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Christine Knox
Regulatory Delivery
Department for Business, Energy and Industrial Strategy
Second Floor
1 Victoria Street
London
SW1H 0ET

11th November 2016

Dear Mrs Knox

I am writing in response ot the consultation on updating the Furniture and Furnishings (Fire) (Safety) Regulations. We are a national retailer of upholstered furniture and are therefore an interested party. Our response to the consultation is as follows:

Q1 Do you agree with the revised definition of the Regulation's Scope?

There is an absence of what is exactly meant by "private use in a dwelling" as this does not seem to cover rented property, holiday camps and care homes. Whilst in essence these may be considered as places of business, for clarity it is felt that this should be expanded upon, and included in the Regulations.

There is also a consideration for pet beds; these are often greater than the size of floor cushions yet do not appear to be outside of the Regulations.

Q2 Do you agree with the proposals relating to the sleeping bags and mattress protectors (i.e those that can put in a washing machine and are explicitly removed from scope and do not meet the requirements of the Regulations?

Whilst this does not affect our business as we do not retail these items, is there is a limit to the size of the washing machine? Should this have a limited i.e <9kg? I believe that the regulations could be drafted better to avoid loopholes being exploited.

Q3 Do you agree with the proposals relating to cushions and seat pads (i.e that they remain excluded from cover tests but the definition of these products to be specified more clearly).

In part yes, we agree with the guidelines for the for the scatter cushion size, however this seems at odds with the size of seat pads.

The 60cm x 60cm x nominal thickness seems a sensible approach that only the filling should apply as this is the bulk of the item. However if a seat pad was 30cm x 30cm x 2cm thick both the cover and the fillings be in scope, by virtue of the thickness being greater than the 1cm allowed. For clarity and

legal certainty the seat pad size should be removed. However it is understood that this would give rise to a lower limit and I would suggest that this is 15cm x 15 cm x nominal thickness.

It is understood the Leisure and Outdoor Furniture Association are proposing a volume based approach. However this is very difficult to measure and some fillings could be compressed to fit under their limit proposed ($0.025m^3$). In order for the regulations to be enforced, it is thought that the H x W x nominal measurement is the correct approach.

Q4 Do you agree with the proposals relating to outdoor furniture (i.e that outdoor furniture unsuitable for use inside the home, and clearly labelled as not complying with the regulations) should be out of scope?

Whilst we do not currently supply outdoor furniture, but there appears to be an issue over who gets to decide whether something is unsuitable. For example furniture in a conservatory, some families may not want the additional expense of having a set of furniture for the garden and the conservatory. Or additional seating required for unexpected guests, in this case whilst garden furniture may not be used permanently in the home nevertheless it is possible.

Q5 Do you agree with the proposals relating to baby products (i.e that items covered by BS EN1888 and BS EN1466 are removed from the scope, with padded playpens treated in the same way as mattresses?

Whilst we do not retail these, we agree this is a sensible change to the legislation.

Q6 Do you agree with the proposed treatment of second hand products (i.e that they would be required to bear the relevant permanent label)?

Yes.

Q7 Do you agree to the removing the filling 1 option?

Yes.

Q8 Do you agree that the specifications set out in the draft Regulations for the test foam and fibre wrap are sufficient to achieve the objectives of the Regulations?

In theory yes, we understand that over the past few years there has a greater shift towards fibre wrapped foam and this is reflective of the current market. However there need to be absolute clarity on what this specification test is. For example: the denier of the fibre, and the weight or volume of this.

Q9A Do you agree that the regulations should provide a protective cover option?

We believe that there should be as many routes to compliance as possible as this encourages innovation and results in greater choice for the retailer and the consumer alike. However the tests appears to be prohibitively expensive resulting in products that may be uncompetitive, unless

significant economies of scale were achievable. The issue is still on the measurement whether there is a tolerance, and the proposal that the test is completed five times against the standard, which in itself comprised of 2 tests, meaning that the cover will have to undergo 10 tests in total, and given the known variability of tests between test houses, would be virtually unenforceable. The technical panel that BIS appointed, advised of the difficulties here, however it would appear that BEIS have ignored their own advice given by technical experts.

As such it is felt that in the impact assessment that the 25% of furniture using this route is wildly optimistic. Also in the impact assessment no consideration has been given for the increase in costs this will attract.

Ultimately it is felt that the take up of this route, is likely to be so low, when compared to the other option, this may as well be removed, from our own research our suppliers are very unlikely to use this as a route to compliance.

Q9B Do you agree with our proposed definition of protectiveness?

No, for the reasons set out above.

Q10 Do you agree with the proposed requirements for components close to the cover?

Yes, although we have concerns with regard to the use of webbing and being able to source FR webbing that is sufficiently durable, however are confident that alternatives can be sought in the transition period.

Q11 Do you agree that there is no need for the cigarette test for covers that pass the revised match test?

Yes, our own due diligence testing has shown no failures of the cigarette test but a passing of the match test.

Q12 Which of the routes to compliance do you expect to use?

We expect that our suppliers will use the non-protective route.

Q13A What do you expect the impact will be on the use of fire retardants in covers will be?

An overall significant reduction.

Q13B what do you expect the impact will be on your overall use of fire retardants will be?

An overall significant reduction.

Q14 do you agree with the requirements to hold a technical file?

Yes, as we do currently.

Q15A do you agree with the requirements for a single permanent label and a removal of the display label.

Yes

Q15B What do you think is the most effective means of communicating the use of fire retardants?

Written text in plain intelligible language.

Q16 Do you agree that a 24 month transition period is sufficient and that the changes should be reviewed in 5 years.

Yes.

Q17 do you have any other comments on the draft?

The legislation makes several references to British Standards; I believe the full test standards themselves should be annexed in the legislation. Currently it is only possible to purchase the standards from the BSI. However, if it is possible for a criminal conviction for not complying with the revised Regulations, then the standards should be written in the statute, or otherwise freely available.

For small manufacturers access to British Standards documentation can be prohibitively expensive and is a barrier to market entry. This would also assist Trading standards demonstrate their case in the event of a manufacturer that was non-compliant.

Q18 Do you agree with the estimate of the traceability time?

The completion of the technical to a workable standard will not take 4 hours per month, as this depends on the number and volume of product, it is estimated for a company of our size this would represent an additional head count of 1.5 at full time, in addition it would take over 40 hours to implement.

Q19 How much do you estimate you would save from the removal of the cigarette test?

Whilst the cigarette test is removed, the saving of this would be at best nullified by the requirement to test components. The overall cost of testing will increase by 50% per annum during the transition period, whilst alternative components are researched, and 25% per annum in real terms after this period. It is also worth noting that logistical costs remain the same and the net saving of removal of the cigarette test is closer to 20%.

Also in the absence of an exclusion list, the level of due diligence required means that we will have to set fire to metal springs, as they are in 40mm of the cover, this would seem contrary to common sense. However, from an enforcement point of view, it would be feasible to rely on the case of *Garrett v Boots* as per Lord Lane *"What might be reasonable for the large retailer might not be reasonable for the village shop"* and *Naish v Gore* [1971 All ER 737] whereby it was stated by Lord

Widgery: *"It is for the defendant to prove that he took all reasonable precautions and if he has taken none, that means he must prove that none could be reasonably taken."* Therefore moving the focus from actual compliance to a technical breach of the revised regulations.

Q20 How much do you think you would save from reduced use of fire retardants?

It is expected that the cost of the product will increase by around 5-10%, until the economies of scale are fully reached for when goods are manufactured in the UK. At a time when our margins are already tight, this is a cost burden we are unlikely to be able to absorb fully, given the fact that significant number of components are already imported and the current exchange rate is unfavourable, adding additional costs to businesses at this stage will make it difficult in the medium term for British manufacturing to compete with imported products.

Q21 Are you aware of any other costs or benefits.

Aside to the answer for Q18, there is an ongoing cost of the maintenance of technical information and this impact assessment provides a rather conservative cost for this and seems not to understand the level of storage for such technical information.

Q22 To what extent do you agree that overall these proposals represent a reasonable compromise?

There is no compromise at all. The additional production costs and the routes to compliance will make furniture uncompetitive in the European and wider global market. It is felt that the increased costs may result in a larger illegal market of non-compliant products, and the companies that adhere to the Regulations at a commercial disadvantage.

Whilst, a self-regulatory approach is preferable, however, there will be an absence of enforcement by regulators, so there is little value in having increased Regulations if there is no one to enforce the manufacturers that are not going to comply.

It is very clear that despite the advice given by the Technical Panel at the request of BIS this is likely to go through in its current form with no further changes.

Yours sincerely

Compliance Manager
For & Behalf of A Share & Sons Ltd T/A ScS and House of Fraser Made to Order