



Department for
Business, Energy
& Industrial Strategy



**ALIGNMENT OF NINE EU SINGLE
MARKET DIRECTIVES WITH THE
NEW LEGISLATIVE FRAMEWORK**

Consultation response on UK
implementation

DECEMBER 2016

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1. Overview of the proposals

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. By way of response the New Legislative Framework (NLF) was created and single market Directives on products have been aligned to make them more consistent and clearer for businesses.
2. The UK has an obligation under EU law to transpose these Directives. The Government has agreed that there will be no immediate changes to our relationship with the EU. Until we have left the EU the UK will remain a member of the EU with all of the rights and obligations that membership entails. The UK will in due course be leaving the EU. Until we do so the Government's policy is that we will meet our legal obligations. Transposing this legislation forms part of this work.
3. This document summarises responses to the Department for Business, Innovation and Skills¹ public consultation on the implementation of these Directives in the UK.
4. The consultation exercise was taken forward jointly with the National Measurement and Regulation Office (NMRO)², which was the policy lead for measuring instruments (two of the Directives relate to this area), and the Health and Safety Executive (HSE), which is the policy lead for the Civil Explosives Directive (one of the Directives covered by the NLF, and included in the consultation exercise). HSE is also the enforcing authority for a number of the Directives within the scope of the exercise.
5. The 8 Directives being aligned to the NLF are:

Name	"Old" Number	"New" Number
Low Voltage	2006/95 EC	2014/35/EU
Simple Pressure Vessels	2009/105 EC	2014/29/EU
Lifts and their safety components	1995/16 EC	2014/33/EU
Equipment for use in Potentially	94/9 EC	2014/34/EU

¹ In July 2016 The Department for Business, Innovation and Skills (BIS) and the Department of Energy and Climate Change (DECC) merged to form the Department for Business, Energy and Industrial Strategy (BEIS)

² Regulatory Delivery was created on 1 April 2016 as a directorate within the Department for Business, Innovation and Skills, bringing together the Better Regulation Delivery Office and the National Measurement and Regulation Office to focus on regulation and enforcement

Explosive Atmospheres (ATEX)		
Electromagnetic Compatibility	2004/108 EC	2014/30/EU
Measuring Instruments	2004/22 EC	3014/32/EU
Non Automatic Weighing Instruments	2009/23 EC	2014/31/EU
Civil Explosives	93/15 EC	2014/28/EU

6. In addition to the 8 Directives, we also consulted on the proposed implementing legislation for Directive 2014/68 EC on Pressure Equipment (formerly Directive 97/23 EC and Regulation 1271/2008 EC on the Classification, Labelling and Packaging of Substances and Mixtures (CLP)). This was also being aligned to the NLF and had a transposition deadline of June 2016. We therefore decided to combine the consultation for this work here.
7. Further details of the key elements of the proposals are set out in the original consultation which can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/451121/BIS-15-468-alignment-of-nine-EU-single-market-directives-with-the-new-legislative-framework.pdf
8. The main purpose of the alignment is to make legislation on the Single Market for Goods clearer, more consistent and more effective. It is not intended to change the essential technical requirements of EU product legislation, but instead builds on the existing systems to reinforce the application and enforcement of legislation. The NLF is intended to make legislation consistent so that similar provisions have consistent text.
9. The consultation set out the key responsibilities and areas that will be different as a result of the changes, and asked a series of questions to stakeholders that we hoped would help us more clearly establish the impact of the legislation on them. It is relevant to manufacturers (and their authorised representatives as defined in specific Directives), distributors, importers, retailers, bodies involved in conformity assessment, enforcement authorities and end-users (including consumers).
10. Further details of the key elements of the proposals are set out in the original consultation document.

11. The Department would like to thank all interested parties for taking the time to respond to the consultation. We have considered your views very carefully. As a result of the responses, the impact assessment, and draft legislation which accompanied the consultation, will be revised as explained in the following sections on each question.

2. Conducting the consultation exercise

12. This was a UK-wide consultation and was aimed at as wide an audience as possible which included manufacturers, importers, distributors, retailers, consumers, government departments, enforcement authorities and trade associations. The consultation was launched on 4th August 2015 and remained open for 8 weeks. Stakeholders with a known interest were posted a link to the consultation exercise by email. In addition HSE targeted communications activity at the civil explosives industry and also held a series of working groups specifically on the recast of the Explosives for Civil Use Directive.
13. We received 27 responses in total when the consultation closed on 29 September 2015. These are broken down in the following table:

7	Business representative organisation/trade body
0	Central government
1	Charity or social enterprise
0	Individual
2	Large business (over 250 staff)
0	Legal representative
8	Local Government
1	Medium business (50 to 250 staff)
1	Micro business (up to 9 staff)
3	Small business (10 to 49 staff)

0	Trade union or staff association
5	Other (please describe) Chartered Trading Standards Institute Market Surveillance Authorities (other than Local Government) Government Agencies/other Government

3. Responses received

14. The consultation posed 24 questions covering:

- Questions on general views on the changes
- Specific questions about the requirements of the regulations and how they should be implemented, including on specific regulations
- Questions about the estimates of figures/costs we have used/are seeking more information about these
- Questions about penalties
- Questions about redress
- General questions

Questions on general views on the changes

Question 1 - Do you expect any benefits from the proposed changes? If so, what would they be; what evidence do you have for them; and how great would they be?

Government response:

15. 18 organisations gave information in relation to this question. 6 respondents felt that there would be little or no benefit as a result of the changes, with some of these businesses feeling that the changes could not be felt without effective enforcement of the regulations, and others believing that the changes would encumber economic operators who already “play by the rules”. 12 respondents felt that the changes would make obligations clearer, products more traceable, and facilitate more effective enforcement.
16. Specific concerns were raised with HSE by the civil use explosives industry, both in the consultation responses and through the working group discussion, about the

totality of the costs of implementing EU requirements, such as CE marking, against the benefits. This was a particular concern for multi-national businesses working within and outside the EU.

17. We believe that the proposed changes are practical, and make obligations clearer and more consistent, and that any costs to business are likely to be one-off only. However, we will revise the final Impact Assessments which accompanied the consultation to take account of the figures that respondents provided.
18. HSE plans to carry out a post-implementation review (PIR) of the Explosives Regulations 2014 (which are being amended as a result of the recast) and this will cover the relevant EU Directives. HSE will continue to work with industry as part of the PIR work to consider the concerns raised around the cost and impact of the changes.

Question 2 - Can you think of any possible unintended consequences as a result of these changes? If so, what are they?

Government response:

19. 19 organisations gave information in response to this question. 2 raised concerns with the interpretation of “supply” with respect to the proposed Electrical Safety Regulations. The remaining respondents each raised different issues, including concerns that minor differences between directives could be missed by economic operators; the language set out being too vague; more cost in complying; concerns about the markings which would be required on products; an issue about the definition of manufacturer in certain circumstances in relation to pressure equipment assemblies; and an issue about uncontrolled movements in Lifts, with respect to the proposed Lifts Directive and Regulations.
20. We will ensure that the language used in both the transposing Regulations and the guidance will be consistent and clear, including the definitions set out in the legislation. On pressure equipment, the current position for the definition of manufacturer remains unchanged; the transposing Regulations will be made clearer on this.
21. While we recognise respondents’ concerns about the cost of compliance we believe that these will be limited for most businesses, and will be mitigated by improved guidance.

Question 3 - Are there any areas covered by the new Directives on which it would be beneficial to have more guidance for consumers, importers and/or manufacturers? If so, please give details.

Government response:

22. 19 organisations gave information in relation to this question. The majority of these asked that the guidance should be as simple as possible, particularly with regard to the obligations on economic operators, and several respondents asking for sector-specific requests for guidance.

23. EU guidance will be available on each Directive, however this will be supplemented by UK guidance on the transposing legislation where necessary. We will ensure that the language used is simple, clear and consistent.

Question 4 – (a) Do you consider that the draft regulations (either individually or collectively) are effective and proportionate? If not, please explain why you think this is the case. (b) Do the draft regulations impose requirements which go beyond the requirements set out in the new Directives and which you consider to be disproportionate or unnecessary? If so, please explain why you think this is the case.

Government response:

24. 17 organisations gave information in relation to this question, of which 5 were content that the regulations were effective, proportionate, and did not impose requirements which go beyond the requirements set out in the Directives. The remaining 12 respondents had concerns to varying degrees that some regulations would exceed their scope, that the regulations would not make products more compliant and would instead increase costs, and that the traceability requirements of the directives were either too strict or needed further explanation.
25. The Government's policy is that it will not include provisions which go beyond the requirements set out in the Directives. Having considered the evidence provided by respondents we remain of this view. While we accept that there will be some costs for business as a result of the legislation we believe that these are likely to be one-off. We will address concerns about the need to explain the requirements of the directives in the guidance to the legislation where it is not already made explicit in the EU guidance.
26. HSE is continuing to work with the civil use explosives industry to develop guidance to ensure that the requirements are understood and to address any specific areas of concern.
27. More specific questions about the requirements of the regulations and how they should be implemented, including on specific regulations

Question 5 - Should the template for the declaration of conformity be added as a Schedule to the regulations or should this cross-reference to the Annex to the Directive? Why?

Government response:

28. 16 organisations expressed a view on this question. 11 organisations said that they would prefer that the Regulations cross-refer to the Annex to the Directive containing the template declaration of conformity for ease of reference; the remainder preferred a schedule as they believed that this would be easier to implement or did not specify a reason.

29. In line with the response to question 6 (below) we intend to include the Declaration of Conformity within the Schedules to the Regulations for ease of reference, except where there is a clear case for this to be cross-referred to the Directive.

Question 6 - Should the Regulations cross-refer to the Annexes in the Directives or should the text of the Annexes be included (where possible) in Schedules to the Regulations? Why?

Government response:

30. 15 organisations expressed a view on this question; 10 believed that the Annexes should be included in Schedules to the Regulations and 5 believed that the Regulations should cross-refer to the Annexes in Directives (2 of these had a particular interest in the MID and NAWI Directives).
31. While we believe that the regulations which transpose the Directives should be consistent, we recognise that it might be appropriate in some cases to vary the approach. As such, while for the majority of the Regulations the text concerning essential requirements will be included in the Schedule, for ease of reference. However the MID and NAWI Directives will cross-refer to the annexes to the Directives to avoid unnecessary duplication due to the volume of annexes concerned.

Question 7 - The Directives require that instructions and safety information must accompany the product in a language which can be easily understood by consumers and end-users, as determined by the Member State concerned. Should the Regulations specify that for products made available to end-users in the United Kingdom, English is the language which can be easily understood to ensure greater clarity? Or would this be too restrictive?

Government response:

32. 20 respondents stated that the instructions and information should be specified as English or that English should be the “main” language. Of this, one respondent asked that Welsh and Gaelic be considered in addition to English, and others said that English could be accompanied by other languages if necessary. 1 respondent felt that this proposal was too restrictive.
33. The Regulations will require that instructions and safety information which accompany the product will be written in English. However it will be acceptable for other languages to be included in addition if desired.

Question 8 - Should the new Regulations covering the different product strands all follow the same structure? Why?

Government response:

34. 15 organisations expressed a view on this question. 14 said “yes” or “probably” for reasons of consistency and clarity and 1 respondent said “no” because the products

concerned were too diverse. 4 organisations provided additional information to support their view.

35. We agree that the Regulations should follow the same structure, for reasons of consistency and clarity and we will reflect this in the final drafting of the Regulations.

Question 9 - Should provisions which are common to each of the Directives be implemented in exactly the same way (where possible) - e.g. using exactly the same language - in the various sets of regulations?

Government response:

36. 13 respondents said “yes” or “probably” to this question for reasons of consistency and clarity; 1 respondent said “no” because the products concerned were too diverse.
37. We agree that the provisions which are common to each of the Directives should be implemented in exactly the same way (where possible) for reasons of consistency and clarity and we will reflect this in the final drafting of the Regulations.

Question 10 - Do you agree with the Non Automatic Weighing Instruments (NAWI) and Measuring Instruments Directive (MID) draft regulations (where applicable) including the in-service control of individual measuring instruments on the UK market place? Please note that the provisions complement the safeguard clause of the Directives and are identical to those already in existence in the current legislation.

Government response:

38. We received fewer responses to this question because it is focussed on the NAWI draft regulation. 1 respondent listed a number of disagreements against drafting aspects of the NAWI proposal. However the majority of the respondents supported the draft, with one respondent giving the additional suggestion that “the only further opportunity for simplification would be to synchronise all in-service requirements whether for NAWI or MID under a single set of regulations with common requirements”.
39. We will reflect concerns on aspects of the drafting of the regulations in the final drafts of the regulations.
40. The decision not to pursue a single set of regulations for the NAWI and MID in-service requirements (for specific instruments) was taken to avoid the need for separate legislation in addition to the transposition package being taken forward by the BIS Regulatory Policy Unit. The approach is consistent with both the current regulations and has the added benefit of having all the in-service controls combined for MID instruments covered by the Weights & Measures Act 1985. A single set of regulations for the NAWI and MID in-service requirements would be liable to cause confusion amongst users.

Question 11 - Do you agree with the proposal to align the requirements for gas and electricity meters with those of the other MID instruments, thereby allowing meters approved under national legislation to be put into use after 30th November 2016? This will allow meters held in stock by suppliers or asset owners to continue to be put into use after this date; thereby avoiding the need for suppliers and asset owners to dispose of these assets.

Government response:

41. We received 3 direct responses to this question; 2 agreed with the proposal with 1 respondent saying specifically that “it is irresponsible to discard functional equipment” however 1 opposed the intended change because “for the last ten years it has been the industries understanding that from the end of November 2016 pre-MID meters could not be installed”. One organisation agreed with the question.
42. Utilities and other businesses holding stocks of national meters, not put into use prior to 30th November 2016, face the possibility of the double outlay of replacing those meters with other MID non-smart meters and subsequently by 2020 with MID smart meters. All suppliers and asset owners are required to invest in 53 million gas and electricity smart meters that will be rolled out to all homes and businesses by 2020. The proposal to align the aforementioned requirements with the other MID instruments would therefore result in a significant saving to business. This complements the current exercise in looking to extend the life of existing meters on the market such that when replacement is necessary smart meters can be provided.

Question 12 - Can you provide an estimate of the cost saving by allowing these meters to continue to be put into use after 30th November 2016? If so, what is this based on?

Government response:

43. There were 2 responses to this question, both of which said that “the majority of the meters the utilities will buy to replace failing national (IEC) meters will have a unit cost of less than £8. The bulk of the costs of any meter installation is in the visitation and replacement of the meter (normally quoted as £40) and this still remains, irrespective of which type of meter is installed”.
44. By allowing existing meter supplies to be naturally used up this removes the need for utilities and other businesses holding stocks to purchase new stocks of non-smart MID meters ahead of the current roll out proposal of MID smart-meters. This makes it less likely that replacement meters would need to be carried out a second time. One supplier has estimated that they hold up to 20,000 national meters at an average meter cost of £10 (taking into account the additional cost of prepayment meters). Therefore there is likely to be a significant financial benefit if national meters already placed on the market were permitted to be put into use after 30th November 2016 where required ahead of the roll out of the 2020 smart meter programme.

Question 13 - Do you agree with the LVD draft regulations specifying the requirement for a safe connection to BS1363 style socket outlets and revoking the equivalent requirement in the Plugs and Sockets, etc (Safety) Regulations 1994 (SI 1994:1768)? Why?

Government response:

45. The 6 respondents agreed with this question. 2 expressed a desire to see more detail in the text and scope. 1 respondent said yes, but only if there was no ambiguity. 1 respondent disagreed with the question because “this brings in to the UK Regulation products which are specifically excluded from the LVD. It is important that the requirements for Plugs and Sockets are retained in the Plugs and Sockets etc. (safety) Regulations”.
46. There is clear support for transferring the requirement for an appropriate connection of electrical equipment from the Plugs and Sockets etc (Safety) Regulations to the LVD Regulation. The LVD contains a clear requirement that products are able to be safely connected to the electrical mains supply. This effectively covers the majority of Part 2 of the Plugs and Sockets Regulations; it is therefore appropriate that the relevant requirements should be transferred to the LVD Regulations. One respondent noted the requirement for an appropriately rated fuse should also be included, which we will do. One respondent expressed concern that products out of scope, i.e. the plug and converter plug, would be brought into the scope of the LVD. This is not the case - the technical and conformity assessment requirements would continue to be provided under domestic Regulations, namely, the Plugs and Sockets etc. (Safety) Regulations.

Questions about the estimates of figures/costs we have used/are seeking more information about

Question 14 - Do the Impact Assessments adequately reflect the effect of the new Directives?

Government response:

47. 6 respondents supported the Impact Assessment or provided additional information. 1 organisation did not support the Impact Assessment. 4 respondents had mixed views.

Lifts Directive

48. One organisation responded with specific reference to the Lifts Directive. They said that they consider the resource and finance commitment to be an underestimate regarding the review and reissue of revised certificates. The company also stated that under the Lifts Directive/Regulations that technical documentation should be retained for 15 years, and that there is no such requirement in the Directive or Regulations.

49. A second organisation believed that the impact assessment generally reflects the effect of the new Directive.

Explosives for Civil Use

50. One organisation said that there are much higher potential costs for the recast, while another stated that the costs seemed reasonable.

Non Automatic Weighing Instruments

51. One organisation said that paragraph 31 was correct and one that paragraph 31 was incorrect. The one which felt it was incorrect felt that requalification provisions do not appear to be identical to those already in existence in the current legislation and that modification would be necessary.

General

52. One organisation (a Trade Representative Organisation) said that it disagreed with clause 85 of the Impact Assessment which states that the overall costs will be modest – for a volume producer the costs will be high, with one member estimating a cost of £22 million.
53. Three organisations believed that the costs set out in the Impact Assessment were generally reflective of the impact of the measures.
54. We note the concerns and views of respondents and will consider these figures in our revised Impact Assessments.

Question 15 - Do you agree with our estimate of the number of businesses affected in each sector? Can you provide additional evidence?

Government response:

55. 6 organisations provided information in response to this question.

Lifts Directive

56. One organisation stated that there are currently 6 Notified Bodies.
57. A different organisation (a Trade Representative Organisation) said that it has 168 members and that they believed they cover approximately 85% of the industry.

Explosives for Civil Use

58. One organisation states that they thought the estimated number of explosives manufacturers in the UK (13) seemed to be on the high side, but they had no other evidence.
59. A different organisation said that they believed there are 10 businesses in the Offshore Explosives Sector.

60. We note the concerns and views of respondents and will consider these figures in our revised Impact Assessments.

Question 16 - Are you able to provide any evidence (quantified or otherwise) of the likely costs of the changes for the main affected groups i.e. manufacturers, importers or distributors? If so, what is this based on?

Government response:

61. 7 organisations gave information in response to this question.
62. One organisation said that translation costs had not been considered. This could cost £12.5 million, and since the organisation's turnover is £3 million this was unaffordable. They felt that "small business was being strangled by bureaucracy".
63. Two organisations said that they were unable to give precise estimates of the financial impacts but believe that these would be large.
64. One organisation said that they had already provided figures in contribution to the Impact Assessment.
65. One organisation (a Trade Representative Organisation) said that for a volume producer the costs will be high, with one member estimating a cost of £22 million.

Explosives for Civil Use

66. One organisation provided an estimate of additional costs expected for CE approval under the recast of around £900,000 based on 113 applications
67. We note the concerns and views of respondents and will consider these figures in our revised Impact Assessments.

Question 17 - Do you agree with our estimate of the average costs (one-off and on-going) to business? Can you provide additional evidence to support your answer? If so, what is this based on?

Government response:

68. 7 organisations provided information in response to this question.
69. One organisation believed that costs were escalating, and time-scales were lengthening, so they were finding it difficult to provide an effective service.
70. One organisation said that there could be additional on-costs for Notified Bodies in supplying additional data to the statutory authority and Notified Body Coordination group, unless this could be supplied by email.
71. One organisation said that there would be additional costs for moulding and tooling changes.

Explosives for Civil Use

72. One organisation thought that the costs were reasonable.
73. We note the concerns and views of respondents and will consider these figures in our revised Impact Assessments.

Question 18 - Do you agree with our estimate of the average costs to Notified Bodies? Can you provide additional evidence to support your answer?

Government response:

74. 3 organisations responded to this question.

Lifts Directive

75. One organisation said that there were likely to be additional costs specific to their business arising from resourcing, accreditation and subsistence costs. Based on a client list of approximately 100 their additional one-off costs are estimated as being 1% of turnover.

General

76. One respondent said that in relation to this question, the Notified Bodies concerned follow the peer audit system; should this system be rejected the costs for a UKAS-approved Notified Body appear to be correct.
77. We note the concerns and views of respondents and will consider these figures in our revised Impact Assessments.

Question 19 - What is your estimate of the costs on a yearly basis for your business in complying with the Regulations, in terms of either additional time spent in complying with the regulations or financial costs? Please specify whether the costs have been calculated using additional time spent or financial costs. If using additional time spent please provide an estimate of the additional number of hours required alongside costs?

Government response:

78. Comments from the 8 organisations which responded included:
- An expectation that there will be a marginal increase in costs
 - A concern that translation costs far outweigh sales, which will cause the company to reduce exports and to shrink
 - A cost estimate of £1000 - £2000 (equating to additional hours of 15 – 20 per year).

- An additional ongoing time increase over and above the current estimate of approximately 50 hours per annum
- An expectation that there would be an additional cost in responding to consultation and guidance documents, constituting in the region of 300 – 400 hours for 2015/16 with 150 -200 hours in 2016/17.
- A concern that, due to the extensive range and volume of products affected, the initial cost of complying with the Regulations are estimated to be substantial with annual costs reducing after that.

Explosives for Civil Use

79. One respondent referred back to a previous estimate under question 16 of around £900,000 for 113 applications. Another offered a range of £1000 - £2000 based on an additional 15 – 20 hours per year of work.
80. We note the concerns and views of respondents and will consider these figures in our revised Impact Assessments.

Question 20 (refers to all directives covered in the BIS Impact Assessment (i.e. all except for the Civil Uses Explosives Directive)- If you are able to be more specific, can you give an estimate of the costs to business for (i) Familiarising themselves with the legislation; (ii) Holding the additional data; (iii) Obtaining new conformity assessment documentation; (iv) Post-marketing obligations?

Government response:

81. Of the 8 organisations which responded concerns/estimates included:
- A concern that changes in legislation are a burden; traceability requirements will have minimal ongoing costs. They also had a concern about language requirements
 - 3 organisations expressing the concern that costs to the enforcement authority are for training and familiarising itself with the new requirements, requiring officer time of 8 hours
82. We note the concerns and views of respondents and will consider these figures in our revised Impact Assessments.

Question 21 refers to the Civil Uses Explosives Directive only.

Question 21

(a) Do you agree with the assumptions made when estimating costs to manufacturers of the following? If not, why not? Could you provide alternative estimates? What are these based on:

- **Familiarisation;**
- **conformity attestation;**
- **packaging;**
- **procedures when products pose a risk.**

Government response:

83. 3 organisations responded directly to this question. One organisation referred back to a previous estimate under Question 16 of around £900,000 for 113 applications. Another agreed with the assumptions in the Impact Assessment.

(b) Do you agree with the assumptions made when estimating costs to distributors and importers of the following? If not, why not? Could you provide alternative estimates? What are these based on?

- **Familiarisation**
- **checking packaging and safety requirements**
- **taking action following receipt of non-compliant products**

Government response:

84. There was 1 specific response to this question which was that the organisation concerned agreed with the assumptions. 2 organisations said that they would provide comments directly to HSE.

(c) Could you provide additional estimates of costs to manufacturers for translation of safety information? If so, what have you based these on?

Government response:

85. There were no responses to this question.

(d) Could you provide additional estimates of costs to importers for annotating the explosives with their details? If so, what have you based these on?

Government response:

86. There were no responses to this question.

87. We note the concerns and views of respondents and will consider these figures in our revised Impact Assessments.

Questions about penalties

Question 22 - In order to implement the NLF Directives we must set effective, proportionate and dissuasive penalties for infringements. Should the new legislation have a consistent approach to penalties across all the implementing regulations?

Government response:

88. 17 organisations provided information in response to this question. The majority said yes. Overall comments included:
- Penalties need to be flexible and that there needs to be guidance for the courts
 - A consistent approach might be useful however the hazard presented and subsequent risk might vary and this needs to be reflected. The organisation concerned supports varying penalties to reflect the size of the company.
 - Being proportionate is vital. Everything should be based on turnover so that smaller businesses are not unfairly treated compared to large rivals.
 - 8 organisations which thought that a consistent approach was appropriate
 - One organisation would prefer to see an emphasis on enforcement of the regulations rather than on penalties, which are only imposed following a successful prosecution
 - Where public safety is involved penalties should reflect the additional risks and numbers (of particular relevance to the Lifts Directive).
 - It may not be applicable to apply the same penalties within the Explosives industry as within other industries as the end users are not the public (of particular relevance to the Explosives for Civil Use Directive).
 - One organisation which argued that the new obligations on manufacturers and installers in relation to recall and withdrawal as being potentially very severe for non-conformities. So the new regulation significantly increases the cost for non-conformities – the penalties should reflect this.
89. BEIS notes the overall consensus for consistency of approach and will implement a common approach towards fines and sanctions across all directives, but with deviations where necessary.
90. HSE is aligning with the wider NLF approach being taken by BIS and is developing a series of NLF-specific notices. Health and safety issues will additionally continue to be dealt with through the existing Health and Safety at Work etc. Act 1974 (HSWA) enforcement framework as applied by the implementing Regulations. HSE is developing guidance for businesses likely to be affected by the NLF to ensure that the processes are clear.

Questions about redress

Question 23 - Is the level of redress in the new legislation sufficient? Why?

Government response:

91. There were 9 direct responses to this question, of which 2 were unclear on what was meant by the term “redress”. 1 respondent said that there was no form of address for economic operators who are wrongly served with an enforcement notice. 1 respondent said that they thought it is important that entities that disobey the regulations in order to gain commercial advantage are strongly discouraged to do so; 1 agreed with the statement. 1 said that they would prefer to see the emphasis on enforcement of the regulations rather than on penalties, which are only imposed following a successful prosecution. 2 respondents agreed that the level of redress is sufficient/adequate.
92. The levels of redress referred to here is redress against enforcement bodies which issue notices in error.
93. Based on the feedback that BEIS received we intend to maintain the approach to redress set out in the legislation that was proposed in the consultation. In addition HSE is not proposing any further amendments. There are existing routes for remedy available under HSWA (against HSWA notices) and common law.

General question

Question 24 - Do you have any other comments that might aid the consultation as a whole?

Government response:

94. 12 organisations provided further information or asked additional questions in response. One of the respondents felt that no one would actually benefit from the changes to the legislation and that the amount of documentation should be minimised; another agreed, saying that they felt that the recast was unwelcome and unnecessary. Another concern was lack of resources, and others asked for great clarity on the applicability of the legislation, such as on definitions. Respondents also gave specific details, including drafting changes, to each directive.

Explosives for Civil Use

95. 1 respondent stated that the changes are unwelcome as the industry is already highly regulated, and another stated that there should be consistency with the Pyrotechnic Articles (Safety) Regulations 2015.
96. Anomalies in drafting and spelling errors have been noted and will be corrected. We will use the information supplied by respondents to revise our Impact Assessment, which will more clearly set out the likely impact on business. In

addition we will ensure that the provisions set out in the Regulations are made clear in the guidance accompanying the legislation.

4. Next steps

97. In light of the information received through the consultation exercise BEIS and HSE (in relation to Civil Use Explosives) will be seeking to implement the proposed legislation in by the end of the year).

ANNEX – List of respondents

Barking and Dagenham Council

BEAMA

BEKA Associates

British Toy and Hobby Association

British Compressed Gases Association

Chartered Trading Standards Institute

East of England Trading Standards Association

EM-Lite

Engineering Equipment and Materials Users Association ESF

Explosive Developments

Gloucestershire County Council

Haliburton

Hampshire County Council

Health and Safety Executive

Health and Safety Executive Northern Ireland

Lancashire County Council

Lifts and Escalators Industry Association

Lift Cert

London Underground

Northamptonshire County Council

RWE

Southwark Council

Telecom Policy Services Ltd

Transport for London

UKWF

Wales Heads of Trading Standards Metrology Group

Wallop



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