

**IMPLEMENTATION OF THE
DIRECTIVE ON THE PLACING ON
THE MARKET OF PYROTECHNIC
ARTICLES**

Response to consultation on
draft regulations

JUNE 2010

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The Department reserves the right to publish any such responses. The Department's policy on responses which a respondent wishes to be confidential is subject to the limitations referred to in the consultation document published on 4 August 2009.

1. Introduction

1.1 This document is the response of Department for Business, Innovation and Skills (BIS) to the consultation conducted between 4 August and 27 October 2009 on the draft regulations for the implementation of the European Directive on the placing on the market of pyrotechnic articles, 2007/23/EC (the Directive).

1.2 This publication contains a synopsis of responses to the consultation, and outlines the Government's response to the issues raised and the rationale behind the final regulations, to be laid before Parliament.

The Directive - Objectives

1.3 The Directive was published in the Official Journal of the European Union on 14 June 2007. Member States were under an obligation to publish regulations by 4 January 2010. The United Kingdom did not meet this deadline, but it did notify its draft implementing regulations to the Commission on 22 December 2009 as required under EU Directive 98/34 (technical standards). Member States are also under an obligation to bring the regulations into force, subject to transitional provisions (see below) for category 1 to 3 fireworks by 4 July 2010 and for category 4 and theatrical and other pyrotechnic articles by 4 July 2013.

1.4 The Directive deals with the harmonisation of standards and the safety of pyrotechnic articles placed on the market throughout the European Union. The Directive covers fireworks, theatrical pyrotechnics, and other pyrotechnic articles which include car air-bag detonators and restraint systems, and shroud cutters. It does not generally deal with the use of these articles and it does not cover military and civil use explosives, toy percussion caps or marine equipment or articles intended for use in the aerospace industry or for non-commercial use by police forces or fire authorities.

1.5 The Directive aims to harmonise product standards for pyrotechnics across the EU while recognising this is an area where Member States have different customs and traditions giving rise to different rules (see recital 10 of the Directive). The Directive therefore permits Member States to retain or introduce national prohibitions and restrictions on possession, use and sale of particular categories of pyrotechnic articles justified on grounds of public order, security, safety or environmental protection.

1.6 The option of doing nothing and retaining existing national legislation had been considered, but since the Directive allows for continued bans of certain fireworks, along with higher age restrictions on the supply of fireworks, the potential benefits in other areas were considered to outweigh the changes to the firework regime. The option of voluntary measures would not properly implement the Directive and additionally issues relating to product safety were not suitable for voluntary measures. Ultimately the only option was to

implement the Directive by Regulation, which would also avoid infraction proceedings.

1.7 The implementation will be through secondary legislation in the Pyrotechnic Articles (Safety) Regulations 2010, which will replace the Fireworks Safety Regulations 1997 (as amended). The regulations also make various other amendments to primary and secondary legislation relevant to product standards for pyrotechnic articles. However, it is important to note that while the 1997 Regulations are to be revoked, the Directive and therefore the 2010 Regulations include substantial transitional provisions to allow manufacturers and importers time to adjust to the requirement to have articles or processes relating to articles assessed for compliance under the new rules.

Therefore articles which were lawful to supply immediately before the coming into force of these new rules can continue to be supplied until 3 July 2017.

Government policy for implementing EU Directives

1.8 The Government's policy is to transpose Directives so as to implement them on time and in accordance with other policy goals, including minimising the burdens on business. The implementing regulations have been drafted with this in mind. They have been drafted following extensive discussion with industry stakeholders and with regulators and enforcers in the field.

1.9 As regarding pyrotechnic articles, the Government has the twin objective of ensuring appropriate levels of safety for the public and not imposing disproportionate costs and burdens on manufacturers, importers, distributors and users of pyrotechnic articles. Accordingly, we are seeking to ensure that implementation of the Directive is done in a way which continues to provide the high level of safety for fireworks as is provided under the present rules and will provides a proportionate response to meeting our legal obligations under the Directive.

2. Executive summary

2.1 This document sets out the approach taken to the implementation of the Pyrotechnics Directive by the draft Regulations. The draft Regulations will be laid before Parliament in order to meet the deadline of 4 July 2010 for the regulations to come into force in relation to category 1 to 3 fireworks. It summarises the principal issues raised in responses to the consultation on the draft Regulations, provides the Government's response to them, and describes the principal effects of the final Regulations.

2.2 The key elements of the approach taken by the Regulations are as follows:

(a) The Regulations are to be made partly using the power to make safety regulations under section 11 of the Consumer Protection Act 1987 and partly using the power to make regulations implementing EU obligations under section 2(2) of the European Communities Act 1972;

(b) The draft Regulations published previously noted that it was being considered as to whether they should cover the whole of the United Kingdom. Following further consideration it has been decided to apply the regulations to the whole of the UK. This means that various amendments to provisions of Northern Ireland legislation have been added to the regulations in regulation 49 and schedule 5, as well as specific provisions on enforcement of the rules in Northern Ireland in schedule 4. The detail of the changes to cover Northern Ireland and its specific legislation are referred to in the detailed note included in Annex A;

(c) As in the consultation draft, restrictions on the sale of certain groups of category 1-3 fireworks which are currently banned from sale on safety grounds have been retained, along with the existing age restrictions on sale;

(d) We have retained the separation of regulations applying to category 1-3 fireworks and other pyrotechnical articles suggested in the consultation draft. Thus Part 2 of the Regulations which comes into force on 4 July 2010 applies to category 1 to 3 fireworks, and Part 3 of the Regulations which comes into force on 4 July 2013 apply to category 4 fireworks, theatrical and other pyrotechnic articles. That approach is partly due to the timing issue and partly due to the need for different provisions for category 1 to 3 fireworks, such as the specific age restrictions and the prohibitions on specified category 1 to 3 fireworks;

(e) A key part of the regime of the Directive is the introduction of the prohibition on supply of category 4 fireworks, T2 theatrical pyrotechnic articles and P2 other pyrotechnic articles to persons other than persons with specialist knowledge. The draft regulations include the prohibition and set out what persons supplying those articles will need to assure themselves of in order to continue supplying those articles;

(f) The Directive introduces a substantially different set of assessment rules for pyrotechnic articles, based on the requirement to have third party conformity assessment. The Council and the European Parliament accepted that substantial time would be necessary to allow compliance with this new regime and included a transitional provision in article 21(5) allowing for a ten year period from the adoption of the Directive. Regulations 46 and 47 and regulation 49(11) and (12) set out the UK's implementation Article 21(5) of the Directive. Two separate provisions are necessary since the Regulations come into force in relation to category 1 to 3 fireworks on 4 July 2010 and for all other pyrotechnic articles on 4 July 2013;

(g) The Regulations make provision that goes beyond what is required by the Directive. The Directive expressly permits this in article 6.2 and elsewhere. On that basis, and in common with most Member States the United Kingdom notified parts of the Regulations to the Commission under the Technical Standards Directive (Directive 98/34) on 22 December 2009. These provide for continued restrictions on the supply to the public of certain types of category 2 and 3 fireworks, which have previously been banned for sale on the basis of safety issues. The other major additions to the requirements of the Directive are in respect of age restrictions which follow the existing framework and the continued restriction on the break-up of packs for retail sale.

We provide a detailed note of drafting changes to the consultation draft in annex A.

Guidance on the regulations will be published as soon as possible and prior to 4 July.

3. Scope of the Directive – what is covered by the Directive and specific UK prohibitions

What does the Directive say?

3. Articles 2.1 to 2.5 of the Directive say

“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.”

Article 6.2 of the Directive also allows for specific national provisions restricting the availability of certain pyrotechnic articles

“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.”

What the draft regulations say

3.1 The scope of the Directive is determined by referring to the definition of pyrotechnic articles which is identical to that in the Directive. Most of the other definitions found in the Regulations are also identical to those in the Directive. Small elaborations have been made to “distributor”, which includes the words “other than a manufacturer or an importer” to make clear that this is mutually exclusive with those other concepts. The Directive uses the concept of placing an article on the market; in contrast the Regulations rely on the concept of “supply” of an article, since this is the expression used in the Consumer Protection Act 1987.

Regulation 21 sets out the largely re-enacted prohibitions on supply of specific category 2 and 3 fireworks, e.g. bangers and jumping crackers etc. The definitions of these fireworks are set out in Schedule 3 to the Regulations, and these reflect the existing domestic definitions of such fireworks which were banned on safety grounds under the Fireworks (Safety) Regulations 1997.

What we asked - Are the definitions of fireworks, set out in schedule 3, which are subject to prohibitions suitable and adequate?

What did respondents say?

3.2 The vast majority of respondents agreed broadly with the definitions of the prohibitions but offered technical advice on the refinement of some and the inclusion of others.

Our conclusion – what the regulations provide

3.3 After careful consideration of these views, we have concluded that the underlying policy intention set out in the previous consultation is appropriate and that the Regulations should remain broadly as drafted.

3.4 We have however added definitions of “primary pack”, “selection pack” and “shot tube” and have removed the words “and which has one point of ignition” in relation to both a “battery” and a “combination” in Schedule 3 since this was felt to be too restrictive as some articles have more than one ignition point.

4. Age limits and restrictions on sale

Age limits

What does the Directive say?

4.1 Article 7.1 of the Directive lays down specific age limits for sales of certain categories of articles:

That the age limit for supply of category 1 fireworks should be 12 years

That the age limit for supply of category 2 fireworks should be 16 years

That the age limit for supply of category T1 theatrical pyrotechnic articles and P1 other pyrotechnic articles should be 18 years

4.2 Article 7.2 of the Directive allows Member States to have higher age limits on the grounds of public order, security or safety.

4.3 Article 7.3 prohibits sale of category 4 fireworks and T2 theatrical pyrotechnic articles and P2 other pyrotechnic articles to persons other than “persons with specialist knowledge”. The way this issue is dealt with is set out further below.

What the draft regulations said

4.3 They proposed retaining the UK's existing age limits

Regulation 15 set out that the minimum age limit for supply of category 1 fireworks as 16 years and that the minimum age limit for supply of all other pyrotechnic articles to consumers as 18 years. Regulation 34 set out that category 4 fireworks, T2 theatrical pyrotechnic articles and P2 other pyrotechnic articles are only for supply to persons with specialist knowledge. That concept is now set out in regulation 42.

What we asked - Should the UK retain its existing age limits on the purchase of category 1 fireworks?

What did respondents say?

4.4 Enforcement agencies, Trading Standards and some other respondents including some manufacturers believed that the age restriction of 18 years should be extended across all categories of pyrotechnics.

4.5 The relatively few remaining respondents largely felt that the existing age limits should be retained.

Our conclusion - what the regulations provide

4.6 We fully recognise the attractions of simplifying regulations for enforcement agencies, retailers and the general public by raising the age for supply of all fireworks to 18 years. However after careful consideration we concluded that it would be disproportionate to raise the age limit for all category 1 fireworks to 18, since by definition these articles represent a very low hazard level. We believe it to be over-prescriptive to, for example, further restrict the sale of items such as Christmas crackers. Whilst some category 1 fireworks such as party poppers are clearly less dangerous than small sparklers, both provide demonstrable hazards, we have concluded that any attempt to split this category further would result in more rather than less confusion.

Selection Packs

What the draft regulations said

4.7 Regulation 21.4 of the draft Regulation said that

(1) *“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.”*

What we asked - Should we retain the prohibition on breaking up selection packs?

What did respondents say?

4.8 With the exception of two respondents to this question all agreed that the prohibition on the breaking up of selection packs for retail sale should be retained.

This reduced young peoples' access to fireworks by avoiding the sale of the noisier types on their own, and therefore more cheaply. It also avoids issues arising with storage – such as loose fireworks and the fact that it then becomes almost impossible for retailers to know how much explosive content they have on the premises.

Our conclusion - what the regulations provide

4.9 We have concluded that the overall approach proposed in the draft regulations is correct. We have also added definitions of “selection pack” and “primary pack” since those concepts are referred to in the definition of “mini rocket” in Schedule 3 and therefore we have added references to those definitions in this provision.

5. Specialist Knowledge

Person with Specialist Knowledge

What does the Directive say?

5.1 Article 2.10 defines a person with specialist knowledge as
“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 7.3 sets out the prohibition

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

- (a) fireworks of category 4,*
- (b) pyrotechnic articles of category P2 and theatrical pyrotechnic articles of category T2.”*

What the draft regulations said

5.2 We do not believe that a specific authorisation/licensing regime is required or appropriate because of the range of products and uses even within the different categories of pyrotechnic articles and we have therefore proposed a system on the basis of a person being able to satisfy a set of criteria to the satisfaction of the supplier, the basic elements of which are

being able to demonstrate training, experience and having insurance. These provisions were set out in Regulations 42-44 of the consultation draft:

A person with specialist knowledge for each category of pyrotechnic articles is any individual who—

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

What we asked - What are your views on the provisions defining who is a person with specialist knowledge? and
Should there be three separate tests for a person with specialist knowledge?

What did respondents say?

5.3 All respondents agreed that this was very complicated to set out in regulations and that specific requirements could not cover a complete category of pyrotechnic articles let alone all the categories of pyrotechnic articles. Similarly industry experts believed the concept must be sufficiently flexible to deal with persons who use a range of pyrotechnic articles, for example a firework display firer and also those who only deal with particular articles, e.g. car air bag detonators.

5.4 A number of respondents expressed the view that the way the Regulation was worded was repetitive and unclear. There were a number of suggestions to clarify the wording many of which have been taken into account in the re-drafted regulation 42

Our conclusion - what the regulations provide

5.5 Regulation 42 now covers all three categories of specialist knowledge. The provisions in each case have been made fully consistent with each other and in each case the person who wishes to be supplied with a pyrotechnic article must demonstrate to the proposed supplier that he has undertaken the relevant training, has used the relevant category of article and has valid liability insurance for that category of article. We believe these requirements will provide sufficient security to the public without being over burdensome to users or suppliers of pyrotechnic articles.

6. Safety Distances

Minimum distance marking for category 4 fireworks and T2 pyrotechnics

What the Directive says

6.1 Article 12 refers to labeling of articles other than pyrotechnic articles for vehicles and in sub-paragraphs 2 and 3 states:

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 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 distances(s).

What the consultation said

6.2 Following initial discussion with industry, we decided at the consultation stage to leave sub-paragraph 4(b) below in square brackets as it was clear there was discussion within the European standards group about this wording.

The draft Regulation 32 said

(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].*

What we asked - Should the requirement for the marking of a minimum safety distance be maintained for category 4 fireworks and T2 pyrotechnics?

What did respondents say

6.3 Whilst some respondents from both the industry and enforcement bodies believed that the minimum safety distance should be marked, a large majority believed that this could restrict certain types of display unnecessarily (eg on barges or roof-tops). At the same time they believed that display operators had the necessary experience and expertise to take into account the nature of the article and local conditions as long as they had the other required information about the device.

Conclusions – what do the regulations provide

6.4 The updated regulation 31 elaborates what is required as far as minimum safety distances are concerned. The provision requires a category 4 firework, a category P2 other pyrotechnic articles and category T2 theatrical pyrotechnic article to have the statement “minimum safety distance to be determined by users using supplied product data”. This answers safety concerns that labelling of articles should refer to minimum safety distances yet allowing for the expertise of the user of the pyrotechnic article, in relation to articles which may only be supplied to persons with specialist knowledge

7. Enforcement

Further enforcement and market surveillance provisions?

What the draft regulations said

7.1 This is an area complicated by a great deal of existing and recently introduced EU legislation, together with existing domestic legislation. In

addition different enforcers have differing responsibilities in related fields. For example, the area is now partly covered by the EU Regulation on Accreditation and Market Surveillance (commonly known as “the RAMS Regulation”) which is in the process of giving HSE (as far as concerns pyrotechnic articles) certain additional powers.

7.2 We proposed that responsibility for enforcement for category 1 to 3 fireworks would lie with local authority weights and measures authorities (with the Secretary of State having a back up power to enforce) and that the enforcers for category 4 fireworks, theatrical and other pyrotechnic articles would be the Health and Safety Executive

What we asked - Is there further provision necessary in relation to enforcement and market surveillance?

What did respondents say?

7.3 There were a number of issues brought out in the responses in relation to regulations 18, 19, 37 and 38 reflecting the complicated interaction between the typical responsibility of weights and measures authorities and the HSE. For example, representatives of weights and measures authorities noted that undertaking responsibilities in relation to manufacturing sites for category 1 to 3 fireworks would be novel and problematic for weights and measures authorities, given for example the licensing powers of the HSE.

Our conclusion - What the draft regulations say

7.4 The regulations remain in similar form, in that responsibilities for enforcement of Part 2 of the Regulations covering category 1 to 3 fireworks will remain mainly with local weights and measures authorities and for Part 3 which covers category 4 fireworks, T2 theatrical pyrotechnic articles and P2 pyrotechnic articles the main enforcer would be the Health and Safety Executive.

However, the extension to Northern Ireland means that for Part 2 district councils in Northern Ireland are added and for Part 3 the Secretary of State have responsibility for enforcement in that part of the United Kingdom. Although the Secretary of State will discuss with Northern Ireland authorities which Northern Ireland authorities should have responsibility in the longer term, particularly in relation to enforcement of articles under Part 3 and for regular inspections of manufacturing sites of category 1 to 3 fireworks.

In addition we have added a backup power for the Secretary of State or for local weights and measures authorities and district councils to take action under Part 3. Given the issue raised about inspections at manufacturing sites above, we have imposed a duty on the Health and Safety Executive and the Secretary of State to undertake regular inspections of manufacturing sites for category 1 to 3 fireworks.

8. Authorities covered by the Directive

Other authorities which should fall within the Directive?

What does the Directive say?

8.1 Article 1.4 of the Directive states

“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;”

What the draft regulations said

8.2 Regulation 3 of the draft Regulation listed the appropriate organisations.

What we asked - Are there other authorities that need to fall within the Directive, the provisions of which exclude the armed forces, police forces or fire departments?

What did respondents say?

8.3 There were a number of comments largely relating to up-dated nomenclature.

Our conclusions – what do the regulations provide

8.4 The list has been updated to take account of the extension to the entire UK and comments received.

9. Free Movement

Free Movement provisions

9.1 Article 6.2 of the Directive requires that

“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.”

What the draft regulations said

9.2 Our draft Regulations set out how the principles of not hindering, restricting or prohibiting placing on the market of pyrotechnic articles which comply with the Directive work in relation to the enforcement of the UK regulations in regulations 10 and 28.

What we asked - Is the way the free movement provisions work clear; is other provision necessary and in what way could it be justified?

What did respondents say?

9.3 Respondents found the provisions clear enough but some expressed the view that there would be relatively little free movement in the firework sector because of the labelling requirements and the way the market was organised.

Our conclusions - what do the regulations provide

9.4 We have maintained the original provision, but with re-ordering of regulations 10 and 28 to put the references to the different regulations into ascending order.

10. Impact Assessment

Impact Assessment evidence

What we asked - Can you provide any evidence to help inform the Impact Assessment?

Most comments related to fireworks, although there is impact on some of the other pyrotechnic articles. Whilst standard products such as car air bag detonators, would benefit from the same standard across Europe In respect of fireworks there was consensus amongst those who responded that there was likely to be little benefit to the UK as inter-community trade would be more limited than suggested given that each country had its own preferences for certain types of firework, and that the vast majority were manufactured in China. They also suggested that the costs of EC type approval were underestimated. This has been reflected in the revised impact assessment which covers a range of potential costs according to the number of individual types of types of pyrotechnic and the grouping of these for type approval. Until the requirements for grouping are delineated it remains difficult to predict how much the increased costs will be. The Regulations allow pyrotechnic articles placed on the market prior to 4 July 2010 (in the case of category 1-3 fireworks) and 4 July 2013 (in the case of other pyrotechnic articles) to remain on the market until July 2017 which will allow some spreading of the costs.

11. Next Steps

13.1 The Directive requires all Member States to adopt the necessary laws to implement the Directive by 4 January 2010, with the provisions for categories 1 to 3 fireworks coming into force by 4 July 2010 and for category 4 fireworks, theatrical pyrotechnic articles and other pyrotechnic article to come into force by 4 July 2013.

What was proposed

13.2 The implementing regulations would be brought into effect on 4 July 2010 for category 1 to 3 fireworks and on 4 July 2013 for category 4, and theatrical and other pyrotechnic articles. Both cases are subject to transitional provisions.

What is happening

13.3 The Regulations are being laid to come into force on 4 July 2010. General guidance for companies and enforcement agencies will be published shortly as will guidance for potential notified bodies

ANNEX A

CHANGES FROM DRAFT CONSULTATION OF AUGUST 2009

Changes as between the consultation draft of the Pyrotechnic Articles (Safety) Regulations 2009 and the Regulations as at 13 May 2010

Treaty of Lisbon

1. The changes made by the entry into force of the Treaty of Lisbon mean that references to “the Community” have been altered to “the EU”.

Significant changes

2. The categorisation duty has been brought forward to Part 1 of the Regulations since logically classification needs to be determined before Parts 2 or Part 3 can apply. In addition a provision has been added that the notified body must confirm the categorisation assigned by the manufacturer, as required by the Directive.
3. In regulation 3(2)(a)(ii) the reference to a “police authority” has been amended to “police force in England and Wales” since this more accurately reflects the wording of Article 1.4(a) of the Directive.
4. Regulation 6(1)(b) which required a category 1 to 3 firework to be “submitted to a notified body” has been amended, by adding the words “or is otherwise subject to a conformity assessment procedure” to allow for the use of the different conformity assessment modules, which do not require each and every article to be submitted, such as EC type conformity assessment.
5. The potential liability of an importer under regulation 7 or 24 has been set out as including a contravention caused by an action, omission or default of the manufacturer.
6. The obligation of distributors under regulations 8(2) and 25(2) have been clarified. The Directive refers to an articles being “accompanied by the required documents”. This is interpreted as meaning by any separate safety warnings or instructions provided by a manufacturer or where relevant an importer.
7. Provision has been included in regulations 9 and 26 to remove recognition of articles which comply with harmonised standards where the standard is determined, by an EU committee, not to comply with the essential safety requirements set out in the Directive.
8. The restrictions on the free movement provision (regulations 10(2) and 27(2)) have been extended to allow for enforcement action under the Consumer Protection Act 1987 and under the General Product Safety Regulations 2005 .

9. The criminal offence concerning affixing a mark which may confuse a third person as to the meaning of a CE marking which was set out in regulations 12(6) and 30(6) has been moved to regulations 13(2) and 30(2).
10. The duty to undertake regular inspections of category 1 to 3 fireworks at manufacturing sites in regulation 18 is to be carried out by the Health and Safety Executive in Great Britain and the Secretary of State in Northern Ireland. A consequential amendment is made to facilitate that in regulation 1.
11. References to the power of enforcement authorities to recall products have been taken out of regulation 19, since the Directive does not mention recall. This power (and others) is however available to enforcers in relation to pyrotechnic articles (including category 1 to 4 fireworks) since it is intended to include a reference to the Pyrotechnic Articles Safety Regulations 2010 in the regulations implementing certain provisions of the Regulation on Market Surveillance 765/2008 (commonly known as RAMS). Enforcement authorities have additional powers available to them under the General Product Safety Regulations 2005.
12. The trigger for powers available to enforcement authorities under regulation 19 has been widened by removing the reference to the article having to bear a CE marking and be accompanied by an EC declaration of conformity.
13. In regulation 31 the requirement to label in relation to minimum safety distances has been clarified in relation to labelling category 4 fireworks, theatrical and other pyrotechnic articles by the requirement that the labelling must include the statement "minimum safety distances to be determined by using supplied safety data".
14. A power for weights and measure authorities and for the Secretary of State to enforce Part 3 of the regulations has been added in regulation 36(2). Weights and measures authorities are empowered to investigate and prosecute outside of their areas. Since both HSE, the Secretary of State and local enforcement authorities have duties or powers to enforce Part 3 of the Regulations, a mechanism for informing and deciding who will enforce in a given circumstance has been added in regulation 37(3) and (4).
15. Offences (together with provision for defences and for associates of an offender) have been added in relation to contravention of specified provisions in Part 3, including safety obligations of manufacturers and importers, obligations concerning the CE marking and labelling and prohibitions on supply. These were omitted from the consultation draft.
16. Article 42 which sets out who is a person with specialist knowledge to whom Category 4 and P2 and T2 pyrotechnic articles can be supplied has

been set out in one article rather than having separate articles for category 4 fireworks and T2 theatrical pyrotechnic articles and P2 other pyrotechnic articles. Other significant changes have been made to the drafting of the provision as follows, the words “who can demonstrate having” are applied to all three requirements for a person with specialist knowledge (undertaken training, used pyrotechnic articles and insurance). Paragraph (4) has been added to make clear what the training must include, training on the nature and correct use of the articles and the risks associated with transport, storage and use of such articles. Other changes are consequential on moving provisions from three articles into one.

17. Further provision has been made in Part 4 concerning the appointment of UK notified bodies. Those bodies are a key part of the conformity assessment process under the Pyrotechnics Directive. The changes are-
 - 17.1. to allow the Secretary of State to make wider provisions as to the tasks of the body and to take into account matters beyond whether the body satisfies the minimum standards required by the Directive;
 - 17.2. regulation 43(5) makes clearer provision concerning the extent to which a body which meets assessment criteria in a harmonised standard relevant to notified bodies meets the minimum criteria for notified bodies set out in the Pyrotechnics Directive;
 - 17.3. the provisions concerning revocation of appointment have been amended to make clearer when appointments would end and add to the grounds on which appointments can be revoked;
 - 17.4. the provision allowing for variation and restriction of appointment has been extended;
 - 17.5. provision has been added to allow for the Secretary of State to arrange for inspection of the premises of an applicant notified body by another person and to request information from a UK notified body to be supplied to another person to ensure it meets the minimum criteria for a notified body set out in the Directive;
 - 17.6. provision has been added to require the Secretary of State to notify the Commission and the Member States in relation to appointments under regulation 43;
 - 17.7. imposing a duty for the UK notified body to carry out its conformity assessment duties, subject to the terms of the appointment, the applicant’s documents being in English or another acceptable language, that the applicant has paid its fee and that the notified body reasonably believes it can carry out its duties within 6 months of receiving the application;

- 17.8. imposing a duty for the UK notified body to make provision for appeals against its decision to refuse an EC type certificate and analogous decisions; and
- 17.9. A small change has been made to regulation 44(4) to advert to the fact that the work required of a UK notified body need not stem from the submission of an article to it, since its duties include assessment of full qualify systems etc.

Transitional provisions

18. Amendments have been made to regulations 46 and 47 to make them appropriate to Northern Ireland as noted below.
19. Regulation 46 has been changed to make clear that the transitional provision does not apply to regulations 15 and 21 – so that the restrictions and prohibitions on the supply of category 1 to 3 fireworks in relation to age (regulation 15) and in relation to prohibition of certain specified types of fireworks (regulation 21) apply to all supplies of category 1 to 3 fireworks from 4th July 2010.
20. Similarly regulation 47 has been amended so that the prohibition on supply of category 4 fireworks, T2 theatrical pyrotechnic articles and P2 other pyrotechnic articles (regulation 33) applies to all such articles from 4th July 2013.
21. A paragraph has been added to regulations 46 and 47 to make clear that the transitional provisions can apply to articles which have not been classified by 4th July 2010 or 2013.

Repeals, revocations, amendments and savings

22. Consequential amendments have been added to regulation 49 as follows
 - 22.1. section 31 of the Explosives Act 1875 (sale of gunpowder to children),
 - 22.2. sections 5 and 6 and the Schedule to the Fireworks Act 1951 (marking of fireworks);
 - 22.3. the Fireworks Act 1964 (exemption from such marking);
 - 22.4. the labelling provisions in the Classification and labelling of Explosives Regulations 1983 and the analogous regulations in Northern Ireland;
 - 22.5. to secondary legislation concerning Part 8 of the Enterprise Act 2002, substituting references to the legislation revoked by these regulations.

22.6. paragraph 11 introduces the amendments set out in Schedule 5 concerning the Explosives (Fireworks) Regulations (Northern Ireland) 2002; and

22.7. paragraph 12 makes clear that the Firework (Safety) Regulations 1997 (as amended) continue to apply to category 4 fireworks, notwithstanding their revocation by this article until 4th July 2013.

Schedule 3 – definitions of fireworks used in Regulation 21

23. The words “and which has one point of ignition” have been removed from the definitions of “battery” and “combination”. Definitions of “primary packs” and “secondary packs” and of “shot tube” have been added.

Schedule 4 - enforcement powers under part 3

24. In paragraph 1 of Schedule 4 provision has been added to the effect that penalties are no more than 3 months’ imprisonment or a fine of level 5 on the standard scale (£5,000) in line with the limits under section 2(2) of the European Communities Act 1972.

25. Paragraphs 3 and 4 concern the power to require a person to withdraw a pyrotechnic article from the market under Part 3. Paragraph 5 provides for appeals against withdrawal notices. Paragraph 6 imposes an offence of contravening such a notice.

Northern Ireland

26. The consultation draft was published on 1st August 2009 and noted in regulation 1(4) that the regulations may be extended to apply to the whole of the United Kingdom. The Regulations have been extended to apply to Northern Ireland. In Parts 1 to 4 this has been achieved mainly by

26.1. changing references to Great Britain to United Kingdom;

26.2. including references to district councils in addition to weights and measures authorities;

26.3. by including specific provisions about district councils;

26.4. including references to NI police, fire and rescue authorities;

26.5. including an extent provision in regulation 1; and

26.6. including specific provision on enforcement allowing for district councils to take action outside their area in NI in regulation 18.

27. In Article 45 provision has been made for Northern Ireland proceedings. References have been made to Northern Ireland legislation in regulations 46 and 47 making clear that the transitionals apply whether or not an article is classified under the Northern Ireland classification regulations. The transitional is also amended to make clear that it concerns compliance with legislation relevant to a part of the UK. Regulation 49 makes amendments to Northern Ireland legislation, including the

Classification and Labelling Regulations and the Explosives (Fireworks) Regulations (Northern Ireland) 2002.

28. Paragraph 5 Schedule 4 (enforcement of Part 3) includes specific references to Northern Ireland.
29. Schedule 5 sets out the detail of the amendments to the Explosives (Fireworks) Regulations (Northern Ireland) 2002.

ANNEX B

ALPHABATICAL LIST OF RESPONDENTS TO CONSULTATION ON DRAFT REGULATIONS

**Association of Chief Police Officers
Aberdeen Trading Standards Department
Absolute Fireworks
ACPO Firearms and Explosives Licensing Working Group (FELWG)
Association of Chief Police Officers in Scotland
AWE plc
BECTU
Black Cat Fireworks Ltd
Blue Cross
British Fireworks Association
British Pyrotechnists Association
British Association for Shooting and Conservation
CBI Explosives Industry Group
Davas Ltd
Department for Communities & Local Government
Devon Trading Standards Service
Dog's Trust
East Sussex Fire and Rescue Service
Health & Safety Executive
HM Revenue & Customs
Islington Trading Standards Service
James Page
Keith Brock
Kimbolton Fireworks
LACORS
Lancashire Trading Standards Service
Martin Guest (Consulting)
Mr. DA & Mrs. K Jenkins
Northern Ireland Office
Pyrocon Ltd
Ron Lancaster
Stoke on Trent Trading Standards
Trading Standards Institute
Trading Standards South East
United Kingdom Pyrotechnic Society**

