

**dti**

**FIREWORKS REGULATIONS  
2004**

Consultation on proposals to  
tackle the anti-social use of  
fireworks through the  
regulation of use and supply.

**CONSULTATION DOCUMENT**

April 2004



**SCOTTISH EXECUTIVE**

This is a joint consultation with the Scottish Executive

**dti**

The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

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## 1. Executive Summary

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**1.1** The Fireworks Act 2003 (the 2003 Act) was originally a Government-supported Private Members Bill which received Royal Assent on 18 September 2003. The purpose of this legislation is to reduce the noise, nuisance and injuries caused by the misuse of fireworks - which forms part of the broader public concern with the problem of anti-social behaviour.

**1.2** The Act enables the Secretary of State for Trade and Industry to make regulations (Fireworks Regulations) in order to secure that there is either no risk, or a minimal risk compatible with use, that fireworks will cause death, injury or distress to persons or animals, or damage to property. The scope of the Act is twofold in its approach in that it allows the Government to tackle issues regarding the supply of fireworks as well as their use, or misuse.

**1.3** This document therefore covers proposals to introduce a number of limited prohibitions on the importation, sale, possession and use of fireworks, specifically (as above) with the aim of tackling their anti-social use by those who take the fun out of firework use and turn it into misery for the many.

**1.4** The proposed Regulations consist of the following:

- to make permanent the emergency Fireworks Regulations 2003 – where it is an offence for anyone under the age of 18 to possess fireworks in a public place, and for the possession of category 4 fireworks, that is, professional display fireworks, by any person other than a fireworks professional;<sup>1</sup>
- to create a curfew on the use of fireworks – set between 11 pm and 7 am, with the inclusion of exemptions for traditional and multi-cultural celebrations;
- to prohibit the supply, to the public, of category 3 fireworks that exceed 120 decibels;

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<sup>1</sup> A person is a “firework professional” if employed to operate fireworks displays, a pyrotechnician, manufacturer or importer, etc.

- the creation of a licensing regime whereby those intending to supply fireworks to the public all year round are required to apply for a licence to do so from their Local Authority;
- a requirement that all suppliers to the public, whether internet, mail-order or retail/ wholesale, display a notice informing consumers of the law regarding underage sales and possession; and
- the creation of an importation requirement whereby all importers of fireworks will provide Customs and Excise with details as to the destination of their product - so as to allow for a port to point-of-sale audit trail to help clamp down on illegal storage and distribution.

**1.5** These proposals, which we believe form a comprehensive package of measures designed to tackle the problem of fireworks misuse and illegal distribution, are also complementary to the recent proposed Fireworks (Safety) (Amendment) Regulations 2004 – which, we expect to come into force late in May<sup>2</sup>. These Regulations propose:

- a ban on the supply of air bombs;
- the tightening-up of the definition of mini rockets; and
- a change of the “due diligence” defence to that of “strict liability” for suppliers in relation to the sale of fireworks to those under the age of 18.<sup>3</sup>

**1.6** It is important that both of the proposed Regulations are made and as soon as possible in order to reduce the potential that fireworks may be misused in the 2004 fireworks season.

## **How to Respond?**

**1.7** When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation

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<sup>2</sup> The consultation for these proposals closes on the day that this consultation is launched (23<sup>rd</sup> April 2004).

<sup>3</sup> This would have the effect of encouraging retailers to be more cautious and proactive in ascertaining the age of those whose age maybe ambiguous.

represents and, where applicable, how the views of members were assembled.

**1.8** Please submit your responses to this consultation by post or email to:

David Southerland  
Consumer and Competition Policy Directorate  
Room 427  
Department of Trade and Industry  
1 Victoria Street  
London SW1H 0ET

[David.Southerland@dti.gsi.gov.uk](mailto:David.Southerland@dti.gsi.gov.uk)

### **Closing Date**

**1.9** Responses must be received by **Friday 2<sup>nd</sup> July 2004**.

**1.10** The Minister for Employment Relations, Competition and Consumers - Gerry Sutcliffe MP - has given authorisation for the consultation period to last for 10 weeks rather than the usual 12. This will enable our Regulations to be laid before Parliament before the summer recess, so that an affirmative resolution debate can take place in which the Home Office will seek additional powers under the Fixed Penalty and Disorder scheme to enable the Police to enforce the curfew with more suitable penalties (FPNs). The Debate must take place before the House rises and our regulation must be before the House at the time of the debate.

### **Confidentiality**

**1.11** Your response may be made public by the DTI or the Scottish Executive. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested.

**1.13** We will handle any personal data you provide appropriately in accordance with the Data Protection Act 1998.

## Consultees

**1.14** We are sending this document to the consultees listed at Part 6. Please tell us if you know of others who would be interested in receiving this consultation. It is also available by request from the address below and on the DTI website at: [www.dti.gov.uk](http://www.dti.gov.uk)

**1.15** This document is issued jointly with the Scottish Executive.

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

## Enquiries

**1.17** If you have any questions, or would like further information on this consultation please contact David Southerland on 020 7215 0371.

**1.18** If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Louisa Renwick  
Consultation Co-ordinator  
Department of Trade and Industry  
Room 723  
1 Victoria Street  
London SW1H 0ET  
[Louisa.renwick@dti.gsi.gov.uk](mailto:Louisa.renwick@dti.gsi.gov.uk)

**1.19** A copy of the Code of Practice on Consultations may be viewed at the following website address:

<http://www.cabinet-office.gov.uk/regulation/Consultation/Code.htm>

**1.20** All responses relating to the Scottish proposed Regulations will be forwarded to the Scottish Executive. However, you may wish to send a copy directly to:

Andrew McConnell  
Enterprise, Transport & Lifelong Learning Department  
Scottish Executive  
4<sup>th</sup> Floor  
Meridian Court  
5 Cadogan Street  
Glasgow G2 6AT  
[Andrew.McConnell@scotland.gsi.gov.uk](mailto:Andrew.McConnell@scotland.gsi.gov.uk)

## Consultation questions

1.21 The following are general questions for consultees:

(a) Can the current Possession Regulations, that is, those making it an offence to possess fireworks by the under 18s or for members of the public to possess category 4 fireworks, be improved in any way?

(b) Is the proposed curfew set at an appropriate time?

(c) Do consultees believe that the Police and Community Support Officers are best suited to enforce the curfew?

(d) Do consultees believe that 120 decibels is the appropriate level at which to set a maximum limit for category 3 fireworks?

(e) Do consultees have views on how best to implement the maximum 120 decibel limit for category 2 fireworks given the restrictions in section 5 of the Fireworks Act 2003 i.e. is the Government's plan to reference the new British Standard (BS EN 14035) the best approach?

(f) Are the powers that the Home Office is working to secure for the police sufficient to be able to deal with enforcement of the possession offences? Would these powers be appropriate for Scotland?

(g) Do consultees, particularly those whose trade includes the sale of fireworks in the context of importation, wholesale or retail, believe that the proposed Regulations will have a negative impact on competition or profitability?

(h) Will the proposed Regulations contribute to a reduction in the anti-social use of fireworks and a reduction in firework-related injuries?

**All comments in relation to the proposed Regulations are welcome.**

## 2. Proposals

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**2.1** The main objective of implementing the selected provisions of the 2003 Act is to reduce the risk that fireworks are misused by anti-social or irresponsible members of the public in a way that could cause death, injury, distress or anxiety to people or animals or damage to property. And, where misuse is perhaps not a conscious endeavour, such as the use of particularly loud fireworks, it is hoped that these regulations will encourage consumers to be more considerate when using fireworks.

### **Proposal 1 – Possession Offences**

**2.2** Under section 3 and 5 of the Fireworks Act, the Government made emergency Regulations prohibiting the possession, in a public place, of all adult fireworks<sup>4</sup> by those under the age of 18 and for anyone other than a fireworks professional to possess a category 4 firework – usually the most dangerous and powerful fireworks. We propose to repeal these Regulations and incorporate them, in their current form, in the proposed Fireworks Regulations 2004.

**2.3** The police will be responsible for the enforcement of possession offences, as is currently their responsibility under the 2003 Fireworks Regulations. The Home Office is working to improve the enforcement powers and sanctions available to the police including making possession offences arrestable and punishable by FPNs They are also looking into the appropriateness of applying powers of stop, search and seize in relation to underage possession.

**2.4** With respect to both the possession offences, the Home Office are working to provide suitable powers to the police to make the offences both arrestable and punishable by Fixed Penalty Notices. The Scottish Executive is considering the position for Scotland.

### **Proposal 2 – Curfew of Firework Use**

**2.5** Under section 4 of the 2003 Act, we propose to impose a curfew on the use of fireworks during night hours, that is, between 11 pm and 7 am.<sup>5</sup>

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<sup>4</sup> An adult firework is any firework with the exception of caps, cracker snaps, novelty matches, party poppers and sparklers from category 1 and 2.

<sup>5</sup> These times are in line with the definition of night hours in the Noise Act 1996.

Most of the complaints that we receive about fireworks noise relates to the their use at anti-social hours - many of which relate to their use in the early hours of the morning such as between 2 am and 4 am.

**2.6** We have included exemptions to the curfew – those dates identified as being either traditional (5<sup>th</sup> November) or that possess religious or cultural significance to constituent minorities (Diwali). These exemptions, however, will not mean that fireworks can be set off throughout what is defined as night hours, but rather permission is extended to 2 am <sup>6</sup>.

**2.7** Following discussions with enforcers, we believe the enforcement of the curfew should lie with the Police and Community Support Officers. Whilst the Police are in support of the curfew, there is no universal agreement among Chief Constables that its enforcement should be a police responsibility.

**2.8** An alternative option is to give the powers to Environmental Health Officers (EHOs), although it should be noted that they have refused the offer of this role on the following grounds:

- The role of EHOs is to make professional judgements as to whether someone is in breach of the Noise Act (informed by the measurement of sound over long and regular periods of time). In the context of a curfew on fireworks use, a breach of a curfew precludes the making of a professional judgement because to determine whether the law has been broken or not only requires a momentary visual observation.
- Currently, only a very small percentage (approximately 8%) of EHO's work in authorities offering 24 hour coverage. This would therefore require a significant increase in resource costs.

**2.9** Scottish Ministers are expected to be conferred with concurrent functions (with the Secretary of State) under section 4 of the 2003 Act. The Scottish Executive's proposed Regulations to impose a curfew are similar to those described above and are included in this document.

### **Proposal 3 – Decibel Limit on Category 3 Fireworks**

**2.10** It is proposed to ban the supply to the public of category 3 fireworks that exceed 120 decibels, which is the limit to be set by the European Standard (BS EN 14035). Category 3 fireworks are the loudest and most

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<sup>6</sup> The use of fireworks is therefore prohibited between 2 am and 7 am on these occasions.

powerful fireworks available for public use<sup>7</sup>. We do not propose to extend the maximum limit to category 2 fireworks at this time owing to the nature of section 5 of the Fireworks Act, which excludes category 1 and 2 fireworks from its scope.

**2.11** Notwithstanding the above, it is the Government's intention to apply the 120 decibel limit to category 2 fireworks - which we plan to do in due course by referencing the European Standard (making the requirements of that Standard mandatory) by using powers under the Consumer Protection Act 1987<sup>8</sup>.

**2.12** The enforcement of this proposal would fall to Local Trading Standards Officers, who are currently responsible for the enforcement of the Fireworks (Safety) Regulations 1997.

#### **Proposal 4 – Licensing of suppliers**

**2.13** Where there is general agreement that fireworks are increasingly used outside of the traditional periods of the year (increasingly in early October and mid-November), we hope to reverse this trend by restricting the sale to the general public of fireworks outside of the following periods:

- 4 days before and including the day of Diwali (usually in October/November);
- 4 days before and including the day of Chinese New Year (usually in January/February);
- 4 days before and including 31 December;
- 3 weeks before and 5 days after 5 November;

**2.14** Those who wish to supply outside of these periods will have to apply to the relevant licensing authority for an annual licence. The cost of that licence will be set at £200 and its grant subject to the discretion of the licensing authority who may refuse it on the grounds of either a potential increase in anti-social behaviour or injuries as a result of usage outside of the defined periods.

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<sup>7</sup> Defined in the British Standard BS 7114 as "fireworks which present a medium hazard and which are intended for outdoor use in large, open areas".

<sup>8</sup> This would require an amendment to the Fireworks (Safety) Regulations 1997.

**2.15** The enforcement of this proposal would be enforceable by the relevant licensing authority – which could be HSE, the Fire Service or the Local Authority.

### **Proposal 5 – Requirement that Suppliers of Fireworks to the Public Display a Sign**

**2.16** We propose to place a requirement on any outlet that supplies to the public to display a notice where the fireworks are on display to inform them:

(a) that it is an offence to sell fireworks to those under the age of 18

(b) that it is an offence to possess fireworks, in a public place, if under the age of 18

**2.17** We believe that this represents a positive step in tackling underage sales and therefore misuse, as it will remind potential underage purchasers of how the law applies to them.

**2.18** Again, as with the decibel limit, the enforcement of this proposal would fall to Local Trading Standards Officers, who are currently responsible for the enforcement of the Fireworks (Safety) Regulations 1997.

### **Proposal 6 – Importers to provide information to Customs and Excise**

**2.19** Importers of fireworks will be required to furnish the Commissioners of Customs and Excise with information pertaining to the destination, storage and wholesale distribution of firework consignments. In practice this would mean that the current standard entry form, C88 <sup>9</sup>, will contain an additional section whose completion would be mandatory if the consignments are to be permitted to leave the port. The required information would be as follows:

- name and address of the importer
- name and address of the storage facility
- details of any further movements to the point of retail sale.

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<sup>9</sup>. Box 44 of Customs and excise form C88 is the standard entry form which is increasingly filled in electronically.

**2.20** Customs and Excise will be responsible for gathering and distributing information and for prosecutions where that that information is found to be false.

**2.21** Failure to enter the fireworks into a Registered or Licensed premises following importation or entering into such premises an amount of fireworks in excess of that authorised by the authority, as the case may be, will be punishable under the Explosives Act 1875 and enforceable by the relevant Authority (HSE/ Trading Standards).

### 3. Draft Regulatory Impact Assessment

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#### 1. Issue

**1.1 The Fireworks Act 2003** (the “2003 Act”) received Royal Assent on 18 September 2003. This Act is enabling legislation – conferring power on the Secretary of State to make provision about fireworks and other explosives. The passing of the 2003 Act was in recognition that current legislation is inadequate to deal with the increasing inconsiderate and anti-social use of fireworks.

**1.2** There are a number of existing Acts of Parliament and Regulations made which cover fireworks - that is, disparate pieces of legislation regulating the supply, sale and use of such products. This legislation is as follows:

- The **Fireworks Regulations 2003** (made under the **Fireworks Act 2003**) prohibit the possession of most fireworks by those under the age of 18 in public places as well as of category 4 fireworks (professional display fireworks) by any person other than a fireworks professional.<sup>1</sup>
- The **Fireworks (Safety) Regulations 1997** (made under the **Consumer Protection Act 1987**) prohibit the supply to the general public of particular types of fireworks on the grounds of consumer safety (focussed principally the safety of consumer products), as well as further increasing the minimum age of persons to whom fireworks could be supplied - from 16 to 18 years of age. The regulations require that all fireworks intended for supply to the general public meet the **British Standard 7114** (due to be replaced by the new harmonized European Standard: BS EN 14035).<sup>2</sup>
- The **General Product Safety Regulations 1994** impose a general prohibition on supplying unsafe goods, and supplement the 1997 Regulations by serving as a residual protective measure in respect

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<sup>1</sup> These regulations were made under the emergency procedure – which means that they can last no longer than 12 months. The proposed Firework Regulations 2004 will repeal these Regulations and incorporate them.

<sup>2</sup> Made under section 11 of the **Consumer Protection Act 1987** - which confers power on the Secretary of State to make regulations for securing, inter alia, that goods to which that section applies are safe and that appropriate information is provided.

of any aspect of safety that is not covered by the 1997 Regulations.

- The **Explosives Act 1875** (as modified by the **Control of Explosives Regulations 1991** and as amended by the **Explosives (Age of Purchase) Act 1976** and, in part, superseded by the **Consumer Protection Act 1987**) permits an unlimited quantity of fireworks to be kept, without licensing or registering the place of storage provided the fireworks are intended for private use. However, if storing fireworks for supply in the course of a business (retail or wholesale), the fireworks have to be kept on premises registered with the Local Authority or HSE.<sup>3</sup> Additionally, in relation to use (as opposed to storage) of fireworks it is an offence under the 1875 Act to throw or discharge a firework in a street or a public place, or to tamper with or alter fireworks without a licence. The former offence is punishable by a maximum fine of £5,000, the latter with a fine, imprisonment or both.
- The **Health and Safety Act 1974** - provides for the making of health and safety regulations for the general purposes of securing the safety of persons at work.<sup>4</sup> In the context of fireworks, this would generally apply to firework display operators and those events where pyrotechnic or firework displays take place in the course of business.

## 2. Objectives

**2.1** The objective of the proposed Regulations is to reduce the risk that the use of fireworks will cause death, injury or distress – either to persons or animals, or cause the destruction of, or damage to, property. This objective, which is set out in section 2 of the 2003 Act, will be met by a combination of supply side measures and those designed to control the use of fireworks. The 2003 Act enables the Government to address the lack of relevant provisions in existing legislation to tackle the anti-social behaviour phenomenon.

**2.2** The proposed Regulations are as follows:

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<sup>3</sup> The Local Authorities responsible for issuing storage licenses are the Fire Service in metropolitan areas and Trading Standards in the Regions.

<sup>4</sup> Section 15, schedule 3 and Part I of the 1974 Act.

- **Prohibition of supply etc. to young persons:** to simply repeal the 2003 emergency Regulations and incorporate them into the Fireworks Regulations 2004. See separate regulatory impact assessment for the 2003 Regulations:

<http://www.dti.gov.uk/ccp/topics1/pdf1/fireworkria2.pdf>

- **Prohibition of supply etc. in certain circumstances:** the creation of a curfew on the use of fireworks – which will prohibit the use of fireworks between the hours of 11 pm and 7 am, with the exception of November 5<sup>th</sup>, New Years Eve, Chinese New Year and Diwali.<sup>5</sup>
- **Prohibition of supply etc. of certain fireworks:** to set a maximum noise level of 120 decibels for category 3 fireworks, which are the largest and most powerful fireworks available to consumers. 120 decibels is level taken from the harmonised European Standard (BS EN 14035) which is developed by European Standardisation body (CEN). Category 3 fireworks exceeding this level will be prohibited from sale to members of the public. It would also be an offence to possess them.
- **Licensing of suppliers:** the creation of a licensing system whereby shops, that is, those outlets supplying to the general public – both retail and some wholesale outlets, will be required to apply for a licence to supply all year round. Those supplying to the public during the following defined periods will not be required to obtain a licence to supply:
  - (a) November 5 (3 weeks before and 5 days after)
  - (b) New Year (December 27 to 1 January)
  - (c) Chinese New Year (4 Days before, including the Day of Chinese New Year.
  - (d) Diwali (4 Days before, Including Diwali)
- **Information about fireworks:** requiring those supplying to the public to display a notice informing consumers of the law with respect to the sale to and possession of fireworks by those under the age of 18. The notice should read:

**“It is illegal to sell fireworks to anyone under the age of 18. It is also illegal for anyone under the age of 18 to be in possession of fireworks in a public place”**

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<sup>5</sup> Dispensations from the curfew may be obtained by firework display operators and other pyrotechnicians for public events from the Local Authority.

- **Prohibition of importation etc. of fireworks:** where importers, at the point of entry, will be required to provide the relevant information so as to reduce the possibility that fireworks are destined for illegal storage and/or distribution. Importers of fireworks will be required to furnish commissioners of Customs and Excise with the following information (which will then be forwarded on the relevant licensing authority):
  - (i) the name and address of the importing company or companies.
  - (ii) the address of the storage facilities where the fireworks are destined - including the name of those storing the fireworks.

**2.3** The proposed Regulations apply to England, Wales and Scotland but not to Northern Ireland. However, Scottish Ministers are expected to be conferred with concurrent functions (with the Secretary of State) under sections 4 and 6 – “Prohibition of supply etc, in certain circumstances” and “Public fireworks displays”, so far as the functions are exercisable in or as regards Scotland. The Scottish Executive’s proposals under section 4 are included in the joint consultation document, of which this document forms a part.

**2.4** Regulatory issues arising from the Scottish Regulations have been considered in conjunction with the English and Welsh proposals – and are therefore included in this regulatory impact assessment. As this RIA reveals, the Scottish proposals will have no impact on business, charities or the voluntary sector.

### **3. Options**

**3.1** In formulating these Regulations under the 2003 Act, we have considered a number of options. In doing so, an important guiding principle has been the belief that regulation should be the last resort. The following options set out some our thinking in terms of the problems identified, the shortfalls of existing legislation and possible non-regulatory solutions to the former:

- (a) **do nothing** and rely on existing legislation in this area, e.g. principally the 1997 Regulations and the 1875 Act,

(b) secure **voluntary guidelines** and rely on existing **public awareness campaigns** to ensure consumer safety and control noise and nuisance; or

(c) accept and **enact the selected provisions of the 2003 Act** to tackle the anti social use of fireworks with measures designed to tackle both the supply of fireworks and their use by consumers.

**3.2 Option (a)** is acceptable insofar as the following provisions of the 2003 Act are concerned:

- **Section 7 Licensing of Suppliers (Two Tier System)** – many questioned the need and the wisdom of having a two tier licensing system whereby to supply fireworks, irrespective of the times that you supply, you would first need to apply for a licence from the relevant licensing authority – in addition to the payment of a fee. Some went further in suggesting that the anti-social behaviour problem has little to do with supply so much as being a contemporary socio-cultural problem. With regard to the former point, we believe that if it is one of our objectives to achieve a reduction in sales beyond the defined periods, then the best way to achieve this, while avoiding the creation of an excessive and unfair system (and in addition to storage licences), is to require those intending to sell outside of the periods to have a licence. Any one caught supplying a day out of the prescribed periods, for example, would be committing an offence. Regarding the latter point on anti-social behaviour, while the supply of fireworks, strictly speaking, has little bearing on the intention of the user, it is nonetheless the case that the availability of a particular misused product – such as those products restricted under the Intoxicating Substances Supply Act 1985 (covering products such as glue) correlates to the frequency of misuse. In the context of fireworks, we believe that restricting sales to within defined periods would therefore have an impact on the periods of use.
- **Section 6 Public fireworks displays** - which allows the making of Regulations requiring, among other things, operators to be trained and for firework displays to give notice of planned displays. We do not believe, at this time, that public firework display operators pose a particular danger to the general public. There is no clear evidence that the recorded injuries at public displays were as a direct result of incompetence or the unprofessional use of fireworks by operators. Furthermore, we do not wish to burden display operators with the requirement to notify for the reason that this could increase the already high level of private displays – thereby potentially increasing the frequency of firework noise

around the fireworks period. We therefore consider that the existing legislation in this area, which is the **Health and Safety Act 1974**, is sufficient for the purposes of ensuring that displays are operated responsibly. No further regulation is required at this time, although the DTI and Scottish Executive will continue to monitor during the 2004 firework season.

- **Section 10 Training courses** – related to the above, there is no clear evidence of major incidence of death or serious injury caused by the use of fireworks by display operators and therefore little justification to regulate so as to require professional display operators to undergo mandatory training. Event organisers and display operators have duties under the **Health and Safety at Work Act 1974** to ensure, so far as reasonably practicable, the safety of members of the public, as well as their and others' employees. These duties would, for example, require operators to carry out a full site assessment; ensure that the equipment they use is suitable for the purpose; and ensure that they and their staff are competent and properly trained. Furthermore, the Health and Safety Executive (HSE) believe that the fireworks display industry has a generally very good safety record. Again, this will be reviewed after the 2004 fireworks season.

**3.3** However, with regard to the proposed Regulations, in the light of growing complaints about firework noise and nuisance and damage to property - and the possibility of increasing incidents of injury as a result of the increasing abuse of fireworks, doing nothing is not an option. The scope of existing legislation, which could be said to cover certain aspects of what the proposed Regulations hope to tackle, is limited in the following ways:

- The **Consumer Protection Act 1987** (under which the 1997 **Fireworks (Safety) Regulations** were made) is limited to the safety of consumer products and is therefore insufficient for the purpose of controlling the sale of nuisance products; their time of use; and to address the issue of imports destined for illegal storage.
- The **Explosives Act 1875**, which deals with the storage and criminal use of fireworks, is complementary to the 2003 Act but insufficient in the sense that it cannot specify who can and who cannot possess particular types of fireworks – and cannot prohibit the supply of certain types of firework.
- The **Noise Act 1996**, as amended by the Anti-social Behaviour Act 2003, is applicable in England, Wales and Northern Ireland and deals with unacceptable levels of domestic noise beyond 11 pm eleven. The Environmental Protection Act (1990), applicable

throughout the UK, contains statutory nuisance legislation which includes noise but it does not specifically prohibit firework use beyond that time. Additionally, the judgement of whether a noise is a nuisance is requires the professional judgement of Environmental Health Officers - who monitor noise over periods of time. In most cases, this would preclude the possibility that those using fireworks beyond this point could be prosecuted given intermittency and the relatively short duration of use. A complete prohibition would remedy this inadequacy by making it an offence to let off any individual firework after 11 pm.

**3.4 Option (b)** would require the fireworks industry to agree and adhere to voluntary guidelines. The effectiveness of this approach is questionable in the light of the experience with Air Bombs<sup>6</sup> – where despite the existence of a voluntary ban this particular type of firework has gradually made its way back onto the market.<sup>7</sup> In the context of the free market, were one competitor to flout a voluntary agreement, the likely outcome would be a domino effect.

**3.5** While it should be acknowledged that public awareness campaigns are a valuable way to disseminate important information with a view to influencing public behaviour, the available evidence indicates that there are still an unacceptable number of injuries. The increasing use of fireworks all year round would entail corresponding campaign activity, which would be difficult (and expensive) to sustain for such a period. One of the principal reasons for this is that broadcasters are unlikely to extend the free airtime given to Government TV 'fillers' throughout the year - and certainly not with the same intensity as they do pre-November 5th.

**3.6 Option (c)**, in its entirety, is the recommended option – and one which would plug the gap in existing legislation - and focus specifically on the issue of anti-social use.

## 4. Risk Assessment

**4.1** Despite the current Regulations that are in force, the table below lists sets out the risks that fireworks pose were the status quo to be maintained:

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<sup>6</sup> Local Trading Standards report that some retailers across the country have been selling Air Bombs despite the agreed voluntary ban on these items. As it is currently not an offence to supply Air Bombs to the public, there is no quantitative data available as local Trading Standards are not required to keep records of such sales.

<sup>7</sup> The Government hopes to ban Air Bombs under the proposed **Fireworks (Safety) (Amendment) Regulations 2004**. See the consultation document for this and other proposed measures at: <http://www.dti.gov.uk/ccp/consultpdf/fireworkcon2004.pdf>

Risks Identified	Implications
<p><b>Firework related Injuries</b></p>	<p>Firework related injuries historically fluctuate around the 1000 per year mark. The figures for 2003 indicate yet another rise from the previous year's figure.</p>
<p><b>Anti-social Behaviour</b></p>	<p>Anti-social behaviour in all of its manifestations is a problem that the Government is tackling head-on by the introduction of specifically targeted Regulations. In the context of fireworks, this particular product has increasingly become a tool for troublesome elements to terrorise communities. The Government needs to act to implement all of these proposed measures so that the danger, noise and nuisance of fireworks misuse is reduced.</p>
<p><b>Noise and Nuisance</b></p>	<p>Since 2001, the Department of Trade &amp; Industry (DTI) has received quite substantial levels of complaints from the public and interest/ cause groups about firework nuisance - especially associated with the noise and misuse caused by fireworks use in the streets.</p> <p>Assuming that the current trend continues, incidents of misuse are likely to present more in the way of misery to particular individuals and groups in the community. Where acceptance was once the norm – increasing usage is likely to lead to many people feeling desperate and distressed.</p>

## 5. Benefits

### Noise and Nuisance

**5.1** The proposed curfew would have benefits for those in areas where firework use beyond acceptable times has become the rule rather than the exception. Many of the complaints that the DTI has received in relation to noise relate not only to the use of fireworks outside of the traditional season (something which the license to supply is designed to tackle) – but also to firework use late at night and in the early hours of the morning.

**5.2** We hope for a reduction in noise late at night as a result of the curfew – and expect that this regulation will be an important deterrent for many law abiding citizens who use fireworks.

**5.3** Although we agree that there is likely to be certain instances where those breaking the curfew could not be brought to account, we believe that the curfew will be enforceable in many cases if the offenders are caught in the act. In this regard, detection will be similar to that of the offence of letting off fireworks in a public place, which is an offence under the Explosives Act 1875.<sup>8</sup> The combination of these two factors would mean reductions in the noise and nuisance suffered by local residents; reductions in the distress caused to domestic, working (particularly guide dogs) and farm animals (where fireworks late at night can be more distressing in the absence of day time ambient noise levels); and fewer noise and nuisance complaints being made to the police and local authorities.

**5.4** By imposing a maximum level of 120 decibels on category 3 fireworks, we hope to reduce the number of extremely loud bangs that have characterised bonfire nights and caused distress to older people, working animals and pets. This is a first step to applying maximum levels on most consumer fireworks, which the Government intends to do and will keep constantly under review.

### Licensing of Suppliers

**5.5** It is envisaged that the proposed licensing regime will ensure that firework sales, for most retailers and wholesalers, are restricted to the traditional times of the year. This also includes sale periods for multi-

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<sup>8</sup> This offence is punishable by fixed penalty notice (FPN) in England and Wales– as under section 1(1) of the **Criminal Justice and Police Act 2001**. The Home Office are working to add the possession and curfew laws to the list of offences that can be dealt with in this way. The Scottish Executive is considering the position for Scotland.

cultural events. Those outlets wishing to supply all year round will be encouraged, given the licence conditions, to be both responsible and more mindful of the impact that fireworks can have on local communities.

**5.6** HSE are in the process of drawing up new Regulations – the **Manufacture and Storage of Explosives Regulations**, which will update the existing registration regulations. The two licensing schemes will be complementary, that is, a pre-condition for having a licence to supply would be the possession of a storage licence and, where the storage licence is revoked – so too will the licence to supply.

### **Information about fireworks**

**5.7** As with the use of notices in shops where alcohol and cigarettes are purchased, this is an effective way to make those unsure of the law aware or those that need reminding, that not only is it an offence for retailers to supply them with fireworks but also an offence for persons under the age of 18 to possess them. This may provide a disincentive to try while also deterring adult customers from buying on an under age person's behalf.

## **6. Business Sectors Affected/ Competition Assessment**

**6.1** The markets affected by the proposed Regulations are firework manufacturers (or more accurately, importers as no real manufacture of consumer fireworks takes place in the UK<sup>9</sup>), importers, professional firework display operating companies and retail or wholesale outlets. The majority of retailers that would be affected are outlets such as newsagents, garden centres and supermarkets - whose principal merchandise are products other than fireworks.

**6.2** The results of applying the competition filter<sup>10</sup> for all of the proposed regulations indicate that there is little in the way of significant affects on competition. Questions 1, 2 and 3 (industry concentration) were answered 'yes', as was question 5 on market structure. The other five questions were answered in the negative. On that basis, a full competition assessment is not needed.

**6.3** Although question 5 of the filter was answered "yes" with regard to licenses to supply all year round, we believe that the possible outcome is

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<sup>9</sup> With the exception of minor product assembly.

<sup>10</sup> For further details see: [www.cabinet-office.gov.uk/regulation/ria-guidance/content/competition/index.asp](http://www.cabinet-office.gov.uk/regulation/ria-guidance/content/competition/index.asp)

not significant. It is certain that for those suppliers that currently supply fireworks all year round there will be a disadvantaged inasmuch as they will have to pay for a licence to supply whereas others supplying within the defined periods will not. However, the cost of the licence would be negligible to those whose market niche is satisfying year round demand for fireworks at weddings, birthdays and other such events – as well as during the peak firework season. It is therefore likely that the existing customer base of both the seasonal outlets and those supplying all year round will remain the same.

**6.4** Importers will be required to ensure that they are able to furnish Customs and Excise Commissioners with the relevant information. This is considered to present little in the way of an obstacle to competition on the free market.

**6.5** We consider the proposals made under section 3, 4, and 5, that is, the creation of a curfew, the possession of fireworks in public places by under 18s and the prohibition of possession of category 4 by any one other than a fireworks professional, respectively, to have no impact on competition.

**6.6** Similarly, with the introduction of a maximum decibel limit on category 3 fireworks, in line with the European Standard, this, if anything, reduces barriers to trade by making manufactured fireworks marketable throughout the European Union.

## **7. Small Businesses: ‘*The impact Test*’**

**7.1** Our informal consultations with representative bodies of small businesses show a mixed response to the licensing section of the Act. In our consultation on the Act before it became law there were three main concerns about the form that a licensing regime may take:

- the licensing regime should be fair, that is, in the context of possible higher costs for licences for ethnic community retailers;
- the requirement that small businesses would have to undergo some sort of training as a condition to the licence being granted - as this may prove difficult for family businesses; and
- the total cost of a licence and how that will impact on yearly net profits.

**7.2** In formulating the current proposals, we have considered carefully both these and more recently expressed concerns. We believe that we have dealt with them in the following ways:

- The licensing regime is fair to ethnic minorities because a license to supply is not needed during those festivals where minority faiths and cultures traditionally use fireworks, that is, Diwali and Chinese New Year.
- We do not see the need for retailers/ wholesalers to undergo training. This is usually provided for by the companies that supply them with fireworks.
- Those outlets supplying within the defined periods are not required to have a licence - so no costs are incurred. The impact on specialist outlets whose principal merchandise is fireworks is likely to be minimal – that is, the expected £200 licence is likely to be relatively small in relation to annual turnover.

## **8. Issues of Equity and Fairness**

**8.1** As with the RIA for the Fireworks Bill – our consultation revealed concern by particular religious and cultural communities in relation to regulations creating a curfew on firework use the licensing of suppliers. With regard to the latter, as above, there was particular concern with the idea of a two-tier license scheme where suppliers to local communities for multicultural events might have to apply for the more expensive second tier of licence to supply all year round. After consultation with a number of faith and cultural groups, we were able to identify which groups traditionally use fireworks for particular events. We have therefore included the dates of Diwali and Chinese New Year in our list of exemptions - thus precluding the requirement that such outlets would have to apply for a year round licence. Similarly, we have also included exemption to the curfew for those celebrating these events.

**8.2** We believe that with the list of exemptions and allowances included in the proposed Regulations that we have allayed these concerns and achieved the right balance between fairness and the avoidance of noise and nuisance.

**8.3** We will meet with the commitments to assess and consult on the likely impact of proposed policies set out in DTI's Race Equality Scheme which is available at:

[www.dti.gov.uk/race-equality-scheme/index.htm](http://www.dti.gov.uk/race-equality-scheme/index.htm)

## 9. Enforcement, Sanctions, Monitoring and Review

### Possession Offences and a Curfew on Firework Use

**9.1** The police will continue to have primary responsibility for enforcement of the possession offences. With regard to the curfew – we consider that the police will be best suited to enforce this particular measure. As stated in paragraph 5.3, above, some police representatives have expressed concern about the enforceability of this measure. However, as stated above, we consider that this measure is comparable to other measures in place such as the offence of letting fireworks off in a public place.

**9.2** The Home Office is working improve the sanctions available to the police to deal with curfew breaches and possession offences. We believe that the most suitable and cost effective way is to issue a FPN. This will require amendment to the Criminal Justice and Police Act 2001. An amendment to this legislation would mean that Community Support Officers (CSOs), under the Police Reform Act 2002, will also be able to issue FPNs for this offence, thereby taking some of the enforcement responsibility from the police themselves. The Scottish Executive is also assessing the situation.

**9.3** Currently, the powers of the 2003 Act give police officers the power to issue a summons and seize the prohibited item. Under Section 11(4) of the Fireworks Act, any person found in breach of regulations made under that Act is liable on summary conviction to:

- an imprisonment term not exceeding six months, or
- a fine not exceeding level 5 (£5000)

**9.4** For those seeking a dispensation from the curfew, Local Authorities will be responsible for processing requests and issuing permits. It is envisaged that the issuing departments within Local Authorities will not be the same as those that issue the licences to supply – but rather those whose responsibility it is for granting entertainment licences. The Department of Culture, Media and Sport has indicated that the licensing regimes currently in place with regard to the supply of alcohol and various forms of entertainment are due to be rationalized and brought under the direction of a unified licensing body within each Local Authority.<sup>11</sup> It is

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<sup>11</sup> See the Licensing Act 2003:

[http://www.hmso.gov.uk/cgi-bin/htm\\_hl.pl?DB=hmso-new&STEMMER=en&WORDS=licensing+act+2003+&COLOUR=Red&STYLE=s&URL=http://www.hmso.gov.uk/acts/acts2003/20030017.htm#muscat\\_highlighter\\_first\\_match](http://www.hmso.gov.uk/cgi-bin/htm_hl.pl?DB=hmso-new&STEMMER=en&WORDS=licensing+act+2003+&COLOUR=Red&STYLE=s&URL=http://www.hmso.gov.uk/acts/acts2003/20030017.htm#muscat_highlighter_first_match)

therefore appropriate that dispensations sought for the purposes of late night fireworks displays or events where fireworks are used is administered by this licensing body. In Scotland it would be for local authorities to determine for themselves who within the local authority should be responsible for dealing with requests permits exempting the holder from the curfew, and to ensure that the general public are aware how these will be dealt with.

### **Notice to consumers**

**9.5** The enforcement of this Regulation would fall to local Trading Standards officers. We do not consider that this would constitute a new burden and thus not much in the way of extra costs as it would be enforced in the course of Trading Standards duties under the Firework (Safety) Regulations 1997 (enforcement of under age sales laws).

### **Importation**

**9.6** Importers of goods, or representatives contracted to complete Customs formalities on their behalf, are required to declare goods on customs declaration Form C88 (either in writing or by data processing techniques) as laid down by Article 62 of Council Regulation 2913/92 and Article 205 of Commission Regulation 2454/93. The information required to be given on Form C88 is dependent upon the customs procedure to which the imported goods are to be put, and whether or not the importer has been approved to use a simplified declaration procedure. However, regardless of Customs requirements, Section 9 of the Fireworks Act will make an additional mandatory requirement for the importer to provide the address of the storage facility where the fireworks are destined including the name and address of the storage facility owner. This information must be shown in Box 44 "any other information" on Form C88. The effectiveness of the proposed regulation is self evident – as the information collected will be passed on to the relevant storage licensing bodies – who will then be able to carry out checks against current data that they have or physical spot checks for those suspected of breaking their storage licence conditions (such as exceeding the permitted gross weight of explosive content in a particular storage premise).

**9.7** The relevant licensing authorities, that is, HSE, Trading Standards or the Fire Service, will be responsible for processing the information passed to them by Customs and Excise. This will mean that each authority will have to set up an effective system of communication between themselves and Customs and Excise – so that information can be checked and, if

action is needed, enabling the enforcement authority to do so in good time. It will be to the discretion of the licensing bodies as to whom they investigate.

## **10. Costs**

### **Enforcement**

**10.1** There will be no extra costs in enforcing the possession offences as under section 3 and 5 of the 2003 Act – as this is currently in place under the Fireworks Regulations 2003<sup>12</sup> (emergency Regulations). However, in relation to the proposed curfew, where we might expect an increase in the cost of enforcement, the police (ACPO and ACPOS) are to advise on the extra costs for enforcing this.

**10.2** Apropos of costs to the police, it is envisaged that the powers and sanctions that the Home Office hope to give the police are expected to reduce the time involved in dealing with these offences – as well as reducing overall court costs.

**10.3** The Local Authorities Co-ordinators of Regulatory Services (Lacors), during the course of the consultation, are to advise on the total costs in relation to the following:

- the cost to licensing bodies for granting dispensations to the curfew;
- the increase in administration costs to the Local Authority registration departments for licensing all year round suppliers;
- the cost of creating a system to receive and act upon information passed to Local Authorities regarding importation from Commissioners of Customs and Excise; and,
- the enforcement of all of the above.

**10.4** The Fire Service and HSE are also to advise on the costs where they are the relevant licensing body – or the body responsible for setting up a system to receive information passed onto them by Customs and Excise.

**10.5** Customs and Excise are currently looking into the cost of system procedure changes and ongoing operational costs as a result of the proposed regulation under section 9. However, they do not expect the rise in costs to be significant – but rather see it as an extension to the system that is currently in operation.

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<sup>12</sup> See RIA for the 2003 Fireworks Regulations: <http://www.dti.gov.uk/ccp/topics1/pdf1/fireworkria2.pdf>.

## **Licensing of retailers**

**10.6** The RIA of the Fireworks Bill noted that while representative bodies of the retail sector were generally supportive of the Bill's provisions, they still had concerns that the cost of a licence to supply would be damaging to retailers – if significantly above the current £13 registration fee (licence to store). As explained in paragraph 7.2, above, as a result of listening to the concerns of retailers in our informal consultations, we believe that we have addressed those concerns by exempting the majority of outlets - an estimated 95% <sup>13</sup> who sell during "seasonal" times, from the requirement to be licensed.

**10.7** Those who supply fireworks to the public – that is retailers, wholesale, mail order or internet suppliers, are likely to incur minor costs in terms of familiarisation with the new laws – particularly with regard ensuring that the notices that they are required to display conform to the Regulations and to ensure that they do not sell into periods where they would be required to be licensed. We expect this cost to be minimal however.

## **11. Consultation**

**11.1** To date the following stakeholders were among those consulted for the proposed Regulations:

**\*Formal Consultation to begin on 23<sup>rd</sup> April 2004\***

## **12. Conclusion and Recommendation**

**12.1** The Fireworks Act 2003 sets out the purpose of the enabling provisions under section 2 – that is to reduce the possibility that firework use can cause death, injury or distress – either to persons or animals, or cause the destruction of, or damage to, property, to which these proposed measures are designed to achieve. While the Government is guided by better regulation principles – and, in particular, committed, wherever possible, to avoiding regulation, we believe that the Fireworks Act itself is

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<sup>13</sup> This figure is an estimate provided by the **British Fireworks Association**.

invaluable legislation in its scope in the area of fireworks, that is, in providing a framework by which to tackle any new problems on the horizon - and now especially in the context of anti-social behaviour and the consequent public dissatisfaction with the law as it is. We have carefully chosen - with these principles and the specific problems of fireworks in mind - which of the provisions in the Act are necessary to enact in order to reduce the risks set out in section 2. And with these proposals, we believe that we are addressing the problem in an effective and measured way and therefore recommend that these proposals are implemented as soon as possible.

## 4. Draft Regulations

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### STATUTORY INSTRUMENTS

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**2004 No.**

## **FIREWORKS**

### The Fireworks Regulations 2004

<i>Made</i> - - - -	<i>2004</i>
<i>Laid before Parliament</i>	<i>2004</i>
<i>Coming into force</i> - -	<i>2004</i>

Whereas the Secretary of State considers that there is a risk that the use of fireworks will have the consequences of death of persons or injury, alarm, distress or anxiety to persons; death of animals or injury or distress to animals; or destruction of, or damage to, property;

And whereas the Secretary of State, in accordance with section 2(1)(b) and (2) of the Fireworks Act 2003 (1), considers it appropriate to make provision by regulations for securing that the risk that the use of fireworks will have the aforesaid consequences is the minimum compatible with their being used;

And whereas the Secretary of State, in accordance with section 2(3) of that Act has consulted the Health and Safety Commission, those organisations which appear to her to be representative of interests substantially affected by these Regulations and such other persons whom she considers it appropriate to consult;

And whereas the Secretary of State has issued a full regulatory impact assessment in accordance with section 2(4) of that Act;

And whereas every chief officer of police in England and Wales and every chief constable in Scotland has, in accordance with section 27(2)(a) of the Consumer Protection Act 1987 (2), agreed to the transfer of such enforcement duties as are specified in these Regulations;

And whereas the Commissioners of Customs and Excise have, in accordance with section 27(2)(a) of the Consumer Protection Act 1987, agreed to the transfer of the duty to enforce the prohibition imposed by regulation 12 of these Regulations;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon her by sections 2, 3, 4, 5, 7, 8 and 9 of the Fireworks Act 2003 and by sections 11(3) and 27(2) of the Consumer

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(1) 2003 c. 22.  
(2) 1987 c. 43.

Protection Act 1987 (as applied respectively by sections 11(6) and 12(1) of the Fireworks Act 2003), hereby makes the following Regulations:—

### **Citation, commencement and extent**

- 1.—(1) These Regulations may be cited as the Fireworks Regulations 2004 and shall come into force on [date].
- (2) These Regulations shall not extend to Northern Ireland.
- (3) Regulations 7 and 8 of these Regulations shall not extend to Scotland.

### **Revocation of the Fireworks Regulations 2003**

2. The Fireworks Regulations 2003 (3) are revoked.

### **Interpretation**

3. In these Regulations—

“adult firework” means

- (a) any firework which does not comply with the relevant requirements of Part 2 of BS 7114 when tested in accordance with the appropriate test method (if any) in Part 3 of BS 7114; or
- (b) any firework (except for a cap, cracker snap, novelty match, party popper, serpent, sparkler or throwdown) which does comply with those requirements;

“amorce” means a firework which is a percussion cap designed for use in toys, which comprises a paper envelope containing a dot of impact-sensitive pyrotechnic composition and which forms part of a roll;

“assembly” means an assembly which includes any firework;

“BS 7114” means the British Standard Specification comprising the following parts—

- (a) BS 7114: Part 1: 1988, the British Standard Specification for classification of fireworks published on 30<sup>th</sup> November 1988 (4);
- (b) BS 7114: Part 2: 1988, the British Standard Specification for fireworks published on 30<sup>th</sup> November 1988 (5); and
- (c) BS 7114: Part 3: 1988, the British Standard Specification for methods of test for fireworks published on 30<sup>th</sup> November 1988 (6);

and references to parts 1, 2 and 3 of BS 7114 shall be construed accordingly;

“cap” means a firework (including, for the avoidance of doubt, an amorce) designed for use in toys which comprises a non-metallic envelope or cup containing a dot of impact-sensitive pyrotechnic composition, and which produces a report when it is hit;

“category 3 firework” means a firework classified as category 3 under Part 1 of BS 7114;

“category 4 firework” means a firework classified as category 4 under Part 1 of BS 7114;

“cracker snap” means a firework—

- (a) which comprises two overlapping strips of card or paper with a friction-sensitive explosive composition in sliding contact with an abrasive surface; and
- (b) which produces a report when pulled apart;

“local authority”, in relation to England and Wales, means—

- (a) in Greater London, a London borough council and the Common Council of the City of London;
- (b) outside Greater London—

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(3) S.I. 2003/3085.

(4) ISBN 0 580 17026 8.

(5) ISBN 0 580 17027 6.

(6) ISBN 0580 17028 4.

- (i) any district council;
  - (ii) the council of any county so far as they are the council for any area for which there are no district councils;
  - (iii) in Wales, the council of a county borough; and
- (c) the Council of the Isles of Scilly,
- and, in relation to Scotland, means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(7);
- “novelty match” means a firework comprising a match with a dot of pyrotechnic composition which is designed to be held in the hand while functioning and whose functioning involves report or the production of visual effects, or both;
- “party popper” means a firework comprising a device—
- (a) which is designed to be held in the hand while functioning;
  - (b) which is operated by a pull-string with an abrasive surface in sliding contact with a friction-sensitive pyrotechnic composition; and
  - (c) whose functioning involves a report with the ejection of streamers or confetti, or both;
- “pyrotechnic composition” means a substance or a mixture of a substance designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as the result of non-detonative self-sustaining exothermic chemical reactions;
- “serpent” means a firework, comprising a pre-formed shape of pyrotechnic composition, with or without support, whose functioning involves the generation of expanded residue;
- “sparkler” means a firework, other than a category 3 or category 4 firework, comprising a rigid wire partially coated with slow-burning pyrotechnic composition, whose functioning involves the emission of sparks without report;
- “the 1987 Act” means the Consumer Protection Act 1987 (8);
- “the 2003 Act” means the Fireworks Act 2003 (9);
- “the 1997 Regulations” means the Fireworks (Safety) Regulations 1997 (10); and
- “throwdown” means a firework comprising impact-sensitive explosive composition and grains of inert material wrapped in paper or foil and which functions to produce a report when thrown onto the ground.

#### **Prohibition of possession of fireworks by persons below the age of eighteen**

- 4.—(1) Subject to regulation 6 below, no person under the age of eighteen years shall possess an adult firework in a public place.
- (2) In paragraph (1) above “public place” includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.

#### **Prohibition of possession of category 4 fireworks**

5. Subject to regulation 6 below, no person shall possess a category 4 firework.

#### **Exceptions to regulations 4 and 5**

6. Regulations 4 and 5 above shall not prohibit the possession of any firework by—
- (a) any person who is employed by, or in business as, a professional organiser or operator of firework displays and who possesses the firework in question for the purposes of his employment or business;

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(7) 1994 c. 39.

(8) 1987 c. 43.

(9) 2003 c. 22.

(10) S.I. 1997/2294.

- (b) any person who is employed in, or whose trade or business (or part of whose trade or business) is, the manufacture of fireworks or assemblies and who possesses the firework in question for the purposes of his trade, employment or business;
- (c) any person who is employed in, or whose trade or business (or part of whose trade or business) is, the supply of fireworks or assemblies, for the purpose of supplying them in accordance with the provisions of the 1997 Regulations;
- (d) any person who is employed by a local authority and who, in the course of his employment, possesses the firework in question for any of the following purposes—
  - (i) the putting on of a firework display by that local authority; or
  - (ii) the use by that local authority of the firework in question at a national public celebration or a national commemorative event;
- (e) any person for use, in the course of a trade or business of his or in the course of his employment, for special effects purposes in the theatre, on film or on television;
- (f) any person employed by or otherwise acting on behalf of a local authority, enforcement authority or other body, where—
  - (i) the authority or body has enforcement powers, conferred by or under any enactment, applying to the firework in question; and
  - (ii) the person so employed possesses the firework in question for the purposes of the authority or body exercising those enforcement powers;
- (g) any person who is employed by a department of the Government of the United Kingdom and who, in the course of his employment, possesses the firework in question for any of the following purposes—
  - (i) the putting on of a firework display by that department;
  - (ii) the use by that department of the firework in question at a national public celebration or a national commemorative event; or
  - (iii) the use by that department of the firework in question for research or investigations;
- (h) any person who—
  - (i) is in business as or employed by a supplier of goods designed and intended for use in conjunction with fireworks or assemblies; and
  - (ii) possesses the firework in question solely for the purposes of testing those goods to ensure that, when used in conjunction with fireworks or assemblies of the same type, they will perform their intended function or comply with any provision made by or under any enactment and relating to the safety of those goods; or
- (i) any person who is employed by an establishment of the naval, military or air forces of the Crown and who, in the course of his employment, possesses the firework in question for any of the following purposes—
  - (i) the putting on of a fireworks display by that establishment; or
  - (ii) the use by that establishment of the firework in question at a national public celebration or a national commemorative event.

#### **Prohibition of use of certain fireworks at night**

- 7.—(1) Subject to paragraph (2) below, no person shall use an adult firework during night hours.
- (2) Paragraph (1) above shall not prohibit the use of a firework—
- (a) during a permitted fireworks night;
  - (b) by any person who is employed by a local authority and who uses the firework in question—
    - (i) for the purposes of putting on a firework display by that local authority; or
    - (ii) at a national public celebration or a national commemorative event;
  - (c) in accordance with a dispensation granted under regulation 8 below.

- (3) In this regulation, “night hours” means the period beginning at 11 pm and ending at 7 am the following day and a “permitted fireworks night” means a period—
- (a) beginning at 11 pm on the first day of the Chinese New Year and ending at 2 am the following day;
  - (b) beginning at 11 pm on 5th November and ending at 2 am the following day;
  - (c) beginning at 11 pm on the day of Diwali and ending at 2 am the following day; or
- beginning at 11 pm on 31st December and ending at 2 am the following day.

#### **Dispensation from the prohibition imposed by regulation 7**

- 8.**—(1) Subject to paragraphs (2) and (3), a local authority may grant a dispensation from the prohibition imposed by regulation 7(1) to any person mentioned in paragraphs (a), (g) or (i) of regulation 6 above to enable that person to use fireworks—
- (a) for the purposes of putting on a firework display; or
  - (b) at a national public celebration or a national commemorative event.
- (2) A local authority shall not grant a dispensation under this regulation, unless it is satisfied either—
- (a) that there is no risk that use of fireworks in accordance with the dispensation will have any of the consequences mentioned in section 2(2) of the 2003 Act; or
  - (b) that the risk that use of fireworks in accordance with the dispensation will have any such consequences is the minimum that is compatible with their being used.
- (3) Where a local authority grants a dispensation under this regulation, it shall inform the chief officer of police of the police force maintained in relation to the police area where the fireworks are to be used in accordance with the dispensation.

#### **Prohibition of supply of excessively loud category 3 fireworks**

- 9.**—(1) No person shall supply, or offer or agree to supply, any category 3 firework which, when used, produces a maximum A-weighted impulse sound pressure level exceeding 120 decibels when measured at a horizontal distance of 15 metres from the testing point at a height of one metre above the ground.
- (2) No person shall purchase or possess a firework, whose supply is prohibited by paragraph (1) above.

#### **Licensing of fireworks suppliers**

- 10.**—(1) Subject to paragraph (2) below, no person shall supply, expose for supply or possess for supply any adult firework, save in accordance with a licence granted under paragraph (3) below.
- (2) Paragraph (1) above shall not prohibit the supply, exposing for supply or possessing for supply of adult fireworks—
- (a) on the first day of the Chinese New Year and the three days immediately preceding it;
  - (b) on the day of Diwali and the three days immediately preceding it;
  - (c) during the period beginning on the 15<sup>th</sup> October and ending on the 10<sup>th</sup> November; or
  - (d) on the 28<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup> December.
- (3) An application for a licence under this regulation shall be made to the local authority for the local government area where a supplier is located and the local authority shall not grant a licence if—
- (a) the applicant has committed an offence under section 11 of the 2003 Act;
  - (b) the applicant has committed an offence under section 12 of the 1987 Act arising from a contravention of the 1997 Regulations;

- (c) the authority is otherwise satisfied on reasonable grounds that the circumstances of the applicant suggest that there is an unacceptable risk that the use of any fireworks supplied by him may have any of the consequences specified in section 2(2) of the 2003 Act; or
  - (d) the applicant does not hold a licence permitting the storage of fireworks in accordance with any regulations made under the Health and Safety at Work Act 1974 (11).
- (4) A local authority may attach to a licence such conditions as it considers necessary, and, in the case of an existing licence, may vary the conditions to the extent that it considers it necessary, to secure that any risk that the supply of fireworks may have any of the consequences specified in section 2(2) of the 2003 Act is kept to a minimum compatible with their being used.
- (5) A local authority may charge a fee not exceeding £200 in connection with an application for a licence under this regulation and an annual fee not exceeding £200 in connection with the subsistence of such a licence.
- (6) A local authority may revoke a licence if it is satisfied that any of the conditions mentioned in paragraph (3) above is satisfied in relation to the licence holder.
- (7) Any person who holds or who has applied for a licence under this regulation and who is aggrieved by a refusal to grant, or the variation of, a licence under this regulation may appeal to the magistrates' court.

### **Information about adult fireworks**

- 11.**—(1) No person shall supply, expose for supply or possess for supply any adult firework unless he gives to all persons to whom the firework is supplied or exposed for supply information that—
- (a) it is illegal to sell adult fireworks to anyone under the age of eighteen; and
  - (b) it is illegal for anyone under the age of eighteen to possess fireworks in a public place.
- (2) A person complies with paragraph (1) above only if he displays the information in a prominent position and, where the fireworks are supplied or exposed for supply in any premises, by means of a notice, which measures no less than 400 millimetres by 300 millimetres and whose letters are no less than 36 millimetres high and which is displayed prominently in those premises.

### **Importation of fireworks**

- 12.**—(1) No person shall import any firework, unless they have complied with the requirements of paragraph (2) below.
- (2) The requirements of this paragraph are to give information to the Commissioners of Customs and Excise as to—
- (a) the name and address of the person or persons importing the fireworks concerned;
  - (b) the name of the person who is to store the fireworks concerned; and
  - (c) the address of all premises at which the fireworks are to be stored prior to their being supplied, offered for supply or exposed for supply to the general public.

### **Transfer of enforcement duties**

- 13.**—(1) In this regulation “the enforcement duty” means the duty imposed by section 27(1) of the 1987 Act, insofar as that duty is, by virtue of section 12(1) of the 2003 Act, exercisable in relation to the enforcement of the prohibitions imposed, in England and Wales, by regulations 4, 5 and 7 above and, in Scotland, by regulations 4 and 5 above.
- (2) The enforcement duty in England and Wales is hereby transferred to the chief officer of police of each police force and shall be the duty of every chief officer of police in relation to the police area for which the force in question is maintained (12).

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(11) 1974c.37.

(12) The expressions “chief officer of police”, “police force” and “police area” are defined, in relation to England and Wales, in Schedule 1 of the Interpretation Act 1978 (c. 30) and section 101 of the Police Act 1996 (c. 16).

(3) The enforcement duty in Scotland is hereby transferred to the chief constable of each police force and shall be the duty of every chief constable in relation to the police area for which the force in question is maintained (13).

(4) Every weights and measures authority of Great Britain is hereby relieved of the enforcement duty.

#### **Transfer of the duty to enforce regulation 12**

14. The duty imposed by section 27(1) of the 1987 Act, insofar as that duty is, by virtue of section 12(1) of the 2003 Act, exercisable in relation to the enforcement of the prohibition imposed by regulation 12 above, is hereby transferred to the Commissioners of Customs and Excise and every weights and measures authority of Great Britain is hereby relieved of that duty.

#### **Proceedings**

15. In England and Wales a magistrates' court may try an information in respect of an offence under section 11 of the 2003 Act arising from a contravention of a prohibition imposed by these Regulations if the information is laid within twelve months from the time when the offence was committed, and in Scotland summary proceedings for such an offence may be brought at any time within twelve months from the time when the offence was committed.

Parliamentary Under Secretary of State for Employment  
Relations, Competition and Consumers  
Department of Trade and Industry

[Date]

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(13) The expressions "chief constable", "police force" and "police area" are defined, in relation to Scotland, in Schedule 1 of the Interpretation Act 1978 (c. 30) and section 50 of the Police (Scotland) Act 1967 (c. 77).

**2004 No.**

**FIREWORKS**

**The Fireworks (Scotland) Regulations 2004**

*Made* - - - - 2004

*Laid before the Scottish Parliament* 2004

*Coming into force* - - 2004

Whereas the Scottish Ministers consider that there is a risk that the use of fireworks will have the consequences of death of persons or injury, alarm, distress or anxiety to persons; death of animals or injury or distress to animals; or destruction of, or damage to, property;

And whereas the Scottish Ministers may exercise concurrently with the Secretary of State for Trade and Industry the functions conferred upon her by (a) sections 2(1), (3), (4), (5), (6) and (7), 11(6) and 12(1) of the Fireworks Act 2003<sup>(1)</sup> so far as the functions are exercisable in relation to provision or exceptions under inter alia section 4 of that Act; (b) section 4 of that Act; and (c) sections 11(3)(f), 18(1) and (2) and 27(2) and (3) of the Consumer Protection Act 1987<sup>(2)</sup> so far as (i) those provisions are applied in relation to fireworks regulations by sections 2(7), 11(6) or 12(1) of the Fireworks Act 2003; and (ii) the function of making fireworks regulations is exercisable by the Scottish Ministers<sup>(3)</sup>;

And whereas the Scottish Ministers, in accordance with section 2(1)(b) and (2) of the Fireworks Act 2003 and the provisions for the concurrent exercise of functions as aforesaid, consider it appropriate to make provision by regulations for securing that the risk that the use of fireworks will have the aforesaid consequences is the minimum compatible with their being used;

And whereas the Scottish Ministers, in accordance with section 2(3) of that Act has consulted the Health and Safety Commission, those organisations which appear to them to be representative of interests substantially affected by these Regulations and such other persons whom they consider it appropriate to consult;

And whereas a full regulatory impact assessment has been issued in accordance with section 2(4) of that Act;

And whereas every chief constable in Scotland has, in accordance with section 27(2)(a) of the Consumer Protection Act 1987<sup>(4)</sup>, agreed to the transfer of such enforcement duties as are specified in these Regulations;

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(1) 2003 c.22.

(2) 1987 c.43.

(3) By virtue of SI 2004/

(4) 1987 c.43.

Now, therefore, the Scottish Ministers, in exercise of the powers conferred upon them concurrently with the Secretary of State as aforesaid by sections 2, 4, 11 and 12 of the Fireworks Act 2003 and by sections 11(3) and 27(2) of the Consumer Protection Act 1987 (as applied respectively by sections 11(6) and 12(1) of the Fireworks Act 2003), hereby make the following Regulations:–

### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Fireworks (Scotland) Regulations 2004 and shall come into force on

These Regulations shall extend to Scotland.

### **Interpretation**

2. In these Regulations–

“adult firework” means

- (a) any firework which does not comply with the relevant requirements of Part 2 of BS 7114 when tested in accordance with the appropriate test method (if any) in Part 3 of BS 7114; or
- (b) any firework (except for a cap, cracker snap, novelty match, party popper, serpent, sparkler or throwdown) which does comply with those requirements;

“amorce” means a firework which is a percussion cap designed for use in toys, which comprises a paper envelope containing a dot of impact-sensitive pyrotechnic composition and which forms part of a roll;

“BS 7114” means the British Standard Specification comprising the following parts–

- (a) BS 7114: Part 1: 1988, the British Standard Specification for classification of fireworks published on 30th November 1988<sup>(5)</sup>;
- (b) BS 7114: Part 2: 1988, the British Standard Specification for fireworks published on 30th November 1988<sup>(6)</sup>; and
- (c) BS 7114: Part 3: 1988, the British Standard Specification for methods of test for fireworks published on 30th November 1988<sup>(7)</sup>;

and references to Parts 1, 2 or 3 of BS 7114 shall be construed accordingly;

“cap” means a firework (including, for the avoidance of doubt, an amorce) designed for use in toys which comprises a non-metallic envelope or cup containing a dot of impact-sensitive pyrotechnic composition, and which produces a report when it is hit;

“category 3 firework” means a firework classified as category 3 under Part 1 of BS 7114;

“category 4 firework” means a firework classified as category 4 under Part 1 of BS 7114;

“cracker snap” means a firework–

- (a) which comprises two overlapping strips of card or paper with a friction-sensitive explosive composition in sliding contact with an abrasive surface; and
- (b) which produces a report when pulled apart;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(8)</sup>;

“novelty match” means a firework comprising a match with a dot of pyrotechnic composition which is designed to be held in the hand while functioning and whose functioning involves report or the production of visual effects, or both;

“party popper” means a firework comprising a device–

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<sup>(5)</sup> ISBN 0 580 17026 8.

<sup>(6)</sup> ISBN 0 580 17027 6.

<sup>(7)</sup> ISBN 0 580 17028 4.

<sup>(8)</sup> 1994 c. 39.

- (a) which is designed to be held in the hand while functioning;
  - (b) which is operated by a pull-string with an abrasive surface in sliding contact with a friction-sensitive pyrotechnic composition; and
  - (c) whose functioning involves a report with the ejection of streamers or confetti, or both;
- “pyrotechnic composition” means a substance or a mixture of a substance designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as the result of non-detonative self-sustaining exothermic chemical reactions;
- “serpent” means a firework, comprising a pre-formed shape of pyrotechnic composition, with or without support, whose functioning involves the generation of expanded residue;
- “sparkler” means a firework, other than a category 3 or category 4 firework, comprising a rigid wire partially coated with slow-burning pyrotechnic composition, whose functioning involves the emission of sparks without report; and
- “throwdown” means a firework comprising impact-sensitive explosive composition and grains of inert material wrapped in paper or foil and which functions to produce a report when thrown onto the ground.

### **Prohibition of use of certain fireworks at night**

- 3.—(1) Subject to paragraph (2) below, no person shall use an adult firework during night hours.
- (2) Paragraph (1) above shall not prohibit the use of a firework—
- (a) during a permitted fireworks night;
  - (b) by any person who is employed by a local authority and who uses the firework in question—
    - (i) for the purposes of putting on a firework display by that local authority; or
    - (ii) at a national public celebration or a national commemorative event; or
  - (c) in accordance with a dispensation granted under regulation 4 below.
- (3) In this regulation, “night hours” means the period beginning at 11 00 p.m. and ending at 7 00 a.m. the following day and a “permitted fireworks night” means a period—
- (a) beginning at 11 00 p.m. on the first day of the Chinese New Year and ending at 2 00 a.m. the following day;
  - (b) beginning at 11 00 p.m. on 5th November and ending at 2 00 a.m. the following day;
  - (c) beginning at 11 00 p.m. on the day of Diwali and ending at 2 00 a.m. the following day; or
  - (d) beginning at 11 00 p.m. on 31st December and ending at 2 00 a.m. the following day.

### **Dispensation from the prohibition imposed by regulation 3**

- 4.—(1) Subject to paragraphs (3) and (4), a local authority may grant a dispensation from the prohibition imposed by regulation 3(1) to any of the persons mentioned in paragraph (2) to enable that person to use fireworks—
- (a) for the purposes of putting on a firework display; or
  - (b) at a national public celebration or a national commemorative event.
- (2) The persons mentioned for the purposes of paragraph (1) are—
- (a) any person who is employed by, or in business as, a professional organiser or operator of firework displays;
  - (b) any person who is employed by a department of the Government of the United Kingdom or by the Scottish Executive or an agency of the Scottish Executive; or
  - (c) any person who is employed by an establishment of the naval, military or air forces of the Crown.
- (3) A local authority may not grant a dispensation under this regulation, unless it is satisfied either—

- (a) that there is no risk that use of fireworks in accordance with the dispensation will have any of the consequences mentioned in section 2(2) of the Fireworks Act 2003<sup>(9)</sup>; or
  - (b) that the risk that use of fireworks in accordance with the dispensation will have any such consequences is the minimum that is compatible with their being used.
- (4) Where a local authority grants a dispensation under this regulation, it shall inform the chief constable of the police force maintained in relation to the police area where the fireworks are to be used in accordance with the dispensation.

### **Transfer of enforcement duties**

**5.—**(1) In this regulation “the enforcement duty” means the duty imposed by section 27(1) of the Consumer Protection Act 1987<sup>(10)</sup>, insofar as that duty is, by virtue of section 12(1) of the Fireworks Act 2003<sup>(11)</sup> exercisable in relation to the enforcement of the prohibition imposed by regulation 3 of these Regulations.

The enforcement duty in Scotland is hereby transferred to the chief constable of each police force and shall be the duty of every chief constable in relation to the police area for which the force in question is maintained<sup>(12)</sup>.

Every weights and measures authority having the enforcement duty in relation to any area in Scotland is hereby relieved of the enforcement duty.

### **Proceedings**

**6.** In Scotland, summary proceedings for an offence under section 11 of the Fireworks Act 2003 arising from a contravention of a prohibition imposed by these Regulations may be brought at any time within twelve months from the time when the offence was committed.

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<sup>(9)</sup> 2003 c.22.

<sup>(10)</sup> 1987 c.43.

<sup>(11)</sup> 2003 c.22.

<sup>(12)</sup> The expressions “chief constable”, “police force” and “police area” are defined, in relation to Scotland, in Schedule 1 of the Interpretation Act 1978 (c.30) and section 50 of the Police (Scotland) Act 1967 (c.77).

## 5. What happens next?

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**5.1** We intend for the Regulations to be laid before Parliament at Westminster in July, after the consultation has closed. We therefore hope they will come into force sometime in late July.

**5.2** The Scottish Parliament is in recess when the consultation closes. The Scottish Executive intends for Scottish Regulations to be laid before the Scottish Parliament when it returns from recess in September.

**5.3** We aim to publish a report on the outcome of this consultation at the end of August 2004.

**5.4** With regard to the sections of the Fireworks Act that we do not propose to enact by regulations – such as those sections covering public fireworks displays (section 6) and training of display operators, at this time we do not have concerns about the way public displays are operated and therefore believe that there is little need to regulate in this area. This has been reflected by our discussions with various groups (enforcers, fireworks industry, animal welfare groups etc). However, we will review this position based on the experiences of this and future November fireworks seasons.

## 6. List of Consultees

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BRITISH IMPORTERS FEDERATION  
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## Annex A

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### Code of Practice on Consultations

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
7. The complete code is available on the Cabinet Office's web site address:

[www.cabinet-office.gov.uk/servicefirst/index/consultation.htm](http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm)

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