



Department  
for Business  
Innovation & Skills

**Consultation on  
Implementation of Directive  
2013/29/EU**

This Directive concerns the harmonisation of the laws of Member States relating to the making available on the market of pyrotechnic articles and Directive 2014/58/EU on traceability of pyrotechnic articles

DECEMBER 2014

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# 1. Consultation outline

## Background

1.1 In 2006, the European Commission conducted a review into the functioning of the internal market for goods. It concluded that the EU harmonised legislation was not as effective as it should be. In particular, three main deficiencies were highlighted:

- (a) the high number of products that were on the EU market that did not comply with product safety legislation;
- (b) the unsatisfactory performance of some conformity assessment bodies; and
- (c) the difficulties that many stakeholders faced in understanding and using the EU legislation.

1.2 By way of response, the New Legislative Framework (“NLF”) was created. The core principles of the NLF are that:

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

1.3 The 2013 Pyrotechnics Directive (2013/29/EU) (“the Pyrotechnics Directive”) applies the NLF approach to the pyrotechnics sector. It is supplemented by the 2014 Commission Implementing Directive on the traceability of pyrotechnic articles (2014/58/EU) (“the Traceability Directive”).

1.4 The UK has an obligation under EU law to implement the Directives. In doing so, we must ensure that we secure their objectives. However, we have a degree of choice as to how we do that.

## The consultation

1.5 To implement the Directives, we propose to make the Pyrotechnic Articles (Safety) Regulations 2015 (“the 2015 Regulations”). These Regulations will revoke and replace the Pyrotechnic Articles (Safety) Regulations 2010 (“the 2010 Regulations”). A draft of the 2015 Regulations can be found in Annex 1.

1.6 As the Directives have already been made, we can no longer influence their contents. However, we are keen to have the views of stakeholders on our approach to implementing those Directives. We have set out a number of specific questions on which we are asking for responses. In addition, we are seeking input on the impacts of these Regulations to ensure our Impact Assessment correctly reflects the likely costs and benefits.

1.7 This consultation will be relevant to:

- (a) manufacturers, importers and distributors of pyrotechnic articles;
- (b) bodies involved in the conformity assessment of pyrotechnic articles;
- (c) enforcement authorities with responsibilities for pyrotechnic articles; and
- (d) end-users of pyrotechnic articles (including consumers).

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Respond by: Thursday 22 January 2015

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## **2. Executive Summary**

2.1 The UK must implement the Directives. The Directives impose new obligations on manufacturers, importers and distributors of pyrotechnic articles. They also make detailed provision concerning the bodies which are entitled to carry out conformity assessments, and the market surveillance regime.

2.2 We propose to implement the Directives by making the 2015 Regulations. In order to help us ensure that the 2015 Regulations operate as they should and in order to help us understand the likely impacts, we are seeking responses to the questions set out in Section 4.

### 3. The Proposals

3.1 The Pyrotechnics Directive sets out a comprehensive regime governing the supply of pyrotechnic articles on the EU market and will be implemented by the 2015 Regulations.

3.2 The Pyrotechnics Directive replaces the 2007 Pyrotechnics Directive, and the 2015 Regulations will replace the 2010 Regulations. Although this will mean substantive changes in UK law, many things will remain the same. This part of the consultation document highlights the key respects in which the law will change.

#### (a) **Obligations of manufacturers**

3.3 Under the 2010 Regulations, the manufacturer has various obligations which will also be found in the 2015 Regulations. These include requirements to ensure that a pyrotechnic article is manufactured in accordance with the essential safety requirements (regulation 7 of the draft 2015 Regulations and Article 8(1) of the Pyrotechnics Directive), that it is subject to a conformity assessment procedure (regulation 8(1) and Article 8(2)) and that it is CE-marked (regulation 9(1) and Article 8(2)).

3.4 In addition, producers and distributors of pyrotechnic articles for consumers currently have obligations under the General Product Safety Regulations 2005 which include requirements concerning monitoring, taking action in respect of unsafe articles and informing enforcement authorities where unsafe articles have been placed on the market. Going forward, the 2015 Regulations will contain broader, but also more specific, requirements to address these points.

3.5 Under the 2015 Regulations, the manufacturer will have new obligations to:

(i) label pyrotechnic articles with a registration number and a product, batch or serial number; (regulation 11(2) and paragraph 1 to Schedule 3 and Article 10(2))

(ii) ensure procedures are in place to maintain the conformity of pyrotechnic articles manufactured by series production; (regulation 13 and Article 8(4))

(iii) 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; (regulation 20 and Article 3 of the Traceability Directive)

(iv) keep records of other economic operators in the supply chain for 10 years; (regulation 37 and Article 15)

(v) monitor pyrotechnic articles presenting a risk to health and safety, at the request of an enforcing authority; (regulation 21 and Article 8(4))

(vi) take action to address the non-conformity of any pyrotechnic articles 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); (regulation 22(1) and Article 8(8)) and

(vii) notify the market surveillance authority if it considers that a pyrotechnic article that it has placed on the market presents a risk (even where that article is not for consumers). (regulation 22(2) and Article 8(8))

### **(b) Obligations of importers**

3.6 Under the 2010 Regulations, an importer is required to ensure that the manufacturer has met all of the manufacturer's obligations or meet those obligations itself. Under the 2015 Regulations, instead of the obligations of the importer being determined entirely by reference to those of the manufacturer, the obligations of the importer are set out in detail separately. The key new obligations will include:

(i) labelling pyrotechnic articles with their contact details; (regulation 17 and Article 12(3))

(ii) retaining technical documentation and EU declaration of conformity for 10 years (regulation 19 and Article 12(8));

(iii) keeping 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; (regulation 20 and Article 3 of the Traceability Directive)

(iv) keeping a record of other economic operators in the supply chain for 10 years; (regulation 37 and Article 15)

(v) monitoring pyrotechnic articles presenting a risk to health and safety at the request of an enforcing authority; (regulation 21 and Article 12(6))

(vi) taking action to address the non-conformity of any pyrotechnic articles 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); (regulation 22(1) and Article 12(7)) and

(vii) notifying the market surveillance authority if it considers that a pyrotechnic article that it has placed on the market presents a risk (even where the article is not for consumers). (regulation 22(2) and Article 12(7))

### **(c) Obligations of distributors**

3.7 Under the 2010 Regulations, distributors have to take due care in respect of pyrotechnic articles, which includes checking that they bear a CE marking and they are accompanied by any warnings or instructions provided by the manufacturer. Under the 2015 Regulations, distributors will have new obligations, which will include:

(i) keeping records of other economic operators in the supply chain for 10 years; (regulation 37 and Article 15) and

(ii) ensuring action is taken to address the non-conformity of any pyrotechnic articles that it has placed on the market. (regulation 27 and Article 13(4))

(d) Notified bodies

3.8 The draft 2015 Regulations contain a more detailed regime governing the bodies which are entitled to carry out conformity assessments under the Directive. These provisions include requirements that a body must satisfy before it can be treated as a notified body (Schedule 5 and Article 25), the process of notification (regulations 43 - 47 and Articles 28 and 29), the operational obligations of notified bodies (Schedule 6 and Article 33) and procedures for monitoring (regulation 48 and Articles 22, 24, 28 and 31) and addressing any non-compliance of notified bodies with the provisions of the Regulations (regulation 50 and Article 31).

(e) More detailed obligations and more extensive powers for enforcing authorities

3.9 The Pyrotechnics Directive aims to create a more robust harmonised system of market surveillance and enforcement. This aim is reflected in the more detailed provisions on market surveillance and enforcement in the 2015 Regulations.

3.10 As in the 2010 Regulations, the market surveillance authority with primary responsibility varies as between categories of pyrotechnic article and as between Great Britain and Northern Ireland. As in the 2010 Regulations, other enforcers besides the market surveillance authority are entitled to enforce. (regulation 54)

3.11 However, there are differences in two main respects. First, the 2015 Regulations reflect the three different scenarios envisaged by the Pyrotechnics Directive and the different processes that are to apply in each case ((i) pyrotechnic article is not in conformity and presents a risk; (ii) pyrotechnic article is in conformity but presents a risk; (iii) pyrotechnic article is not in conformity but presents no risk). (Regulations 58, 60 and 61 and Articles 39, 41 and 42)

3.12 Second, the 2015 Regulations also extend the powers of the enforcing authorities. They will continue to have the powers that they already have under the Consumer Protection Act 1987 or the Health and Safety at Work etc Act 1974. However, they will also gain the power to issue compliance and recall notices even where the product does not present a risk. (regulation 55 and Schedules 7, 8 and 9)

(f) Transitional provisions (regulation 75 and Article 46)

3.13 The 2015 Regulations will contain transitional provisions.

3.14 A pyrotechnic article which is placed on the market before 1st July 2015 and is in conformity with the 2010 Regulations, may be made available on the market on or after 1st July 2015, even if it does not comply with the requirements of the 2015 Regulations.

3.15 A category F1 – F3 firework that was lawfully manufactured or placed on the market in the UK before 4th July 2010, may be made available on the market in the UK until 3rd July 2017, even if it does not comply with the requirements of the 2015 Regulations. From 4th July 2017 onwards, such a firework can only be made available on the market if it complies with the 2015 Regulations.

3.16 A pyrotechnic article of any other category that was lawfully manufactured or placed on the market in the UK before 4th July 2013, may be made available on the market in the UK until 4th July 2017, even if it does not comply with the requirements of the 2015

Regulations. From 4th July 2017 onwards, such a pyrotechnic article can only be made available on the market if it complies with the 2015 Regulations.

3.17 A certificate of conformity issued under the 2010 Regulations will be treated as a valid certificate of conformity under the 2015 Regulations.

## 4. Consultation Questions

4.1 The consultation questions are listed below for ease of reference so that Consultees can get an overview of what information is sought and can refer to them swiftly.

4.2 We are asking the questions to get a better idea of the impact on business, which will in turn inform the impact assessment.

**Question 1: If the details of the manufacturer and/or the importer cannot be put on the pyrotechnic article itself, we propose that they be put on the packaging or in an accompanying document. Do you support this approach? If not, why not?**

4.3 The labelling of a pyrotechnic article must include information about manufacturers and importers. This labelling must be put on the pyrotechnic article itself. However, where that is not possible, there is some uncertainty as to where the information must be put.

4.4 Under Articles 8(6) and 12(3) of the Pyrotechnics Directive where it is not possible to put the information about the manufacturer or importer on the pyrotechnic article, it must be put on the packaging or in an accompanying document.

4.5 However, under Article 10(5) of the Pyrotechnics Directive where there is insufficient space on a pyrotechnic article for the labelling requirements (which include the information about the manufacturer and importer), that information must be put on the smallest piece of packaging.

4.6 We propose to adopt the more flexible approach in Articles 8(6) and 12(3), enabling the information about the manufacturer and importer to be put on the packaging or in an accompanying document where it cannot be put on the pyrotechnic article (regulation 11). It is hoped that this approach will give businesses more flexibility and that it will be more consistent with the New Legislative Framework Decision.

**Question 2: We propose to bring the detailed requirements of the Traceability Directive into force on 17th October 2016. Do you support this approach? Or would you prefer that they were brought into force on 1 July 2015 at the same time as the rest of the 2015 Regulations?**

4.7 There are basic rules on traceability in the Pyrotechnics Directive. These require manufacturers to label pyrotechnic articles with the registration number assigned by the notified body which carried out the conformity assessment procedure. They also require both manufacturers and importers to keep records of the registration numbers for the



pyrotechnic articles they make available on the market. These rules need to come into force on 1st July 2015.

4.8 However, there are more detailed rules on traceability (e.g. maintaining records of the type of fireworks supplied and their site of manufacture) in the Traceability Directive which need not come into force until 17th October 2016. The draft Regulations would bring the basic rules into force on 1st July 2015, but would not bring the more detailed rules into force until 17th October 2016.

**Question 3: Do you agree that the draft transitional provisions in regulation 75 reflect the regime provided for in the Article 46 of the Directive? If not, why not?**

4.9 There will be transitional provisions ensuring a more gradual transition to the new regime. We have summarised how these provisions will work in paragraphs 3.13 – 3.17.

**Question 4: We propose to make amendments to the Fireworks Regulations 2004 to ensure that they use the same system of categories as the Pyrotechnics Directive. Do you support this proposal? If not, why not?**

4.10 The Pyrotechnics Directive requires that pyrotechnic articles, including fireworks, be categorised. The categories for fireworks include F1, F2, F3 and F4.

4.11 Currently, the requirements of the Fireworks Regulations 2004 regulate “adult fireworks”. The phrase “adult fireworks” is defined by reference to British Standards.

4.12 In a recent meeting with stakeholders, it was suggested that it would be beneficial to amend the Fireworks Regulations 2004 so that they operate by reference to the categories set out in the Pyrotechnics Directive. We consider that consistency in terminology would make it easier for economic operators, who have to deal with both the Pyrotechnic Articles (Safety) Regulations 2015 and the Fireworks Regulations 2004, to understand and comply. It would also assist enforcement authorities.

4.13 To this end, it is proposed that the Fireworks Regulations 2004 be amended so that “adult fireworks” will, in future, be defined as meaning fireworks which fall within categories F2, F3 and F4 under the Directive (regulation 76(3) and Schedule 10).

**Question 5: Do you consider that the draft Regulations, as a whole, are effective and proportionate? If not, why not?**

4.14 The following questions focus on the impact on business of implementing the regulations and if these are reflected accurately in the impact Assessment attached at Annex 5.

**Question 6: Do you consider that the Impact Assessment correctly characterises the changes resulting from the new Regulations? If not, what needs to be changed?**

**Question 7: Do you agree with our estimate of the number of businesses affected? If not, can you provide additional evidence?**

**Question 8: Do you agree with our estimate of average costs (one-off and on-going)? Can you provide additional evidence to support your answer?**

**Question 9: Are you able to provide any evidence (quantified or otherwise) of the benefits of these changes?**

## **5. How to respond**

5.1 When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

5.2 The Consultation Response form is available electronically at [www.bis.gov.uk](http://www.bis.gov.uk) (until the consultation closes). It can be submitted by email or by letter to:

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Product Regulation team  
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4th Floor Spur 1  
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London SW1H 0ET

Tel: 020 7215 3465

Email: [pyroconsultation@bis.gsi.gov.uk](mailto:pyroconsultation@bis.gsi.gov.uk)

5.3 A list of those organisations and individuals consulted is in Annex 3. We would welcome suggestions of others who may wish to be involved in this consultation process. Please feel free to forward this consultation to anyone you think may be interested.

5.4 You may make printed copies of this document without seeking permission. BIS consultations are digital by default but if required printed copies of the consultation document can be obtained from:

BIS Publications Orderline  
ADMAIL 528  
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Tel: 0845-015 0010  
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[www.bis.gov.uk/publications](http://www.bis.gov.uk/publications)

5.5 Other versions of the document in Braille, other languages or audio-cassette are available on request.

## 6. Confidentiality & Data Protection

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

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

## 7. Help with queries

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

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London  
SW1H 0ET

0207 215 3465

[Christine.knox@bis.gsi.gov.uk](mailto:Christine.knox@bis.gsi.gov.uk)

7.2 The consultation principles are in Annex 2.

## 8. What happens next?

8.1 This consultation is necessary to enable the United Kingdom to make the new legislation required to implement the requirements of. A response to this consultation will be made and following the date of this issue, the Regulations will be laid in Parliament to come into force on. The Government's Response Document will be placed on the BIS website, with paper copies of the summary of responses made available on request.

# Annex 1 Draft Regulations – The Pyrotechnic Articles (Safety) Regulations 2015

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## STATUTORY INSTRUMENTS

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2015 No. 0000

### CONSUMER PROTECTION

### HEALTH AND SAFETY

## The Pyrotechnic Articles (Safety) Regulations 2015

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	1st July 2015

The Secretary of State is a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to pyrotechnic articles.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for certain references to provisions of EU instruments to be construed as references to those provisions as amended from time to time.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A<sup>(3)</sup> of Schedule 2 to, the European Communities Act 1972:

### PART 1

#### Preliminary

#### Citation, commencement and extent

1.—(1) These Regulations may be cited as the Pyrotechnic Articles (Safety) Regulations 2015 and come into force on 1st July 2015.

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<sup>(1)</sup> S.I. 2009/2743.

<sup>(2)</sup> 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.

<sup>(3)</sup> Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by the European Union (Amendment) Act 2008, Schedule, Part 1.

- (2) These Regulations extend to England and Wales, Scotland and Northern Ireland, except—
- (a) regulation 76(3) (consequential revocations, amendments and savings) and Schedule 10 (consequential amendments to the Fireworks Regulations 2004) do not extend to Northern Ireland;
  - (b) regulation 76(4) and Schedule 11 (consequential amendments to the Explosives (Fireworks) Regulations (Northern Ireland) 2002) extend to Northern Ireland only.

## Interpretation

2.—(1) In these Regulations—

the “1974 Act” means the Health and Safety at Work etc Act 1974<sup>(4)</sup>;

the “1987 Act” means the Consumer Protection Act 1987<sup>(5)</sup>;

the “2010 Regulations” means the Pyrotechnic Articles (Safety) Regulations 2010<sup>(6)</sup>;

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

“banger” means a firework (other than a firework within regulation 33(1)(g)(i) (prohibitions on making available certain category F2 and F3 fireworks))—

(a) which comprises a non-metallic tube which contains pyrotechnic composition and has a fuse; and

(b) whose functioning principally involves report;

“battery” means an assembly which includes two or more fireworks of the same type;

“category F1 firework” has the meaning set out in paragraph 1 of Schedule 1 (categories of pyrotechnic article);

“category F2 firework” has the meaning set out in paragraph 2 of Schedule 1;

“category F3 firework” has the meaning set out in paragraph 3 of Schedule 1;

“category F4 firework” has the meaning set out in paragraph 4 of Schedule 1;

“category P1 other pyrotechnic article” has the meaning set out in paragraph 7 of Schedule 1;

“category P2 other pyrotechnic article” has the meaning set out in paragraph 8 of Schedule 1;

“category T1 theatrical pyrotechnic article” has the meaning set out in paragraph 5 of Schedule 1;

“category T2 theatrical pyrotechnic article” has the meaning set out in paragraph 6 of Schedule 1;

“CE marking” means a marking which takes the form set out Annex II of RAMS (as amended from time to time);

“combination” means an assembly, other than a battery, which includes 2 or more fireworks;

“conformity assessment” means the process demonstrating whether the essential safety requirements relating to a pyrotechnic article have been fulfilled;

“conformity assessment body” means a person that performs conformity assessment activities, including calibration, testing, certification and inspection;

the “Directive” means Directive 2013/29/EU of the European Parliament and of the Council on the harmonisation of the laws of the member States relating to the making available on the market of pyrotechnic articles<sup>(7)</sup>;

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<sup>(4)</sup> 1974 c.37.

<sup>(5)</sup> 1987 c.43.

<sup>(6)</sup> S.I. 2010/1554; amended by S.I. 2011/1885, 2012/1848, 2012/2963, 2013/602, 2013/1948 and 2013/1950.

<sup>(7)</sup> OJ L 178, 28.6.2013, p. 27.

“distributor” means any person in the supply chain, other than the manufacturer or the importer, who makes a pyrotechnic article available on the market;

“double banger” means a firework (other than a firework falling within regulation 33(1)(g)(i))—

- (a) which comprises a non-metallic tube containing two portions of pyrotechnic composition connected by a delay fuse; and
- (b) whose functioning principally involves report and a flash of light;

“economic operator” means a manufacturer, importer or distributor;

“enforcing authority” means any person enforcing these Regulations under regulation 54 (enforcement);

“essential safety requirements” means the requirements set out in Schedule 2 (essential safety requirements);

“EU declaration of conformity” means a declaration of conformity required to be drawn up in accordance with regulation 9(1)(a) (EU declaration of conformity and CE marking);

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

“flash banger” means a firework (other than a firework falling within regulation 33(1)(g)(i))—

- (c) which comprises a non-metallic tube containing metal-based pyrotechnic composition; and
- (d) whose functioning principally involves report and a flash of light;

“harmonised standard” has the meaning set out in point 1(c) of Article 2 of Regulation (EU) 1025/2012 of the European Parliament and of the Council on European standardisation<sup>(8)</sup> (as amended from time to time);

“importer” means any person who—

- (e) is established within the EU; and
- (f) places a pyrotechnic article from a third country on the EU market;

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

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

“make available on the market” means any supply for distribution, consumption or use on the EU market in the course of a commercial activity, whether in return for payment or free of charge, and related expressions must be construed accordingly;

“manufacturer” means a person who—

- (g) manufactures a pyrotechnic article, or has such an article designed or manufactured; and
- (h) markets that pyrotechnic article under that person’s name or trade mark;

“market surveillance authority” has the meaning set out in regulation 53 (designation of market surveillance authority);

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

- (i) the outside diameter of which, at the point where the diameter is greatest, is less than 12 millimetres; or
- (j) if equipped with a stick for the purpose of stabilising its flight—
  - (i) where the firework is intended to be made available on the market singly, whose overall length (including the length of any such stick) is less than 900 millimetres or (not including the length of any such stick) is less than 195 millimetres; or
  - (ii) where the firework is intended to be supplied in a primary pack, whose overall length (including the length of any such stick) is less than 400 millimetres or (not including any such stick) is less than 125 millimetres; or

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<sup>(8)</sup> OJ L 316, 14.11.2012, p. 12.

- (iii) where the firework is intended to be supplied in a selection pack, whose overall length (including the length of any such stick) is less than 300 millimetres; or
- (k) if not equipped with a stick for the purposes of stabilising its flight—
  - (i) whose overall length is less than 300 millimetres; and
  - (ii) is intended to be supplied singly or in a primary pack;

“notified body requirements” means the requirements set out in Schedule 5 (notified body requirements);

“person with specialist knowledge” has the meaning set out in Schedule 4 (persons with specialist knowledge);

“place on the market” means the first making available on the EU market, and related expressions must be construed accordingly;

“primary pack” means a package of fireworks of the same type, all of which are either category F1 fireworks, category F2 fireworks or category F3 fireworks, which is intended to be offered for retail sale as a single unit;

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

“pyrotechnic article for a vehicle” means a component of a safety device in a vehicle which contains a pyrotechnic substance used to activate that device or another device;

“RAMS” means Regulation (EC) 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93<sup>(9)</sup>;

“recall” means taking any measure aimed at achieving the return of a pyrotechnic article that has already been made available to the end-user and related expressions must be construed accordingly;

“registration number” means the number assigned to a pyrotechnic article by a notified body under paragraph 5(a) of Schedule 6 (operational obligations of notified bodies) or the laws of any other member State which implement the Article 33(3) of the Directive (as amended from time to time) or Commission Implementing Directive 2014/58/EU setting up a system for the traceability of pyrotechnic articles<sup>(10)</sup> (as amended from time to time);

“relevant conformity assessment procedure” means a conformity assessment procedure referred to in regulation 40 (conformity assessment procedures);

“relevant economic operator” means, in relation to a pyrotechnic article, an economic operator with obligations in respect of that pyrotechnic article under Part 2;

“selection pack” means a package of fireworks of more than one type intended to be offered for retail sale as a single unit;

“shot tube” means a tube containing propellant charge and a pyrotechnic unit, with or without a transmitting fuse, the principal effect of which is the ejection of the pyrotechnic unit producing a visual effect in the air, an aural effect in the air or both;

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

“technical documentation” has the meaning given in regulation 8(b) (technical documentation and conformity assessment);

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

“wheel” means an assembly—

- (l) which includes a tube or tubes containing pyrotechnic composition;

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<sup>(9)</sup> OJ L 218, 13.8.2008, p. 30.

<sup>(10)</sup> OJ L 155, 17.4.2014, p. 28.

- (m) which is designed to be attached to a support and to rotate about a fixed point or axis and which is provided with a means of attaching it securely to such a support so that it can rotate; and
- (n) whose functioning involves rotation around a fixed point and the emission of sparks and flames, with or without aural effect.

“withdraw”, when used in relation to a pyrotechnic article, means taking any measure aimed at preventing a pyrotechnic article in the supply chain from being made available on the market and related expressions must be construed accordingly.

(2) In these Regulations, a reference to a pyrotechnic article being “in conformity with Part 2” means that—

- (a) the pyrotechnic article is in conformity with the essential safety requirements; and
- (b) each relevant economic operator has complied with the obligations imposed on them under Part 2 which must be satisfied at or before the time at which they make the pyrotechnic article available on the market.

(3) In these Regulations (except in Part 4 (notification of conformity assessment bodies) and Schedules 5 (notified body requirements) and 6 (operational obligations of notified bodies)), “notified body” means—

- (a) a notified body within the meaning set out in regulation 43 (notified bodies); or
- (b) a notified body under the laws of any other member State which implement the Directive.

(4) In these Regulations (except in regulation 21 (monitoring) and Schedule 2), “risk” means a risk to—

- (a) human health;
- (b) public security;
- (c) the safety of consumers; or
- (d) the environment.

## Scope

3.—(1) Subject to paragraph (2), these Regulations apply to pyrotechnic articles.

(2) These Regulations do not apply to—

- (a) pyrotechnic articles intended for non-commercial use by—
  - (i) the armed forces;
  - (ii) a police force in England and Wales;
  - (iii) the Police Service of Scotland;
  - (iv) the Police Service of Northern Ireland, the Police Service of Northern Ireland Reserve or the Northern Ireland Policing Board;
  - (v) the British Transport Police;
  - (vi) the Ministry of Defence Police Force;
  - (vii) the Civil Nuclear Constabulary;
  - (viii) a police force for a harbour, port, airport, park, garden or forest in the United Kingdom or with a specialised function in the United Kingdom;
  - (ix) the National Crime Agency; and
  - (x) a fire and rescue service authority within the meaning of section 1 or a combined authority within the meaning of section 2 or 4 of the Fire and Rescue Services Act 2004<sup>(11)</sup>;
  - (xi) the Scottish Fire and Rescue Service; or
  - (xii) the Northern Ireland Fire and Rescue Board;
- (b) equipment falling within the scope of Council Directive 96/98/EC on marine equipment<sup>(12)</sup>;

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<sup>(11)</sup> 2004 c.21.

<sup>(12)</sup> OJ L 46, 17.02.1997, p. 25.



- (c) pyrotechnic articles intended for use in the aerospace industry;
- (d) percussion caps intended specifically for toys falling within the scope of Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys<sup>(13)</sup>;
- (e) explosives falling within the scope of Council Directive 93/15/EEC on the harmonization of the use of the provisions relating to the placing on the market of explosives for civil uses<sup>(14)</sup>;
- (f) projectiles and propelling charges and blank ammunition used in portable firearms, other guns and artillery;
- (g) fireworks which—
  - (i) are built by a manufacturer established in the United Kingdom;
  - (ii) are built for the manufacturer's own use;
  - (iii) comply with the law applicable to such fireworks (excluding these Regulations); and
  - (iv) remain within the territory of the United Kingdom.

#### **Exception for trade fairs, exhibitions and demonstrations**

4. Nothing in these Regulations prevents the showing and use of a pyrotechnic article, which is not in conformity with Part 2, at a trade fair, exhibition or demonstration for the marketing of pyrotechnic articles, provided that a visible sign clearly indicates—

- (a) the name and date of the trade fair, exhibition or demonstration;
- (b) that the pyrotechnic article is not in conformity with Part 2; and
- (c) that the pyrotechnic article is not available for sale until brought into conformity.

#### **Exception for research, development and testing**

5. Nothing in these Regulations prevents the free movement and use of a pyrotechnic article, which is not in conformity with Part 2, for the purpose of research, testing and development, provided that a visible sign clearly indicates that—

- (a) the pyrotechnic article is not in conformity with Part 2; and
- (b) the pyrotechnic article is not available for purposes other than research, development and testing.

## **PART 2**

### **Obligations of economic operators**

#### **Manufacturers**

#### **Categorisation**

6. Before placing a pyrotechnic article on the market, a manufacturer must—

- (a) categorise it using the categories set out in Schedule 1 (categories of pyrotechnic article), according to its—
  - (i) type of use; or
  - (ii) purpose and level of hazard, including its noise level; and
- (b) ensure that a notified body has confirmed that categorisation as part of a relevant conformity assessment procedure.

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<sup>(13)</sup> OJ L 170, 30.6.2009, p. 1.

<sup>(14)</sup> OJ L 121, 15.5.1993, p. 20.

## **Design and manufacture in accordance with essential safety requirements**

7. Before placing a pyrotechnic article on the market, a manufacturer must ensure that it has been designed and manufactured in accordance with the essential safety requirements.

## **Technical documentation and conformity assessment**

8. Before placing a pyrotechnic article on the market, a manufacturer must—

- (a) have a relevant conformity assessment procedure carried out; and
- (b) draw up the technical documentation referred to—
  - (i) for a pyrotechnic article in respect of which the conformity assessment procedure in regulation 40(a) is being carried out, in point 3(c) of Module B of Annex II to the Directive (as amended from time to time);
  - (ii) for a pyrotechnic article in respect of which the conformity assessment procedure in regulation 40(b) is being carried out, in point 2 of Module G of Annex II to the Directive (as amended from time to time);
  - (iii) for pyrotechnic article in respect of which the conformity assessment procedure in regulation 40(c) is being carried out, in point 3.1(b) of Module H of Annex II to the Directive (as amended from time to time).

## **EU declaration of conformity and CE marking**

9.—(1) Where the conformity of a pyrotechnic article with the essential safety requirements has been demonstrated by a relevant conformity assessment procedure, the manufacturer must, before placing the pyrotechnic article on the market—

- (a) draw up a declaration of conformity in accordance with regulation 41 (EU declaration of conformity); and
- (b) affix the CE marking in accordance with regulation 42 (CE marking).

(2) The manufacturer must keep the EU declaration of conformity up-to-date.

(3) Where a pyrotechnic article is subject to more than one EU instrument requiring a declaration of conformity to be drawn up, the manufacturer must draw up a single declaration of conformity, which—

- (a) identifies the EU instruments; and
- (b) includes references to the publication of those EU instruments in the Official Journal of the European Union.

## **Retention of technical documentation and EU declaration of conformity**

10. A manufacturer must keep the technical documentation and the EU declaration of conformity drawn up in respect of a pyrotechnic article for a period of 10 years beginning on the day on which the pyrotechnic article is placed on the market.

## **Labelling of pyrotechnic articles other than pyrotechnic articles for vehicles**

11.—(1) Before placing a pyrotechnic article on the market, a manufacturer must ensure that it is labelled —

- (a) visibly, legibly and indelibly;
- (b) clearly, understandably and intelligibly; and
- (c) subject to paragraphs (3) and (4), in the official language of the member State in which the pyrotechnic article is to be made available to the end-user.

(2) The manufacturer must ensure that the labelling of the pyrotechnic article includes, as a minimum, the information specified in Schedule 3 (labelling: required information).

(3) The information specified in paragraph 1(a) and (b) of Schedule 3 must be provided in a language which can be easily understood by the end-users and the market surveillance authority in the member State in which it is to be made available to such end-users.

(4) The information specified in paragraph 1(f) of Schedule 3 must be provided in a language which can be easily understood by consumers and other end-users in the member State in which the pyrotechnic article is to be made available to such consumers and other end-users.

(5) Where the pyrotechnic article is to be made available to end-users in the United Kingdom the language which can be easily understood by consumers and other end-users is English.

(6) Where it is not possible for information specified in paragraph 1(a) and (b) of Schedule 3 to be indicated on the pyrotechnic article (including where this is as a result of other labelling requirements referred to in Schedule 3 having taken up the available space on the pyrotechnic article), the manufacturer must ensure that that information is indicated on its packaging or in a document accompanying the pyrotechnic article.

(7) If the pyrotechnic article does not provide sufficient space for the other labelling requirements specified in Schedule 3 (including where this is as a result of the information specified in paragraph 1(a) and (b) of Schedule 3 having taken up the available space on the pyrotechnic article), the manufacturer must ensure that the information is provided on the smallest piece of packaging.

(8) This regulation does not apply to pyrotechnic articles for vehicles.

### **Labelling of pyrotechnic articles for vehicles**

**12.**—(1) Before placing a pyrotechnic article for a vehicle on the market, a manufacturer must ensure that it is labelled with—

- (a) the information about the manufacturer specified in paragraph 1(a) and (b) of Schedule 3;
- (b) the name and type of the pyrotechnic article;
- (c) the registration number of the pyrotechnic article;
- (d) the product, batch or serial number of the pyrotechnic article; and, where necessary
- (e) safety instructions.

(2) If the pyrotechnic article for a vehicle does not provide sufficient space for the labelling requirements specified in paragraph (1), the manufacturer must ensure that the information is provided on the packaging.

(3) Before placing a pyrotechnic article for a vehicle on the market, the manufacturer must draw up a safety data sheet.

(4) In paragraph (3), “safety data sheet” means a document—

- (a) compiled in accordance with Annex II to Regulation (EC) 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals, establishing a European Chemicals Agency<sup>(15)</sup> (as amended from time to time); and
- (b) which takes account of the specific needs of professional users.

### **Compliance procedures for series production**

**13.**—(1) A manufacturer of pyrotechnic articles which are manufactured by series production must ensure that, before placing such a pyrotechnic article on the market, procedures are in place to ensure that any pyrotechnic article so manufactured will be in conformity with Part 2.

(2) In doing so, the manufacturer must take adequate account of—

- (a) any change in pyrotechnic article design or characteristics; and
- (b) any change in a harmonised standard or in another technical specification by reference to which the EU declaration of conformity was drawn up.

(3) In this regulation, “technical specification” means a document that prescribes technical requirements to be fulfilled by a pyrotechnic article.

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<sup>(15)</sup> OJ L 396, 30.12.2006, p. 1.

## Importers

### **Prohibition on placing on the market pyrotechnic articles which are not in conformity**

14. An importer must not place a pyrotechnic article on the market unless it is in conformity with the essential safety requirements.

### **Requirements which must be satisfied before an importer places a pyrotechnic article on the market**

15.—(1) Before placing a pyrotechnic article on the market, an importer must ensure that—

- (a) a relevant conformity assessment procedure has been carried out by the manufacturer;
- (b) the manufacturer has drawn up the technical documentation;
- (c) the pyrotechnic article—
  - (i) bears the CE marking; and
  - (ii) is accompanied by the required documents; and
- (d) the manufacturer has complied with the requirements set out in regulations 11 (labelling of pyrotechnic articles other than pyrotechnic articles for vehicles) and 12 (labelling of pyrotechnic articles for vehicles).

(2) In paragraph (1)(c)(ii), “required documents” means any documents that are required to be provided with the pyrotechnic article pursuant to—

- (a) regulation 11(6); and
- (b) regulation 35 (supply of safety data sheet).

### **Prohibition on placing on the market pyrotechnic articles considered not to be in conformity with the essential safety requirements**

16.—(1) Where an importer considers, or has reason to believe, that a pyrotechnic article is not in conformity with the essential safety requirements, the importer must not place the pyrotechnic article on the market.

(2) Where the pyrotechnic article presents a risk, the importer must inform the manufacturer and the market surveillance authority of that risk.

### **Information identifying importer**

17.—(1) Before placing a pyrotechnic article on the market, an importer must indicate on the pyrotechnic article—

- (a) the name, registered trade name or registered trade mark of the importer; and
- (b) a postal address at which the importer can be contacted.

(2) The information specified in paragraph (1) must be in a language which can be easily understood by end-users and the market surveillance authority in the member State in which it is to be made available to end-users.

(3) Where it is not possible to indicate the information specified in paragraph (1) on the pyrotechnic article, the importer must indicate that information—

- (a) on the packaging; or
- (b) in a document accompanying the pyrotechnic article.

### **Instructions and safety information**

18.—(1) When placing a pyrotechnic article on the market, an importer must ensure that it is accompanied by instructions and safety information in a language which can be easily understood by consumers and other end-users in the member State in which the pyrotechnic article is to be made available to such consumers and other end-users.

(2) When the pyrotechnic article is being made available to consumers and other end-users in the United Kingdom, the language which can be easily understood by consumers and other end-users is English.

## **Retention of technical documentation and EU declaration of conformity**

**19.** An importer must, for a period of 10 years beginning on the day on which the pyrotechnic article is placed on the market—

- (a) keep a copy of the EU declaration of conformity at the disposal of enforcing authorities; and
- (b) ensure that the technical documentation can be made available to enforcing authorities, upon request.

Manufacturers and importers

## **Traceability**

**20.**—(1) Where a manufacturer or importer places a pyrotechnic article on the market before 17th October 2016, the manufacturer or importer must—

- (a) maintain a record of the registration number of the pyrotechnic article for a period of at least 10 years beginning on the day on which it is placed on the market; and
- (b) upon request, make this information available to an enforcing authority.

(2) Where a manufacturer or importer places a pyrotechnic article on the market after 16th October 2016, the manufacturer or importer must—

- (a) keep a record of the required information for the pyrotechnic article for a period of at least 10 years beginning on the day on which it is placed on the market;
- (b) transfer the record referred to in subparagraph (a) to the Secretary of State if the manufacturer or importer is ceasing to trade; and
- (c) upon a reasoned request, provide an enforcing authority with the required information.

(3) The Secretary of State may appoint a person to receive, hold and manage the record referred to in paragraph (2) on the Secretary of State's behalf.

(4) In this regulation, "required information" means the following information about a pyrotechnic article—

- (a) the registration number;
- (b) the trade name;
- (c) the generic type and sub-type (where applicable); and
- (d) the site of manufacture.

## **Monitoring**

**21.** When an enforcing authority deems it appropriate, with regard to the risks to the health and safety of consumers presented by a pyrotechnic article, a manufacturer or importer must, upon a duly justified request of the authority—

- (a) carry out sample testing of pyrotechnic articles made available on the market;
- (b) investigate complaints that pyrotechnic articles are not in conformity with Part 2;
- (c) keep a register of—
  - (i) complaints;
  - (ii) pyrotechnic articles which are not in conformity with Part 2; and
  - (iii) pyrotechnic article recalls; and
- (d) keep distributors informed of any monitoring carried out under sub-paragraphs (a), (b) and (c).

## **Duty to take action in respect of pyrotechnic articles placed on the market which are considered not to be in conformity**

**22.**—(1) A manufacturer or importer who considers, or has reason to believe, that a pyrotechnic article which they have placed on the market is not in conformity with Part 2 must immediately take the corrective measures necessary to—

- (a) bring the pyrotechnic article into conformity;

- (b) withdraw the pyrotechnic article; or
- (c) recall the pyrotechnic article.

(2) Where the pyrotechnic article presents a risk, the manufacturer or importer must immediately inform the market surveillance authority, and the competent national authorities of any other member State in which the manufacturer or importer made the pyrotechnic article available on the market, of the risk, giving details of—

- (a) the respect in which the pyrotechnic article is considered not to be in conformity with Part 2; and
- (b) any corrective measures taken.

### **Provision of information and cooperation**

**23.**—(1) A manufacturer or importer must, further to a reasoned request from an enforcing authority, provide the authority with the information and documentation necessary to demonstrate that the pyrotechnic article is in conformity with Part 2—

- (a) in paper or electronic form; and
- (b) in a language which can be easily understood by the enforcing authority.

(2) A manufacturer or importer must, at the request of the enforcing authority, cooperate with the authority on any action taken to—

- (a) evaluate a pyrotechnic article in accordance with regulation 57 (evaluation of pyrotechnic articles presenting a risk);
- (b) eliminate the risks posed by a pyrotechnic article which the manufacturer or importer has placed on the market.

## Distributors

### **Duty to act with due care**

**24.** When making a pyrotechnic article available on the market, a distributor must act with due care to ensure that it is in conformity with Part 2.

### **Requirements which must be satisfied before a distributor makes a pyrotechnic article available on the market**

**25.**—(1) Before making a pyrotechnic article available on the market, the distributor must verify that—

- (a) the pyrotechnic article—
  - (i) bears the CE marking;
  - (ii) is accompanied by the required documents;
  - (iii) is accompanied by instructions and safety information in a language which can be easily understood by consumers and other end-users in the member State in which the pyrotechnic article is to be made available on the market;
- (b) the manufacturer has complied with the requirements set out in regulation 11 (labelling of pyrotechnic articles other than pyrotechnic articles for vehicles) and 12 (labelling of pyrotechnic articles for vehicles);
- (c) the importer has complied with the requirements set out in regulation 17 (information identifying importer).

(2) In paragraph (1)(a)(ii), “required documents” means the documents that are required to be provided with the pyrotechnic article pursuant to—

- (a) regulation 11(6);
- (b) regulation 17(3)(b); and
- (c) regulation 35 (supply of safety data sheet).

### **Prohibition on making available on the market where pyrotechnic article not considered to be in conformity with the essential safety requirements**

26.—(1) Where a distributor considers, or has reason to believe, that a pyrotechnic article is not in conformity with the essential safety requirements, the distributor must not make the pyrotechnic article available on the market.

(2) Where the pyrotechnic article presents a risk, the distributor must inform the following persons of the risk—

- (a) the manufacturer or the importer; and
- (b) the market surveillance authority.

### **Duty to take action in respect of pyrotechnic articles made available on the market which are not in conformity**

27.—(1) A distributor who considers, or has reason to believe, that a pyrotechnic article which the distributor has made available on the market is not in conformity with Part 2 must make sure that the necessary corrective measures are taken to—

- (a) bring that pyrotechnic article into conformity;
- (b) withdraw the pyrotechnic article; or
- (c) recall the pyrotechnic article.

(2) Where the pyrotechnic article presents a risk, the distributor must immediately inform the market surveillance authority, and the competent national authorities of the other member States in which the distributor has made the pyrotechnic article available on the market, of that risk, giving details of—

- (a) the respect in which the pyrotechnic article is considered not to be in conformity with Part 2; and
- (b) any corrective measures taken.

### **Provision of information and cooperation**

28.—(1) A distributor must, further to a reasoned request from an enforcing authority, provide the authority with the information and documentation, in paper or electronic form, necessary to demonstrate that the pyrotechnic article is in conformity with Part 2.

(2) A distributor must, at the request of the enforcing authority, cooperate with the authority on any action taken to—

- (a) evaluate a pyrotechnic article in accordance with regulation 57 (evaluation of pyrotechnic articles presenting a risk); and
- (b) eliminate the risks posed by a pyrotechnic article which the distributor has made available on the market.

Importers and distributors

### **Storage and transport**

29. Each importer and distributor must ensure that, while a pyrotechnic article is under their responsibility, its storage or transport conditions do not jeopardise its conformity with the essential safety requirements.

### **Cases in which obligations of manufacturers apply to importers and distributors**

30. An economic operator who would, but for this regulation, be considered an importer or distributor (“A”), is to be considered a manufacturer for the purposes of these Regulations and is subject to the obligations of a manufacturer under this Part, where A—

- (a) places a pyrotechnic article on the market under A’s own name or trademark; or
- (b) modifies a pyrotechnic article already placed on the market in such a way that it may affect whether the pyrotechnic article is in conformity with Part 2.

### **Prohibition on making available to persons younger than the minimum age limit**

**31.**—(1) An economic operator must not make a pyrotechnic article available on the market to a person younger than the minimum age limit in the member State in which it is made available.

(2) Where a pyrotechnic article is made available in the United Kingdom, the minimum age limits are—

- (a) for a Christmas cracker, 12 years;
- (b) for a category F1 firework other than a Christmas cracker, 16 years;
- (c) for a category F2 firework or a category F3 firework, 18 years;
- (d) for a category T1 theatrical pyrotechnic article, 18 years;
- (e) for a category P1 other pyrotechnic article, 18 years.

(3) In this regulation—

“Christmas cracker” means a paper or foil tube, crimped at each end, enclosing novelties and with one or more snaps running along the length of the tube; and

“snap” means two overlapping strips of cardboard or paper, or two strings, with a friction-sensitive pyrotechnic composition in sliding contact with an abrasive surface and designed to be held in the hand.

### **Prohibition on making available to persons without specialist knowledge**

**32.** An economic operator must not make available on the market the following pyrotechnic articles, except to a person with specialist knowledge—

- (a) a category F4 firework;
- (b) a category T2 theatrical pyrotechnic article; or
- (c) a category P2 other pyrotechnic article.

### **Prohibitions on making available certain category F2 and F3 fireworks**

**33.**—(1) An economic operator must not make available on the market in the United Kingdom a category F2 firework or a category F3 firework of any of the following descriptions—

- (a) an aerial wheel;
- (b) a banger, flash banger or double banger;
- (c) a jumping cracker;
- (d) a jumping ground spinner;
- (e) a spinner;
- (f) a mini rocket;
- (g) a shot tube—
  - (i) which produces a report as its principal effect; or
  - (ii) the inside diameter of which is greater than 30mm;
- (h) a battery containing bangers, flash bangers or double bangers;
- (i) a combination (other than a wheel) which includes one or more bangers, flash bangers or double bangers.

(2) Paragraph (1)(b) does not prohibit the making available on the market of a category F2 firework or category F3 firework as part of a wheel.

(3) Paragraph (1) does not prohibit the making available on the market of a category F2 firework or category F3 firework to a person with specialist knowledge.

(4) No person who carries on a business involving, to whatever extent, the making available of fireworks on the market by retail may supply a category F2 firework or category F3 firework which has been removed, caused to be removed, or that person knows to have been removed from a selection pack or primary pack of fireworks, intended for retail sale as a single unit, made up of the same or different types of fireworks.



### **Prohibition on making pyrotechnic articles for vehicles available to members of the general public**

**34.** An economic operator must not make a category P1 pyrotechnic article, which is also a pyrotechnic article for a vehicle (including an airbag or seat belt pre-tensioner system), available to a member of the general public unless the article has been incorporated in a vehicle or a detachable vehicle part.

### **Supply of safety data sheet**

**35.** When making a pyrotechnic article for a vehicle available on the market to a professional user, an economic operator must supply to the professional user the safety data sheet referred to in regulation 12(3) (labelling of pyrotechnic articles for vehicles)—

- (a) in the language requested by that professional user; and
- (b) on paper or in electronic form, provided that the format chosen is accessible to the professional user.

### **Translation of declaration of conformity**

**36.** An economic operator who makes a pyrotechnic article available on the market in the United Kingdom must ensure that the EU declaration of conformity is prepared in, or translated into, English.

### **Identification of economic operators**

**37.—**(1) An economic operator (“E”) must, on request, identify the following to the market surveillance authority—

- (a) any economic operator who has supplied E with a pyrotechnic article; and
  - (b) any economic operator to whom E has supplied a pyrotechnic article.
- (2) E must be able to present the information referred to—
- (a) in paragraph (1)(a), for a period of 10 years beginning on the day on which E was supplied with the pyrotechnic article;
  - (b) in paragraph (1)(b), for a period of 10 years beginning on the day on which E supplied the pyrotechnic article.

### **Prohibition on improper use of CE marking**

**38.—**(1) An economic operator must not affix the CE marking to a pyrotechnic article unless—

- (a) that economic operator is the manufacturer; and
- (b) the conformity of the pyrotechnic article with the essential safety requirements has been demonstrated by a relevant conformity assessment procedure.

(2) An economic operator must not affix a marking to a pyrotechnic article—

- (a) which is not the CE marking; but
- (b) which purports to attest that the pyrotechnic article satisfies the essential safety requirements.

(3) An economic operator must not affix to a pyrotechnic article a marking, sign or inscription which is likely to mislead any other person as to the meaning or form of the CE marking.

(4) An economic operator must not affix to a pyrotechnic article any other marking if the visibility, legibility and meaning of the CE marking would be impaired as a result.

## PART 3

### Conformity assessment

#### Presumption of conformity

**39.** A pyrotechnic article which is in conformity with a harmonised standard (or part of such a standard) the reference to which has been published in the Official Journal of the European Union is to be presumed to be in conformity with the essential safety requirements covered by that standard (or that part of that standard).

#### Conformity assessment procedures

**40.**—(1) For the assessment of conformity of a pyrotechnic article, the manufacturer must follow one of the following procedures referred to in Annex II to the Directive (as amended from time to time)—

- (a) EU-type examination carried out by a notified body (Module B), and, at the choice of the manufacturer, one of the following procedures—
  - (i) conformity to type based on internal production control plus supervised product checks at random intervals (Module C2);
  - (ii) conformity to type based on quality assurance of the production process (Module D);
  - (iii) conformity to type based on product quality assurance (Module E);
- (b) conformity based on unit verification by a notified body (Module G);
- (c) conformity based on full quality assurance by a notified body (Module H), insofar as it concerns category F4 fireworks.

#### EU declaration of conformity

**41.** The EU declaration of conformity for a pyrotechnic article must—

- (a) state that the fulfilment of the essential safety requirements has been demonstrated in respect of the pyrotechnic article;
- (b) contain the elements specified in Annex II to the Directive (as amended from time to time) for the relevant conformity assessment procedure followed in respect of the pyrotechnic article; and
- (c) have the model structure set out in Annex III to the Directive (as amended from time to time).

#### CE marking

**42.**—(1) The CE marking must be affixed visibly, legibly and indelibly to the pyrotechnic article.

(2) Where it is not possible or warranted, on account of the nature of the pyrotechnic article, to affix the CE marking in accordance with paragraph (1), the CE marking must be affixed to—

- (a) the packaging; and
- (b) the accompanying documents.

(3) The CE marking must be followed by the identification number of the notified body which carried out the relevant conformity assessment procedure for the pyrotechnic article, where that body is involved in the production control phase.

(4) The identification number of the notified body must be affixed—

- (a) by the notified body itself; or
- (b) under the instructions of the notified body, by the manufacturer.

## PART 4

### Notification of conformity assessment bodies

#### Notified bodies

**43.** For the purposes of this Part, a notified body is a conformity assessment body which satisfies the following conditions—

- (a) the Secretary of State has—
  - (i) designated the conformity assessment body as an authorised body in accordance with regulation 44 (designation of authorised bodies); and
  - (ii) notified the European Commission and the other member States in accordance with regulation 47 (notification); and
- (b) no objections are raised by the European Commission or the other member States—
  - (i) within two weeks of a notification, where an accreditation certificate is used; or
  - (ii) within two months of a notification, where accreditation is not used.

#### Designation of authorised bodies

**44.** The Secretary of State may designate a conformity assessment body as an authorised body if—

- (a) the conformity assessment body has made an application in accordance with regulation 45 (application for designation as an authorised body); and
- (b) the Secretary of State is satisfied that the conformity assessment body meets the notified body requirements.

#### Application for designation as an authorised body

**45.** When making an application to the Secretary of State for designation as an authorised body, a conformity assessment body must ensure that the application is accompanied by—

- (a) a description of—
  - (i) the conformity assessment activities;
  - (ii) the conformity assessment modules for which the conformity assessment body claims to be competent; and
  - (iii) the pyrotechnic articles for which the conformity assessment body claims to be competent; and either
- (b) an accreditation certificate issued by the United Kingdom Accreditation Service attesting that the conformity assessment body fulfils the notified body requirements; or
- (c) the documentary evidence necessary for the Secretary of State to verify, recognise and regularly monitor the conformity assessment body's compliance with the notified body requirements.

#### Presumption of conformity of notified bodies

**46.** Where a conformity assessment body demonstrates its conformity with the criteria laid down in the a harmonised standard (or part of such a standard), the reference of which has been published in the Official Journal of the European Union, the Secretary of State is to presume that the conformity assessment body meets the notified body requirements covered by that standard (or part of that standard).

#### Notification

**47.—**(1) The Secretary of State must notify the European Commission and the other member States of any conformity assessment body designated as an authorised body under regulation 44.

- (2) A notification under paragraph (1) must include—
  - (a) details of—

- (i) the conformity assessment activities in respect of which the conformity assessment body has been designated; and
- (ii) the conformity assessment modules in respect of which the conformity assessment body has been designated; and either
- (b) an accreditation certificate issued by the United Kingdom Accreditation Service attesting that the conformity assessment body fulfils the notified body requirements; or
- (c) documentary evidence which attests to—
  - (i) the conformity assessment body’s competence; and
  - (ii) the arrangements in place to ensure that the conformity assessment body will be monitored regularly and will continue to satisfy the notified body requirements.

### **Monitoring**

- 48.** The Secretary of State must monitor each notified body with a view to verifying that the notified body—
- (a) continues to meet the notified body requirements;
  - (b) complies with any condition to which its designation is subject; and
  - (c) carries out its functions in accordance with these Regulations.

### **Delegation to the United Kingdom Accreditation Service**

**49.** The Secretary of State may authorise the United Kingdom Accreditation Service to carry out the following activities on behalf of the Secretary of State—

- (a) assessing applications for designation as an authorised body; and
- (b) monitoring notified bodies.

### **Changes to notifications**

**50.—(1)** Where the Secretary of State determines that a notified body no longer meets the notified body requirements, or that it is failing to fulfil its obligations under these Regulations, the Secretary of State must restrict, suspend or withdraw the notified body’s designation as an authorised body.

(2) In deciding what action is required under paragraph (1), the Secretary of State must have regard to the seriousness of the failure to meet the notified body requirements or to fulfil the obligations under these Regulations.

(3) Before taking action under paragraph (1), the Secretary of State must—

- (a) give notice in writing that it intends to take such action and the reasons for taking such action; and
- (b) give the notified body an opportunity to make representations within a reasonable period from the date of that notice and consider any such representations.

(4) Where the Secretary of State takes action under paragraph (1), the Secretary of State must immediately inform the Commission and the other member States.

(5) Where the Secretary of State has taken action under paragraph (1), or where the notified body has ceased its activity, the notified body must—

- (a) on the request of the Secretary of State, transfer its files (including the register which it maintains under paragraph 5 of Schedule 6 (operational obligations of notified bodies)) to another notified body or to the Secretary of State; or
- (b) ensure that its files are kept available for the Secretary of State and enforcing authorities for a period equal to that specified in paragraphs 5 and 6 of Schedule 6.

### **Operational obligations of notified bodies**

**51.** When a notified body carries out a relevant conformity assessment procedure, it must do so in accordance with Schedule 6 (operational obligations of notified bodies).

## **Subsidiaries and contractors**

**52.**—(1) Where a notified body subcontracts specific tasks connected with conformity assessment, or has such tasks carried out by a subsidiary, the tasks are only to be treated as having been carried out by a notified body for the purposes of regulation 43 (conformity assessment procedures) where the conditions in paragraphs (2) and (3) are satisfied.

(2) The notified body must—

- (a) ensure that the subcontractor or subsidiary meets the notified body requirements; and
- (b) inform the Secretary of State accordingly.

(3) The notified body must have obtained the agreement of the client to the use of a subcontractor or subsidiary.

(4) Where a notified body subcontracts specific tasks connected with conformity assessment, or has such tasks carried out by a subsidiary, the notified body must for a period of 10 years beginning on the day on which the tasks are carried out, keep at the disposal of the Secretary of State the documentation concerning—

- (a) the assessment of the qualifications of the subcontractor or the subsidiary; and
- (b) the conformity assessment activities carried out by the subcontractor or subsidiary.

(5) When monitoring a notified body in accordance with regulation 48, the Secretary of State is to treat the notified body as responsible for the tasks performed by a subcontractor or subsidiary, wherever the subcontractor or subsidiary is established.

## **PART 5**

### **Market surveillance and enforcement**

#### **Designation of market surveillance authority**

**53.**—(1) In Great Britain, the market surveillance authority is—

- (a) within its area, the weights and measures authority for—
  - (i) category F1 fireworks;
  - (ii) category F2 fireworks; and
  - (iii) category F3 fireworks;
- (b) the Health and Safety Executive for—
  - (i) category F4 fireworks;
  - (ii) category T1 theatrical pyrotechnic articles;
  - (iii) category T2 theatrical pyrotechnic articles;
  - (iv) category P1 other pyrotechnic articles; and
  - (v) category P2 other pyrotechnic articles.

(2) In Northern Ireland, the market surveillance authority is—

- (a) within its area, the district council for—
  - (i) category F1 fireworks;
  - (ii) category F2 fireworks;
  - (iii) category F3 fireworks;
- (b) the Secretary of State for—
  - (i) category F4 fireworks;
  - (ii) category T1 theatrical pyrotechnic articles;
  - (iii) category T2 theatrical pyrotechnic articles;
  - (iv) category P1 other pyrotechnic articles; and
  - (v) category P2 other pyrotechnic articles.

## Enforcement

**54.**—(1) The market surveillance authority must enforce these Regulations and RAMS (in its application to pyrotechnic articles) or ensure that they are enforced.

(2) In Great Britain, a GB enforcer other than the market surveillance authority may enforce these Regulations and RAMS (in its application to pyrotechnic articles).

(3) In Northern Ireland, a NI enforcer other than the market surveillance authority may enforce these Regulations and RAMS (in its application to pyrotechnic articles).

(4) Before taking action under paragraphs (1) or (2) a GB enforcer or NI enforcer must notify the market surveillance authority of the proposed action.

(5) The Secretary of State may appoint a person to act on behalf of the Secretary of State for the purposes of enforcing these Regulations and RAMS (in its application to pyrotechnic articles).

(6) No enforcing authority may prosecute an offence in Scotland.

(7) In this regulation—

“GB enforcer” means—

- (a) a weights and measures authority;
- (b) the Health and Safety Executive;
- (c) the Secretary of State;

“NI enforcer” means—

- (d) a district council;
- (e) the Secretary of State.

## Enforcement powers

**55.**—(1) Schedule 7 (enforcement powers of weights and measures authorities, district councils and the Secretary of State under the 1987 Act) is to have effect where the enforcing authority is—

- (a) a weights and measures authority;
- (b) a district council;
- (c) the Secretary of State.

(2) Schedule 8 (enforcement powers of the Health and Safety Executive under the 1974 Act) is to have effect where the enforcing authority is the Health and Safety Executive.

(3) In addition to the powers available to an enforcement authority under paragraph (1) or (2), the authority may use the powers set out in Schedule 9 (compliance, withdrawal and recall notices).

(4) This regulation does not prevent an enforcing authority from taking action in respect of a pyrotechnic article under the General Product Safety Regulations 2005<sup>(16)</sup>.

## Exercise of enforcement powers

**56.** When enforcing these Regulations, the enforcing authority must exercise its powers in a manner which is consistent with—

- (a) regulation 57 (evaluation of pyrotechnic articles presenting a risk);
- (b) regulation 58 (enforcement action in respect of pyrotechnic articles which are not in conformity and which present a risk);
- (c) regulation 59 (EU safeguard procedure);
- (d) regulation 60 (enforcement action in respect of pyrotechnic articles which are in conformity, but present a risk);

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<sup>(16)</sup> S.I. 2005/1803; amended by S.I. 2005/2759, 2011/1043, 2011/1881 and 2012/1848.

- (e) regulation 61 (enforcement action in respect of formal non-compliance);
- (f) regulation 62 (restrictive measures).

### **Evaluation of pyrotechnic articles presenting a risk**

**57.**—(1) Where the market surveillance authority has sufficient reason to believe that a pyrotechnic article presents a risk, the market surveillance authority must carry out an evaluation in relation to the pyrotechnic article covering the relevant requirements of Part 2 applying in respect of that pyrotechnic article.

(2) Where an enforcing authority other than the market surveillance authority has sufficient reason to believe that a pyrotechnic article presents a risk, that enforcing authority may carry out an evaluation in relation to the pyrotechnic article covering the relevant requirements of Part 2 applying in respect of that pyrotechnic article.

### **Enforcement action in respect of pyrotechnic articles which are not in conformity and which present a risk**

**58.**—(1) Where, in the course of the evaluation referred to in regulation 57, an enforcing authority finds that the pyrotechnic article is not in conformity with Part 2, it must, without delay, require a relevant economic operator to—

- (a) take appropriate corrective actions to bring the pyrotechnic article into conformity with those requirements within a prescribed period;
- (b) withdraw the pyrotechnic article within a prescribed period; or
- (c) recall the pyrotechnic article within a prescribed period.

(2) The enforcing authority must inform the notified body which carried out the conformity assessment procedure in respect of the pyrotechnic article of—

- (a) the respect in which the pyrotechnic article is not in conformity with Part 2; and
- (b) the actions which the enforcing authority is requiring the relevant economic operator to take.

(3) Where the enforcing authority is not the Secretary of State and it considers that the lack of conformity referred to in paragraph (1) is not restricted to the United Kingdom, it must notify the Secretary of State of—

- (a) the results of the evaluation; and
- (b) the actions which it has required the economic operator to take.

(4) Where the Secretary of State receives a notice under paragraph (3), or otherwise considers that the lack of conformity referred to in paragraph (1) is not restricted to the United Kingdom, the Secretary of State must inform the European Commission and the other member States of—

- (a) the results of the evaluation; and
- (b) the actions which the enforcing authority has required the economic operator to take.

(5) Where the relevant economic operator does not take adequate corrective action within the prescribed period, the enforcing authority must take appropriate measures to—

- (a) prohibit or restrict the pyrotechnic article being made available on the market in the United Kingdom;
- (b) withdraw the pyrotechnic article from the United Kingdom market; or
- (c) recall the pyrotechnic article.

(6) Where the enforcing authority is not the Secretary of State and it takes measures under paragraph (5), it must notify the Secretary of State of those measures without delay.

(7) Where the Secretary of State receives a notice under paragraph (6), or takes measures under paragraph (5), the Secretary of State must notify the European Commission and the other member States of those measures without delay.

(8) The notices in paragraphs (6) and (7) must include details about the pyrotechnic article and, in particular—

- (a) the data necessary for the identification of the pyrotechnic article which is not in conformity with Part 2;
- (b) the origin of the pyrotechnic article;
- (c) the nature of the lack of conformity alleged and the risk involved;
- (d) the nature and duration of the measures taken;

- (e) the arguments put forward by the relevant economic operator;
  - (f) whether the lack of conformity is due to either of the following—
    - (i) failure of the pyrotechnic article to meet requirements relating to a risk;
    - (ii) shortcomings in the harmonised standards referred to in regulation 39 (presumption of conformity) conferring a presumption of conformity.
- (9) In this regulation, “prescribed period” means a period which is—
- (a) prescribed by the enforcing authority; and
  - (b) reasonable and commensurate with the nature of the risk presented by the pyrotechnic article.

### **EU safeguard procedure**

**59.**—(1) Where another member State has initiated the procedure under Article 39 of the Directive (as amended from time to time), each enforcing authority (other than the Secretary of State) must, without delay, inform the Secretary of State of—

- (a) any measures taken by the enforcing authority in respect of the pyrotechnic article; and
- (b) any additional information which the enforcing authority has at its disposal relating to the lack of conformity of the pyrotechnic article.

(2) Where another member State has initiated the procedure under Article 39 of the Directive (as amended from time to time), the Secretary of State must, without delay, inform the European Commission and the other member States of—

- (a) any measures taken by an enforcing authority in respect of the pyrotechnic article;
- (b) any additional information which an enforcing authority has at its disposal relating to the lack of conformity of the pyrotechnic article; and
- (c) any objections that the Secretary of State may have to the measure taken by the member State initiating the procedure.

(3) Where a measure taken by another member State in respect of a pyrotechnic article is considered justified under Article 39(7) of the Directive (as amended from time to time), the market surveillance authority must ensure that appropriate measures, such as withdrawal, are taken in respect of the pyrotechnic article without delay.

(4) Where a measure taken by another member State in respect of a pyrotechnic article is considered justified by the European Commission under Article 40(1) of the Directive (as amended from time to time), the market surveillance authority must take the necessary measures to ensure that the pyrotechnic article is withdrawn from the United Kingdom market.

(5) Where the market surveillance authority is not the Secretary of State and it has taken action under paragraph (3) or (4), it must inform the Secretary of State.

(6) Where the Secretary of State receives a notice under paragraph (5) or has taken action under paragraphs (3) or (4), the Secretary of State must inform the European Commission of the action taken.

(7) If a measure taken by an enforcing authority pursuant to regulation 58 is considered unjustified by the European Commission under Article 40(1) of the Directive (as amended from time to time), the enforcing authority must withdraw that measure.

### **Enforcement action in respect of pyrotechnic articles which are in conformity, but present a risk**

**60.**—(1) Where, having carried out an evaluation under regulation 57, an enforcing authority finds that although a pyrotechnic article is in conformity with Part 2, it presents a risk, the enforcing authority must require a relevant economic operator to take appropriate measures to—

- (a) ensure that the pyrotechnic article concerned, when placed on the market, no longer presents a risk;
- (b) withdraw the pyrotechnic article within a prescribed period; or
- (c) recall the pyrotechnic article within a prescribed period.

(2) Where an enforcing authority is not the Secretary of State and it takes measures under paragraph (1), it must notify the Secretary of State immediately.



(3) Where the Secretary of State receives a notice under paragraph (2) or takes measures under paragraph (1), the Secretary of State must notify the European Commission and the other member States immediately.

(4) The notices referred to in paragraphs (2) and (3) must include details about the pyrotechnic article and, in particular—

- (a) the data necessary for the identification of the pyrotechnic article concerned;
- (b) the origin and the supply chain of the pyrotechnic article;
- (c) the nature of the risk involved; and
- (d) the nature and duration of the measures taken by the enforcing authority.

(5) In this regulation, “prescribed period” means a period which is—

- (a) prescribed by the enforcing authority; and
- (b) reasonable and commensurate with the nature of the risk presented by the pyrotechnic article.

### **Enforcement action in respect of formal non-compliance**

**61.**—(1) Where an enforcing authority makes one of the following findings relating to a pyrotechnic article, it must require a relevant economic operator to put an end to the non-compliance concerned within a specified period—

- (a) the CE marking—
  - (i) has not been affixed; or
  - (ii) has been affixed otherwise than in accordance with regulations 38 (prohibition on improper use of CE marking) and 42 (CE marking);
- (b) where a notified body is involved in the production control phase for the pyrotechnic article, the identification number of the notified body—
  - (i) has not been affixed; or
  - (ii) has been affixed otherwise than in accordance with regulation 42;
- (c) the EU declaration of conformity—
  - (i) has not been drawn up; or
  - (ii) has been drawn up otherwise than in accordance with regulations 9 (EU declaration of conformity and CE marking) and 41 (EU declaration of conformity);
- (d) the technical documentation is either not available or not complete;
- (e) the following information that is required to be included in the labelling of the pyrotechnic article is absent, false or incomplete—
  - (i) the information specified in paragraph 1(a) and (b) of Schedule 3 (labelling: required information);
  - (ii) the information specified in regulation 17(1) (information identifying importer); or
- (f) any other administrative requirement imposed on the manufacturer or importer under Part 2 has not been fulfilled.

(2) Until the specified period has elapsed, the enforcing authority must not commence proceedings under these Regulations, or take any other enforcement action under these Regulations, against the relevant economic operator in respect of the non-compliance concerned.

(3) Where the non-compliance referred to in paragraph (1) persists, the enforcing authority must take appropriate measures to—

- (a) restrict or prohibit the pyrotechnic article being made available on the market;
- (b) ensure that the pyrotechnic article is withdrawn; or
- (c) ensure that the pyrotechnic article is recalled.

(4) This regulation does not apply where a pyrotechnic article presents a risk.

## Restrictive measures

**62.** When enforcing these Regulations, an enforcing authority must comply with the requirements of Article 21 of RAMS (as amended from time to time) in relation to any measure to—

- (a) prohibit or restrict a pyrotechnic article being made available on the market;
- (b) withdraw a pyrotechnic article; or
- (c) recall a pyrotechnic article.

## Offences

**63.—(1)** It is an offence for a manufacturer to contravene or fail to comply with any requirement of—

- (a) regulation 6 (categorisation);
- (b) regulation 7 (design and manufacture in accordance with essential safety requirements);
- (c) regulation 8 (technical documentation and conformity assessment);
- (d) regulation 9 (EU declaration of conformity and CE marking);
- (e) regulation 10 (retention of technical documentation and EU declaration of conformity);
- (f) regulation 11 (labelling of pyrotechnic articles other than pyrotechnic articles for vehicles);
- (g) regulation 12 (labelling of pyrotechnic articles for vehicles);
- (h) regulation 13 (compliance procedures for series production);
- (i) regulation 20 (traceability);
- (j) regulation 21 (monitoring);
- (k) regulation 22 (duty to take action in respect of pyrotechnic articles placed on the market which are considered not to be in conformity);
- (l) regulation 23 (provision of information and cooperation);
- (m) regulation 31 (prohibition on making available to persons younger than the minimum age limit);
- (n) regulation 32 (prohibition on making available to persons without specialist knowledge);
- (o) regulation 33 (prohibitions on making available certain category F2 and F3 fireworks);
- (p) regulation 34 (prohibition on making pyrotechnic articles for vehicles available to members of the general public);
- (q) regulation 35 (supply of safety data sheet);
- (r) regulation 36 (translation of EU declaration of conformity);
- (s) regulation 37 (identification of economic operators);
- (t) regulation 38 (prohibition on improper use of CE marking).

**(2)** It is an offence for an importer to contravene or fail to comply with any requirement of—

- (a) regulation 14 (prohibition on placing on the market pyrotechnic articles which are not in conformity);
- (b) regulation 15 (requirements which must be satisfied before an importer places a pyrotechnic article on the market);
- (c) regulation 16 (prohibition on placing on the market pyrotechnic articles considered not to be in conformity with the essential safety requirements);
- (d) regulation 17 (information identifying importer);
- (e) regulation 18 (instructions and safety information);
- (f) regulation 19 (retention of technical documentation and EU declaration of conformity);
- (g) regulation 20;
- (h) regulation 21;
- (i) regulation 22;
- (j) regulation 23;

- (k) regulation 29 (storage and transport);
- (l) regulation 31;
- (m) regulation 32;
- (n) regulation 33;
- (o) regulation 34;
- (p) regulation 35;
- (q) regulation 36;
- (r) regulation 37;
- (s) regulation 38.

(3) It is an offence for a distributor to contravene or fail to comply with any requirement of—

- (a) regulation 24 (duty to act with due care);
- (b) regulation 25 (requirements which must be satisfied before a distributor makes a pyrotechnic article available on the market);
- (c) regulation 26 (prohibition on making available on the market where pyrotechnic article not considered to be in conformity with the essential safety requirements);
- (d) regulation 27 (duty to take action in respect of pyrotechnic articles made available on the market which are not in conformity);
- (e) regulation 28 (provision of information and cooperation);
- (f) regulation 29;
- (g) regulation 31;
- (h) regulation 32;
- (i) regulation 33;
- (j) regulation 34;
- (k) regulation 35;
- (l) regulation 36;
- (m) regulation 37;
- (n) regulation 38.

(4) It is an offence for a conformity assessment body to fail to comply with regulation 50(5) (changes to notifications).

(5) It is an offence for any person to contravene or fail to comply with any requirement of a notice, other than a compliance notice, served on that person by an enforcing authority under regulation 55 (enforcement powers).

(6) It is an offence for any person—

- (a) intentionally to obstruct—
  - (i) an officer of an enforcing authority (or officer of such authority) acting in pursuance of its powers and duties under these Regulations or Article 19 of RAMS;
  - (ii) a customs officer facilitating the action of an enforcing authority under these Regulations; or
- (b) knowingly or recklessly to provide any statement, information, document or record which is false or misleading in a material respect in purported compliance with any requirement of these Regulations or Article 19 of RAMS.

(7) It is an offence for a person who is not authorised to act on behalf of an enforcing authority to purport to exercise any of the powers of the enforcing authority under these Regulations or RAMS.

## Penalties

**64.**—(1) In England, Wales and Northern Ireland, a person guilty of an offence under regulation 63 is liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding 3 months or to both;

- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or to both.
- (2) In Scotland, a person guilty of an offence under regulation 63 is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding 3 months or to both;
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or to both.

**Defence of due diligence**

**65.**—(1) Subject to paragraph (2), (4) and (6), in proceedings for an offence under regulation 63, it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

- (2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—
  - (a) served a notice in accordance with paragraph (3); or
  - (b) obtained the leave of the court.

(3) The notice must—

- (a) give any information in P’s possession which identifies or assists in identifying the person who—
  - (i) committed the act or default; or
  - (ii) supplied the information on which P relied.
- (b) be served on the person bringing the proceedings not less than 7 clear days before—
  - (i) in England, Wales and Northern Ireland, the hearing of the proceedings;
  - (ii) in Scotland, the trial diet.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied upon the information, having regard in particular—

- (a) to the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether P had any reason to disbelieve the information.

(5) In this regulation, “third party allegation” means an allegation that the commission of the offence was due—

- (a) to the act or default of another person; or
- (b) to reliance on information supplied by another person.

(6) This regulation does not apply in respect of proceedings for offences under regulation 63(6).

**Liability of persons other than principal offender**

**66.**—(1) Where the commission of an offence by one person (“A”) under regulation 63 is due to anything which another person (“B”) did or failed to do in the course of business, B is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against A.

(2) Where a body corporate commits an offence, a relevant person is also guilty of the offence where the body corporate’s offence was committed—

- (a) with the consent or connivance of the relevant person; or
- (b) as a result of the negligence of the relevant person.

(3) In paragraph (2), “relevant person” means—

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) in relation to a body corporate managed by its members, a member of that body corporate performing managerial functions;
- (c) in relation to a Scottish partnership, a partner; or
- (d) a person purporting to act as a person described in subparagraphs (a), (b) or (c).

### **Time limit for prosecution of offences**

**67.**—(1) In England and Wales an information relating to an offence under regulation 63 that is triable by a magistrates' court may be so tried if it is laid within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(2) In Scotland—

- (a) summary proceedings for an offence under regulation 63 may be commenced before the end of 12 months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to the Lord Advocate's knowledge; and
- (b) section 136(3) of the Criminal Procedure (Scotland) Act 1995 (time limit for certain offences) applies for the purpose of this paragraph as it applies for the purpose of that section.

(3) In Northern Ireland summary proceedings for an offence under regulation 63 may be instituted within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the knowledge of the prosecutor.

(4) No proceedings may be brought more than three years after the commission of the offence.

(5) For the purposes of this regulation a certificate of the prosecutor (or in Scotland, the Lord Advocate) as to the date on which the evidence referred to paragraphs (1), (2) or (3) came to light, is conclusive evidence.

(6) This regulation has effect subject to paragraphs 1(n) and 2(l) of Schedule 8 (enforcement powers of the Health and Safety Executive under the 1974 Act).

### **Service of documents**

**68.**—(1) Any document required or authorised by these Regulations to be served on a person may be served by—

- (a) delivering it to that person in person;
- (b) leaving it at that person's proper address; or
- (c) sending it by post or electronic means to that person's proper address.

(2) In the case of a body corporate, a document may be served on a director of that body.

(3) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.

(4) For the purposes of this regulation, "proper address" means—

- (a) in the case of a body corporate or its director—
  - (i) the registered or principal office of that body; or
  - (ii) the email address of the secretary or clerk of that body;
- (b) in the case of a partnership, a partner or person having control or management of the partnership business—
  - (i) the principal office of the partnership; or
  - (ii) the email address of a partner or person having that control or management;
- (c) in any other case, a person's last known address, which includes an email address.

(5) If a person to be served with a document has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept service, that address must also be treated as that person's proper address.

(6) In this regulation, "partnership" includes a Scottish partnership.

### **Recovery of expenses of enforcement**

**69.**—(1) This regulation applies where a person commits an offence under regulation 63.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the enforcing authority for any expenditure which the enforcing authority has incurred in investigating the offence.

### **Action by enforcing authority**

**70.**—(1) An enforcing authority may itself take action which an economic operator could have been required to take by a notice served under regulation 55 (enforcement powers) where the conditions for serving such a notice are met and either—

- (a) the enforcing authority has been unable to identify any economic operator on whom to serve such a notice; or
- (b) the economic operator on whom such a notice has been served has failed to comply with it.

(2) If the enforcing authority has taken action under paragraph (1)(b), the authority may recover from the economic operator, as a civil debt, any costs or expenses reasonably incurred by the enforcing authority in taking the action.

(3) A civil debt recoverable under paragraph (2) may be recovered summarily—

- (a) in England and Wales by way of a complaint pursuant to section 58 of the Magistrates' Courts Act 1980;
- (b) in Northern Ireland in proceedings under article 62 of the Magistrates' Court (Northern Ireland) Order 1981.

### **Appeals against notices**

**71.**—(1) An application for an order to vary or set aside the terms of a notice served under regulation 55 may be made—

- (a) by the economic operator on whom the notice has been served; and
- (b) in the case of a notice other than a recall notice, by a person having an interest in the pyrotechnic article in respect of which the notice has been served.

(2) An application must be made before the end of the period of 21 days beginning with the day on which the notice was served.

(3) The appropriate court may only make an order setting aside a notice served under regulation 55 if satisfied—

- (a) that the pyrotechnic article to which the notice relates is in conformity with Part 2; or
- (b) that the enforcing authority failed to comply with regulation 56 (exercise of enforcement powers) when serving of the notice.

(4) On an application to vary the terms of a notice served under regulation 55, the appropriate court may vary the terms of the notice as it considers appropriate.

(5) In this regulation—

- (a) the “appropriate court” is to be determined in accordance with regulation 72 (appropriate court for appeals against notices); and
- (b) “notice” means any of the following—
  - (i) a prohibition notice served in accordance with Schedule 7 (enforcement powers of weights and measures authorities, district councils and the Secretary of State under the 1987 Act);
  - (ii) a notice to warn served in accordance with Schedule 8;
  - (iii) a suspension notice served in accordance with Schedule 8;
  - (iv) a compliance notice served in accordance with Schedule 9 (compliance, withdrawal and recall notices);
  - (v) a withdrawal notice served in accordance with Schedule 9;
  - (vi) a recall notice served in accordance with Schedule 9.

### **Appropriate court for appeals against notices**

**72.**—(1) In England and Wales or Northern Ireland, the appropriate court for the purposes of regulation 71 is—

- (a) the court in which proceedings have been brought in relation to the pyrotechnic article for an offence under regulation 63 (offences);

- (b) an employment tribunal seized of appeal proceedings against a notice which relates to the pyrotechnic article and which has been served under or by virtue of paragraph 1 of Schedule 8 (enforcement powers of the Health and Safety Executive under the 1974 Act); or
  - (c) in any other case, a magistrates' court.
- (2) In Scotland, the appropriate court for the purposes of regulation 71 is—
- (a) the sheriff of a sheriff court district in which a notice has been served on an economic operator under regulation 55 (enforcement powers);
  - (b) an employment tribunal seized of appeal proceedings against a notice which relates to the pyrotechnic article and which has been served under or by virtue of paragraph 1 of Schedule 8.
- (3) A person aggrieved by an order made by a magistrates' court in England and Wales or Northern Ireland pursuant to an application under regulation 71, or by a decision of such a court not to make such an order, may appeal against that order or decision—
- (a) in England and Wales, to the Crown Court;
  - (b) in Northern Ireland, to the county court.

### **Compensation**

**73.**—(1) Where an enforcing authority serves a notice requiring a relevant economic operator to take, or refrain from taking, action, the enforcing authority is liable to pay compensation to a person having an interest in the pyrotechnic article for any loss or damage suffered by reason of the notice if both of the conditions in paragraph (2) are satisfied.

- (2) The conditions are that—
- (a) the pyrotechnic article in respect of which the notice was served neither—
    - (i) presents a risk; nor
    - (ii) contravenes any requirement of these Regulations; and
  - (b) the exercise of the power to serve the notice was not attributable to neglect or default by the person.

## **PART 6**

### **Miscellaneous**

#### **Review**

- 74.**—(1) The Secretary of State must from time to time—
- (a) carry out a review of these Regulations;
  - (b) set out the conclusions of the review in a report; and
  - (c) publish the report.
- (2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other member States.
- (3) The report must, in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
  - (b) assess the extent to which those objectives are achieved; and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved by a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of 5 years beginning on 1st July 2015.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding 5 years.

## Transitional provisions

**75.**—(1) Subject to paragraph (5), nothing in these Regulations prevents the making available on the market of a pyrotechnic article which—

- (a) was placed on the market before 1st July 2015; and
- (b) is in conformity with the 2010 Regulations, or the law of any other member State implementing the 2007 Directive.

(2) Subject to paragraphs (4) and (5), nothing in these Regulations prevents the making available on the market in the United Kingdom of a pyrotechnic article which was lawfully manufactured or placed on the market in the United Kingdom immediately before 4th July 2010 and which is of one of the following categories—

- (a) a category F1 firework;
- (b) a category F2 firework; or
- (c) a category F3 firework.

(3) Subject to paragraphs (4) and (5), nothing in these Regulations prevents the making available on the market in the United Kingdom of a pyrotechnic article which was lawfully manufactured or supplied in the United Kingdom immediately before 4th July 2013 and which is of one of the following categories—

- (a) a category F4 firework;
- (b) a category T1 theatrical pyrotechnic article;
- (c) a category T2 theatrical pyrotechnic article;
- (d) a category P1 other pyrotechnic article; or
- (e) a category P2 other pyrotechnic article.

(4) On 5th July 2017 the following provisions cease to have effect—

- (a) paragraph (2); and
- (b) paragraph (3), except to the extent that it applies to a pyrotechnic article for a vehicle (including as spare parts).

(5) Paragraphs (1), (2) and (3) do not apply to—

- (a) regulation 31 (prohibition on making available to persons younger than the minimum age limit);
- (b) regulation 32 (prohibition on making available to persons without specialist knowledge); or
- (c) regulation 33 (prohibition on making available certain category F2 or category F3 fireworks).

(6) For the purposes of these Regulations, a certificate issued, or approval granted, by a notified body under regulation 44(1) of the 2010 Regulations, or any enactment of another member State which implemented the 2007 Directive, is to be treated as a certificate issued or approval granted under Annex II to the Directive.

(7) In this regulation, “2007 Directive” means Directive 2007/23/EC of the European Parliament and of the Council on the placing on the market of pyrotechnic articles<sup>(17)</sup>.

## Consequential revocations, amendments and savings

**76.**—(1) The 2010 Regulations are revoked, save to the extent required to give effect to regulation 75(1).

(2) In section 31 of the Explosives Act 1875, for paragraphs (2) to (5), substitute—

“(2) Subsection (1) does not apply to—

- (a) pyrotechnic articles within the meaning of the regulation 2 of the Pyrotechnic Articles (Safety) Regulations 2015; or
- (b) percussion caps intended specifically for toys falling within the scope of Directive 2009/48 of the European Parliament and the Council on the safety of toys<sup>(18)</sup>.”.

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<sup>(17)</sup> OJ L 154, 14.6.2007, p. 1.

<sup>(18)</sup> OJ L 170, 30.6.2009, p. 1.



(3) The Fireworks Regulations 2004<sup>(19)</sup> are amended as set out in Schedule 10 (consequential amendments to the Fireworks Regulations 2004).

(4) The Explosives (Fireworks) Regulations (Northern Ireland) 2002<sup>(20)</sup> are amended as set out in Schedule 11 (consequential amendments to the Explosives (Fireworks) Regulations (Northern Ireland) 2002).

[name]

[Minister]

[Date]

Department for Business, Innovation and Skills

## SCHEDULE 1

Regulation 2(1)

### Categories of pyrotechnic article

#### Fireworks

**77.** Category F1 fireworks are fireworks which present a very low hazard and negligible noise level and which are intended for use in confined areas, including fireworks which are intended for use inside domestic buildings.

**78.** Category F2 fireworks are fireworks which present a low hazard and low noise level and which are intended for outdoor use in confined areas.

**79.** Category F3 fireworks are fireworks which present a medium hazard, which are intended for outdoor use in large open areas and whose noise level is not harmful to human health.

**80.** Category F4 fireworks are fireworks which present a high hazard, which are intended for use only by persons with specialist knowledge and whose noise level is not harmful to human health.

#### Theatrical pyrotechnic articles

**81.** Category T1 theatrical pyrotechnic articles are theatrical pyrotechnic articles which present a low hazard.

**82.** Category T2 theatrical pyrotechnic articles are theatrical pyrotechnic articles which are intended for use only by persons with specialist knowledge.

#### Other pyrotechnic articles

**83.** Category P1 other pyrotechnic articles are pyrotechnic articles, other than fireworks and theatrical pyrotechnic articles, which present a low hazard.

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

## SCHEDULE 2

Regulation 2(1)

### Essential Safety Requirements

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

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

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<sup>(19)</sup> S.I. 2004/1836; amended by the Commissioners for Revenue and Customs Act 2005, section 50 and S.I. 2004/3262 and 2010/1554.

<sup>(20)</sup> S.R. (N.I.) 2002 No. 147; amended by S.I. 2010/1554.

- (3) Each pyrotechnic article must function correctly when used for its intended purpose.
- (4) Each pyrotechnic article must be tested under realistic conditions. If this is not possible in a laboratory, the tests must be carried out in the conditions in which the pyrotechnic article is to be used.
- (5) The following information and properties, where applicable, must be considered or tested—
- (a) design, construction and characteristic properties, including detailed chemical composition (mass and percentage of substances used) and dimensions;
  - (b) the physical and chemical stability of the pyrotechnic article in all normal, foreseeable environmental conditions;
  - (c) sensitivity to normal, foreseeable handling and transportation;
  - (d) compatibility of all components as regards their chemical stability;
  - (e) resistance of the pyrotechnic article to moisture where it is intended to be used in humid or wet conditions and where its safety or reliability may be adversely affected by moisture;
  - (f) resistance to low and high temperatures, where the article is intended to be kept or used at such temperatures and its safety or reliability may be adversely affected by cooling or heating of a component or of the pyrotechnic articles as a whole;
  - (g) safety features intended to prevent untimely or inadvertent initiation or ignition;
  - (h) suitable instructions and, where necessary, markings in respect of safe handling, storage, use (including safety distances) and disposal;
  - (i) the ability of the pyrotechnic article, its wrapping or other components to withstand deterioration under normal, foreseeable storage conditions;
  - (j) specification of all devices and accessories needed and operating instructions for safe functioning of the pyrotechnic article.
- (6) During transportation and normal handling, unless specified by the manufacturer's instructions, the pyrotechnic article must contain the pyrotechnic composition.
- (7) Pyrotechnic articles must not contain detonative explosives other than black powder and flash composition, except for pyrotechnic articles of categories P1, P2, T2 and fireworks of category F4 meeting the following conditions:
- (a) the detonative explosive cannot be easily extracted from the pyrotechnic article;
  - (b) for category P1, the pyrotechnic article cannot function in a detonative manner, or cannot, as designed and manufactured, initiate secondary explosives;
  - (c) for categories F4, T2 and P2, the pyrotechnic article is designed and intended not to function in a detonative manner, or if designed to detonate, it cannot as designed and manufactured initiate secondary explosives.
- (8) The various groups of pyrotechnic articles must at least also comply with the following requirements.

## **Fireworks**

**86.**—(1) The manufacturer must assign fireworks to different categories according to regulation 6 (categorisation), characterised by net explosive content, safety distances, noise level, or similar. The category must be indicated on the label.

- (2) For category F1 fireworks, the following conditions must be met—
- (i) the safety distance must be at least 1 metre. However, where appropriate the safety distance may be less;
  - (ii) the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance;
  - (iii) the category must not comprise bangers, banger batteries, flash bangers and flash banger batteries;
  - (iv) throwdowns must not contain more than 2.5 mg silver fulminate.
- (3) For category F2 fireworks, the following conditions must be met—

- (i) the safety distance must be at least 8 metres. However, where appropriate the safety distance may be less;
  - (ii) the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance.
- (4) For category F3 fireworks, the following conditions must be met—
- (i) the safety distance must be at least 15 metres. However, where appropriate the safety distance may be less;
  - (ii) the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance.
- (5) Fireworks may only be constructed of materials which minimise risk to health, property and the environment from debris.
- (6) The method of ignition must be clearly visible or must be indicated by labelling or instructions.
- (7) Fireworks must not move in an erratic and unforeseeable manner.
- (8) Category F1 fireworks, category F2 fireworks and category F3 fireworks must be protected against inadvertent ignition either by a protective cover, by the packaging or by the construction of the pyrotechnic article. Category F4 fireworks must be protected against inadvertent ignition methods specified by the manufacturer.

### **Other pyrotechnic articles**

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

### **Ignition devices**

- 88.**—(1) Ignition devices must be capable of being reliably initiated and be of sufficient initiation capability under all normal, foreseeable conditions of use.
- (2) Ignition devices must be protected against electrostatic discharge under normal, foreseeable conditions of storage and use.
- (3) Electric igniters must be protected against electromagnetic fields under normal, foreseeable conditions of storage and use.
- (4) The covering of fuses must be of adequate mechanical strength and adequately protect the explosive filling when exposed to normal, foreseeable mechanical stress.
- (5) The parameters for the burning times of fuses must be provided with the pyrotechnic article.
- (6) The electrical characteristics of electric igniters must be provided with the pyrotechnic article.
- (7) The wires of electric igniters must be sufficiently insulated and must be of sufficient mechanical strength, including the solidity of the link to the igniter, taking account of their intended use.

## **SCHEDULE 3**

Regulation 11(2)

### **Labelling: required information**

#### **Labelling**

- 89.** The labelling of a pyrotechnic article must include—

- (a) the name, registered trade name or registered trade mark of the manufacturer;
- (b) a single postal address at which the manufacturer can be contacted;
- (c) the name, type and category of the pyrotechnic article;
- (d) the registration number of the pyrotechnic article;
- (e) the product, batch or serial number of the pyrotechnic article; and
- (f) instructions for use and safety information, which must include—
  - (i) the minimum age limit for the pyrotechnic article specified in regulation 31 (prohibition on making available to persons younger than the minimum age limit) or by the member State in which the pyrotechnic article is to be made available on the market;
  - (ii) the net explosive content of the pyrotechnic article;
  - (iii) the information required by paragraphs 2 to 5.

### **Additional instructions and safety information**

**90.** The labelling of a firework must also display the following information—

- (a) for a category F1 firework, where appropriate—
  - (i) “for outdoor use only”; and
  - (ii) a minimum safety distance;
- (b) for a category F2 firework—
  - (i) “for outdoor use only”; and, where appropriate
  - (ii) a minimum safety distance;
- (c) for a category F3 firework—
  - (i) “for outdoor use only”;
  - (ii) a minimum safety distance; and
  - (iii) the year of production;
- (d) for a category F4 firework—
  - (i) “for use only by persons with specialist knowledge”;
  - (ii) a minimum safety distance; and
  - (iii) the year of production.

**91.** The labelling of sparklers must also display the words “Warning: not to be given to children under 5 years of age”.

**92.** The labelling of a theatrical pyrotechnic article must also display the following information—

- (a) for a category T1 theatrical pyrotechnic article, where appropriate—
  - (i) “for outdoor use only”; and
  - (ii) a minimum safety distance;
- (b) for a category T2 theatrical pyrotechnic article—
  - (i) “for use only by persons with specialist knowledge”; and
  - (ii) a minimum safety distance.

**93.** The labelling of a category P1 other pyrotechnic article or category P2 other pyrotechnic article must also, where appropriate, display a minimum safety distance.

**94.** In paragraph 4, “sparkler” means a rigid wire article partially coated along one end with slow-burning pyrotechnic composition, with or without an ignition head and designed to be held in the hand, the principal effect of which is to emit sparks, with or without aural effects (other than a report).

## Persons with specialist knowledge

**Person with specialist knowledge: category F4 fireworks**

**95.**—(1) A person with specialist knowledge for a category F4 firework is any individual who can demonstrate having—

- (a) undertaken training recognised in the fireworks business, in relation to the type of category F4 firework which is to be made available to that individual;
- (b) used category F4 fireworks; and
- (c) valid liability insurance covering use of category F4 fireworks.

(2) A person with specialist knowledge for a category F4 firework also includes—

- (a) any person whose trade or business (or a significant part of whose trade or business) is the supply of category F4 fireworks, for the purposes of making them available on the market in accordance with these Regulations; and
- (b) any person who is—
  - (i) in business as a supplier of goods designed and intended for use in conjunction with a category F4 firework; and
  - (ii) intends to use the category F4 firework solely for the purposes of testing it to ensure that, when used in conjunction with fireworks of the same type, it will perform its intended function or comply with any provisions made by or under any enactment and relating to the safety of such goods.

**Person with specialist knowledge: category T2 theatrical pyrotechnic articles**

**96.**—(1) A person with specialist knowledge for a category T2 theatrical pyrotechnic article is any individual who can demonstrate having—

- (a) undertaken training recognised in the theatrical profession, in relation to the type of category T2 theatrical pyrotechnic article which is to be made available to that individual;
- (b) used category T2 theatrical pyrotechnic articles; and
- (c) valid liability insurance covering use of category T2 theatrical pyrotechnic articles.

(2) A person with specialist knowledge for a category T2 theatrical pyrotechnic article also includes—

- (a) any person whose trade or business (or a significant part of whose trade or business) is the supply of category T2 theatrical pyrotechnic articles, for the purpose of making them available on the market in accordance with these Regulations;
- (b) any person who is—
  - (i) in business as a supplier of goods designed and intended for use in conjunction with a category T2 theatrical pyrotechnic article; and
  - (ii) intends to use the category T2 theatrical pyrotechnic article in question solely for the purposes of testing it to ensure that, when used in conjunction with articles of the same type, it will perform its intended function or comply with any provisions made by or under any enactment and relating to the safety of such goods.

(3) In paragraph 2(1)(a), “the theatrical profession” means the profession related to indoor and outdoor stage productions and includes film and television or similar productions.

**Person with specialist knowledge: category P2 other pyrotechnic articles**

**97.**—(1) A person with specialist knowledge for a category P2 other pyrotechnic articles is any individual who can demonstrate having—

- (a) undertaken training recognised in the industry in question, in relation to the type of category P2 other pyrotechnic article which is to be made available to that individual;

- (b) used category P2 other pyrotechnic articles; and
  - (c) valid liability insurance covering use of category P2 other pyrotechnic articles.
- (2) A person with specialist knowledge for a category P2 other pyrotechnic article also includes—
- (a) any person whose trade or business (or a significant part of whose trade or business) is the supply of category P2 other pyrotechnic articles, for the purpose of making them available on the market in accordance with these Regulations;
  - (b) any person who is—
    - (i) in business as a supplier of goods designed and intended for use in conjunction with a category P2 other pyrotechnic article; and
    - (ii) intends to use the category P2 other pyrotechnic article in question solely for the purposes of testing it to ensure that, when used in conjunction with articles of the same type, it will perform its intended function or comply with any provisions made by or under any enactment and relating to the safety of such goods.

**Person with specialist knowledge: officers of enforcing authorities**

**98.** Any person employed by or under or acting on behalf of an enforcing authority proposing to make a test purchase of a category F4 firework, category T2 theatrical pyrotechnic article or category P2 other pyrotechnic article, is to be considered to be a person with specialist knowledge where the enforcing authority—

- (a) has enforcement powers, conferred by or under any enactment, applying to the pyrotechnic article in question; and
- (b) before that person purchases the pyrotechnic article, informs the person making it available on the market that the purchase is to be made for the purposes of ascertaining whether any provision made by or under any enactment and relating to the safety of the pyrotechnic article has been contravened in relation to that pyrotechnic article.

**Interpretation**

**99.—**(1) The training referred to in paragraphs 1(1)(a), 2(1)(a) and 3(1)(a) must include training in—

- (a) the nature and correct use of the articles which are to be made available; and
- (b) the risks associated with the transport, storage and use of such articles.

(2) The training referred to in paragraphs 1(1)(a), 2(1)(a) and 3(1)(a) includes such training recognised in the relevant business, profession or industry of any member State.

(3) The use of articles referred to in paragraphs 1(1)(b), 2(1)(b) and 3(1)(b) includes the use anywhere in the world.

(4) The “liability insurance” referred to in paragraphs 1(1)(c), 2(1)(c), and 3(1)(c) may be in the name of the individual in question or the employer of that person.

**SCHEDULE 5**

Regulation 2(1)

**Notified body requirements**

**100.** A conformity assessment body must be established in the United Kingdom and have legal personality.

**101.** A conformity assessment body must be a third party body independent of the organisation or the pyrotechnic article it assesses.

**102.—**(1) A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities must not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of pyrotechnic articles or explosive substances, nor the representative of any of those parties.

(2) Subparagraph (1) does not preclude the use of pyrotechnic articles or explosive substances that are necessary for the operations of the conformity assessment body or the use of pyrotechnic articles for personal purposes.

**103.** A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities must not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of pyrotechnic articles or explosive substances, or represent the parties engaged in those activities.

**104.** A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities must not engage in activity that may conflict with their independence of judgment or integrity in relation to conformity assessment activities for which they are notified (including consultancy services).

**105.** A conformity assessment body must ensure that the activities of its subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.

**106.** A conformity assessment body and its personnel must carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and must be free from all pressures and inducements, particularly financial, which might influence their judgment or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in those activities.

**107.** A conformity assessment body must be capable of carrying out all of the conformity assessment activities for which it has been designated, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.

**108.** A conformity assessment body must have at its disposal—

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment activities;
- (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency and the ability of reproduction of those procedures, and have appropriate policies and procedures in place that distinguish between tasks it carries out as a notified body and other activities;
- (c) procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the process.

**109.** A conformity assessment body must have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and must have access to the necessary equipment or facilities.

**110.** The personnel responsible for carrying out conformity assessment activities must have—

- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
- (b) satisfactory knowledge of the requirements of the assessments which the personnel carry out and adequate authority to carry out those assessments;
- (c) appropriate knowledge and understanding of the essential safety requirements, of the applicable harmonised standards and of the Directive and of these Regulations;
- (d) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.

**111.** A conformity assessment body must be able to demonstrate the impartiality of its top level management and the personnel responsible for carrying out the conformity assessment activities.

**112.** The remuneration of the top level management and the personnel responsible for carrying out the conformity assessment activities must not depend on the number of assessments carried out or on the results of those assessments.

**113.** A conformity assessment body must have, and must satisfy the Secretary of State that it has, adequate civil liability insurance in respect of its activities.

**114.** A conformity assessment body must ensure that its personnel observe professional secrecy with regard to all information obtained in carrying out their tasks in accordance with these Regulations and that proprietary rights are protected.

**115.** Paragraph 15 does not prevent the personnel from providing information to the Secretary of State.

**116.** A conformity assessment body must participate in, or ensure that its personnel who are responsible for carrying out the conformity assessment activities are informed of, the relevant standardisation activities and the activities of any notified body coordination group established under the Directive and must apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

## SCHEDULE 6

Regulation 51

### Operational obligations of notified bodies

**117.** A notified body must carry out conformity assessments in accordance with the relevant conformity assessment procedures.

**118.** A notified body must carry out conformity assessments in a proportionate manner, avoiding unnecessary burdens on economic operators.

**119.** A notified body must perform its activities taking due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

**120.** A notified body must respect the degree of rigour and the level of protection required to ensure that the pyrotechnic article is in conformity with the requirements of these Regulations.

**121.** A notified body carrying out a conformity assessments must—

- (a) assign a registration number in the form specified in Article 1 of Commission Implementing Directive 2014/58/EU setting up a system for the traceability of pyrotechnic articles (as amended from time to time), which identifies the pyrotechnic articles which have been subject to a conformity assessment and their manufacturers; and
- (b) maintain a register with the registration number of the pyrotechnic articles in respect of which it has issued a certificate of conformity or granted an approval for a period of 10 years beginning on the day on which the certificate of conformity was issued or the approval was granted.

**122.** After 16th October 2016—

- (a) an entry made in the register referred to in paragraph 5(b) must contain at least the information set out in the Annex to Commission Implementing Directive 2014/58/EU (as amended from time to time);
- (b) the notified body must—
  - (i) keep the information referred to in subparagraph (a) in respect of a pyrotechnic article for a period of 10 years beginning on the day on which the certificate of conformity was issued or the approval was granted; and
  - (ii) update the register referred to paragraph 5(b) and make it publicly available on the internet.

**123.** Where a notified body finds that essential safety requirements or corresponding harmonised standards or other technical specifications have not been met by a manufacturer, it must require the manufacturer to take appropriate corrective measures and must not issue a certificate of conformity or grant an approval.

**124.** Where, in the course of the monitoring of conformity following the issue of a certificate or grant of an approval, a notified body finds that a pyrotechnic article is no longer in conformity with the essential safety requirements, it must require the manufacturer to take appropriate corrective measures and must suspend or withdraw the certificate of conformity or approval (if necessary).

**125.** Where the notified body has required a manufacturer to take corrective measures and the manufacturer has failed to take such measures, or those measures have not had the required effect, the notified body must restrict, suspend or withdraw any certificate of conformity or approval.



**126.** Paragraph 11 applies where a notified body is minded to—

- (a) refuse to issue a certificate of conformity or grant an approval; or
- (b) restrict, suspend or withdraw a certificate of conformity or approval.

**127.** Where this paragraph applies, the notified body must—

- (a) give the person applying for the certificate or approval, or the person to whom the certificate or approval was given, a notice in writing giving reasons and specifying the date on which the refusal, restriction, suspension or withdrawal is intended to take effect;
- (b) give the person applying for the certificate or approval, or the person to whom the certificate or approval was given, an opportunity to make representations within a reasonable period from the date of the notice; and
- (c) take account of any such representations before taking its decision.

**128.** A notified body must inform the Secretary of State of—

- (a) any refusal, restriction, suspension or withdrawal of a certificate of conformity or approval;
- (b) any circumstances affecting the scope of, or conditions for, designation under regulation 44 (designation of authorised bodies);
- (c) any request for information which it has received from an enforcing authority regarding conformity assessment activities; and
- (d) on request, conformity assessment activities performed within the scope of its designation and any other activity performed, including cross-border activities and subcontracting.

**129.** A notified body must make provision in its contracts with its clients enabling such clients to appeal against a decision—

- (a) to refuse to issue a certificate of conformity or grant an approval; or
- (b) to restrict, suspend or withdraw a certificate of conformity or approval.

**130.** A notified body must provide other bodies notified under the Directive carrying out similar conformity assessment activities covering the same pyrotechnic articles with relevant information on issues relating to negative and, on request, positive conformity assessment results.

**131.** A notified body must participate in the work of any notified body coordination group established under the Directive, directly or by means of its designated representatives.

## SCHEDULE 7

Regulation 55(1)

### Enforcement powers of weights and measures authorities, district councils and the Secretary of State under the 1987 Act

#### **Enforcement powers under the 1987 Act**

**132.** For the purposes of enforcing these Regulations, the following sections of the 1987 Act apply subject to the modifications in paragraph 2—

- (a) section 13 (prohibition notices and notices to warn);
- (b) section 14 (suspension notices);
- (c) section 16 (forfeiture: England and Wales and Northern Ireland);
- (d) section 17 (forfeiture: Scotland);
- (e) section 18 (power to obtain information);
- (f) section 28 (test purchases);
- (g) section 29 (powers of search etc);
- (h) section 30 (provisions supplemental to s 29);

- (i) section 31 (powers of customs officer to detain goods);
- (j) section 33 (appeals against detention of goods);
- (k) section 34 (compensation for seizure and detention);
- (l) section 35 (recovery of expenses of enforcement);
- (m) section 37 (power of Commissioners for Revenue and Customs);
- (n) section 45 (interpretation);
- (o) section 46 (meaning of “supply”); and
- (p) Schedule 2 (prohibition notices and notices to warn).

### **Modifications to the 1987 Act**

**133.** The sections of the 1987 Act referred to in paragraph 1 are to apply as if—

- (a) in section 13—
  - (i) in subsection (1), for “unsafe”, on each occasion that it appears, there were substituted “non-compliant”;
  - (ii) in subsection (1), “relevant” were omitted on each occasion that it appears;
  - (iii) in subsection (2), the words from “; and the Secretary of State may” to the end were omitted;
  - (iv) for subsections (4), (5) and (6) there were substituted—
 

“(6A) In this section, “non-compliant” means that—

    - (a) the goods present a risk (within the meaning of regulation 2(4) of the Pyrotechnic Articles (Safety) Regulations 2015); or
    - (b) a safety provision has been contravened, or not complied with, in relation to the goods.”;
- (b) in section 14—
  - (i) in subsection (2)(c), “under section 15 below” were omitted;
  - (ii) subsections (6) to (8) were omitted;
- (c) in section 16, for subsection 2(b) there were substituted—
 

“(b) where an application with respect to some or all of the goods has been made to a magistrates’ court under regulation 71 (appeals against notices) of the Pyrotechnic Articles (Safety) Regulations 2015 or section 33, to that court; and”;
- (d) in section 18, subsections (3) and (4) were omitted;
- (e) in section 28, subsections (3) and (4) were omitted;
- (f) in section 30, subsections (5), (7) and (8) were omitted;
- (g) in section 31(1), for “Part II of this Act”, there were substituted “the Pyrotechnic Articles (Safety) Regulations 2015”;
- (h) in section 37(1), for “Part II of this Act”, there were substituted “the Pyrotechnic Articles (Safety) Regulations 2015”; and
- (i) in section 45(1)—
  - (i) for the definition of “enforcement authority” there were substituted—
 

““enforcement authority” means an enforcing authority within the meaning of regulation 2(1) of the Pyrotechnic Articles (Safety) Regulations 2015;”;
  - (ii) for the definition of “goods” there were substituted—
 

““goods” means a pyrotechnic article within the scope of the Pyrotechnic Articles (Safety) Regulations 2015;”;
  - (iii) for the definition of “safety provision” there were substituted—
 

““safety provision” means any provision of the Pyrotechnic Articles (Safety) Regulations 2015;”;
  - (iv) for the definition of “safety regulations” there were inserted—

““safety regulations” means the Pyrotechnic Articles (Safety) Regulations 2015;”.

## SCHEDULE 8

Regulation 55(2)

### Enforcement powers of the Health and Safety Executive under the 1974 Act

#### Enforcement powers under the 1974 Act

**134.** For the purposes of enforcing these Regulations, the following sections of the 1974 Act apply subject to the modifications in paragraph 2—

- (a) section 19 (appointment of inspectors);
- (b) section 20 (powers of inspectors);
- (c) section 21 (improvement notices);
- (d) section 22 (prohibition notices);
- (e) section 23 (provisions supplementary to ss 21 and 22);
- (f) section 24 (appeal against improvement or prohibition notice);
- (g) section 25 (power to deal with cause of imminent danger);
- (h) section 25A (power of customs officer to detain articles and substances);
- (i) section 26 (power of enforcing authorities to indemnify inspectors);
- (j) section 27 (obtaining of information by the Executive, enforcing authorities etc);
- (k) section 27A (information communicated by Commissioners for Revenue and Customs);
- (l) section 28 (restrictions on disclosure of information);
- (m) section 33 (offences);
- (n) section 34 (extension of time for bringing summary proceedings);
- (o) section 35 (venue);
- (p) section 39 (prosecution by inspectors);
- (q) section 41 (evidence); and
- (r) section 42 (power of court to order cause of offence to be remedied or, in certain cases, forfeiture).

#### Modifications to the 1974 Act

**135.** The sections referred to in paragraph 1 apply as if—

- (a) references to “relevant statutory provisions” were references to—
  - (i) the provisions of the 1974 Act set out in paragraph 1, as modified by this paragraph; and
  - (ii) these Regulations;
- (b) in regulation 19—
  - (i) in subsection (1), for “Every enforcing authority” there were substituted “The Health and Safety Executive”;
  - (ii) in subsection (1), “within its field of responsibility” were omitted;
  - (iii) in subsection (2), paragraph (b) were omitted;
  - (iv) in subsection (3), for “enforcing authority which appointed him” there were substituted “Health and Safety Executive”;
- (c) in section 20—
  - (i) in subsection (1), “within the field of responsibility of the enforcing authority which appointed him” were omitted;

- (ii) in subsection (2)(c)(i), for “his (the inspector’s) enforcing authority” there were substituted “the Health and Safety Executive”;
- (iii) subsection (3) were omitted;
- (d) for section 22(2) there were substituted—
  - “(2) An inspector may serve a notice (in this Part referred to as “a prohibition notice”) on a person if, as regards any activities to which this section applies, the inspector is of the opinion that, as carried on or likely to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve—
    - (a) a risk (within the meaning of regulation 2(4) of the Pyrotechnic Articles (Safety) Regulations 2015); or
    - (b) a contravention of a relevant statutory provision.”;
- (e) in section 23, subsections (3), (4) and (6) were omitted;
- (f) in section 25A(1), for “an enforcing authority”, there were substituted “the Health and Safety Executive”;
- (g) in section 26, for each of the following references there were substituted “the Health and Safety Executive”—
  - (i) “the enforcing authority which appointed him”;
  - (ii) “that authority”; and
  - (iii) “the authority”;
- (h) in section 27—
  - (i) for “Executive”, on each occasion that it appears, there were substituted “Health and Safety Executive”;
  - (ii) in subsection (1), paragraph (b) were omitted; and
  - (iii) in subsection (1), “or, as the case may be, to the enforcing authority in question” were omitted;
- (i) in section 27A(2)—
  - (i) for “an enforcing authority” there were substituted “the Health and Safety Executive”; and
  - (ii) the words from “, other than the Office for Nuclear Regulation” to the end were omitted;
- (j) in section 28—
  - (i) for “Executive”, on each occasion that it appears, there were substituted “Health and Safety Executive”;
  - (ii) in subsection (1)(a), “, other than the Officer for Nuclear Regulation (or an inspector appointed by it),” were omitted;
  - (iii) in subsection (1)(a), “, by virtue of section 43A(6) below” were omitted;
  - (iv) in subsection (3), “or any enforcing authority” were omitted;
  - (v) in subsection (4), “or an enforcing authority” were omitted; and
  - (vi) in subsection (5)(a), “or the purposes of the enforcing authority in question”;
- (k) in section 33—
  - (i) in subsection (1), the paragraphs (a) to (i) and (k) to (m) were omitted;
  - (ii) for subsection (2), there were substituted—
    - “(2) A person guilty of an offence under section 33 is liable—
      - (a) on summary conviction to imprisonment for a term not exceeding three months, a fine not exceeding level 5 on the standard scale or both;
      - (b) on conviction on indictment to imprisonment for a term not exceeding two years, a fine or both.”;
  - (iii) section 33(3) were omitted;
- (l) in section 34—
  - (i) in subsection (1), paragraphs (a) and (b) were omitted; and

- (ii) subsections (3) to (6) were omitted;
- (m) in section 35, for “any enforcing authority”, there were substituted “the Health and Safety Executive”;
- (n) in section 39(1), for “enforcing authority” there were substituted “Health and Safety Executive”; and
- (o) in section 42, subsections (3A), (4) and (5) were omitted.

## SCHEDULE 9

Regulation 55(3)

### Compliance, withdrawal and recall notices

#### Compliance notice

**136.**—(1) An enforcing authority may serve a compliance notice on a relevant economic operator in respect of a pyrotechnic article if the authority has reasonable grounds for believing that there is non-compliance.

(2) A compliance notice must—

- (a) require the relevant economic operator on which it is served to—
  - (i) end the non-compliance within such period as may be specified in the notice; or
  - (ii) provide evidence, within such period as may be specified in the notice, demonstrating to the satisfaction of the enforcing authority that the non-compliance has not in fact occurred; and
- (b) warn the economic operator that, if the non-compliance persists or if satisfactory evidence has not been produced under sub-paragraph (a) within the period specified in the notice, further action may be taken in respect of the pyrotechnic article or any pyrotechnic article of the same type made available on the market by that relevant economic operator.

(3) A compliance notice may include directions as to the measures to be taken by the economic operator to secure compliance, including different ways of securing compliance.

#### Withdrawal notice

**137.**—(1) An enforcing authority may serve a withdrawal notice on a relevant economic operator in respect of a pyrotechnic article if the authority has reasonable grounds for believing that—

- (a) the pyrotechnic article has been made available on the market; and
- (b) there is non-compliance.

(2) A withdrawal notice must prohibit the relevant economic operator from making the pyrotechnic article available on the market without the consent of the enforcing authority.

(3) A withdrawal notice may require the relevant economic operator to take action to alert end-users to any risk presented by the pyrotechnic article.

(4) A withdrawal notice may require the relevant economic operator to keep the enforcing authority informed of the whereabouts of any pyrotechnic article referred to in the notice.

(5) A consent given by the enforcing authority pursuant to a withdrawal notice, may impose such conditions on the making available on the market as the enforcing authority considers appropriate.

#### Recall notice

**138.**—(1) The enforcing authority may serve a recall notice on a relevant economic operator in respect of a pyrotechnic article if the authority has reasonable grounds for believing that—

- (a) the pyrotechnic article has been made available to end-users; and
- (b) there is non-compliance.

(2) A recall notice must require the relevant economic operator to use reasonable endeavours to organise the return of the pyrotechnic article from end-users to the relevant economic operator or another person specified in the notice.

(3) A recall notice may—

- (a) require the recall to be effected in accordance with a code of practice;
  - (b) require the relevant economic operator to—
    - (i) contact end-users in order to inform them of the recall, to the extent that it is practicable to do so;
    - (ii) publish a notice in such form and such manner as is likely to bring to the attention of end-users any risk the pyrotechnic article poses and the fact of the recall; or
    - (iii) make arrangements for the collection or return of the pyrotechnic article from end-users or its disposal; or
  - (c) impose such additional requirements on the relevant economic operator as are reasonable and practicable with a view to achieving the return of the pyrotechnic article.
- (4) In determining what requirements to include in a recall notice, the enforcing authority must take into consideration the need to encourage distributors and end-users to contribute to its implementation.
- (5) A recall notice may only be issued by the enforcing authority where—
- (a) other action which it may require under these Regulations would not suffice to address the non-compliance;
  - (b) the action being undertaken by the relevant economic operator is unsatisfactory or insufficient to address the non-compliance;
  - (c) the enforcing authority has given not less than 10 days' notice to the relevant economic operator of its intention to serve such a notice; and
  - (d) the enforcing authority has taken account of any advice obtained under subparagraph (6).
- (6) A relevant economic operator which has received notice from the enforcing authority of an intention to serve a recall notice may at any time prior to the service of the recall notice require the authority to seek the advice of such person as the Institute determines on the questions of—
- (a) whether there is non-compliance; and
  - (b) whether the issue of a recall notice would be proportionate.
- (7) Subparagraphs (5)(b), (c) and (d) do not apply in the case of a pyrotechnic article presenting a serious risk requiring, in the view of the enforcing authority, urgent action.
- (8) Where a relevant economic operator requires the enforcing authority to seek advice under subparagraph (6), that relevant economic operator is to be responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the enforcing authority.
- (9) In this regulation, “Institute” means the charitable organisation with registered number 803725 and known as the Chartered Institute of Arbitrators.
- (10) A recall notice served by the enforcing authority may require the relevant economic operator to keep the authority informed of the whereabouts of a pyrotechnic article to which the recall notice relates, so far as the relevant economic operator is able to do so.

## **Interpretation**

**139.** In this Schedule, “non-compliance” means that the pyrotechnic article—

- (a) presents a risk; or
- (b) is not in conformity with Part 2 or RAMS (in its application to pyrotechnic articles).

## **SCHEDULE 10**

Regulation 76(3)

### **Consequential amendments to the Fireworks Regulations 2004**

**140.** The Fireworks Regulations 2004 are amended as set out below.

**141.** In regulation 3 (interpretation)—

- (a) for the definition of “adult firework” substitute—

- ““adult firework” means any—
- (a) category F2 firework within the meaning of paragraph 2 of Schedule 1 to the 2015 Regulations;
  - (b) category F3 firework within the meaning of paragraph 3 of Schedule 1 to the 2015 Regulations;
  - (c) category F4 firework within the meaning of paragraph 4 of Schedule 1 to the 2015 Regulations;”;
- (b) omit the definitions of—
- (i) “BS 7114”;
  - (ii) “BS EN 61672”;
  - (iii) “category 3 firework”; and
  - (iv) “category 4 firework”;
- (c) in the definition of “sparkler”, omit “, other than a category 3 or category 4 firework,”; and
- (d) for the definition of “the 2010 Regulations”, substitute—
- ““the 2015 Regulations” means the Pyrotechnic Articles (Safety) Regulations 2015;”.

**142.** In regulation 5 (prohibition of possession of category 4 fireworks), for “category 4 firework”, substitute “category F4 firework within the meaning of paragraph 4 of Schedule 1 to the 2015 Regulations”.

**143.** For “2010 Regulations”, substitute “2015 Regulations” in each of the following places—

- (a) regulation 6(1)(c) (exceptions to regulations 4 and 5); and
- (b) regulation 9(2A)(a) (licensing of fireworks suppliers).

**144.** In regulation 9(5), for subparagraph (b), substitute—

“(b) an offence under the 2015 Regulations;”.

**145.** For regulation 10(2) (information about fireworks), substitute—

“(2) In paragraph (1), “the required information” means information that—

- (a) it is illegal to sell—
  - (i) a category F1 firework (other than crackers) to anyone under the age of 16; and
  - (ii) a category F2 firework or a category F3 firework to anyone under the age of 18; and
- (b) it is illegal for anyone under the age of 18 to possess adult fireworks in a public place.”.

**146.** For regulation 10(3), substitute—

“(3) A person who supplies an adult firework must, for a period of 3 years beginning on the day on which the supply takes place, maintain a record of the total amount of explosives contained in the firework.”.

## SCHEDULE 11

Regulation 76(4)

### Consequential amendments to the Explosives (Fireworks) Regulations (Northern Ireland) 2002

[To be completed]

## **Annex 2 Consultation principles and comments on the conduct of this consultation**

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles. See the following link:

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess  
BIS Consultation Co-ordinator  
1 Victoria Street  
London  
SW1H 0ET

Tel: 020 7215 1661

e-mail: [angela.rabess@bis.gsi.gov.uk](mailto:angela.rabess@bis.gsi.gov.uk)

However if you wish to comment on the specific policy proposals you should contact the policy lead Christine Knox (Please see Section 5 for the contact details).



## **Annex 3      List of Individuals/Organisations to be consulted**

Absolute Fireworks  
Association of Chief Police Officers  
Association of Chief Standards Trading Officers  
Association of Convenience Stores  
Association of Stage Pyrotechnicians  
Black Cat Fireworks  
British Retail Consortium  
Blue Cross  
Bright Star fireworks  
British Firework Association  
British Pyrotechnists Association  
British Standards Institution  
Chief Fire Officers' Association  
Department of Justice and Equality Ireland  
Department of Justice Northern Ireland  
Department for Transport  
Department for Communities and Local Government  
Dogs Trust  
Explosive Industries Group CBI  
Fireworks Enforcement Liaison Group  
Fire Brigades Union  
1st Galaxy Fireworks  
Health & Safety Executive  
Health & Safety Executive for Northern Ireland  
Health and Safety Laboratory  
Just FX  
Kimbolton Fireworks  
National Campaign for Firework Safety  
National Federation of Retail Newsagents  
Northern Group Systems (Environmental Health) Northern Ireland  
Product Safety Focus Group of Trading Standards Officers  
Pyrocon  
RoSPA Royal Society for the Prevention of Accidents  
SCOTTS Trading Standards in Scotland  
Scottish Government  
SGS  
SMMT Society of Motor Manufacturers and Traders  
Star Fireworks  
TNT Fireworks  
Unique Party  
Trading Standards Institute  
UKAS UK Accreditation Service  
Welsh Government

## Annex 4 Consultation response form

### Consultation response form - page 1

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is Thursday 22 January 2015.

Please return completed forms, by email to the address on page 10, paragraph 5.2 or by post to:

Christine Knox  
Department for Business, Innovation & Skills  
4<sup>th</sup> Floor Spur 1  
1 Victoria Street  
London SW1H 0ET

Tel: 020 7215 3465

We would like respondents to tick a box from a list of options that best describes them at a respondent. This allows views to be presented by group type.

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

**Consultation response form – page 2**

**Question 1: If the details of the manufacturer and/or the importer cannot be put on the pyrotechnic article itself, we propose that they be put on the packaging or in an accompanying document. Do you support this approach? If not, why not?**

Comments:

**Question 2: We propose to bring the detailed requirements of the Traceability Directive into force on 17th October 2016. Do you support this approach? Or would you prefer that they were brought into force on 1 July 2015 at the same time as the rest of the 2015 Regulations?**

Comments:

**Question 3: Do you agree that the draft transitional provisions in regulation 75 reflect the regime provided for in the Article 46 of the Directive? If not, why not?**

Comments:

**Question 4: We propose to make amendments to the Fireworks Regulations 2004 to ensure that they use the same system of categories as the Pyrotechnics Directive. Do you support this proposal? If not, why not?**

Comments:

**Question 5: Do you consider that the draft Regulations, as a whole, are effective and proportionate? If not, why not?**

Comments:

**Question 6: Do you consider that the Impact Assessment correctly characterises the changes resulting from the new Regulations? If not, what needs to be changed?**

Comments:

**Consultation response form – page 3**

**Question 7: Do you agree with our estimate of the number of businesses affected? If not, can you provide additional evidence?**

Comments:

**Question 8: Do you agree with our estimate of average costs (one-off and on-going)? Can you provide additional evidence to support your answer?**

Comments:

**Question 9: Are you able to provide any evidence (quantified or otherwise) of the benefits of these changes?**

Comments:

**Do you have any other comments that might aid the consultation process as a whole?**

Comments:

Thank you for your views on this consultation. However, as part of the BIS wider customer survey plans, we would appreciate your views on below.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

Thank you.

## Evidence Base

### Problem under consideration

#### Alignment – Directive 2013/29/EU

In 2006 the European Commission conducted a review of the way that the internal market for goods was working. The Commission found that harmonised legislation was not working effectively across and within EU Member States. They identified three main problems including (i) the number of products that were on the EU market that did not comply with product safety legislation; (ii) the unsatisfactory performance of some Notified Bodies (the bodies which determine whether a product meets the essential requirements of the legislation) and (iii) difficulties in using and understanding the current legislation. The Commission proposed a Decision in an attempt to improve this.

2. The New Legislative Framework (NLF) which resulted is a common set of principles which aims to make legislation on the Single Market for Goods clearer, more consistent and more understandable. It was adopted as an EU Regulation and an EU Decision in July 2008.<sup>1</sup> Subsequently an “Alignment Package” was introduced to align nine existing European Union Directives to the NLF. The 2007/23/EU Pyrotechnics Directive was one of the nine to be aligned. This will be achieved by the implementation of Directive 2013/29/EU.

3. The key provisions of the 2013 Directive are to introduce common definitions and responsibilities for Economic Operators (EOs) ie manufacturers, importers and distributors. For example, all economic operators must now hold information for 10 years on who supplied them with a particular product. The Directive also clarifies what EOs must do when a product is non-compliant eg distributors who suspect a product does not comply must now take corrective action to make it compliant or take steps to recall it.

#### Traceability – Directive 2014/58/EU

4. During discussions on the alignment package at the beginning of 2013, it became clear that the Commission had concerns about the traceability of pyrotechnic articles. They put forward a proposal to improve this which was adopted as Directive 2014/58/EU setting up a system for the traceability of pyrotechnic articles. The key provisions are that manufacturers will label all pyrotechnic articles with a registration number and that records will be kept of this number for 10 years by manufacturers and importers.

5. These two Directives are being considered in a single Impact assessment because we plan to implement them with one piece of UK legislation.

#### Rationale for intervention

6. The purpose of the alignment is to make products in the EU safer by making the relevant legislation easier for users to understand and apply. Directive 2013/29/EU on the making available on the market of pyrotechnic articles will align requirements for pyrotechnic articles. In order to meet our EU law obligations, this Directive must be transposed into national law by July 2015.

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<sup>1</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products. Decision No 768/2008/EC on a common framework for the marketing of products.

7. The traceability Directive should be transposed into national law by April 2015.

8. We propose to implement the requirements of both Directives by revoking and replacing the Pyrotechnic Articles (Safety) Regulations 2010.

### **Policy Objective**

9. The objective is to transpose the requirements of the Directives into UK law. This will ensure that the safety and economic benefits of clearer legislation, and improved traceability, reach UK consumers and workers.

### **Description of options**

10. We considered two possible options. It is not possible to do nothing as the UK has treaty obligations to implement the Directives:

#### **Option 1 – make legislation to implement the Directives - PREFERRED**

We propose to implement by revoking and replacing the 2010 Pyrotechnic Articles (Safety) Regulations. This option would ensure that the UK regulations reflect the updated obligations and traceability requirements and ensure that pyrotechnic articles are correctly labelled to better protect consumers.

#### **Option 2 - non-regulatory approach.**

We considered a non-legislative approach of implementing and rejected it. This is because it would not meet the UK's EU law obligations to implement the Directives.

### **Monetised and non-monetised costs and benefits of options**

#### **Option 1 – make legislation to implement the Directives - PREFERRED**

#### ***Alignment: benefits***

- *Harmonisation*

11. It is expected **there will be some benefit** from clarification and harmonisation of definitions for business across Member States. Harmonising of duties of those in the supply chain across the Union will facilitate movement of goods in the internal market – with potential positive implications on competition.

- *Notification process*

12. There **could be marginal benefits** to organisations wishing to become notified bodies from clearer indication of the notification process.

- *Enforcement*

13. Some Trading Standards departments have indicated they do not receive a large number of complaints from consumers and they **do not therefore envisage much in the way of financial benefit** accruing to them from the proposed amendment which should reduce such complaints.

### **Alignment: costs**

- *Labelling*

14. There is a new labelling requirement to include the registration number and the product, batch or serial number on the pyrotechnic articles. The requirement for the registration number matches that in the harmonised standards used to demonstrate compliance for CE marking under the 2007 Directive so additional costs would not be expected in respect of the registration number. But there may be increased costs especially for small businesses (which make up the majority of businesses in this sector) in including the product, batch or serial number.

- *Retention of information*

15. There will be a duty for all economic operators to keep information for ten years as to who supplied them with a pyrotechnic article and who they have supplied a pyrotechnic article to. Some of the products under the pyrotechnics Directive are likely to have a lifespan of less than 10 years. The **additional data collection / storage cost is expected to be marginal**, but if further evidence indicates otherwise, it will be reported accordingly.

- *Change of Directive number*

16. A new directive number might lead to costs being incurred for manufacturers and notified bodies necessitating the re-drafting and re-issue of documents and manuals to include the revised number. There will be a transitional period before these requirements will come into force hence any alterations could be incorporated more broadly into periodic updating, **so any additional cost should be marginal**.

- *Notification process*

17. Notified Bodies for the pyrotechnic and firework industry could be affected due to reinforcement of the notification requirements and information obligations - strengthened obligations on information sharing among notified bodies would lead to some increase in ongoing costs – there are already some occasions when NBs are required to exchange information, but the obligation has been widened and so such exchanges will need to be more frequent. However there are currently no UK pyrotechnic notified bodies so **this will not be a cost to UK Notified Bodies** but may be a cost that NBs in other Member States pass onto their UK customers.

- *Familiarisation costs*

18. Enforcers, industry and government will need to ensure that importers, manufacturers and distributors are aware of changes to legislation and this could lead to some **one-off costs**.

### **Traceability: benefits**

19. Clearer duties on operators throughout the supply chain (ie not just manufacturer/importer) may also bring some **minor benefits** in that the enforcement authority will be able to target more directly those infringing the requirements.

20. There may be **some financial savings in enforcement costs** due to the improved traceability requirements and increased co-operation between Notified Bodies for pyrotechnic articles placed on the market.

### ***Traceability: costs***

21. **Manufacturers and importers will incur costs in keeping records** of registration numbers of all articles and the **UK Government will incur costs** in retaining this information if those above cease trading. There is a frequent turnover of particularly importers of consumer fireworks so we have estimated costs to HMG of keeping such records as a third of an administrative post per year at circa £10k annually.

22. Additional to the new traceability requirements in the alignment Directive, are those in the traceability directive which include a new registration number requirement which is the same as that in the harmonised standard EN15947 used to demonstrate compliance with the old 2007 Directive so we are not expecting this will impart a new cost under the 2013 Directive. Also manufacturers and importers will be required to keep records of these registration numbers along with their trade name, generic type and the site of manufacture. Dependent on how these EOs keep records presently this **could add administrative costs**. Also if the relevant businesses cease activity then the records are required to be transferred to the competent authority ie UK Government who will also incur administrative costs from receiving, storing and retrieving the records. There is a frequent turnover of particularly importers of consumer fireworks so we have estimated costs to HMG of keeping such records as a third of an administrative post per year at circa £10k annually.

23. There are additional information retention requirements for Notified Bodies which could be passed on to UK business from other Member State NBs.

#### *Overall*

24. Further details of the cost to business of this approach are outlined below in the 'Direct costs to business' section.

### **Option 2 - non-regulatory approach**

*Benefits:* nil

*Costs:*

25. This option would ignore the legal requirement for Member States to implement as set out in the two Directives.

### **Risks and assumptions**

26. We have assumed that industry is already keeping a certain amount of the new data required eg site of manufacture of imported articles, and that they have efficient data retrieval systems. This may not be the case as many are small or micro businesses so costs could be more than anticipated.

### **Direct costs to business**

27. In transposing the EU directives there is a degree of gold-plating in that we are exercising derogations to retain pre-existing standards which are higher than the minimum outlined by the EU legislation. We consider that this approach is justified on the grounds of public order and health and safety. The relevant provisions that will amount to gold-plating are the following:



(i) Under the Directive, category F1 fireworks (the least dangerous category) cannot be made available to a person under 12 years of age. Under UK law, the position is (and will continue to be) that (aside from crackers) such category F1 fireworks cannot be made available to a person under 16 years of age.

(ii) Under the Directive, category F2 fireworks cannot be made available to a person under 16 years of age. Under UK law, the position is (and will continue to be) that such category F2 fireworks cannot be made available to a person under 18 years of age.

(iii) Under UK law, the position is (and will continue to be) that certain categories of fireworks that would otherwise fall within category F2 or F3 (e.g. spinners and air bombs) can only be supplied to a person with specialist knowledge. This restriction is not found in the Directive.

28. However, as these requirements maintain the status quo, they will not give rise to new costs for business

29. Most of the direct costs to industry will arise from new labelling and data retention requirements as outlined below. Rather than seeking to itemise these separately for each potential cost element, we have used feedback from industry to give an indication of cost and impact according to different elements of the supply chain.

### **All economic operators**

30. Economic operators include manufacturers, importers and distributors and they will all have new record keeping responsibilities and will have to provide the following to enforcement agencies on request:

- identify any economic operator who has supplied them with a pyrotechnic article
- identify any economic operator to whom they have supplied a pyrotechnic article
- keep this information for 10 years

31. In addition Notified Bodies may pass on costs from their new requirements (maintaining list of registration numbers, revised notification process, obligations to share information) to UK business customers.

32. As well as these obligations for all operators there are further duties outlined below.

### **Manufacturers**

33. There are new requirements for manufacturers which could have costs associated. These include:

- keeping technical documentation and declaration of conformity (DOC) for 10 years. This is a current requirement except for products that are assessed under Module G (unit verification). In future manufacturers using Module G will also have to retain documentation for 10 years.
- keeping a record for 10 years of the **registration number** along with **trade name, generic type, sub-type if applicable** and **site of manufacture**
- ensuring procedures are in place to maintain conformity of series production
- carrying out sample testing following justified request & keeping register of complaints

- new labelling and safety information requirements to include **registration number, product, batch or serial number**
- clarified non-conformity and market surveillance requirements
- complying with the economic operators obligations above

34. Although the Directives require the labelling to include a product, batch or serial number, the choice between these different numbers will be left to the manufacturer. It is expected that most manufacturers will choose to include a product number (at a relatively small cost), rather than a batch number (at a much larger cost). Therefore, this new labelling requirement is not expected to give rise to significant new costs for manufacturers. The Blue Guide (p47 of 2014 edition) says that labelling with the product, batch, or serial number is left to the discretion of the manufacturer.

35. Under the current Regulations, information about the manufacturer which does not fit on the pyrotechnic article must be put on the retail packaging. Under the new Directive it will be possible for such information to be put on its packaging or in a document accompanying the pyrotechnic article. This additional flexibility may allow manufacturers to make a cost saving.

### **Importers**

36. New requirements for importers include:

- keeping technical documentation and declaration of conformity (DOC) for 10 years
- clarified non-conformity and market surveillance requirements eg sample testing when requested by enforcement authorities and keeping a register of complaints and product recalls.
- complying with the economic operators obligations above

37. Under the current regulations, the importer only takes on substantial obligations concerning the compliance of a pyrotechnic article where the manufacturer is not established in the EU. Under the requirements of the Directive, all importers of pyrotechnic articles will have such obligations. Currently all businesses are required to keep a certain amount of information for HMRC reporting purposes for up to 6 years. Depending on the information already kept, the additional costs could cover only the extra 4+ years of data retention.

### **Distributors**

38. The 2013 Directive expands and makes more explicit the obligations of distributors. For these purposes, distributors include any economic operators in the supply chain who are not the manufacturer or importer. The new obligations include the following:

- where distributors consider or have reason to believe that a pyrotechnic article is not in conformity with the essential safety requirements, they must not make the pyrotechnic article available on the market;
- ensuring that storage and transport conditions do not jeopardise compliance with the essential safety requirements;
- complying with the economic operators obligations below

## Retailers

39. As retailers are distributors for the purposes of the Directive, they will need to comply with the relevant requirements of the Directive. Retailers of consumer fireworks include supermarkets, newsagents and corner shops. There are likely to be costs for these businesses, particularly in relation to the new duty to keep a record of the economic operators that supplied the fireworks to them. We have no data available to provide even a rough estimate of costs at this stage and hope to obtain costings through our consultation.

## Estimate of costs for business

40. BIS asked CBI Explosives Industry Group, the British Fireworks Association, the British Pyrotechnists Association and the Association of Stage Pyrotechnicians to undertake informal surveys of their industry and their members to assess the costs of implementation. From the responses it is clear that there will be some transitional and ongoing costs to businesses.

41. Micro businesses are included. The regulations ensure consumer safety and it is important that businesses of all size are committed to meeting the essential safety requirements of the pyrotechnic Directives.

42. The sectors covered by the Directives include consumer fireworks, display fireworks (for professional use), theatrical pyrotechnics and also other pyrotechnic articles which can include components for automotive air bags and seat belt tensioners and other articles such as bird scarers and other markets which are complex to identify. We have better information on the consumer and stage firework sectors than for the broader 'other pyrotechnic articles' class. It is therefore difficult to determine exactly how many companies will be affected by the new legislation to arrive at an accurate determination of costs.

- *European market*

43. The EU market for consumer fireworks is estimated by industry to be around €700 million (£550 million) per year with the EU market for sales to professionals only (Category 4) also estimated at €700 million per year. Automotive occupant restraint systems mainly comprise airbags and seatbelt tensioners. In 2009, around 65 million airbag systems were produced in the EU market, representing a market value of around €1.8 billion. As regards seatbelts, approximately 80 million units at a value of about €1 billion were produced in the EU in 2009. This amounts to a total market size of roughly €2.8 billion for automotive occupant restraint systems.<sup>2</sup>

44. The overall market size of the pyrotechnics sector covered by the Directives is thus in the region of €4.2 billion or £3.3 billion per year

- *UK market*

45. Using data from industry we broadly estimate the market for consumer fireworks to be worth about £60-70 million annually in the UK, around £24 million for Category 4 fireworks and in the region of £5 million for theatrical pyrotechnics. Due to the disparate nature of the sector there is no collected data available for the category of other pyrotechnic articles in the UK.

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<sup>2</sup> Impact Assessment *NEW LEGISLATIVE FRAMEWORK (NLF) ALIGNMENT PACKAGE*, Brussels, November 2011, p63  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1376:FIN:EN:PDF>

*Category 1-4 fireworks (professional display), theatrical pyrotechnics*

46. Data below from HSE shows that there were around 70 importers of pyrotechnic articles last year. This largely covers consumer, display and theatrical pyrotechnics but some other pyrotechnic articles may be included. This corresponds with data on the number of importers from outside of the UK which reveals that in 2013, 70 companies imported fireworks from outside the EU.<sup>3</sup>

**Notifications to HSE 2010 – 2013 of UK imports of Category 1-4 fireworks**

Year	Approximate Number of Importers
2011	118
2012	86
2013	71

47. Over 95% of consumer fireworks are imported to the UK, nearly all from China, and the value of fireworks imports to the UK from outside the EU is £16 million.<sup>4</sup> There are very few UK manufacturers of display and theatrical pyrotechnics. Industry estimate that there are twice as many distributors of Category 1-4 fireworks as importers – distributors here including those with a primary focus on fireworks and excluding retailers of other goods such as supermarkets and corner shops.

*Other pyrotechnic articles including air bags and seat belt tensioners*

48. The Office of National Statistics data suggests there is little manufacture of other pyrotechnic articles.<sup>5</sup> Sales and import data under the manufacture of explosives categories for fireworks and other pyrotechnic articles is frequently suppressed suggesting there are very few companies involved in this in the UK. Although this data is likely to also include some manufacturers not affected by the directive. The main difficulty is in identifying pyrotechnics distributors. There is no SIC code that corresponds with pyrotechnics distributors. Companies that distribute pyrotechnics will be classified under several very broad wholesaler and entertainment SIC codes, of which they make up a tiny proportion

49. Our best estimate therefore is that there are approximately 200 - 250 businesses that will be affected by the implementation of these two Directives. The vast majority of these are SMEs with many micro businesses

	Estimate	Source of estimate
Importers of fireworks & theatrical pyrotechnics	70	Data from HSE and HMRC
Distributors of fireworks and theatrical pyrotechnics	140	Industry estimate
Manufacturers/importers/distributors of all pyrotechnic articles	Very low numbers - say <10	Industry, ONS
<b>Total</b>	<b>220</b>	Use range 200-250

50. The government's informal survey received responses from five companies, who together represent manufacturers, importers and distributors of Cat 1-4 fireworks and theatrical pyrotechnic articles. This small sample showed average one-off costs of about £3,500 for implementation and ongoing costs of roughly £30k per annum. Extrapolating this data to give total costs would be unreliable, and we plan to call for further evidence in our formal consultation.

<sup>3</sup> HMRC UK Trade Information - commodity code 36041  
<https://www.uktradeinfo.com/TradeTools/ImportersDetails/Pages/ImportersSearch.aspx>

51. The government's informal survey received responses from five companies, who together represent manufacturers, importers and distributors of Cat 1-4 fireworks and theatrical pyrotechnic articles. This small sample showed average one-off costs of about £3,500 for implementation and ongoing costs of roughly £30k per annum. The companies in the sample are larger than most economic operators affected by the regulation, so we expect their average compliance costs to be higher than average. Therefore it would be unreliable to extrapolate from these averages to the total cost to business. To reach an estimate of the total cost to business we have assumed that the one-off transition will on average require 40 hours of staff time per business to a cost of £13.53 per hour.<sup>6</sup>

52. This would give average one-off costs of £541 per business, leading to a total one-off cost to business of £119,100. We have assumed that ongoing costs will involve on average 200 hours of staff time per economic operator at an average hourly cost of £13.53 per hour. This gives an average ongoing cost of £2,707 per annum per business, leading to a total ongoing cost to business of £595,500 per annum. We plan to call for further evidence in our formal consultation.

	Hours per business	Cost per hour (£)	Cost per business (£)	Number of economic operators	Total cost to business (£)
<b>One-off</b>	40	13.53	541	220	119,100
<b>Ongoing (per annum)</b>	200	13.53	2,707	220	595,500

### Direct benefits to business

53. There could be marginal benefits to organisations wishing to become NBs from a clearer indication of the notification process. Additionally some benefits are expected from clarifications and harmonisation of definitions across Member States, though it is not possible to quantify these.

### Wider impacts

54. The proposal will not introduce any equality, environmental or social impacts.

55. Transitional costs may have a proportionally greater impact on smaller firms. However it is not possible to exempt micro-businesses or SMEs from the scope of the regulations without affecting essential safety protections for the consumer. The UK fireworks and theatrical pyrotechnics industry is mainly made up of SMEs and micro businesses.

56. The new regulations would be enforced by local authorities' trading standards departments and the Health and Safety Executive (HSE) who already enforce the Pyrotechnic Articles (Safety) Regulations 2010. Any familiarisation costs will be minimal as they have been involved in discussions on the alignment from an early stage.

<sup>4</sup> ONS PRODCOM Provisional 2013 SIC(07) 2051 - Manufacture of explosives

<sup>5</sup> as above

<sup>6</sup> Based upon the mean hourly wage of administrative and secretarial occupations in the Annual Survey of Hours and Earnings 2013 and estimates of non-wage labour costs based on Eurostat

## **Evidence plan**

57. We plan to build on the costs to business by calling for evidence during our consultation. In particular we will be looking at data for the new requirement for EOs to keep 10 year data on who they have supplied products to and who has supplied them with products and, for manufacturers and importers, the site of manufacture. We will also focus on any costs incurred from the new requirements on labelling with product, batch or serial number.

58. We will specifically contact retailers from supermarkets to corner shops via the British Retail Consortium and the Association of Convenience Stores. This should help us to build up a more complete and reliable picture of the costs of implementing these two Directives, which will be include in the Final Impact assessment.

## **Summary and preferred option**

59. In summary we prefer to go with Option 1 and make legislation to implement Directives 2013/29/EU and 2014/58/EU. This should help to make pyrotechnic articles in the EU safer by making the relevant legislation easier for users to understand and apply, and should make it easier to trace pyrotechnic articles throughout the supply chain and thereby improve market surveillance and the safety of pyrotechnic articles.

60. We would implement by bringing in secondary legislation to revoke and replace the Pyrotechnic Articles (Safety) Regulations 2010. This would bring the clarity of a fresh set of easy to understand regulations rather than introducing confusing amendments into the existing legislation. Implementation should help to progress the long term aim of improving the internal market in products through more effective market surveillance, better regulation of notified bodies and more effective legislative harmonisation.

BIS  
November 2014

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