

Firework (Amendment) Regulations 2004 – proposals to supplement the Fireworks Regulations 2004

Consultation response for the consultation beginning on 12 November 2004 and ending on 3 December 2004.

1. Introduction and Background

1.1 This consultation response includes a summary of consultee responses, amendments made and the Department's thinking in relation to the changes made.

1.2 The Fireworks Regulations 2004 ("the principal Regulations") were made under the **Fireworks Act 2003** ("the Fireworks Act") on 14 July 2004. Since the making of those Regulations, some technical inaccuracies have come to the Government's attention, which were considered in need of amendment at the earliest opportunity so that the principal Regulations would be both effective and clear.

1.3 The intention behind the amendments was to make the principal Regulations clearer in giving effect to the Government's intentions, as opposed to making any substantial changes to those Regulations or making additional measures under the Fireworks Act 2003. The Government's intentions were expressed in the consultation document for the draft Fireworks Regulations 2004 and the regulatory impact assessment for that legislation (RIA).¹

1.4 Most of the proposed amendments related to regulation 9, which came into force on 1 January 2005. By ensuring that the necessary amendments were made ahead of this date, regulatory confusion among enforcers and retailers will have been averted. A change further down the line would have meant changes to an already tailor made and functioning system.

1.5 The proposed amendments to be made to the principal Regulations were as follows:

Regulation 9 – Licensing of firework suppliers:

- to amend so that year round fireworks suppliers must have a licence for each outlet where fireworks are supplied – to avoid the possibility that companies with multiple outlets only need a single licence covering all of their premises in a local authority area. This would have been an unfair advantage to such companies and therefore a disadvantage to smaller suppliers with only one outlet;

¹ Final RIA and Consultation Document may be viewed at: <http://www.dti.gov.uk/ccp/topics1/fireworks.htm>

- include an exemption for those suppliers that supply fireworks solely to other businesses and not to the general public. This would include, for example, businesses supplying only to professional display companies and wholesale and retail outlets;
- require those that supply fireworks outside of the permitted windows of non-licensed supply to pay a fee of £500 – irrespective of geographical location;
- change the reference to the “Fire and Civil Defence Authority” to the “Fire and Rescue Authority”; and
- where the Regulations currently transfer the enforcement of the licensing requirements from Local Weights and Measures Authorities (Trading Standards) in Greater London to the Fire and Civil Defence Authority (see above) - amend to retain the enforcement duty of Trading Standards for the London area.

Regulation 10 – Information about adult fireworks:

- change the non-standard paper size of 400x300mm to the standard A3 size (420x297mm);
- amend the first line of the notice to consumers relating to age restrictions and sales to include a reference to sparklers;
- in response to a concern raised by the Joint Committee on Statutory Instruments (JCSI)² – to make clear that the requirement on suppliers of fireworks under regulation 10 (3) to provide information on request involves a requirement to keep a record of that information for five years; and;
- amend regulation 10(3) to specify “adult firework” where the reference is currently “firework” alone – which encompasses all relatively harmless category 1 fireworks.

1.6 The formal written consultation began on 12 November 2004 and, with Ministerial approval, lasted for 3 weeks. The consultation was shorter than that recommended in Cabinet Office guidelines owing to the minor nature of the proposed Regulations.

2. Responses received

² House of Lords and House of Commons Joint Committee on Statutory Instruments: Thirteenth Report of Session 2003 – 04. This may be viewed at: www.publications.parliament.uk/pa/jt200304/jtselect/jtstatin/181/181.pdf

2.1 The Department received 27 responses. These were sent by a variety of media, including post, telephone calls and email. Respondents were mainly enforcement bodies, members/ representatives of the fireworks industry, trade associations and other Government departments. Other interested groups, such as the RSPCA, also submitted responses.

2.2 The responses, with the exception of those whose authors requested that their response be in confidence, are available in the DTI Library and can be accessed on request by contacting the Information and Library Services of the DTI on **020 7215 6226**. A list of those respondents who were willing to have their names and responses disclosed can be found at Annex A.

3. Consultation: questions and answers

3.1 Below are the specific questions set out in section 3.1 of the consultation document, together with a summary and analyses of the responses received.

(a) Do consultees believe that these proposed amendments improve the Fireworks Regulations 2004 and reflect the original intention of these Regulations?

The majority of responses expressed support for the proposals, both in terms of achieving a tightening up of the principal Regulations and in making clearer the new measures for both the industry and enforcers.

(b) Are there any technical aspects that consultees believe have not been addressed in these proposed amendments?

While the intention to tighten up the legislation was generally supported, there was also concern that the consultation draft of the Regulations might not achieve the stated aims. The draft was scrutinised in light of the comments received and a number of changes made.

4. Amendments made to the draft regulations

Regulation 3 – Amendment of Regulation 9 of the principal Regulations

4.1 The question was asked as to whether the proposed amendments to regulation 9(1) would have the effect of requiring a company with 3 outlets to have 4 licences, 1 for each outlet and a further licence for the company itself. The wording of the amendment to regulation 9(1) was changed to address this concern.

4.3 Additionally, the wording was changed to make clear that even suppliers who do not physically possess fireworks (e.g. Internet suppliers and mail

order suppliers) are nonetheless required to be licensed if supplying outside the specified periods.

Regulation 4 – Amendment of Regulation 10 of the principal Regulations.

4.4 Under the proposed amendments, fireworks suppliers would be required to keep records of individual transactions of fireworks that exceed 50 kg in total explosive content for a period of 5 years after the transaction concerned. However, the majority of consultation respondents, including the industry and enforcers, were of the view that 5 years was an excessive amount of time to retain such records. The period has been changed to 3 years.

Regulation 5 – Amendment of Regulation 12 of the Principal Regulations.

4.5 The wording of draft regulation 5 would have potentially transferred the enforcement duty for Regulation 7 of the principal Regulations (the licensing of suppliers) to Fire and Rescue Authorities in many areas other than those where they currently have enforcement duties under the Explosives Act 1875.

4.6 Given that it was the intention to mirror the enforcement arrangements currently in place under the 1875 Act, the draft was amended to ensure that the enforcement duty is only transferred with respect to Fire and Rescue Authorities in metropolitan counties.³

4.7 The final Fireworks (Amendment) Regulations can be viewed at:

<http://www.legislation.hmso.gov.uk/si/si2004/20043262.htm>

5. Other issues

Length of consultation

5.1 Some respondents expressed concern about the reduced period of consultation for these proposals. While we accept that the making of regulations which introduce new measures should always be done with the benefit of a minimum 12 weeks duration, we considered that in the case of the proposed changes to the Fireworks Regulations 2004 this time limit was not necessary given that proposed changes were neither new or substantive.

5.2 Since the making of the 2004 Regulations, the Government were made aware of the problems and were in discussion with the relevant stakeholders about the necessary changes to be made. The drafting of the amendments took place on the basis of those discussions and in tandem.

³ Metropolitan Counties are defined in the Local Government Act 1975, schedule one. Although much of this Act has been repealed by newer Local Government legislation, the schedule to this Act is still in place.

The licence fee of £500 - is this the right level?

5.3 While most respondents were of the view that the amendment of regulation 9(7) was a progressive move to meet the stated intention of the principal Regulations, others thought that this level was either too high or too low.

5.4 Originally, the figure of £200 was floated in the consultation document to the draft 2004 Regulations, but this figure changed on the basis of the responses that we had to that consultation. The figure of £500 was arrived at accordingly.

The Licensing of suppliers should be more closely linked to arrangements under the Explosives Act 1875

5.6 Some respondents thought that the regulations governing the supply of fireworks should be more closely connected to the current storage regime, under the Explosives Act 1875. In particular, it was stated that persons with a licence to supply should also be the same person with a registration or licence to store those fireworks – and therefore in control of the fireworks.

5.7 The Government does not consider that there is a particular problem with this current arrangement. Indeed, there are many responsible suppliers who currently do not store the fireworks that they supply. We also believe that the two licensing regimes are sufficiently linked given the requirement that each supplier of fireworks must have a registration or storage licence under the 1875 Act, or be able to demonstrate that the fireworks to be supplied are stored on such premises if suppliers do not themselves store them.

6. Next Steps

6.1 The Fireworks Regulations 2004 (as amended) form a comprehensive package of measures designed to control the importation, supply, possession and use of fireworks. Most of the measures came into force on 7 August 2004, and the remainder on 1 January 2005.

6.2 Given the date of introduction i.e. its close proximity to the fireworks season of 2004 and certain measures coming into force after that period, we believe that the optimal benefits of the measures introduced will not have been felt last year – but should be felt during the 2005 season.

6.3 This is because in most cases familiarity with the measures, both by enforcement authorities and the general public, will improve both the systems in place to ensure compliance and better enforcement and, with regard to the public, an understanding of the new measures e.g. that it is no longer acceptable to use fireworks during curfew times.

6.4 The Government also hopes to have secured more powers for the police in order better enforce the possession prohibitions in relation to the under 18s and of non-professionals possessing category 3 fireworks.⁴ This will further reduce the potential for the anti-social and criminal use of fireworks in the streets.

6.5 All relevant links in relation to this consultation response are available in Annex A.

Annex A

1. Useful Links

Fireworks (Amendment) Regulations:

<http://www.legislation.hmso.gov.uk/si/si2004/20043262.htm>

Fireworks (Amendment) Regulations 2004 - Regulatory Impact Assessment:

<http://www.dti.gov.uk/ccp/consultpdf/condocria1104.pdf>

Fireworks Regulations 2004

<http://www.legislation.hmso.gov.uk/si/si2004/20041836.htm>

Fireworks Act 2003

<http://www.legislation.hmso.gov.uk/acts/acts2003/20030022.htm>

Fireworks (Safety) Regulations 1997

<http://www.legislation.hmso.gov.uk/si/si1997/97229401.htm>

Fireworks (Amendment) Regulations 2004 Consultation Document:

<http://www.dti.gov.uk/ccp/consultpdf/condocria1104.pdf>

DTI website

<http://www.dti.gov.uk/>

Fireworks Injury Data

⁴ This proposal forms a part of the Serious Organised Crime and Police Bill and is currently before Parliament. See www.parliament.uk or www.homeoffice.gov.uk

http://www.dti.gov.uk/homesafetynetwork/fw_stats.htm

Consumer and Competition Policy web pages

<http://www.dti.gov.uk/ccp/>

2. Consultation Respondents

No.	NAME	ORGANISATION/ STATUS
1.	Mr W Fraser	Aberdeen City Council
2.	Mr G Shand	Aberdeen City Council
3.	Ms S McIsaac MP	All Party Group on Fireworks
4.	Mr K Bailey	Association of Chief Police Officers (ACPO)
5.	Mr M Guest	Black Cat Fireworks Limited
6.	Mr J Woodhead	British Fireworks Association (BFA)
7.	Mr J Crawford	East Ayrshire Council
8.	Mr G Bates	Fife Council
9.	Mr A Armitage	The Garden Centre Association
10.	Mr N Coltart	Glasgow City Council
11.	Mr I Lockhart	Glasgow City Council
12.	Mr D Chapman	Health and Safety Laboratory
13.	Mr N Mackenzie	Highland Council
14.	Mr G Robb	Highland Council
15.	Mr R Davies	Royal Borough of Kingston Upon Thames
16.	Ms A Edwards	Local Authorities Co-ordinators of Regulatory Services (LACORS)
17.	Ms K Yates	London Trading Standards Authorities (LOTSAs)
18.	Mr M Hagan	Merseyside Fire & Rescue Service/ CFOA
19.	Mr P Wakeham	Noise Abatement Society (NAS)
20.	Steve Blanchard	North Lincolnshire Council – Environmental Services
21.	Mr D Bowles	Royal Society for the Prevention of Cruelty to Animals (RSPCA)
22.	Ms S Humphries	South Gloucestershire Council
23.	Ms K Cross	Staffordshire Council
24.	Mr D Roderick	Trading Standards Institute
25.	Mr J Holmes	Tyne & Wear Fire & Rescue Service
26.	Mr D Monks	West Yorkshire Fire & Rescue Service
27.	Mr N Tobin	National Campaign for Firework Safety (NCFS)