

Firework (Safety) (Amendment) Regulations 2004

Consultation response for the consultation beginning on January 30th and ending on 23rd April 2004

1. Introduction and Background

1.1 The Fireworks (Safety) Regulations 1997¹ (“the 1997 Regulations”) were made under the Consumer Protection Act 1987. The powers under that Act allow the Secretary of State to make Regulations (Safety Regulations) to protect consumers from unsafe products or products that would be unsafe if supplied to certain persons. The 1997 Regulations therefore:

- raised the age of purchase for all fireworks with the exception of category one and category two sparklers to 18;
- prohibited the supply of a number of fireworks considered dangerous, including: aerial shells; aerial maroons; shells-in-mortar; and maroons-in-mortar; bangers; Chinese crackers; mini-rockets; and fireworks of erratic flight (e.g. squibs, jumping crackers, helicopters).

1.2 On January 30th 2004, the Government launched a formal consultation on proposed Regulations to be made under the Consumer Protection Act 1987 to amend the existing 1997 Regulations. The amendments were proposed for the same reasons – to secure as much as possible, the inherent safety of consumer products and the protection of consumers generally. This formal written consultation followed extensive preliminary meetings with a range of interested organisations and individuals – which were essential to inform the formulation of the proposals.

1.3 The amendments that were proposed are as follows:

- a ban on the supply of air bombs;
- tighten-up the definition of mini-rockets;
- to amend the prohibition on supply to person *apparently* under eighteen so that it applies to persons who are *actually* under

¹ S.I. 1997/2294.

eighteen – therefore no longer relying on the supplier’s judgment of appearance;

1.4 In response to the consultation, the Department received many comments - all of which were of value in our final consideration of the Regulations in their draft form.

2. Responses received

2.1 The Department received **66** responses. These were sent by a number of mediums, including post and telephone calls, although most respondents submitted feedback by email. Respondents ranged from enforcement bodies, such as local Trading Standards Officers and members/ representatives of the fireworks industry, trade associations, retailers - to various interest groups, such as the RSPCA, faith groups and members of the general public.

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. Amendments made

3.1 The responses were generally supportive of the proposed measures, although many expressed the need for tighter and more stringent controls on fireworks in order to tackle nuisance and anti-social use – which is what we hope to achieve with the implementation of the provisions of the Fireworks Act 2003.

3.2 As a result of the consultation, two consequent changes were made to the draft in the light of the consultation responses.

Schedule: 1. - (1) (definition of air bombs)

3.3 The British Fireworks Association (BFA) advised that the definition of air bombs in the consultation draft included items not usually considered to be air bombs - but also included devices which are similar but whose principal effect is not report (auditory) - but rather aural.

3.4 The principal aim of this proposal was to eliminate air bombs from the market, that is, those fireworks that are attractive to those who may endanger their own safety and the safety of others by using them. We therefore decided that this change should be made given that the definition contained in the draft Regulations also caught fireworks generally not considered a problem – those that are much the same as “ordinary” roman candles.

(a) Original definition:

““air bomb” means a roman candle (or a combination that includes three or fewer roman candles) whose functioning comprises the ejection of eleven or fewer pyrotechnic units, and which contains any pyrotechnic unit designed to eject and burst and whose bursting charge is other than black powder”

(b) Amended definition

““air bomb” means a Roman candle (or a combination which includes three or fewer roman candles) whose functioning comprises the ejection of eleven or fewer pyrotechnic units, and which contains any pyrotechnic unit designed to eject and burst and whose bursting charge is other than black powder and constitutes more than ten per cent of the pyrotechnic unit.”

Schedule: 4. - (1) Saving for Air Bombs Sold in Selection Packs

3.5 Both the CBI Explosives Industry Group (CBI EIG) and the BFA recommended that the derogation period for the supply of air bombs in selection boxes should be extended.² Such an extension was suggested in order that the difficulties of disposing of the remaining air bombs (in the supply chain) and other fireworks that accompany these items in selection boxes. We agree with this recommendation - and it is in line with the thinking that informed the originally proposed derogation period. This will mean that the retail and wholesale sectors will be able to clear current supplies/ stocks with less of a potential for complex and problematic wastage issues arising.

3.6 The final Regulations can be viewed at:

<http://www.hmso.gov.uk/si/si2004/20041372.htm>

4. Other issues

4.1 A small number of respondents, such as the Co-operative Group, sought clarification on the due diligence defence in relation to sales to under 18s (as set out in the 1997 Regulations and section 39 of the Consumer Protection Act).

4.2 Section 39 of the Consumer Protection Act provides for suppliers to show that they took all reasonable steps and exercised all due diligence to avoid the commission of an offence. The effect of the amendment to

² The original proposal was to allow supply up to, but not including, 9 November 2004.

regulation 6(1) is that the actual, as opposed to the apparent, age of the purchaser will determine liability. A supplier claiming that he believed an under-aged purchaser was 18 or over would need to show that he took all reasonable steps and exercised all due diligence to ascertain the age of the customer - such as asking for a driving licence or proof of age card, etc. This means that were a retailer to be deceived by someone producing convincing false identification - after requesting identification - then this would count as a reasonable step and thus qualifies as a defence in the context of court action. We have simply removed the element of "appearance" that the 1997 Regulations prescribe - making suppliers liable if the only defence is an unreasonable and erroneous judgment of appearance.

4.3 Some respondents questioned why there should be a saving for air bombs in selection boxes.³ As explained above in paragraph 3.5, we have done this to overcome the problem of disposing of old stocks of fireworks, including other permitted fireworks, in such boxes. It should also be noted that under the industry's voluntary ban on the supply of air bombs - air bombs in selection packs were not included in the arrangement.

4.4 One respondent - a Local Trading Standards Office, stated that the opinion that the definition of mini-rockets seemed too complex to enforce - possibly in the sense that the definition of a mini-rocket is relative to its mode of sale. The way that the Regulations approach the re-defining of mini-rockets was to first tighten the existing definition - which prohibits, in absolute terms, rockets falling under any of the minimum dimensions from supply to the general public. For example, no rocket, sold in whatever way - selection box or singularly, can be supplied if its:

- outside diameter is less than 12mm; or
- overall length (including stick) measures less than 300mm.

If any of the dimensions fall below the above measurements, then the rocket, in absolute terms (regardless of mode of sale), is a mini-rocket and therefore prohibited.

4.5 However, fireworks whose dimensions exceed both the above dimensions will be treated as "mini-rockets" if any of its dimensions are as follows:

- overall length (including stick) measures less than 400mm; or
- body and motor length is less than 125mm

³ A selection box is simply a box containing a variety of fireworks e.g. roman candles, rockets, Catherine wheels, etc.

- if equipped with a stick or sticks and intended for supply in a primary pack. Longer dimensions apply to rockets intended for sale singly.⁴

4.6 Responses received from other Local Trading Standards Offices and from other enforcers did not identify this as a problem. We do not consider it will be difficult to monitor the measurements of such fireworks – although ascertaining whether a firework is an air bomb or not may well require independent testing. Through past experience of the introduction of new fireworks Regulations, however, we expect the majority of importers to comply with the new laws.

5. Responses on issues outside the scope of the powers of the Consumer Protection Act 1987.

5.1 Just under a third of the responses received by the Department were on matters outside the scope of the consultation and, generally, beyond the powers of the Act. The following were issues raised by respondents:

- A common theme was that the proposed Regulations did not go far enough insofar as they fell short of placing noise restrictions on fireworks and that they do not impose a curfew on fireworks use, etc. Such measures are not possible to make under the Consumer Protection Act - as that Act is concerned with consumer safety – and not with the broader social phenomenon of anti-social behaviour. To tackle the latter problem (anti-social use of fireworks), the Fireworks Act 2003 is the most suitable legislation. We have launched a consultation on proposals designed to deal with this.
- Some respondents expressed their preference for a complete **ban on consumer fireworks**. As above, the remit of the Consumer Protection Act 1987 is limited to consumer safety - or their safety in the hands of certain persons, such as children. It is therefore not possible to ban fireworks on the grounds of safety – as not all fireworks constitute a danger – save for their anti-social use.
- It would also be worth noting that the Fireworks Act 2003, under which the newly proposed regulations are made, does not allow for such a ban. Section 5(3) of the Act exempts those fireworks falling under category 1 and 2 from prohibition (referred to as “classes” in the Act). Notwithstanding this legal obstacle, the

⁴ Those rockets that are permitted to be sold singly will have a diameter of no less than 12mm; or an overall length of no less than 900mm; or a body and motor length of no less than 195mm.

Government does not believe that the case has been made for a complete ban on the sale of consumer fireworks as there are many responsible people who enjoy fireworks and do not misuse them. We do not believe that a small minority should spoil the fun of millions of people who put on their own displays.

6. Next Steps

6.1 On June 8, the date that the Fireworks (Safety) (Amendment) Regulations 2004 are set to come into force, guidance will be available from the DTI website for these Regulations. These will form part of the guidance on the wider 1997 Regulations.

6.2 The Government has also launched a new consultation to introduce a raft of measures designed to tackle the anti-social use of fireworks. Responses to this consultation are most welcome. You may view the consultation document at:

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

6.3 Whereas the 2003 Regulations⁵ represented the first step to tackle the misuse of fireworks, these newly proposed 2004 Regulations, we believe, constitute a comprehensive package designed to tackle not only use directly, but also indirectly by regulating the supply side. The measures that the Government hopes to introduce under the Fireworks Act 2003 are as follows:

- to make permanent the provisions of the 2003 Regulations dealing with possession of category 4 fireworks and under-age possession of most other fireworks;
- the creation of a curfew on firework use;
- the imposition of a maximum decibel limit on category 3 fireworks;
- all year round suppliers of fireworks to be licensed;
- a requirement that all suppliers (to the public) of fireworks display a notice informing customers of the law in relation to age; and
- importers to supply information at the point of entry to help ensure they are destined for legal distribution/ storage;

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

⁵ The Fireworks Regulations 2003 made it an offence for any person under the age of 18 to possess fireworks in a public place and for any person other than a fireworks professional to possess a category 4 firework (professional display fireworks).

Annex A

1. Useful Links

Fireworks (Safety) Regulations 1997

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

Fireworks (Safety) (Amendment) Regulations 2004

<http://www.legislation.hmso.gov.uk/si/si2004/20041372.htm>

Consultation on proposed Fireworks Regulations 2004 (23 April – 2 June)

<http://www.dti.gov.uk/ccp/consultpdf/fireworkcon2004.pdf>

Fireworks Act 2003

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

Fireworks Injury Data

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

DTI website

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

Consumer and Competition Policy web pages

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

2. Consultation Respondents

Clare Lynch <i>British Veterinary Association</i>	Simon Taylor <i>Association of Chief Police Officers in England, Wales & Northern Ireland</i>	Derek McElhiney <i>Renfrewshire Council</i>
John Stone <i>South Derbyshire District Council</i>	Joseph Donnelly <i>East Ayrshire Council</i>	Steve Williams <i>Big Bang (Fireworks) Productions Limited</i>
Paul Farrelly MP <i>Newcastle-under-Lyme</i>	Alastair McWhirter <i>Suffolk Constabulary</i>	Jackie Bowie <i>Highland Council,</i>

<i>Constituency</i>		<i>Transport, Environmental & Community Services</i>
Wendy Wrigley <i>Co-operative Group</i>	Steve Goody <i>Animal Welfare Coalition</i>	Marie Hill <i>East of England Trading Standards Authorities</i>
Bryan Lewin <i>Northamptonshire County Council</i>	Heena Prajapati <i>MidCOTS</i>	Barry Chambers <i>North East Lincolnshire Council</i>
Karen Yates <i>London Trading Standards Authorities</i>	E R Forsyth <i>Royal Borough of Kingston upon Thames – TSD</i>	Jim Potts <i>Lancashire County Council</i>
Sue Taylor <i>UKCPI</i>	Alison Edwards <i>LACORS</i>	Peter Arrowsmith FCA <i>National Insurance Consultancy</i>
Bob Laxton MP <i>Derby North Constituency</i>	Carol McCutcheon <i>Fife Council</i>	Richard Hall <i>Warwick District Council</i>
David Nicholson <i>LACORS Wales</i>	David Roderick <i>Trading Standards Institute</i>	Brigadier Charles Smith <i>CBI EIG</i>
Roger Turner <i>National Federation of Post Office & Post Office Pensioners</i>	N Garnham <i>Peterborough City Council</i>	Tom Smith <i>Davas Ltd/ BPA</i>
Gordon Robb <i>Highland Council</i>	F. Palmer <i>(Member of the public)</i>	Peter Sherry <i>SCOTSS</i>

Margaret Wells <i>Birmingham City Council</i>	John Woodhead <i>British Fireworks Association</i>	Carol Ramsell <i>(Member of the public)</i>
John McNicholas <i>Coventry City Council</i>	Nigel Fawkes <i>Pharmanedico</i>	Teresa Kulkarni <i>(Member of the public)</i>
Martyn Evans <i>Scottish Consumer Council</i>	David McCulloch <i>West Dunbartonshire Council</i>	Ron Rapley <i>Black Cat Fireworks</i>
Nick Ahad <i>Yorkshire Evening Post</i>	Rashmi Verma <i>Confederation of Indian Organisations (UK)</i>	Linda Woolston <i>(Member of the public)</i>
S C W Weston <i>(Member of the public)</i>	Brian Richmond <i>Gateshead Council</i>	Keith Atkinson <i>Darlington Borough Council</i>
M D Baker <i>Police Federation of England & Wales</i>	D. Smith <i>North Lanarkshire Council</i>	Graham Lundegaard <i>Sandling Fireworks</i>
Stuart Pudney <i>North Yorkshire County Council</i>	Philip Walker <i>(Member of the public)</i>	Lesley Nicol <i>(Member of the public)</i>
Miss E Lord <i>(Member of the public)</i>	Andrew F Stewart <i>Advocates Library</i>	Tom Bell <i>Royal Environmental Health Institute of Scotland</i>
Noel Tobin <i>National Campaign for Firework Safety</i>	Alaina Hardy <i>(Member of the public)</i>	Russ Howell <i>Kettering Borough Council</i>

Ian Dalgetty <i>AMTAC Laboratories Ltd</i>	Dina Groden <i>BT</i>	Chris Case CACFOA
Geraint Day <i>Institute Of Directors</i>		

Department of Trade and Industry
Consumer and Competition Policy Directorate