PYROTECHNIC ARTICLES (SAFETY) REGULATIONS 2015
Guidance

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Introduction

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The government respected the result and triggered Article 50 of the Treaty on European Union on 29 March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.

Pyrotechnic Articles (Safety) Regulations 2015

The Pyrotechnic Articles (Safety) Regulations 2015 transpose into UK law European Directive 2013/29/EU (the Pyrotechnic Directive) on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles and Directive 2014/58/EU on the traceability of pyrotechnic articles. In UK legislation, the Regulations replace The Pyrotechnic Articles (Safety) Regulations 2010, and are applicable throughout the UK.

The new Pyrotechnic Directive is a result of the New Legislative Framework introduced after a European Commission review into the functioning of the internal market for goods concluded that EU harmonised legislation was not as effective as it should be.

Core principles of the New Legislative Framework

- Legislation governing products should be clear and consistent across sectors.
- The obligations of all economic operators in the supply chain should be set out in more detail.
- Provision should be made to ensure that products are more traceable.
- Those bodies which carry out conformity assessments should have certain attributes (e.g. independence and capability and certain operational obligations).
- Each Member State should have robust, but proportionate, market surveillance and enforcement mechanisms in place based on a set of common requirements at EU level.

This guidance is intended for those engaged in placing pyrotechnic articles on the market, notified bodies and enforcement authorities. The persons engaged in placing on the market are manufacturers, importers and distributors (including retailers) and are referred to collectively as “economic operators”.

Guidance on the meaning of these terms can be found in The Blue Guide 2016, p.28 following http://ec.europa.eu/DocsRoom/documents/18027

The Regulations also determine which articles may be made available to the general public, the specific age restrictions on the sale of such articles, and which articles may only be supplied to persons with specialist knowledge.
This guidance has been produced to assist in the interpretation of certain aspects of the Regulations. It should not be regarded as a substitute for careful reading of the new Regulations themselves, or for obtaining legal advice. The guidance will be updated as and when there are changes.

What’s in the guidance

The guidance includes:

**Key differences between the 2010 and 2015 Regulations**

- New obligations on economic operators and notified bodies
- New obligations re: pyrotechnic articles for vehicles

**Scope of Regulations and applications**

- Key requirements
- Coming into force
- Obligations of economic operators

**Conformity assessment and accreditation**

- EU declaration of conformity and CE marking
- Retention of technical documentation and EU declaration of conformity
- Labelling of pyrotechnic articles
- Traceability
- Monitoring
- Prohibition on making available to persons without specialist knowledge

**Enforcement**

- Market surveillance and enforcement
Key differences between 2010 and 2015 Regulations

Much in the 2015 Regulations duplicates the 2010 Regulations, but there are substantive differences. In accordance with the two new Directives the new Regulations clarify the duties of economic operators; the respective duties of manufacturers, distributors and importers are laid out separately. There is also clarity regarding compliance with CE marking. The definition of non-conformity is extended beyond safety issues and now includes administrative or formal non-conformity.

The key changes are listed below for ease of reference.

New obligations of manufacturers

In addition to existing duties set out under previous legislation, the 2015 Regulations require manufacturers to:

- label pyrotechnic articles with a registration number and a product, batch or serial number (Reg 11(2); Schedule 3, para 1);
- ensure procedures are in place to maintain the conformity of pyrotechnic articles manufactured by series production (Reg 13);
- keep a record for 10 years of the registration number, trade name, generic type (plus sub-type, if applicable) and site of manufacture for a pyrotechnic article (Reg 20);
- keep records of other economic operators in the supply chain for 10 years (Reg 37);
- monitor pyrotechnic articles presenting a risk to health and safety, at the request of the enforcing authority (Reg.21);
- take action to address the non-conformity of any pyrotechnic articles that it has placed on the market (Reg 22(1)); and
- notify the market surveillance authority if it considers that a pyrotechnic article that it has placed on the market presents a risk (Reg 22(2)).

New obligations of importers

In the 2015 Regulations the obligations of the importer are set out in detail separately from the obligations of the manufacturer. The key new obligations, which are in addition to existing duties, are to:

- label pyrotechnic articles with its contact details (Reg 17);
- retain technical documentation and EU declarations of conformity for 10 years (Reg.19);
- keep a record for 10 years of the registration number, trade name, generic type (and sub-type if applicable) and site of manufacture for a pyrotechnic article (Reg 20);
- keep a record of other economic operators in the supply chain for 10 years (Reg 37);
• monitor pyrotechnic articles presenting a risk to health and safety at the request of an enforcing authority (Reg 21);
• take action to address the non-conformity of any pyrotechnic article that it has placed on the market, even where that article is not for consumers and even where the article does not present a risk (Reg 22(1)); and
• notify the market surveillance authority if it considers that a pyrotechnic article that it has placed on the market presents a risk (Reg 22(2)).

New obligations of distributors

The 2015 Regulations extend the obligations of distributors who must now, in addition to existing duties:

• keep records of other economic operators in the supply chain for 10 years (Reg 37); and
• ensure action is taken to address the non-conformity of any pyrotechnic articles that it has placed on the market (Reg 27).

New obligations regarding pyrotechnic articles for vehicles

The 2015 Regulations include a prohibition which says that economic operators must not make a category P1 pyrotechnic article, which is also a pyrotechnic article for a vehicle (and includes airbags or seat belt pre-tensioner system), available to a member of the general public unless in a vehicle or detachable vehicle part (Reg 34).

New obligations of notified bodies

The 2015 Regulations include more detail about how notified bodies are governed than the 2010 Regulations. This includes:

• the requirements that an organisation must satisfy before it can be regarded as a notified body (Schedule 5);
• the process of notification (Regs 43-46)
• the operational obligations of notified bodies (Schedule 6); and
• procedures for monitoring (Reg 47) and addressing any non-compliance with the provisions of these Regulations by notified bodies (Reg 49).

See also The Blue Guide 2016, section 5.2 for further information on notified bodies: http://ec.europa.eu/DocsRoom/documents/18027
Scope of Regulations and application

Key requirements

Before placing pyrotechnic articles on the market, manufacturers and importers must ensure that they comply with the essential safety requirements and have been independently tested for compliance. Retailers and other distributors cannot turn a blind-eye to non-compliant products. They, too, must take due care to ensure that the products they are dealing in are compliant.

Coming into force

The Regulations came into force on 17 August 2015. There are transitional provisions (Reg.74) which are explained later in the Guidance.

Regulations

To assist understanding, the paragraph numbering below corresponds with the numbering of the regulations.

1. Citation and commencement

2. Interpretation of terms used in the Regulations

The majority of terms used in the Regulations will be familiar to those involved in the pyrotechnics industry. The following interpretations are for those terms where extra clarity may be helpful.

2.(1) ‘combination’ – The interpretation of ‘combination’ articles here means an article which comprises two or more firework types in an assembly with a single initial fuse plus, in some cases a reserve fuse. It does not include linked fireworks which are fireworks of Categories F2 or F3 that have either:

(i) been designed and manufactured to be linked together by lengths of fuse of other ignition devices; or
(ii) been marketed as being suitable for linking together with other fireworks.

These should only be placed on the market when their suitability for use when linked has been assessed and agreed by a notified body. An individual article’s CE marking is only valid when that article is used as intended and it is invalidated by combining it with other article.

2.(1) ‘double banger’ – Includes those that jump in the air.
2.(1) ‘selection pack’ – For the purpose of these Regulations, ‘more than one type of firework’ includes different categories of firework, so that a selection pack could comprise fireworks of more than one type and/or more than one category. This is as opposed to a primary pack which is a package of fireworks of the same category and type. Both selection and primary packs are offered for sale as a single retail unit.

2(4) ‘risk’ – An amount of risk is inherent in the use of any explosive material. ‘Risk’ in the context of these Regulations should be taken to mean the point at which the element of risk crosses a threshold and becomes unacceptable. This threshold will inevitably vary according to individual situations.

3. Definition of ‘pyrotechnic article’

The Regulations cover all categories of fireworks, theatrical and other pyrotechnic articles including vehicle air-bag activators, bird-scarers and articles for use by persons with specialist knowledge. Schedule 1 gives definitions of the different categories of pyrotechnics articles. Regulation 3 (2) lists articles not covered by the regulations.

4. Pyrotechnic articles intended for trade fairs, exhibitions and demonstrations are excepted from these Regulations.

5. Pyrotechnic articles for the purpose of research, testing and development are excepted from these Regulations.

Obligations of economic operators

Part 2 of the Regulations sets out the obligations that fall directly on manufacturers, importers and distributors, including retailers. The regulations that apply to respective economic operators are set out in the table below.

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6. Manufacturers must categorise pyrotechnic articles according to the categories set out in Schedule 1.

Reference should also be made to Schedule 10, 2(a), ‘Consequential amendments to the Fireworks Regulations 2004’. The term ‘adult’ firework means any Category F2, F3 or F4 firework. These can only be sold to over 18s including Category F2 sparklers. Retailers’ point of sale material should make it clear that Category F2 and F3 fireworks can only be sold to over 18s.
7. Manufacturers must ensure that pyrotechnic articles are designed and manufactured in accordance with essential safety requirements. These are set out in Schedule 2, and include the safety distances, maximum noise levels, etc., for the different categories.

8. Manufacturers must have a conformity assessment procedure carried out by a notified body and must draw up technical documentation as required by the Regulations.
Conformity assessment and accreditation

9. EU declaration of conformity and CE marking

Where conformity assessment procedures demonstrate that a pyrotechnic article conforms with the essential safety requirements, manufacturers must draw up an EU declaration of conformity (Regulation 41) and affix a CE mark in accordance with Regulation 41 (see later in this guidance). The manufacturer must keep the EU declaration of conformity up to date.

Steps to CE marking

a) Check the product meets the Essential Safety Requirements.
b) Identify a notified body for an independent conformity assessment from the NANDO (New Approach Notified and Designated Organisations) database http://ec.europa.eu/growth/tools-databases/nando/
c) Have the product tested and its conformity checked by the notified body.
d) Draw up and keep available the required technical documentation.
e) Place the CE marking on the product and on the EU Declaration of Conformity. The identification number of the notified body used must be displayed.

10. Retention of technical documentation and EU declaration of conformity

Manufacturers are required to keep both technical documentation and the relevant EU declaration of conformity for 10 years. This 10-year period commences on the date on which the particular article in question is placed on the market. It does NOT date from when the generic article of this design was first placed on the market.

11. Labelling of pyrotechnic articles

Manufacturers of articles, other than pyrotechnic articles for vehicles, must label articles clearly and correctly before placing them on the market. The labels must be indelible. Such labelling must include either product, batch, or serial numbers. However, since one of the objects of labelling is to enable easy and quick monitoring and enforcement, in order to minimise disruption to an article’s supply chain (should that article be under investigation), it would be in the manufacturer’s interest that clear and specific BATCH numbers are included, where practicable. Including batch numbers could limit recall or enforcement action to specific batch or batches rather than all the products of a particular type. Schedule 3 specifies the required information for labels.

12. Manufacturers of pyrotechnic articles for vehicles must label their articles with the information set out in this regulation before placing them on the market.

13. Manufacturers must ensure that procedures are in place to ensure that articles manufactured by series production are in conformity.
14. Importers must not place articles on the market which are not in conformity with the essential safety requirements.

15. Importers must be satisfied that pyrotechnics articles meet all conformity requirements (listed) before they are placed on the market.

16. Importers must not place an article on the market where they believe, or have reason to believe, that the article in question is not in conformity with essential safety requirements.

17. Importers must identify themselves clearly on the label of an article, including name and postal address.

18. Importers must ensure that articles placed on the market include instructions and safety information in a language appropriate to the market for which they are intended.

19. Importers must keep a copy of the EU declaration of conformity for 10 years from the date on which it is placed on the market. They must also ensure that the technical documentation can be made available to enforcing authorities for the same period.

**Traceability**

20. The traceability obligations are intended to help identify the point in the supply chain where non-compliance originated and to enable appropriate corrective action to be taken. Enforcing authorities, manufacturers and importers must be able to trace articles all the way back to the place of manufacture, e.g. the overseas factory where the articles were made. They must also be able to identify the suppliers of each article to the enforcing authorities and any economic operator to whom they have supplied that article. It is good practice for manufacturers, importers and distributors to keep clear records showing, for each article, the steps in the supply chain in which they have been involved. This will help safety issues to be addressed rapidly and significantly reduce the time and resources required to trace an article if it is under investigation.

**Example of traceability record**

For each article:

- Registration number, trade name, generic type
- Name and address of manufacturer; product, batch and serial numbers
- Date of manufacture
- Name and address of importer and/or distributor (where appropriate)
- Date of importation
- Name and address of customer
- Date of sale
21. Monitoring

Regulation 21(2) requires manufacturers and importers to keep a register of complaints alleging non-conformity of pyrotechnic articles with Part 2 of the Regulations (which sets out the obligations of economic operators in relation to the essential safety requirements). The register must also record details of articles found not to be in conformity with Part 2 as well as article recalls.

It is recommended that the register should include as much information as possible about each article, e.g. product, batch, serial or part number, to whom and when it was sold, and reason for non-conformity. Entries in the register must be kept for a minimum of 10 years from the day they should have been entered.

Example of register entry

For each article:

- Registration number, trade name, generic type
- Name and address of manufacturer; product, batch and serial numbers (cross-reference to traceability record)
- Date of manufacture
- Name and address of customer
- Date of sale
- Source of complaint
- Reason for non-conformity
- Date of recall

22. A manufacturer or importer who believes an article placed on the market is not in conformity must immediately make the necessary modifications or withdraw or recall the article.

23. Manufacturers and importers must co-operate with enforcing authorities, on receipt of a reasoned request, if a pyrotechnic article is believed not to be in conformity. They must produce relevant documentation and, if required, assist in steps taken to evaluate or eliminate the risk.

24. A distributor must take “due care” to ensure that pyrotechnic articles are in conformity when placing on the market. A person is likely to be considered to have acted with due care if they have taken such steps as a responsible, competent, conscientious professional distributor of pyrotechnic articles would have taken in the same situation.

25. Before a distributor places a pyrotechnic article on the market he/she must verify that it has a CE mark and that it is accompanied by the necessary documentation and instructions. The distributor is also responsible for checking that the manufacturer has labelled the article properly and that the importer's details are included on the article itself.

26. A distributor must not place an article on the market where he/she has a reasonable belief that it is not in conformity with the essential safety requirements.
27. If a distributor believes an article placed on the market is not in conformity he/she must make the necessary modifications or withdraw or recall the article.

28. On receipt of a reasoned request, distributors must co-operate with enforcing authorities in order to demonstrate conformity. If requested, distributors must cooperate with steps taken to evaluate and eliminate any risk.

29. Importers and distributors must ensure that articles for which they are responsible comply with essential safety requirements whilst being moved or stored and conform to the requirements of the Explosives Regulations 2014.

30. If an importer or distributor places an article on the market under their own name or trademark, or extensively modifies a pyrotechnic article already placed on the market, then they are considered to be the manufacturer of that article.

31. Sets out the minimum age limits for the supply of Category F1, F2, F3, T1 and P1 articles, plus Christmas crackers.

Prohibition on making available to persons without specialist knowledge

32. Category F4 fireworks, Category T2 theatrical and Category P2 other pyrotechnic articles can only be supplied to persons with specialist knowledge. The responsibility for assuring themselves that a prospective customer has such specialist knowledge rests with the supplier of these articles. It is for the supplier to make a judgment as to whether the training in question is sufficient and provided by a person or body with a sufficient reputation in that sector.

To supply one of these articles to someone who is not a person with specialist knowledge is a criminal offence under Regulation 62, punishable on summary conviction by up to three months' imprisonment an unlimited fine or both, or on indictment by up to two years' imprisonment or an unlimited fine or both (Reg 63).

A person seeking to be supplied with F4 fireworks, T2 theatrical pyrotechnics or P2 other pyrotechnic article will need to demonstrate to the satisfaction of the supplier that they:

- have undertaken training recognised in the fireworks business, the theatrical profession or the industry in question according to the articles to be supplied;
- have used the category of article in question; and
- hold valid liability insurance for the article in question.

Schedule 4 specifies the requirements for persons of specialist knowledge for the above categories.

‘A person with specialist knowledge’ with reference to Category F4 fireworks should have undertaken an accredited training course.
In respect of training of persons of specialist knowledge for Category F4 fireworks, it has been agreed by the industry and BEIS that such training should be accredited by an appropriate certification body. Examples of training courses can be found on The British Pyrotechnics Association website: (http://www.pyro.org.uk).

The concept of training recognised in the business, industry or profession does not mean that BEIS will be recognising or recommending specific training courses.

33. This Regulation lists particular instances of category F2 and F3 fireworks (such as bangers) which economic operators must not make available on the UK market other than to people with specialist knowledge. The prohibition of a single item also extends to multiple items of that article. For example the prohibition on a single shot tube means that a battery or combination containing more than one shot tube is also prohibited.

34. Economic operators must not supply a P1 pyrotechnic article for a vehicle to the general public unless it is incorporated in a vehicle or vehicle part (e.g. airbags or seat belt pre-tensioner systems).

35. A safety data sheet must be supplied by an economic operator to a professional user for pyrotechnic articles for vehicles.

36. The declaration of conformity should be translated required into the language required. In the UK market this is English.

37. An economic operator, on a request from a market surveillance authority must supply the details of who has supplied them with pyrotechnic articles and who they have supplied pyrotechnic articles to. This information must be available for 10 years.

38. This regulation prohibits the improper use of CE marking by economic operators. Particularly economic operators must be the manufacturer and the articles must have followed a conformity assessment procedure before the CE marking is applied.

39-51 Conformity assessment and notified body regulations which are self-explanatory
52-72 Market surveillance and enforcement

The 2015 Regulations contain more detailed provisions on market surveillance and enforcement than the 2010 Regulations. Most particularly:

- The new Regulations reflect the three different scenarios set out in the Pyrotechnics Directive with the different processes applying to each, i.e.:

  ~ pyrotechnic article is not in conformity and presents a risk;
  ~ pyrotechnic article is in conformity but presents a risk; or
  ~ pyrotechnic article is not in conformity but does not present a risk.

- Enforcing authorities will continue to have their current powers under present legislation but now also gain the power to issue compliance and recall notices in cases of continued formal non-compliance (Reg.60), e.g. where a CE marking is not affixed in accordance with Regulation 42.

Regulation 62 sets out what constitutes an offence against the Regulations and 63 sets out the penalties applicable for these offences (fines or imprisonment not exceeding 3 months or 2 years, depending on the offence).

Schedule 7 sets out the enforcement powers of weights and measures authorities (Trading Standards), Northern Irish District Councils and the Secretary of State. Schedule 8 specifies enforcement powers of the Health and Safety Executive. Schedule 9 sets out enforcement powers available to all enforcers, which include issuing compliance, withdrawal and recall notices.

Enforcement

In Great Britain, the local weights and measures authorities and in Northern Ireland every district council (more commonly referred to as “Trading Standards”), are the market surveillance authorities responsible for enforcement of these Regulations.

The Regulations also provide powers to the Secretary of State or a person appointed to act on their behalf to enforce the Regulations and RAMS (Regulation (EC 765/2008 which sets out requirements for market surveillance of products).

The Regulations provides the power to market surveillance authorities to take action against economic operators for products that are not in conformity with the Regulations. There are requirements on economic operators to co-operate with the enforcement authority as appropriate on request.

Safeguard procedure

The UK is required under the Regulations to take all appropriate measures to withdraw from the market or to prohibit, and restrict the supply of products bearing CE Marking which may endanger the health and safety of persons or property. Under the safeguard procedure (Regulation 58), the UK must inform the European
Commission and other EU Member States immediately of any enforcement action taken indicating the reasons justifying the action. This will enable Member States to take action against similar products placed on the market on their territories. Similarly, if another Member State initiates the procedure with respect to action taken on their territories, certain actions are required of UK market surveillance authorities and the Secretary of State. The regulations allow the Secretary of State to raise an objection against the measures taken under the safeguard procedure initiated by another Member State. The European Commission will determine whether the action taken is justified; if so the UK enforcement authority must take necessary measures to ensure the product is withdrawn from the market. Where the European Commission find the action taken by the Member State initiating the safeguard procedure is not justified that Member State must withdraw the measure.

**Regulators’ Code**

The relevant market surveillance authorities must have regard to the Regulators’ Code when developing policies and operational procedures that guide their regulatory activities in this area. They should carry out their activities in a way that supports those they regulate to comply and grow, including choosing proportionate approaches that reflect risk.

In responding to non-compliance that they identify, regulators should clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Unless immediate action is needed to prevent a serious breach, regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent. The Secretary of State takes account of the provisions of both the Regulators’ Code and the Growth Duty in exercising his regulatory functions. A link to the Regulators’ Code can be found here:


**Penalties**

A person committing an offence under the Regulations may be liable to a penalty. Penalties can include a fine or a prison sentence of up to three months for the most serious offences. It is matter for the enforcement authority to decide whether prosecution is appropriate in each case taking into account the circumstances of the case and the enforcement authorities’ own policies, operational procedures and practices in line with the Regulators Code. Should a prosecution take place, it is at discretion of the court to decide the penalties imposed on the offender.

73. This regulation places an obligation on the Secretary of State to review the Regulations periodically.
74. Persons making available on the market articles which were placed on the market before 17 August 2015 do not need to comply with the requirements of the 2015 Regulations (Reg.3(2)(a)). However, they do need to comply with the relevant requirements of the 2010 Regulations:

- Persons making available on the market F1 – F3 fireworks of a design that was lawfully manufactured or placed on the market in the UK before 4 July 2010 do not need to comply with most of the requirements of the 2015 Regulations (Reg.74(1)). However, this transitional provision will cease to apply on 5 July 2017 and it will then be necessary to comply with the 2015 Regulations (Reg.74(3)).

- Persons making available on the market other categories of pyrotechnic article of a design manufactured or placed on the market in the UK before 4 July 2013 do not need to comply with most of the requirements of the 2015 Regulations (Reg.74(2)). However, this transitional provision will cease to apply on 5 July 2017 and it will then be necessary to comply with the 2015 Regulations (Reg.74(3)).

For the purposes of the transitional provisions a product or design is not considered to be new if it is a product or design that was placed on the market before the relevant date, including if that was under a different name or with a different part number to the ones under which it is subsequently placed on the market. However, any significant changes to design or construction, or any change of manufacturer will mean that the product or design should be considered to be new.

- From 5 July 2017 all pyrotechnic articles on the market, whether of new or existing design, will have to comply with the 2015 Regulations.

- This applies to Manufacturers, Importers and Distributors (including retailers).

- F1 – F3 designs placed on the market before 4 July 2010 do not currently have to be CE marked, but will have to be CE marked from 5 July 2017.

- Designs of other categories placed on the market before 4 July 2013 do not currently have to be CE marked, but will have to be CE marked from 5 July 2017.