

**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.

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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
Tel: 020 7215 0360
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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

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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

