/chemicals/legislation/pyrotechnic/doc/pyro_impact_assess.pdf

16. Approval to place fireworks on the market in Member States is either through type testing or through batch testing and in general there is no specific requirement for mutual recognition of results (although the UK's present rules allow for recognition of Member State standards that provide an equivalent level of protection). At the moment there is no third party verification of conformity, with UK manufacturers and importers self declaring conformity of each type of firework to British Standard BS7114/BS EN 14035.
17. Domestic manufacturers and importers either test products for conformity with British standards in-house or give products to commercial test houses (usually in the country of manufacture) and in so doing incur a one-off cost for each type of firework. There is a risk that fireworks which do not conform to British standards may not be picked up by Trading Standards Services. Therefore it is possible that fireworks which do not conform to British standards are 'slipping through the net' and possibly resulting in injury to UK consumers.
18. The EU classification system and essential safety standards will remain broadly similar to the current UK classification system and standards. However, under the Directive, as well as having to ensure fireworks conform to the new EU standards in-house or through commercial test houses, domestic firework manufacturers and importers will have to submit articles to Notified Bodies for third party testing to check conformity against EU standards to be adopted under the Directive. This represents an additional cost over and above those currently incurred to ensure conformity to British standards during development of a firework type. The EU commission states in its impact assessment for the Directive that type testing costs in Member States vary from €500-€2500 and tend to increase from category 1 through to category 3 fireworks². Representatives from UK industry have stated informally that UK testing costs fall within this range and average about £500 per type of firework. However, testing costs could in future reduce through competition between Notified Bodies.
19. It is estimated that there are over 50,000 types of firework sold in the EU according to the Commission. However, it is unlikely that every type of firework is sold in every Member State. The UK's current stringent regulations prohibit the sale of certain types of firework and these prohibitions will be maintained, where appropriate and necessary, under the new regulations. Many of the firework types sold in the EU are very similar and according to the Commission could be grouped according to their dimensions and performance characteristics. While group testing may cost more than single type testing it is probable that the equivalent cost per type of firework would be lower under group testing.
20. Therefore a range of possible costs resulting from the new regulations is calculated on the basis of different assumptions of the number of types of fireworks which would need to be tested. Assumptions have to be used as data is unavailable both on the number of types of firework sold in the UK and the extent to which types could be grouped for the purpose of conformity testing. The table below shows costs to UK firework manufacturers and importers on the basis of these different assumptions.

No. Firework types	5000	10000	25000	50000
Cost	£2.5m	£5m	£12.5m	£25m

21. Chinese manufacturers currently have to manufacture fireworks to conform to each individual standard across EU member states. The number of different standards which Chinese manufacturers have to conform to depend on the number of Member States a particular type of firework is exported to. If a particular type of firework which is exported to

² Ibid. (p7)

multiple Member States only has to conform to one standard the unit cost per type of firework may decrease as scale economies could be exploited. Assuming the market is competitive these cost reductions should be passed through to UK importers and ultimately passed on to UK consumers. This may counteract, to one extent or another, the increased costs faced by UK importers of conformity testing by Notified Bodies.

22. The net effect is unclear. However, on the basis that conformity tests by a Notified Body are one-off costs, while cost reductions due to economies of scale will be ongoing, in the long-term the net effect could be positive. Nonetheless it is impossible without any data to estimate the nature of the cost reductions facing Chinese manufactures and the extent of multi-country exports, so this is left as a non-monetised benefit.
23. The EU standards are likely to be very similar to current British standards and it is unlikely that fireworks imported to the UK will be any safer than what is currently imported. It may be the case that currently some fireworks, which do not conform to British standards, are brought in to the UK from the EU under the radar of Trading Standards Services through illegal transport across borders. Data from Suffolk Trading Standards, which has jurisdiction over the major port of Felixstowe, suggests a non-compliance rate of 14% for fireworks, although 'non-compliant' should not be equated with 'unsafe'. These fireworks may cause a number of accidents which could be mitigated under the new regulations through a harmonised higher standard across the EU and the new CE marking making enforcement easier. However, the effect is likely to be negligible in the UK. There were only 990 firework related accidents recorded in the UK in 2005 and the UK experience of collecting firework accident data suggests the vast majority (95%+) result from misuse rather than malfunction. Costs of labelling should not rise dramatically. Complying with the new labelling requirements in the Directive should result in one-off costs only.
24. Category 4 and theatrical pyrotechnic articles are not currently subject to the same formal type or batch testing requirements as Categories 1, 2 and 3. Therefore when the Directive comes in to force, existing costs for Category 4 fireworks and theatrical pyrotechnics will be subject to additional the additional costs of conformity testing as well as the additional costs associated with third party verification by a Notified Body. However, lacking data these are left as non-monetised costs.
25. Intra-EU trade in fireworks is currently limited. The harmonisation of standards could benefit the sole UK manufacturer and, to a lesser extent, importers as fireworks could be more freely traded across the EU. Equally, increased trade could result in greater competition from non-UK manufacturers and importers which could have negative effects for nationally focused UK firms. It is possible that, due to increased competition and lower unit costs of production, UK consumers will benefit from higher quality, lower price fireworks as a result of the Directive although it is not possible to quantify this effect.
26. The Health and Safety Executive and HSE NI is currently responsible for enforcement of the rules on transport and storage of certain categories of pyrotechnics, whilst local authorities are responsible for licensing of smaller storage sites and the retail sector. This work is currently carried out by Trading Standards Departments and district councils in NI. These basic responsibilities will not change. Part 2 of the draft Regulations will mainly be enforced by the local authorities, with Part 3 which covers category 4 pyrotechnic articles, theatrical pyrotechnic articles and other pyrotechnic articles mainly enforced by the Health and Safety Executive and the HSE for Northern Ireland. The Pyrotechnic Directive sets out specific rules on market surveillance of pyrotechnic articles. The Directive will be complemented by the general rules on accreditation and market surveillance which are set out in Regulation 765/2008 on accreditation and market surveillance (RAMS) which is due to enter into force on 1 January 2010, and complying with those requirements may require additional resources.

Other pyrotechnic articles

27. It is estimated that automotive occupant restraint systems are placed in 20 million vehicles in the EU per year. This amounts to approximately 80 million airbags at a value of €3.5 billion and 90 million seat belt pre tensioners at a value of around €2 billion.
28. Many Member States have different approval processes for the placing of automotive occupant restraint systems such as inflators, modules and safety devices for automotive and other uses on their markets. These approval processes currently use national regulations and laws for the approval of these products. These approval processes vary between Member States although some Member States accept the approvals made in other specific member states. The only data available on approval costs relate to Germany where each approval costs companies about €25000.
29. The Directive will eliminate barriers to trade of these pyrotechnical articles enhancing intra-EU competition and lowering costs considerably as a single CE assessment of conformity will replace up to 27 national approval procedures. The extent of the cost reduction cannot be estimated as data is not available on the costs of approval in individual Member States and the number of separate approvals each pyrotechnical article must go through. Nonetheless cost reductions for UK based manufacturers of these articles could be considerable.
30. Other pyrotechnic articles such as nail guns, shroud cutters, and bird scarers, will be subject to the regulations on essential safety standards but manufacturing costs of these items are unlikely to be significantly affected.

F. Risks

31. The main risk is that the Directive will result in higher cost pyrotechnic articles, particularly fireworks, in the UK with no attendant safety benefits to UK consumers.

G. Recommendation

32. Option 2.

H. Implementation

33. The Directive must be implemented by 4 January 2010, and will come into force on 4 July 2010 in respect of category 1, 2 and 3 fireworks – those categories which may be sold to the general public. The Regulations will expressly preclude the use of those particular fireworks which are currently excluded from use in the UK. The UK will however remove certain existing prohibitions, for example, on fireworks of a certain weight and size and non-listed fireworks. The Regulations applicable to fireworks not for sale to the general public and other pyrotechnic articles will enter into force on 4 July 2013.
34. Pyrotechnics which conform to existing legislation, including current British standards (and equivalent standards) will be allowed on the UK market until 2017 which should allow for existing stock to be disposed of, any remainder being minimal.

I. Monitoring and evaluation

35. The EU Commission will continue to compare accident data in order to assess the effectiveness of the Directive. The Commission will also monitor the costs for fireworks and automotive pyrotechnics approvals across Member States in order to ensure cost savings

can be realised by those companies which are active on the EU market. The compliance of industry and importers with the requirements of the Directive will also be monitored. Within the EU, coordinated market surveillance activities including random testing of products available on the market will play a role in ensuring that products meet essential safety requirements.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Competition Assessment

The harmonisation of regulations across the EU will facilitate intra-EU trade in pyrotechnic articles. This will promote intra-EU competition. As EU and Non-EU manufacturers will have to adhere to the same standards, pyrotechnic articles imported into the EU will not have an unfair competitive advantage over items manufactured in the EU.

Small Firms Impact Test

While the increased costs faced by firms could fall disproportionately on SMEs due to the increase in unit costs being lower as volume of sales increases, the majority, if not all, EU manufacturers and importers of fireworks are SMEs. For automotive pyrotechnic articles there is no differential impact on SMEs as all firms will face similar or lower costs under the new system due to increased competition among testing authorities and due to one test series being necessary for the entire EU.

Health Impact Assessment

After careful consideration of the issues and screening against the Department of Health's HIA screening questions, we have concluded that a full Health Impact Assessment is not required. We acknowledge that fireworks are potentially hazardous, (there are approximately 1000 accidents per year involving fireworks). We do not believe that the new regulations will make a significant difference to the accident rate, but to the extent that there is an impact, harmonised European Safety Standards should increase safety, although this potential impact is not measurable. The proposal is that there should be no change to age limits for the purchase of fireworks - there would therefore be no health impact.

Other specific impact tests

Other specific impact tests have been considered, including Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, Race Equality, Disability Equality, Gender Equality, Human Rights and Rural Proofing.

After careful analysis it has been concluded that no significant impact is anticipated in any specific cases above.

ANNEX E

32007L0023

Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles (Text with EEA relevance)

Official Journal L 154 , 14/06/2007 P. 0001 - 0021

Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007

on the placing on the market of pyrotechnic articles
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) The laws, regulations and administrative provisions in force in the Member States with regard to the placing on the market of pyrotechnic articles are divergent, in particular as regards aspects such as safety and performance characteristics.

(2) Those laws, regulations and administrative provisions, being liable to cause barriers to trade within the Community, should be harmonised in order to guarantee the free movement of pyrotechnic articles within the internal market whilst ensuring a high level of protection of human health and safety and the protection of consumers and professional end users.

(3) Council Directive 93/15/EEC of 5 April 1993 on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses [3] excludes pyrotechnic articles from its scope and states that pyrotechnic articles require appropriate measures to ensure the protection of consumers and the safety of the public and that an additional directive is planned in this field.

(4) Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances [4] sets out safety requirements for establishments where explosives, including pyrotechnic substances, are present.

(5) Pyrotechnic articles should include fireworks, theatrical pyrotechnic articles and pyrotechnic articles for technical purposes, such as gas generators used in airbags or in seatbelt pretensioners.

(6) This Directive should not apply to pyrotechnic articles to which Council Directive 96/98/EC of 20 December 1996 on marine equipment [5] and the relevant international conventions mentioned therein apply.

(7) In order to ensure appropriately high levels of protection, pyrotechnic articles should be categorised primarily according to their level of hazard as regards their type of use, purpose or noise level.

(8) According to the principles set out in the Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards [6], a pyrotechnic article should comply with this Directive when the article is placed on the Community market for the first time. In view of religious, cultural and traditional festivities in the Member States, fireworks built by the manufacturer for his own use and which have been approved by a Member State for use on its territory should not be considered as having been placed on the market and should not therefore need to comply with this Directive.

(9) Given the dangers inherent in the use of pyrotechnic articles, it is appropriate to lay down age limits for their sale to consumers and their use, and to ensure that their labelling displays sufficient and appropriate information on safe use, in order to protect human health and safety and the environment. Provision should be made for certain pyrotechnic articles to be made available only to authorised specialists with the necessary knowledge, skills and experience. With regard to pyrotechnic articles for vehicles, labelling requirements should take into account current practice and the fact that these articles are supplied exclusively to professional users.

(10) The use of pyrotechnic articles and, in particular, the use of fireworks, is subject to markedly divergent cultural customs and traditions in the respective Member States. This makes it necessary to allow Member States to take national measures to limit the use or sale of certain categories of fireworks to the general public for reasons of public security or safety.

(11) It is appropriate to establish essential safety requirements for pyrotechnic articles in order to protect consumers and to prevent accidents.

(12) Responsibility for ensuring that pyrotechnic articles comply with this Directive and in particular with those essential safety requirements should rest with the manufacturer. If the manufacturer is not established in the Community, the natural or legal person who imports a pyrotechnic article into the Community should ensure that the manufacturer has fulfilled his obligations under this Directive or should assume all obligations of the manufacturer.

(13) It should not be possible, where the essential safety requirements are satisfied, for Member States to prohibit, restrict or hinder the free movement of pyrotechnic articles. This Directive should apply without prejudice to national legislation on the licensing of manufacturers, distributors and importers by the Member States.

(14) In order to facilitate the process of demonstrating compliance with the essential safety requirements, harmonised standards for the design, manufacture and testing of pyrotechnic articles are being developed.

(15) European harmonised standards are drawn up, adopted and modified by the Committee for European Standardization (CEN), the Committee for Electro-technical Standardization (Cenelec) and the European Telecommunication Standards Institute (ETSI). These organisations are recognised as competent for the adoption of harmonised standards, which they draw up in accordance with the general guidelines for cooperation between themselves and the European Commission and the European Free Trade Association [7], and with the procedure laid down in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services [8]. With regard to pyrotechnic articles for vehicles, the international orientation of the European vehicle supply industry should be reflected by taking into account the relevant international ISO standards.

(16) In line with the "New Approach to technical harmonisation and standardisation", pyrotechnic articles manufactured in compliance with

harmonised standards should benefit from a presumption of conformity with the essential safety requirements provided for in this Directive.

(17) By Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives [9], the Council introduced harmonised means of applying procedures for conformity assessment. The application of these modules to pyrotechnic articles will make it possible to determine the responsibility of manufacturers and of bodies involved in the conformity assessment procedure by taking account of the nature of the pyrotechnic articles concerned.

(18) Groups of pyrotechnic articles that are similar in design, function or behaviour should be assessed by the notified bodies as product families.

(19) In order to be placed on the market, pyrotechnic articles should bear a CE marking indicating their conformity with the provisions of this Directive to enable them to move freely within the Community.

(20) According to the "New Approach to technical harmonisation and standardisation", a safeguard clause procedure is necessary to allow the possibility for contesting the conformity of a pyrotechnic article or failures. Accordingly, Member States should take all appropriate measures to prohibit or restrict the placing on the market of products bearing a CE marking or to withdraw such products from the market if they endanger the health and safety of consumers when the products are used for their intended purpose.

(21) As regards safety in transportation, the rules concerning the transport of pyrotechnic articles are covered by international conventions and agreements, including the United Nations recommendations on the transport of dangerous goods.

(22) Member States should lay down rules on penalties applicable to infringements of the provisions of national law adopted pursuant to this Directive and ensure that these rules are implemented. The penalties provided for should be effective, proportionate and dissuasive.

(23) It is in the interests of the manufacturer and the importer to supply safe products in order to avoid liability costs for defective products causing damage to individuals and private property. In this regard, Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products [10] complements this Directive, since that Directive imposes a strict liability regime on manufacturers and importers and ensures an adequate level of protection for consumers. Furthermore, this Directive provides that notified bodies should be adequately insured in respect of their professional activities, unless their liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the tests.

(24) It is vital to provide for a transitional period to allow national laws in specified fields to be adapted gradually. Manufacturers and importers need to be given time to exercise any rights under national rules in force before the entry into force of this Directive in order, for example, to sell their stocks of manufactured products. Furthermore, the specific transitional periods provided for for the application of this Directive would allow extra time for the adoption of harmonised standards and would ensure the speedy implementation of this Directive so as to enhance the protection of consumers.

(25) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the

principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(26) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [11].

(27) In particular, the Commission should be empowered to adopt Community measures concerning United Nations recommendations, the labelling requirements of pyrotechnic articles and adaptations to technical progress of Annexes II and III related to safety requirements and conformity assessment procedures. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, or to supplement it by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(28) In accordance with point 34 of the Interinstitutional Agreement on better law-making [12], Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objectives and scope

1. This Directive establishes rules designed to achieve the free movement of pyrotechnic articles in the internal market while, at the same time, ensuring a high level of protection of human health and public security and the protection and safety of consumers and taking into account the relevant aspects related to environmental protection.
2. This Directive establishes the essential safety requirements which pyrotechnic articles must fulfil with a view to their being placed on the market.
3. This Directive shall apply to pyrotechnic articles as defined in Article 2(1) to (5).
4. This Directive shall not apply to:
 - (a) Pyrotechnic articles intended for non-commercial use, in accordance with national law, by the armed forces, the police or fire departments;
 - (b) Equipment falling within the scope of Directive 96/98/EC;
 - (c) Pyrotechnic articles intended for use in the aerospace industry;
 - (d) Percussion caps intended specifically for toys falling within the scope of Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys [13];
 - (e) Explosives falling within the scope of Directive 93/15/EEC;
 - (f) Ammunition, meaning projectiles and propelling charges and blank ammunition used in portable firearms, other guns and artillery.

Article 2

Definitions

For the purposes of this Directive:

1. "Pyrotechnic article" means any article containing explosive substances or an explosive mixture of substances designed to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions.

2. "Placing on the market" means the first making available on the Community market of an individual product, with a view to its distribution and/or use, whether for payment or free of charge. Fireworks built by a manufacturer for his own use and which have been approved by a Member State for use on its territory are not to be considered as having been placed on the market.
3. "Firework" means a pyrotechnic article intended for entertainment purposes.
4. "Theatrical pyrotechnic articles" means pyrotechnic articles designed for indoor or outdoor stage use, including film and television productions or similar use.
5. "Pyrotechnic articles for vehicles" means components of safety devices in vehicles which contain pyrotechnic substances used to activate these or other devices.
6. "Manufacturer" means a natural or legal person who designs and/or manufactures a pyrotechnic article, or who causes such an article to be designed and manufactured, with a view to placing it on the market under his own name or trademark.
7. "Importer" means any natural or legal person established in the Community who makes a pyrotechnic article originating from a third country available on the Community market for the first time in the course of his business.
8. "Distributor" means any natural or legal person in the supply chain who makes a pyrotechnic article available on the market in the course of his business.
9. "Harmonised standard" means a European standard adopted by a European standardisation body under a mandate from the Commission in conformity with the procedures laid down in Directive 98/34/EC and with which compliance is not compulsory.
10. "Person with specialist knowledge" means a person authorised by a Member State to handle and/or use on its territory category 4 fireworks, category T2 theatrical pyrotechnic articles and/or category P2 other pyrotechnic articles as defined in Article 3.

Article 3

Categorisation

1. Pyrotechnic articles shall be categorised by the manufacturer according to their type of use, or their purpose and level of hazard, including their noise level. The notified bodies referred to in Article 10 shall confirm the categorisation as part of the conformity assessment procedures in accordance with Article 9.

Categorisation shall be as follows:

(a) Fireworks

Category 1: fireworks which present a very low hazard and negligible noise level and which are intended for use in confined areas, including fireworks which are intended for use inside domestic buildings;

Category 2: fireworks which present a low hazard and low noise level and which are intended for outdoor use in confined areas;

Category 3: fireworks which present a medium hazard, which are intended for outdoor use in large open areas and whose noise level is not harmful to human health;

Category 4: fireworks which present a high hazard, which are intended for use only by persons with specialist knowledge (commonly known as fireworks for professional use) and whose noise level is not harmful to human health.

(b) Theatrical pyrotechnic articles

Category T1: pyrotechnic articles for stage use which present a low hazard;

Category T2: pyrotechnic articles for stage use which are intended for use only by persons with specialist knowledge.

(c) Other pyrotechnic articles

Category P1: pyrotechnic articles other than fireworks and theatrical pyrotechnic articles which present a low hazard;

Category P2: pyrotechnic articles other than fireworks and theatrical pyrotechnic articles which are intended for handling or use only by persons with specialist knowledge.

2. Member States shall inform the Commission of the procedures whereby they identify and authorise persons with specialist knowledge.

Article 4

Obligations of the manufacturer importer and distributor

1. Manufacturers shall ensure that pyrotechnic articles placed on the market comply with the essential safety requirements set out in Annex I.

2. If the manufacturer is not established in the Community, the importer of the pyrotechnic articles shall ensure that the manufacturer has fulfilled his obligations under this Directive or assume these obligations himself.

The importer may be held liable by authorities and bodies in the Community with regard to those obligations.

3. Distributors shall act with due care in accordance with applicable Community law. In particular they shall verify that the pyrotechnic article bears the required conformity marking(s) and is accompanied by the required documents.

4. Manufacturers of pyrotechnic articles shall:

(a) submit the pyrotechnic article to a notified body as referred to in Article 10 which shall perform a conformity assessment in accordance with Article 9; and

(b) affix a CE marking to, and label the pyrotechnic article in accordance with Article 11, and Article 12 or 13.

Article 5

Placing on the market

1. Member States shall take all appropriate measures to ensure that pyrotechnic articles may be placed on the market only if they satisfy the requirements of this Directive, bear a CE marking, and comply with the obligations relating to the conformity assessment.

2. Member States shall take all appropriate measures to ensure that pyrotechnic articles do not unduly bear a CE marking.

Article 6

Free Movement

1. Member States shall not prohibit, restrict or hinder the placing on the market of pyrotechnic articles which satisfy the requirements of this Directive.

2. The provisions of this Directive shall not preclude measures taken by a Member State to prohibit or restrict the possession, use and/or the sale to the general public of category 2 and 3 fireworks, theatrical pyrotechnic articles and other pyrotechnic articles, which measures are justified on grounds of public order, security or safety, or environmental protection.

3. At trade fairs, exhibitions and demonstrations for the marketing of pyrotechnic articles, Member States shall not prevent the showing and use of pyrotechnic articles not in conformity with the provisions of this Directive, provided that a visible sign clearly indicates the name and date of the trade

fair, exhibition or demonstration in question and the non-conformity and non-availability for sale of the articles until brought into conformity by the manufacturer, where such manufacturer is established within the Community, or by the importer. During such events, appropriate safety measures shall be taken in accordance with any requirements laid down by the competent authority of the Member State concerned.

4. Member States shall not prevent the free movement and use of pyrotechnic articles manufactured for the purpose of research, development and testing and which are not in conformity with the provisions of this Directive, provided that a visible sign clearly indicates their non-conformity and non-availability for purposes other than research, development and testing.

Article 7

Age limits

1. Pyrotechnic articles shall not be sold or otherwise made available to consumers below the following age limits:

(a) Fireworks

Category 1: 12 years.

Category 2: 16 years.

Category 3: 18 years.

(b) Other pyrotechnic articles and theatrical pyrotechnic articles

Category T1 and P1: 18 years.

2. Member States may increase the age limits under paragraph 1 where justified on grounds of public order, security or safety. Member States may also lower the age limits for persons vocationally trained or undergoing such training.

3. Manufacturers, importers and distributors shall not sell or otherwise make available the following pyrotechnic articles except to persons with specialist knowledge:

(a) fireworks of category 4,

(b) pyrotechnic articles of category P2 and theatrical pyrotechnic articles of category T2.

Article 8

Harmonised standards

1. The Commission may, in accordance with the procedures laid down by Directive 98/34/EC, request the European standardisation bodies to draw up or revise European standards in support of this Directive or encourage the relevant international bodies to draw up or revise international standards.

2. The Commission shall publish in the Official Journal of the European Union the references of such harmonised standards.

3. Member States shall ensure that the harmonised standards published in the Official Journal of the European Union are acknowledged and adopted.

Member States shall consider pyrotechnic articles falling within the scope of this Directive which comply with the relevant national standards transposing the harmonised standards published in the Official Journal of the European Union to be in conformity with the essential safety requirements set out in Annex I. Member States shall publish the references of the national standards transposing those harmonised standards.

When Member States adopt national transpositions of the harmonised standards they shall publish the reference numbers of those transpositions.

4. Where a Member State or the Commission considers that the harmonised standards referred to in paragraph 2 of this Article do not fully satisfy the

essential safety requirements set out in Annex I, the Commission or the Member State concerned shall refer the matter to the Standing Committee set up by Directive 98/34/EC, giving its reasons. The Standing Committee shall deliver its opinion within six months of such referral. In the light of the Standing Committee's opinion the Commission shall inform the Member States of the measures to be taken regarding the harmonised standards and the publication referred to in paragraph 2.

Article 9

Conformity assessment procedures

For the assessment of conformity of pyrotechnic articles the manufacturer shall follow one of the following procedures:

- (a) the EC type-examination (Module B) procedure referred to in Annex II, Section 1, and, at the choice of the manufacturer, either:
 - (i) the conformity to type (Module C) procedure referred to in Annex II, Section 2,
 - (ii) the production quality assurance (Module D) procedure referred to in Annex II, Section 3, or
 - (iii) the product quality assurance (Module E) procedure referred to in Annex II, Section 4;
- (b) the unit verification (Module G) procedure referred to in Annex II, Section 5; or
- (c) the full product quality assurance procedure (Module H) referred to in Annex II, Section 6, insofar as it concerns fireworks of category 4.

Article 10

Notified bodies

1. Member States shall inform the Commission and the other Member States of the bodies which they have appointed to carry out the conformity assessment procedures referred to in Article 9, together with the specific tasks which these bodies have been appointed to carry out and the identification numbers assigned to them by the Commission.
2. The Commission shall make available to the public on its website a list of the notified bodies and their identification numbers and the tasks for which they have been notified. The Commission shall ensure that this list is kept up to date.
3. Member States shall apply the minimum criteria set out in Annex III for the assessment of bodies of which the Commission is to be notified. Bodies which meet the assessment criteria laid down by the harmonised standards relevant for notified bodies shall be presumed to satisfy the relevant minimum criteria.
4. A Member State which has notified the Commission of a given body shall withdraw the notification if it discovers that that body no longer meets the minimum criteria referred to in paragraph 3. It shall immediately inform the other Member States and the Commission thereof.
5. If the notification of a body is withdrawn, the attestations of conformity and the related documents provided by the body in question shall remain valid unless it is established that there is an imminent and direct risk to health and safety.
6. The Commission shall make available to the public on its website the withdrawal of the notification of the body in question.

Article 11

Obligation to affix the CE marking

1. After having successfully completed the conformity assessment in accordance with Article 9, manufacturers shall visibly, legibly and indelibly affix the CE marking to the pyrotechnic articles themselves or, if this is not possible, to an identification plate attached thereto or to the packaging. The identification plate must be so designed as to make its reuse impossible.
The model to be used for the CE marking shall be in accordance with Decision 93/465/EEC.
2. No marking or inscription which may confuse third persons as to the meaning and form of the CE marking may be affixed to pyrotechnic articles. Any other marking may be affixed to pyrotechnic articles provided the visibility and legibility of the CE marking is not impaired.
3. Where pyrotechnic articles are subject to other Community legislation which covers other aspects of, and prescribes the affixing of, the CE marking, this marking shall indicate that those articles are also presumed to conform to the provisions of the other legislation which applies to them.

Article 12

Labelling of articles other than pyrotechnic articles for vehicles

1. Manufacturers shall ensure that pyrotechnic articles other than pyrotechnic articles for vehicles are properly labelled visibly, legibly and indelibly in the official language(s) of the Member State in which the article is sold to the consumer.
2. The labelling of pyrotechnic articles shall include as a minimum the name and address of the manufacturer or, where the manufacturer is not established in the Community, the name of the manufacturer and the name and address of the importer, the name and type of the article, the minimum age limits as indicated in Article 7(1) and (2), the relevant category and instructions for use, the year of production for category 3 and 4 fireworks and, where appropriate, a minimum safety distance. The labelling shall include the net equivalent quantity (NEQ) of active explosive material.
3. In addition, fireworks shall display the following minimum information:
Category 1: where appropriate: "for outdoor use only" and a minimum safety distance.
Category 2: "for outdoor use only" and, where appropriate, minimum safety distance(s).
Category 3: "for outdoor use only" and minimum safety distance(s).
Category 4: "for use only by persons with specialist knowledge" and minimum safety distance(s).
4. In addition, theatrical pyrotechnic articles shall contain the following minimum information:
Category T1: where appropriate: "for outdoor use only" and a minimum safety distance.
Category T2: "for use only by persons with specialist knowledge" and minimum safety distance(s).
5. If the pyrotechnic article does not provide sufficient space for the labelling requirements referred to in paragraphs 2 to 4, the information shall be provided on the smallest piece of packaging.
6. The provisions of this Article shall not apply to pyrotechnic articles shown at trade fairs, exhibitions and demonstrations for the marketing of pyrotechnic articles, as referred to in Article 6(3), or manufactured for the purpose of research, development and testing, as referred to in Article 6(4).

Article 13

Labelling of pyrotechnic articles for vehicles

1. The labelling of pyrotechnic articles for vehicles shall include the name of the manufacturer or, where the manufacturer is not established in the Community, the name of the importer, the name and type of the article and the safety instructions.
2. If the article does not provide sufficient space for the labelling requirements referred to in paragraph 1, the information shall be provided on the packaging.
3. A safety data sheet compiled in accordance with the Annex to Commission Directive 2001/58/EC of 27 July 2001 amending for the second time Directive 91/155/EEC [14] shall be supplied to professional users in the language requested by them.

The safety data sheet may be supplied on paper or electronically, provided that the addressee has the necessary means of accessing it.

Article 14

Market surveillance

1. Member States shall take all appropriate measures to ensure that pyrotechnic articles may be placed on the market only if, when properly stored and used for their intended purpose, they do not endanger the health and safety of persons.
2. Member States shall carry out regular inspections of pyrotechnic articles on entry into the Community and at storage and manufacturing sites.
3. Member States shall take appropriate measures to ensure that when pyrotechnic articles are transferred within the Community, the safety and public security and protection requirements of this Directive are met.
4. Member States shall organise and perform appropriate surveillance of products placed on the market taking due account of the presumption of the conformity of products bearing a CE marking.
5. Member States shall inform the Commission annually about their market surveillance activities.
6. Where a Member State ascertains that a pyrotechnic article, bearing a CE marking, accompanied by the EC declaration of conformity and used in accordance with its intended purpose, is liable to endanger the health and safety of persons, it shall take all appropriate provisional measures to withdraw that article from the market, to prohibit its being placed on the market or to restrict its free movement. The Member State shall inform the Commission and the other Member States thereof.
7. The Commission shall make available to the public on its website the names of articles that, pursuant to paragraph 6, have been withdrawn from the market, have been banned or are to be placed on the market subject to restriction.

Article 15

Rapid information on products presenting serious risks

Where a Member State has sufficient reasons to believe that a pyrotechnic article presents a serious risk to the health and/or safety of persons in the Community, it shall inform the Commission and the other Member States thereof and shall perform an appropriate evaluation. It shall inform the Commission and the other Member States of the background for and the results of the evaluation.

Article 16

Safeguard clause

1. Where a Member State disagrees with the provisional measures taken by another Member State pursuant to Article 14(6) or where the Commission considers that such measures are contrary to Community legislation, the Commission shall consult, without delay, all parties concerned, evaluate the measures and take a position as to whether or not the measures are justified. The Commission shall notify its position to the Member States and inform the interested parties.

If the Commission considers that the national measures are justified, the other Member States shall take the necessary measures to ensure that the unsafe article is withdrawn from their national market and inform the Commission thereof.

If the Commission considers that the national measures are not justified, the Member State concerned shall withdraw them.

2. Where the provisional measures referred to in paragraph 1 are based on a shortcoming in harmonised standards, the Commission shall refer the matter to the Standing Committee set up by Directive 98/34/EC if the Member State at the origin of the measures maintains its position, and the Commission or that Member State shall initiate the procedure referred to in Article 8.

3. Where a pyrotechnic article does not conform but bears a CE marking, the competent Member State shall take appropriate action against whomever affixed the marking and shall inform the Commission thereof. The Commission shall inform the other Member States.

Article 17

Measures entailing refusal or restriction

1. Any measure taken pursuant to this Directive,

- (a) to prohibit or restrict the placing on the market of a product; or
- (b) to withdraw a product from the market,

shall state the exact grounds on which it is based. Such measures shall be notified without delay to the party concerned, who shall at the same time be informed of the remedies available to him under the national law of the Member State concerned, and of the time limits to which such remedies are subject.

2. In the event of a measure referred to in paragraph 1, the party concerned shall have an opportunity to put forward his views in advance, unless such consultation is not possible because of the urgency of the measure to be taken, as justified in particular by public health or safety requirements.

Article 18

Implementing measures

1. The following measures designed to amend non-essential elements of this Directive, *inter alia* by supplementing it by the addition of new non-essential elements, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(2):

- (a) adaptations necessary to take account of any future amendments to United Nations recommendations;
- (b) adaptations to technical progress of Annexes II and III;
- (c) adaptations to the labelling requirements set out in Articles 12 and 13.

2. The following measures shall be adopted in accordance with the regulatory procedure referred to in Article 19(3):

- (a) the setting up of a traceability system, including a registration number and a register at EU level in order to identify types of pyrotechnic articles and their manufacturer;

(b) the setting up of common criteria for the regular collection and updating of data on accidents related to pyrotechnic articles.

Article 19

Committee

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

Article 20

Penalties

Member States shall lay down rules on penalties applicable to infringements of the provisions of national law adopted pursuant to this Directive and ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Member States shall also adopt the necessary measures allowing them to detain consignments of pyrotechnic articles that fail to comply with this Directive.

Article 21

Transposition

1. Member States shall adopt and publish, by 4 January 2010, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.
2. They shall apply those provisions by 4 July 2010 for fireworks of categories 1, 2 and 3 and by 4 July 2013 for other pyrotechnic articles, for fireworks of category 4 and for theatrical pyrotechnic articles.
3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.
5. National authorisations granted before the relevant date indicated in paragraph 2 shall continue to be valid on the territory of the Member State having granted the authorisation until their expiry date or up to 10 years from the entry into force of the Directive, whichever is the shorter.
6. By way of derogation from paragraph 5, national authorisations for pyrotechnic articles for vehicles granted before the relevant date indicated in paragraph 2 shall continue to be valid until their expiry.

Article 22

Entry into force

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 23

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 23 May 2007.

For the European Parliament

The President

H.-G. Pöttering

For the Council

The President

G. Glos'er

[1] OJ C 195, 18.8.2006, p. 7.

[2] Opinion of the European Parliament of 30 November 2006 (not yet published in the Official Journal) and Council Decision of 16 April 2007.

[3] OJ L 121, 15.5.1993, p. 20. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

[4] OJ L 10, 14.1.1997, p. 13. Directive as last amended by Directive 2003/105/EC of the European Parliament and of the Council (OJ L 345, 31.12.2003, p. 97).

[5] OJ L 46, 17.2.1997, p. 25. Directive as last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 53).

[6] OJ C 136, 4.6.1985, p. 1.

[7] OJ C 91, 16.4.2003, p. 7.

[8] OJ L 204, 21.7.1998, p. 37. Directive as last amended by the 2003 Act of Accession.

[9] OJ L 220, 30.8.1993, p. 23.

[10] OJ L 210, 7.8.1985, p. 29. Directive as amended by Directive 1999/34/EC of the European Parliament and of the Council (OJ L 141, 4.6.1999, p. 20).

[11] OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

[12] OJ C 321, 31.12.2003, p. 1.

[13] OJ L 187, 16.7.1988, p. 1.

[14] OJ L 212, 7.8.2001, p. 24.

ANNEX I

Essential safety requirements

(1) Each pyrotechnic article must attain the performance characteristics specified by the manufacturer to the notified body in order to ensure maximum safety and reliability.

(2) Each pyrotechnic article must be designed and manufactured in such a way that it can be disposed of safely by a suitable process with minimum effect on the environment.

(3) Each pyrotechnic article must function correctly when used for its intended purpose.

Each pyrotechnic article must be tested under realistic conditions. If this is not possible in a laboratory, the tests must be carried out in the conditions in which the pyrotechnic article is to be used.

The following information and properties — where applicable — must be considered or tested:

- (a) Design, construction and characteristic properties, including detailed chemical composition (mass and percentage of substances used) and dimensions;
- (b) The physical and chemical stability of the pyrotechnic article in all normal, foreseeable environmental conditions;
- (c) Sensitivity to normal, foreseeable handling and transportation;
- (d) Compatibility of all components as regards their chemical stability;
- (e) Resistance of the pyrotechnic article to moisture where it is intended to be used in humid or wet conditions and where its safety or reliability may be adversely affected by moisture;
- (f) Resistance to low and high temperatures, where the pyrotechnic article is intended to be kept or used at such temperatures and its safety or reliability may be adversely affected by cooling or heating of a component or of the pyrotechnic article as a whole;
- (g) Safety features intended to prevent untimely or inadvertent initiation or ignition;
- (h) Suitable instructions and, where necessary, markings in respect of safe handling, storage, use (including safety distances) and disposal in the official language or languages of the recipient Member State;
- (i) The ability of the pyrotechnic article, its wrapping or other components to withstand deterioration under normal, foreseeable storage conditions;
- (j) Specification of all devices and accessories needed and operating instructions for safe functioning of the pyrotechnic article.

During transportation and normal handling, unless specified by the manufacturer's instructions, the pyrotechnic articles should contain the pyrotechnic composition.

(4) Pyrotechnic articles must not contain:

- (a) commercial blasting agents, except for black powder or flash composition;
- (b) military explosives.

(5) The various groups of pyrotechnic articles must at least also comply with the following requirements:

A. Fireworks

- (1) The manufacturer must assign fireworks to different categories according to Article 3 characterised by net explosive content, safety distances, noise level, or similar. The category must be clearly indicated on the label.

(a) For category 1 fireworks, the following conditions must be met:

- (i) the safety distance must be at least 1 m. However, where appropriate the safety distance may be less,
- (ii) the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance,
- (iii) category 1 must not comprise bangers, banger batteries, flash bangers and flash banger batteries,
- (iv) throwdowns in category 1 must not contain more than 2,5 mg silver fulminate.

(b) For category 2 fireworks, the following conditions must be met:

- (i) the safety distance must be at least 8 m. However, where appropriate the safety distance may be less,

- (ii) the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance.
- (c) For category 3 fireworks, the following conditions must be met:
 - (i) the safety distance must be at least 15 m. However, where appropriate the safety distance may be less,
 - (ii) the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance.
- (2) Fireworks may only be constructed of materials which minimise risk to health, property and the environment from debris.
- (3) The method of ignition must be clearly visible or must be indicated by labelling or instructions.
- (4) Fireworks must not move in an erratic and unforeseeable manner.
- (5) Fireworks of category 1, 2 and 3 must be protected against inadvertent ignition either by a protective cover, by the packaging, or by the construction of the article. Fireworks of category 4 must be protected against inadvertent ignition by methods specified by the manufacturer.

B. Other pyrotechnic articles

- (1) Pyrotechnic articles must be designed in such a way as to minimise risk to health, property and the environment during normal use.
- (2) The method of ignition must be clearly visible or must be indicated by labelling or instructions.
- (3) The pyrotechnic article must be designed in such a way as to minimise risk to health, property and the environment from debris when initiated inadvertently.
- (4) Where appropriate, the pyrotechnic article must function properly until the "use by" date specified by the manufacturer.

C. Ignition devices

- (1) Ignition devices must be capable of being reliably initiated and be of sufficient initiation capability under all normal, foreseeable conditions of use.
- (2) Ignition devices must be protected against electrostatic discharge under normal, foreseeable conditions of storage and use.
- (3) Electric igniters must be protected against electromagnetic fields under normal, foreseeable conditions of storage and use.
- (4) The covering of fuses must be of adequate mechanical strength and adequately protect the explosive filling when exposed to normal, foreseeable mechanical stress.
- (5) The parameters for the burning times of fuses must be provided with the article.
- (6) The electrical characteristics (e.g. no-fire current, resistance, etc.) of electric igniters must be provided with the article.
- (7) The wires of electric igniters must be sufficiently insulated and must be of sufficient mechanical strength, including the solidity of the link to the igniter, taking account of their intended use.

ANNEX II

Conformity assessment procedures

1. MODULE B: EC type-examination

1. This module describes that part of the procedure by which a notified body ascertains and attests that a sample, representative of the production envisaged, meets the relevant provisions of Directive 2007/23/EC (hereinafter referred to as this Directive).

2. The application for EC type-examination must be lodged by the manufacturer with the notified body of his choice.

The application must include:

- (a) the name and address of the manufacturer,
- (b) a written declaration that the same application has not been lodged with any other notified body,
- (c) the technical documents, as described in point 3.

The applicant must place at the disposal of the notified body a sample representative of the production envisaged, hereinafter called "type". The notified body may request further samples if needed for carrying out the test programme.

3. The technical documents must enable the conformity of the article with the requirements of this Directive to be assessed. They must, as far as is relevant for such assessment, cover the design, manufacture and operation of the article and contain where relevant for the assessment:

- (a) a general type-description,
- (b) conceptual design and manufacturing drawings and diagrams of components, sub-assemblies, circuits, etc.,
- (c) descriptions and explanations necessary for the understanding of the drawings and diagrams and the operation of the article,
- (d) a list of the harmonised standards referred to in Article 8 of this Directive, applied in full or in part, and descriptions of the solutions adopted to meet the essential safety requirements of this Directive where the harmonised standards referred to in Article 8 of this Directive have not been applied,
- (e) results of design calculations made, examinations carried out, etc.,
- (f) test reports.

4. The notified body must:

- (a) examine the technical documents, verify that the type has been manufactured in conformity with those documents and identify the elements which have been designed in accordance with the relevant provisions of the harmonised standards referred to in Article 8 of this Directive as well as the components which have been designed without applying the relevant provisions of those harmonised standards,
- (b) perform or have performed the appropriate examinations and necessary tests to check whether, where the harmonised standards referred to in Article 8 of this Directive have not been applied, the solutions adopted by the manufacturer meet the essential safety requirements of this Directive,
- (c) perform or have performed the appropriate examinations and necessary tests to check whether, where the manufacturer has chosen to apply the relevant harmonised standards, these have been applied,
- (d) agree with the applicant the location where the examinations and necessary tests are to be carried out.

5. Where the type meets the relevant provisions of this Directive, the notified body must issue an EC type-examination certificate to the applicant. The certificate must contain the name and address of the manufacturer, the results of the examination and the data necessary for the identification of the approved type.

A list of the relevant parts of the technical documents must be annexed to the certificate and a copy thereof kept by the notified body.

Where the manufacturer is refused a type certificate, the notified body must provide detailed reasons for such refusal.

Provision must be made for an appeals procedure.

6. The applicant must inform the notified body that holds the technical documents concerning the EC type-examination certificate of all modifications to the approved article which must receive additional approval where such changes may affect the conformity with the essential requirements or the prescribed conditions for use of the article. This additional approval must be given in the form of an addition to the original EC type-examination certificate.

7. Each notified body must communicate to the other notified bodies the relevant information concerning EC type-examination certificates and additions issued or withdrawn.

8. The other notified bodies may receive copies of the EC type-examination certificates and/or any additions thereto. The annexes to the certificates must be kept at the disposal of the other notified bodies.

9. The manufacturer must keep with the technical documents copies of EC type-examination certificates and any additions thereto for a period of at least 10 years after the last date of manufacture of the article concerned.

Where the manufacturer is not established within the Community, the obligation to keep the technical documents available is the responsibility of the person who places the product on the market.

2. MODULE C: Conformity to type

1. This module describes that part of the procedure whereby the manufacturer ensures and declares that the pyrotechnic articles concerned are in conformity with the type as described in the EC type-examination certificate and satisfy the requirements of this Directive that apply to them. The manufacturer must affix the CE marking to each pyrotechnic article and draw up a written declaration of conformity.

2. The manufacturer must take all measures necessary to ensure that the manufacturing process ensures the conformity of the manufactured product with the type as described in the EC type-examination certificate and with the essential safety requirements of this Directive.

3. The manufacturer must keep a copy of the declaration of conformity for a period of at least 10 years after the last date of manufacture of the article concerned.

Where the manufacturer is not established within the Community, the obligation to keep the technical documents available is the responsibility of the person who places the product on the market.

4. A notified body chosen by the manufacturer must perform or cause to be performed examinations of the article at random intervals. A suitable sample of the finished articles, taken on the spot by the notified body, must be examined and appropriate tests, defined in the applicable harmonised standard referred to in Article 8 of this Directive or equivalent, carried out to check the conformity of the article with the requirements of this Directive. In the event of one or more samples of the articles examined not conforming, the notified body must take appropriate measures.

Under the responsibility of the notified body the manufacturer must affix the identification number of that body during the manufacturing process.

3. MODULE D: Production quality assurance

1. This module describes the procedure whereby a manufacturer who satisfies the obligations set out in point 2 ensures and declares that the pyrotechnic articles concerned are in conformity with the type as described in the EC type-examination certificate and satisfy the requirements of this Directive. The manufacturer must affix the CE marking to each article and draw up a written declaration of conformity. The CE marking must be accompanied by the identification number of the notified body responsible for the monitoring referred to in point 4.

2. The manufacturer must operate an approved quality system for production, final product inspection and testing as specified in point 3. He must be subject to the monitoring referred to in point 4.

3. Quality system

3.1. The manufacturer must lodge an application for assessment of his quality system with the notified body of his choice in relation to the pyrotechnic articles concerned.

The application must include:

- (a) all relevant information for the pyrotechnic article category envisaged,
- (b) the documents concerning the quality system,
- (c) the technical documents pertaining to the approved type and a copy of the EC type-examination certificate.

3.2. The quality system must ensure the conformity of pyrotechnic articles with the type as described in the EC type-examination certificate and with the requirements of this Directive that apply to them.

All the elements, requirements and provisions adopted by the manufacturer must be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documents must permit a consistent interpretation of the quality programmes, plans, manuals and quality records.

They must contain in particular an adequate description of:

- (a) the quality objectives and the organisational structure, responsibilities and powers of the management with regard to the quality of the pyrotechnic articles,
- (b) the manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used,
- (c) the examinations and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out,
- (d) the quality records, such as inspection reports and test data, calibration data, and qualification reports of the personnel concerned,
- (e) the means of monitoring the achievement of the required quality of the pyrotechnic articles and the effective operation of the quality system.

3.3. The notified body must assess the quality system to determine whether it satisfies the requirements referred to in point 3.2. It must presume conformity with those requirements in respect of quality systems that implement the relevant harmonised standard. The auditing team must have at least one member with experience of assessing the relevant product technology. The assessment procedure must include an inspection visit to the manufacturer's premises.

A duly substantiated assessment decision must be notified to the manufacturer. It must contain the results of the examination.

3.4. The manufacturer must undertake to fulfil the obligations arising out of the quality system as approved and maintain it at an adequate and efficient level.

The manufacturer must keep the notified body that has approved the quality system informed of any proposed change to the quality system.

The notified body must assess the changes proposed and decide whether the altered quality system will still satisfy the requirements referred to in point 3.2 or whether reassessment is required.

A duly substantiated assessment decision must be notified to the manufacturer. It must contain the results of the examination.

4. Monitoring under the responsibility of the notified body

4.1. The purpose of monitoring is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

4.2. The manufacturer must allow the notified body access for inspection purposes to the manufacturing, inspection, testing and storage premises and provide it with all necessary information, in particular:

(a) the quality system documents,

(b) the quality records, such as inspection reports and test data, calibration data, and qualification reports of the personnel concerned.

4.3. The notified body must periodically carry out audits to make sure that the manufacturer maintains and applies the quality system and provide an audit report to the manufacturer.

4.4. Additionally the notified body may pay unannounced visits to the manufacturer. During such visits the notified body may, if necessary, carry out tests or have them carried out to verify that the quality system is functioning correctly. The notified body must provide the manufacturer with a visit report and, if a test has taken place, with a test report.

5. The manufacturer must, for a period of at least 10 years after the last date of manufacture of the article, keep at the disposal of the national authorities:

(a) the documents referred to in point 3.1.(b),

(b) documents relating to the updating referred to in second subparagraph of point 3.4,

(c) the decisions and reports of the notified body referred to in the fourth subparagraph of point 3.4, and in points 4.3 and 4.4.

6. Each notified body must give the other notified bodies the relevant information concerning quality system approvals issued or withdrawn.

4. MODULE E: Product quality assurance

1. This module describes the procedure whereby a manufacturer who satisfies the obligations set out in point 2 ensures and declares that the pyrotechnic articles are in conformity with the type as described in the EC type-examination certificate. The manufacturer must affix the CE marking to each article and draw up a written declaration of conformity. The CE marking must be accompanied by the identification number of the notified body responsible for the monitoring referred to in point 4.

2. The manufacturer must operate an approved quality system for final pyrotechnic article inspection and testing as specified in point 3. He must be subject to the monitoring referred to in point 4.

3. Quality system

3.1. The manufacturer must lodge an application with the notified body of his choice for the assessment of the quality system in relation to his pyrotechnic articles.

The application must include:

(a) all relevant information for the pyrotechnic category envisaged,

- (b) the quality system documents,
- (c) the technical documents pertaining to the approved type and a copy of the EC type-examination certificate.

3.2. Under the quality system, each pyrotechnic article must be examined and appropriate tests, as defined in the relevant harmonised standard(s) referred to in Article 8 of this Directive or equivalent, carried out in order to verify the conformity of the article with the relevant requirements of this Directive.

All the elements, requirements and provisions adopted by the manufacturer must be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documents must permit a consistent interpretation of the quality programmes, plans, manuals and quality records.

They must in particular contain an adequate description of:

- (a) the quality objectives and the organisational structure, responsibilities and powers of the management with regard to product quality,
- (b) the examination and tests that will be carried out after manufacture,
- (c) the means of monitoring the effective operation of the quality system,
- (d) quality records, such as inspection reports and test data, calibration data, and qualification reports of the personnel concerned.

3.3. The notified body must assess the quality system to determine whether it satisfies the requirements referred to in point 3.2. It must presume conformity with these requirements in respect of quality systems that implement the relevant harmonised standard.

The auditing team must have at least one member with experience of assessing the relevant product technology. The assessment procedure must include an inspection visit to the manufacturer's premises.

A duly substantiated assessment decision must be notified to the manufacturer. It must contain the results of the examination.

3.4. The manufacturer must undertake to fulfil the obligations arising out of the quality system as approved and maintain it at an adequate and efficient level.

The manufacturer must keep the notified body which has approved the quality system informed of any proposed change to the quality system.

The notified body must assess the changes proposed and decide whether the altered quality system will still satisfy the requirements referred to in point 3.2 or whether a reassessment is required.

A duly substantiated assessment decision must be notified to the manufacturer. It must contain the results of the examination.

4. Monitoring under the responsibility of the notified body

4.1. The purpose of monitoring is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

4.2. The manufacturer must allow the notified body access for inspection purposes to the manufacturing, inspection, testing and storage premises and provide it with all necessary information, in particular:

- (a) the quality system documents,
- (b) the technical documents,
- (c) the quality records, such as inspection reports and test data, calibration data and qualification reports of the personnel concerned.

4.3. The notified body must periodically carry out audits to ensure that the manufacturer maintains and applies the quality system and must provide an audit report to the manufacturer.

4.4. Additionally, the notified body may pay unannounced visits to the manufacturer. During such visits the notified body may, if necessary, carry out tests or have them carried out to verify that the quality system is functioning correctly. The notified body must provide the manufacturer with a visit report and, if a test has been carried out, with a test report.

5. The manufacturer must for a period of at least 10 years after the last date of manufacture of the article keep at the disposal of the national authorities:

(a) the documents referred to in point 3.1.(b),

(b) documents relating to the updating referred to in the second subparagraph of point 3.4,

(c) the decisions and reports of the notified body referred to in the fourth subparagraph of point 3.4, and in points 4.3 and 4.4.

6. Each notified body must forward to the other notified bodies the relevant information concerning quality system approvals issued or withdrawn.

5. MODULE G: Unit verification

1. This module describes the procedure whereby the manufacturer ensures and declares that the pyrotechnic article which has been issued with the certificate referred to in point 2 conforms with the relevant requirements of this Directive. The manufacturer must affix the CE marking to the article and draw up a declaration of conformity.

2. The notified body must examine the pyrotechnic article and carry out the appropriate tests as set out in the relevant harmonised standard(s) referred to in Article 8 of this Directive, or equivalent tests, to ensure the conformity of the article with the relevant requirements of this Directive.

The notified body must affix, or cause to be affixed, its identification number to the approved pyrotechnic article and draw up a certificate of conformity concerning the tests carried out.

3. The aim of the technical documents is to enable conformity with the requirements of this Directive to be assessed and the design, manufacture and operation of the pyrotechnic article to be understood.

Where necessary for the assessment, the documents must contain:

(a) a general description of the type,

(b) conceptual design and manufacturing drawings and schemes of components, sub-assemblies and circuits,

(c) the descriptions and explanations necessary for the understanding of the conceptual design and manufacturing drawings, the schemes of components, sub-assemblies and circuits and the operation of the pyrotechnic article,

(d) a list of the harmonised standards referred to in Article 8 of this Directive, applied in full or in part, and descriptions of the solutions adopted to meet the essential safety requirements of this Directive where the harmonised standards referred to in Article 8 of this Directive have not been applied,

(e) results of design calculations made and examinations carried out,

(f) test reports.

6. MODULE H: Full quality assurance

1. This module describes the procedure whereby the manufacturer who satisfies the obligations set out in point 2 ensures and declares that the articles concerned meet the requirements of this Directive. The manufacturer or his importer must affix the CE marking to each article and draw up a

written declaration of conformity. The CE marking must be accompanied by the identification number of the notified body responsible for the monitoring referred to in point 4.

2. The manufacturer must operate an approved quality system for the design, production, final product inspection and testing as specified in point 3 and must be subject to the monitoring referred to in point 4.

3. Quality system

3.1. The manufacturer must lodge an application for assessment of his quality system with a notified body.

The application must include:

- (a) all relevant information for the pyrotechnic article category envisaged,
- (b) the documents concerning the quality system.

3.2. The quality system must ensure the conformity of the article with the requirements of this Directive.

All the elements, requirements and provisions adopted by the manufacturer must be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documents must permit a consistent interpretation of the quality programmes, plans, manuals and quality records.

They must contain in particular an adequate description of:

- (a) the quality objectives and the organisational structure, responsibilities and powers of the management with regard to product design and quality,
- (b) technical construction specifications including the standards applicable and, if the standards referred to in Article 8 of this Directive have not been fully applied, the means of ensuring that the relevant basic requirements of this Directive have been met,
- (c) techniques to control and assess the development results, processes and systematic actions that will be used to develop products belonging to the product category in question,
- (d) the manufacturing, quality control and quality assurance techniques and the processes and systematic actions applied,
- (e) the examinations and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out,
- (f) the quality records, such as inspection reports and test data, calibration data, and qualification reports of the personnel concerned,
- (g) the means of monitoring the achievement of the required design and quality of the product and the effective operation of the quality system.

3.3. The notified body must assess the quality system to determine whether it satisfies the requirements referred to in point 3.2. It must presume conformity with those requirements in respect of quality systems that implement the relevant harmonised standard.

The auditing team must have at least one member with experience of assessing the relevant product technology. The assessment procedure shall include an inspection visit to the manufacturer's premises.

A duly substantiated assessment decision must be notified to the manufacturer. It must contain the results of the examination.

3.4. The manufacturer must undertake to fulfil the obligations arising out of the quality system as approved and maintain it at an adequate and efficient level.

The manufacturer must keep the notified body that has approved the quality system constantly informed of any proposed update of the quality system.

The notified body must assess the changes proposed and decide whether the altered quality system will still satisfy the requirements referred to in point 3.2 or whether reassessment is required.

A duly substantiated assessment decision must be notified to the manufacturer. It must contain the results of the examination.

4. EC monitoring under the responsibility of the notified body

4.1. The purpose of EC monitoring is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

4.2. The manufacturer must allow the notified body access for inspection purposes to the manufacturing, inspection, testing and storage premises and provide it with all necessary information, in particular:

(a) the quality system documents,

(b) the quality records required under the quality system for the development field such as the results of analyses, calculations and tests,

(c) the quality records required under the quality system for the manufacturing field such as inspection reports and test data, calibration data, and qualification reports of the personnel concerned.

4.3. The notified body must periodically carry out audits to make sure that the manufacturer maintains and applies the quality system and provide an audit report to the manufacturer.

4.4. Additionally the notified body may pay unannounced visits to the manufacturer. During such visits the notified body may, if necessary, carry out tests or have them carried out to verify that the quality system is functioning correctly. The notified body must provide the manufacturer with a visit report and, if a test has taken place, with a test report.

5. The manufacturer must, for a period of at least 10 years after the last date of manufacture of the article, keep at the disposal of the national authorities:

(a) the documents referred to in point 3.1.(b),

(b) documents relating to the updating referred to in second subparagraph of point 3.4,

(c) the decisions and reports of the notified body referred to in the fourth subparagraph of point 3.4, and in points 4.3 and 4.4.

6. Each notified body must give the other notified bodies the relevant information concerning quality system approvals issued or withdrawn.

ANNEX III

Minimum criteria to be taken into account by Member States for the bodies responsible for conformity assessments

1. The body, its director and the staff responsible for carrying out the verification tests must not be the designer, manufacturer, supplier, installer or importer of pyrotechnic articles which they inspect, nor the authorised representative of any of these parties. They must not become involved either directly or as authorised representative in the design, construction, marketing, maintenance or importation of such articles. This does not preclude the possibility of exchanges of technical information between the manufacturer and the body.

2. The body and its staff must carry out the verification tests with the highest degree of professional integrity and technical competence and must be free from all pressures and inducements, particularly financial, which might influence their judgment or the results of the inspection, especially from persons or groups of persons with an interest in the result of verifications.

3. The body must have at its disposal the necessary staff and possess the necessary facilities to enable it to perform properly the administrative and technical tasks connected with verification; it must also have access to the equipment required for special verification.
 4. The staff responsible for inspection must have:
 - (a) sound technical and professional training,
 - (b) satisfactory knowledge of the requirements of the tests they carry out and adequate experience of such tests,
 - (c) the ability to draw up the certificates, records and reports required to authenticate the performance of the tests.
 5. The impartiality of inspection staff must be guaranteed. Their remuneration must not depend on the number of tests carried out or on the results of such tests.
 6. The body must take out civil liability insurance unless its liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the tests.
 7. The staff of the body must observe professional secrecy with regard to all information gained in carrying out its tasks (except vis-à-vis the competent administrative authorities of the State in which its activities are carried out) under this Directive or any provision of national law giving effect to it.
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ANNEX IV

Conformity marking

The CE conformity marking must consist of the initials "CE" taking the following form:

+++++ TIFF +++++

If the marking is reduced or enlarged the proportions given in the above graduated drawing must be respected.

Annex F: The Consultation Code of Practice Criteria

1. Formal consultation should take place at a stage when there is scope to influence policy outcome.
2. Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.