RESPONSE BY [redacted] TO THE BEIS CONSULTATION ON CHANGES TO THE FURNITURE AND FURNISHINGS (FIRE) (SAFETY) REGULATIONS 1988 (SEPTEMBER 2016)

My background

I was a civil servant at DTI/BIS/BIES, working on the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (FFRs) from 2004 until December 2015. From 2009 I led on the overall review of the FFRs. From early 2013 to August 2014, as BIS's dedicated expert, I developed a new match test for the FFRs, in conjunction with the Department's appointed technical advisor, Steve Owen of Intertek.

That proposed new match test was put out to informal consultation on two occasions, with hundreds of stakeholders consulted. In addition, I led or participated in around 40 meetings and workshops with every kind of stakeholder, to discuss the new test. This included, for example, a day at the Fire Protection Association's test centre, two one-day workshops at the British Standards Institute, consulting with its furniture flammability committee, FW/6 (of which I was a member for many years). It also included two two-day interrogations of the new test at IKEA's research establishment in Almhult, Sweden, where it was declared excellent and viable. In addition, BIS commissioned FIRA to undertake extensive testing research on the new test; as did Intertek. Much feed-back and comment resulted in a new proposed match test as published by BIS in an August 2014 consultation paper. I also co-wrote with Steve Owen the technical paper proving the case for the new test, circulated widely in late 2014 and published officially by BIS in March 2015. This paper received universal praise and was agreed by a panel of leading test experts in November 2014 as both proving that the current match test mostly doesn't work and that the new one will put it right as well as increase fire safety and reduce flame retardant usage.

Up until my retirement from the civil service in March 2016, I continued to press BEIS management to do the right thing, i.e. I argued that there was no need to do further work on the proposed new match test - the reason management had given Ministers since October 2014 for not implementing the new test in April 2015 as planned (or in April 2016 as they later promised to do). No further work was ever done on the test and in September 2016, BEIS issued this new consultation including a proposed new match test that is identical to the one proposed in August 2014.

I currently work as an independent consultant. My goal is the same as BEIS's stated objective: to reduce flame retardants in UK furniture (and other products).

My assessment of the current situation regarding the FFRs

For nearly thirty years, the FFRs have remained substantially unchanged. This is quite extraordinary when considering how much the world has altered in that time. It is also in conflict with the government's best practice commitment to review regulations every five years.

However, a persistent background feature of these regulations is that in their current form they produce huge yearly profits for the flame retardant and chemical treatment industries, even though the FFRs do not stipulate the use of FRs. It is difficult to get an accurate estimate of the money involved. But there are around 27 million households in the UK with each let's say having the equivalent of two sofas (probably a low estimate). The cost of treating sofa fabric with FRs is about £2 per metre, and there can be around 40 metres in a sofa. This makes a potential market of over £2bn for FRs/treatment in covers and interliners (minus leather covers), and that does not include the value of FRs in fillings.

The new match test proposed in 2014 would have led to an instant drop in FRs of up to 50% in cover fabrics (more with new technologies now possible). It's not really surprising therefore that the chemical industry is so supportive of the FFRs as they currently stand and resistant to change. However, there are several inconvenient truths the chemical industry is not keen to face. First, that the current match test does not work in up to 90% of cases (a fact that no one has refuted), as proved by the 2014 consultation paper and subsequent technical document. Second, the rest of the world does not insist on a small flame test for domestic upholstered furniture. Recently, the California/USA abandoned its small flame test after mounting evidence of the negative effects of FRs and lack of evidence that they actually do much in preventing fires. Third, research shows that toxic fumes, e.g. deadly hydrogen cyanide, are released from furniture very soon after it catches light, i.e. consumers are more likely to be killed by fumes than flames.

To summarise the situation to date:

- The UK has the strictest furniture flammability regulations in the world, lobbied for and supported by the chemical industry
- They are a barrier to the single market but allowed on safety grounds, although 'safety' has been in question since 2014 - for example, in 2015 CHEM Trust pointed out to BEIS that the government is in fact maintaining an unjustified trade barrier since its own publications prove the current match test doesn't work; and EFIC (EU furniture manufacturers association) are to soon challenge the FFRs on this basis
- UK sofas/mattresses contain the highest levels of FRs in the world: 1-3KG per sofa
- UK citizens are exposed to the most contaminated house dust in the world (see Professor Stuart Harrad's research)
- Many FRs have been banned but are still in existing furniture and therefore still get into river water etc, and those banned have been replaced by near-identical varieties
- New ones (e.g. organo-phosphates) are also either hazardous or data gaps exist (see the Danish EPA report*)
- In short, we are all being exposed to either toxic or possibly toxic FR chemicals on a large scale
- Furthermore, FRs make fire smoke toxicity worse which is the principal cause of fire deaths (see papers by Professor Richard Hull and others)
- In August 2014, BIS proposed a new match test that would reduce FRs by up to 50% and possibly to nothing soon after; it also proved that the existing match test doesn't work in most cases, resulting in unnecessary fire deaths and FR damage to health/environment
- But BIS senior civil servants caved in to chemical industry pressure to announce in March 2015 that more work would be done on the new match test
- No more work has ever been done but civil servants have continued to stall in order to protect themselves from exposure of having delayed without good reason
- In September 2016, BEIS issued a new consultation with exactly the same proposed new match test as in 2014
- But they have also added other contentious changes to the regulations that will ensure nothing changes for years to come
- Since November 2014, BEIS has periodically held secret, exclusive meetings with some stakeholders in an attempt to justify its delays. The latest have been during the current consultation period when only business stakeholders were invited

* http://www2.mst.dk/Udgiv/publications/2016/01/978-87-93435-23-0.pdf

Comments on the new consultation proposals

In my view, this consultation is essentially a sham, intended only to continue to delay implementation of a new match test. It was issued at this particular time only because the press prompted it (Sunday Times article of 14 August).

BEIS will no doubt make much of any comments received on this consultation along the lines that stakeholders are undecided or believe that specific elements of the new test could be dealt with differently. But even if there were substance to such comments, BEIS has had over two years in which to elicit and address them, yet has clearly failed to do so.

The consultation process from October 2014 to September 2016 has been consistently mishandled by BIS/BEIS, including:

- Misleading Ministers on several occasions.
- Holding secret meetings from which some stakeholders were refused access despite being imminently qualified to participate, e.g. IKEA, CHEM Trust, the Sustainability Network for Standardisation, the Cancer Prevention Society.
- Acting against Ministers' wishes and their lawyers' own advice.
- Falsely apportioning blame for continuing delays to implementation of the new match test, e.g. falsely accusing the Chief Scientific Officer of causing delays by advising that technical documents had to be put into plain English (absurd but true).
- Allowing Stephen McPartland MP to threaten the then BIS Minister, Jo Swinson MP, with a judicial review if she implemented a new match test, i.e. failing to respond to him with the truth, and concealing this threat from key BIS staff, including the lead officer on the proposals (me). There is also evidence of a possible leak by a BIS manager to McPartland in this matter, via the Association for British Furniture Manufacturers. This threat effectively deterred the Minister from implementing in April 2015.

I provide background to some of these points below and can supply further evidence in support of all of them on request.

Three key issues about this consultation that need addressing:

1) The new proposed match test is identical to the one proposed in August 2014 (other than one or two minor suggestions which are either totally impractical or had already been agreed anyway). The question therefore is: why has BEIS taken over two years to propose the same new test, especially considering that in this period UK furniture has continued to be unsafe and stuffed with brominated flame retardants that everyone knows aren't actually doing very much?

To date, not a single piece of evidence has been presented to show that the new match test proposed in August 2014 is not valid. Aside from some fruitless tinkering, no further work has ever been done by BEIS on the 2014 proposal. For example, in August 2015, BEIS circulated papers to stakeholders before a meeting which contained the specification for the new match test that was unchanged from the August 2014 version. The only criticism that has been made is that it might be difficult to measure hole formation. However, this is a minor point and largely redundant since holes formed tend to be large anyway.

The flame retardant and chemical treatment industries consistently argue that flame retardants equal fire safety. They will also no doubt respond to this consultation along the lines that the current match test should remain in place. Not surprisingly, this will mean them continuing to make many millions of pounds profit per year. However, they are in effect arguing for the retention of a test that was put in place nearly thirty years ago and has clearly not kept up with modern production methods (see below). They also fail to mention that the

practice of back-coating fabrics with FR paste only took hold because the original test was designed mostly to cater for the natural fabrics in common use at the time (which form a protective char layer when burning) but manufacturers increasingly wanted to use cheaper, thermoplastic materials such as polyester which burn easily. It's also common knowledge - confirmed by Trading Standards - that these pastes are often poorly applied and wear off very easily, thereby both rendering cover fabrics ignitable again and polluting homes with excessive FR dust. Similarly, the treatment industry has never provided any research to support their contention that their back coatings are durable.

2) There is no mention in this consultation of the fact that the current match test fails in practice for three main reasons, as clearly set out in the 2014 consultation document and further backed up by the BEIS technical paper, i.e. the industry practice of 'Scotchgarding' finished products which makes them flammable again; chemical undertreatment (which can be a criminal practice and is constantly encountered by Trading Standards); and the fact that the common use of a fibre wrap layer in finished products means the match test often fails in practice. No one has ever disputed these failures. However, all three of these practices have continued since August 2014, thereby keeping the public at risk, but also ensuring profits remain high for the chemical industry and for those manufacturers still colluding in undertreatment and/or Scotchgarding furniture.

This failure to mention that the previous consultation and technical paper proved that the current match test fails in most cases, and that the new test puts right these failings, will allow organisations like FRETWORK and the Fire Safety Platform to put in consultation responses along the lines that no changes should be made unless the fire safety guaranteed by the current match test is continued (even though they know differently). For the record, it should be noted that neither of these organisations has challenged the discovery that the current match test mostly does not work.

3) The introduction of other amendments that are incomplete and in some cases contentious. In 2014, BIS brought the new match test forward from the overall amendments because the failings of the current test needed to be addressed sooner rather than later. On this point, the current consultation states:

"However, the match test is only part of the story: clear feedback was received from stakeholders participating in the 2014 consultation that it would be preferable to see all possible changes set out together and in its formal response to the consultation in March 2015, the Government set out its intention to bring all the changes together as part of the wider review."

This however is a false conflation designed to justify why the new match test is not being implemented sooner than other changes. In truth, some stakeholders said they wanted all possible changes to be made together, something that the Department always acknowledged. However, this was *before* the August consultation document was published, not in response to it as this wording tries to imply. After the consultation/technical documents proved that the current test fails, BIS received little suggestion that the new match test should be delayed by combining it with all the changes. It is also very clear from this new consultation that these are far from "all possible changes" anyway. Also, this statement neatly fails to mention that the March 2015 consultation response by BEIS stated that all FFRs changes would be implemented in April 2016 (which of course they weren't).

BIS's own lawyers were worried about legal action after implementation of the new match test failed to go ahead in April 2015 and advised that it must take place by April 2016 at the latest (it didn't). Anna Soubry MP, BIS minister at the time, also told officials to implement the new match test in April 2016. To this end, BIS lawyers further advised that there was no need for a second consultation on the new match test, i.e. that it could indeed go ahead in April 2016. However, by this time BIS managers were caught in a trap: if they implemented

an unchanged new match test, they would have to justify why they had taken so long to do so. Hence, they changed the Minister's initial intentions by slipping in additional amendments to the FFRs which would ensure a new consultation was required. Even so, they promised stakeholders that this would take place in Easter 2016, which was another promise not met.

However, as said, these other amendments are in any case woefully incomplete or contentious. Over the period 2010-2012, the Department regularly consulted stakeholders to build up more than enough data to thoroughly amend the FFRs. But it's clear from this consultation that BEIS has not used this information to inform its new proposals. It may interest stakeholders, in this respect, to learn that BIS/BEIS did not have a filing system for two years (up to the end of 2015) and that much if not all the previous work done is either unrecorded, lost or inaccessible on old defunct systems. A few examples of what is absent from these current proposals but which were discussed/agreed by stakeholders are:

- The currently confusing overlapping areas with non-domestic furniture re the Regulatory Reform (Fire Safety) Order (preliminary agreement made with the Department for Communities and Local Government but not followed up by the current BEIS policy team).

- Various contentious areas of the FFRs that the Department had agreed to put right, e.g. the continuing re-sale of non-compliant pre-1988 furniture; the exemption of second hand caravans; 'natural', 'organic' mattresses which comply only with the General Product Safety Regulations, not the FFRs; dealing with the fact that mattress covers/ticking are not included in the FFRs, etc.

- No mention of the simple but effective addition of the wording 'DO NOT REMOVE THIS LABEL' to the permanent label, as agreed by everyone some years back - a clear sign in itself of how inexperienced/careless the new BEIS team is.

- No mention of the joint exercise undertaken by the UK's leading test houses and BEIS (convened by FIRA) which put all the FFRs' testing requirements into a single document to be contained within the regulations. This was agreed by BIS lawyers and would clearly benefit better interpretation and oversight of the regulations, as well as making compliance easier, particularly for small businesses.

The proposal to remove products such as prams, buggies, child car seats from scope appears to have been included without Ministerial approval. While it is clearly in the public interest to reduce flame retardant use in such products, this consultation proposes to do so by falsely stating or implying that a) there is no threat from fire, and b) existing EU provisions are sufficient. BEIS officials know only too well that fire statistics exist to show that fires do occur in these products, and that EU standards are not as stringent as the FFRs. What they should have done was put the suggestion to their Minister first to decide whether the risk from fire is outweighed by the benefits of FR reduction and increased profits to UK industry. However, that would have risked a No from the Minister, leaving the policy team with no sweetener to offer industry. Better to imply that it might be achieved; however, Ministerial consent will need to be gained after the consultation. But the officials who made this promise to the Baby Products Association have since moved on and will not therefore face criticism if the Minister decides in the event not to remove their products from scope.

In short, the Department agreed to review the FFRs back in 2004. At my instigation, it began an intensive review into amending the FFRs in 2009 (with the commission of a new statistical report). Yet over 12 years later it has gone out to consultation with only partial or contentious proposals. This is a scandalous waste of tax-payers' and stakeholders' money. A good example of this waste was a meeting BIS managers called of leading test experts in

November 2014 *at one day's notice*, where they were informed by the experts that the proposed new test was ready to go, 'done and dusted', but since this was not what they wanted to hear, the experts were ignored and BIS managers continued to inform the Minister that more work needed to be done.

Other points

Unlike the previous consultation, this one carries no endorsement from the Minister. This suggests it is very much an interim measure, which will require further work.

It makes little to no mention of the extensive work undertaken by the Department prior to the August 2014 consultation. Possibly, this is to disguise the fact that it has done next to no additional work in the ensuing two and a half years on either the new match test or any other amendments to the FFRs.

It fails to mention (as the 2014 consultation highlighted) that the European Commission informed BEIS as early as 2012 that it would no longer support the raising of EU flammability standards to UK levels unless it could be achieved without FRs. One of the aims of the 2014 proposal was to move the FFRs towards harmonisation with the rest of the EU by reducing FRs. Since then, the Commission and other Member States, and the general EU public, have hardened their opposition to FRs in furniture, but BIS's failure to implement means the UK is now at least two years behind this goal.

Unlike the 2014 consultation, It provides no implementation date. This is no doubt to disguise the fact that the earliest possible implementation date is in fact October 2017 (April and October are the two yearly windows for these kinds of regulations), but that is only possible if everything in this consultation is waved through which, given its incomplete and contentious suggestions regarding the overall review of the FFRs, is highly unlikely. In other words, the earliest date by which the failings of the match test could be put right is two and a half years after BEIS had the power and proof to do so, and likely to be much longer.

Stakeholders should be aware that the current BEIS officials working on this review are (with the exception of one part-time member who has other duties) all new and, according to their own admission, know little to nothing about the regulations, flame retardants or testing. One stated that he hadn't even read the August 2014 consultation papers. BEIS did not replace my expertise or Steve Owen's as technical advisor. The proposals put forward in this consultation arise from just two stakeholder meetings held in Summer 2015, which were not followed up. This provoked letters to the Minister from several organisations, such as FRETWORK and the British Furniture Confederation, complaining that BEIS officials were doing nothing on the review. Following those meetings, BEIS has held just two secret stakeholder meetings earlier this year, with only a handful of attendees. The main intention of these meetings was to produce changes to the new match test that would justify BEIS delays. However, the meetings failed to do so and BEIS has been deceptive in not publishing the comments made to this effect by panel members, in this consultation. It has also failed to report that two prominent invitees refused to attend on the grounds that the meetings were being improperly run.

It should also be noted that annex 6 in the consultation document is highly deceptive. First, these are not official comments from BSI FW/6. The Chair of that committee has instructed BSI that they should not have been published as being representative. Without asking, BEIS also told the members concerned that it would not put their names to the comments, presumably because that would have revealed any obvious self-interest and the narrow range of FW/6 views being presented. Also, BEIS fails to mention that these comments are actually an amalgamation of comments made by some members at the 2014 consultation stage and via later correspondence with BEIS, i.e. they are doubly unrepresentative.

Also regarding BSI, this statement by BEIS in the consultation -

"The feedback from the BSI process (see feedback from the FW/6 committee members at Annex 6) provided a number of clarifications and helped us develop our ideas"

- is completely misleading. It tries to imply that a special meeting of FW/6 convened by BEIS in July 2015 added to the development of BEIS's ideas. This is untrue. The July meeting was totally inconclusive, as confirmed by the group and the Chair. BEIS also fails to mention that BSI withdrew the meeting note on the grounds that they did not see it as their role to get involved with amending safety regulations and wanted nothing further to do with the process. In other words, this meeting contributed nothing at all to the development of the new match test. BEIS has tried to say that it did because it was referred to in their March 2015 consultation response as the 'more work' it would do on the new match test.

BEIS now has little means by which to analyse the consultation returns. They cannot enlist stakeholders to help them process returns because this is of course against government consultation rules. They may try to hold more clandestine meetings in the near future at which they present issues raised by the consultation, seeking answers. In fact, at the time of writing, they have already planned such a meeting (15th November) but once again it appears that they have not invited anyone who is seriously interested in reducing flame retardants.

Without expert input, and with an apparent bias towards business interests, BEIS is vulnerable to manipulation by those who will lose most from the new match test, i.e. the flame retardant and chemical treatment industries.

<u>My recommendations</u>

1) BEIS needs to immediately put together a properly representative panel of experts to decide a) whether or not to drop the match test now, leaving the cigarette test in place and thereby adopting what works for the rest of the world, or b) if not, to immediately implement the new match test as proposed in August 2014 and September 2016. This will at least put right the fact that the current test does not work in most cases and is perpetuating the risk of additional fire deaths, injuries and fires, as well as putting tons of flame retardants into British homes unnecessarily. This dire situation means that retailers/manufacturers are in fear of exposure that they are selling unsafe products, a fact that the flame retardant/treatment industries are of course free to play on if they so choose in order to ensure the status quo (e.g. by proposing a code of practice once this new consultation fails, to replace the FFRs and which will no doubt retain the current match test, and which 'industry' would then run).

This panel should consist of experts from testing; Trading Standards; OGDs with an overlapping interest such as the Food Standards Agency, Defra, HSE and the Environment Agency; the fire and rescue services; consumers; British Standards, and ideally someone with experience of similar legislative issues in the USA, e.g. Arlene Blum of the Green Science Policy Institute. It should be chaired by someone with experience but neutral interests. I would be willing to join this committee on the grounds that I have many years experience of these regulations, and have continued to advise in a consultative capacity since retiring from BEIS in March 2016. Steve Owen would be an excellent choice as Chair being qualified as previous technical advisor to BEIS and being the current Chair of the British Standards FW/6 committee.

Care needs to be taken that those invited are not funded by the chemical industry in conflict with claimed safety interests. One example is Mike Hagan of the Fire Safety Platform; but there are many others. While not necessary, on the grounds that the FFRs do not stipulate

the use of flame retardant chemicals, it might be sensible to invite someone from the chemical industry, possibly FRETWORK since they represent flame retardant producers and the chemical treatment industry.

Once the continuing public risk represented by the failing current match test is dealt with, the panel should continue to work on the overall amendments to the FFRs. The fact is such a panel should have been put in place after the 2014 proposal failed. Again, I am happy to help with this since I have a lot of knowledge and experience of the huge amount of work that was carried out from 2009 records of which BEIS has clearly lost.

2) The UK government needs to establish a cross-Departmental and stakeholder group which will look into the growing problem of flame retardants in products. This is not necessarily the specific remit of BEIS but given it is responsible for national regulations that incur much FR use, it seems sensible that it should at least initiate such a group. In fact, while I was at BEIS I and the Cancer Prevention Society held such a meeting at BEIS and OGD colleagues present (and others) have since expressed the desire to take it further. I am not aware of any moves by the current BEIS team, however, to follow this up.

My view on the most likely outcome of the new consultation - winners and losers

Following the close of this consultation it is very likely that the new match test (and the other amendments proposed) will be delayed for at least another year but probably much longer clearly because far more questions will be raised than answers. This means:

Winners are

- FR/chemical treatment industries who can carry on making many millions of pounds per year since the status quo remains in place
- Certain fire fighter officials - current and ex - who can carry on receiving funding from the FR industry, as well as justifying their view that the new match test needs more work
- Retailers/manufacturers who will be let off the hook of selling unsafe products; their fears of mass recalls etc put to rest; can carry on with business as usual
- BEIS officials who caused the delays - perhaps won't be called into question for their failure to implement earlier, lost in the fog of 'more work'

Losers are

- The British public who are still sitting/sleeping on unsafe, FR-polluted, furniture and having to continue buying the same for the foreseeable future, children particularly at risk
- The environment
- Companies, mainly small, who are making FR-free products or who wish to but are disadvantaged by the dominance of the FR/treatment industries and total lack of encouragement or even acknowledgement from BEIS
- Fire fighters on the front line who will carry on being exposed to huge amounts of FR toxic fumes, even more so because covers are more ignitable than they are supposed to be under the current match test

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11 November 2016