

**RED TAPE CHALLENGE RETAIL  
AND MANUFACTURING  
CONSULTATION**

Government response

JULY 2012

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## 1. Background

The Red Tape Challenge was launched in April 2011 with the aim to reduce the burden of regulation that stifles economic growth. Good regulation plays a vital role in protecting business and consumers. However, unnecessary, overcomplicated regulation strangles business and it has to be removed.

The Retail theme was the first to go live under the spotlight process and in a press notice on 28 July 2011 the Government announced the range of retail regulations it proposed to scrap, simplify or amend. The announcement on the Manufacturing theme followed on the 29<sup>th</sup> November.

The Retail and Manufacturing consultation covers 14 statutory instruments for potential revocation identified under the Red Tape Challenge process. These were introduced to tackle a specific problem with a particular product such as safety issues arising from poorly constructed bunk beds. The consultation also includes a proposal to amend one regulation to lower the age at which Christmas crackers can be purchased from 16 to 12 years old.

## 2. Executive Summary

The Government would like to thank all those who took the time to respond to the consultation.

The Government has received 23 responses to the consultation. Most supported the revocation of the statutory instruments in the consultation document. Some issues were raised about individual statutory instruments and we also received more general comments on perceived limitations of the General Product Safety Regulations (GPSR). These are addressed under the relevant sections of the Government Response.

In light of the responses received on two regulations-Pyrotechnics Articles and Pencils and Graphic Instruments, we are looking at these in more detail. We will do a separate Government Response on this in due course.

After considering the responses which came in through the consultation process, Impact Assessments have been drawn up for 10 statutory instruments. These show the revocation of the measures would have zero impact.

### 3. Introduction

The consultation opened on 23 March and closed on 23 May 2012. The consultation was for a period of eight weeks rather than twelve weeks, due to the consultation which had already taken place through the Red Tape Challenge website and the deregulatory nature of the proposals. We were interested to hear from anyone with an interest in the impact of the revocation of these statutory instruments and of any cost benefit that may arise as a result. In addition to appearing on the BIS website, the consultation was also emailed to over forty stakeholders with a particular interest in safeguarding consumers and product safety.

BIS received 23 responses to the consultation. These came from a range of respondents such as large retailers, charitable organisations, enforcement officers and private individuals. Not all respondents commented on all 52 questions, instead commenting on those statutory instruments where they had a particular interest. The large number of questions is due to the fact that the consultation included 15 statutory instruments for amendment and revocation.

## 4. Summary of Responses and Government Response

### Bunk Beds (Entrapment Hazards) (Safety) Regulations 1987

We received ten responses in support of the revocation of the Bunk Beds (Entrapment Hazards) (Safety) Regulations 1987. These came from a range of stakeholders such as enforcement authorities, large retailers and charities. One trading standards body said ‘there is a relevant standard and the provisions of General Product Safety Regulations (GPSR) will adequately absorb the provisions which these regulations sought to protect from’.

Another trading standards body thought that the regulations provide additional protection to children as they identify controls for hazards to those under the age of six.

#### Government Response

The Government proposes to proceed with the revocation of these regulations because the majority of the responses agreed with this approach. The GPSR will provide a comparable level of safety protection. European standard BS EN 747 (which can be used to demonstrate compliance under GPSR) provides comparable safety protection to ‘children’, including those under the age of six. GPSR confer an obligation on anyone to supply only safe products regardless of the age of the consumer.

### Children's Clothing (Hood Cords) Regulations 1976

Eleven responses to the consultation agree with the revocation of the Children’s Clothing (Hood Cord) Regulations 1976. The main reasons cited are that they only apply to outer garments and are therefore restricted in their application. One safety charity feels ‘that BS EN 1468 covers all the hazards and risks covered by the Regulations’. The benefits identified by stakeholders as an effect of revocation are a reduction in regulation to ensure greater business compliance.

Two respondents disagree with revocation. This is because the Children’s Clothing (Hood Cord) Regulations 1976 have been used to prosecute large retailers who were selling children’s hooded tops with a hood cord drawn through the hood. The respondents think GPSR could not be used in this case because of the difficulties around proving a product is dangerous to the criminal standard of proof required in GPSRs.

#### Government Response

The Government proposes to proceed with the revocation of these regulations because the majority of the responses agreed with this approach. The GPSR will provide a comparable level of safety protection. The perception that enforcement action can only be taken against a retailer if they knowingly supply an unsafe product under the GPSR is erroneous because action can be taken for breach of the requirements of the GPSR where goods are anywhere in the supply chain. Moreover enforcement action can be taken against a retailer who supplies a product even though he should have known, from the information in his possession or professional knowledge, that it was unsafe.

## **Wheeled Child Conveyances (Safety) Regulations 1997**

Eleven organisations agree with the revocation of the Wheeled Child Conveyances (Safety) Regulations 1997. One trading standards body responded 'By revoking these regulations, the sanctions imposed by these regulations will be adequately covered by GPSR and EN1888.

One of the large retailers disagreed with revocation because the GPSR cannot always adequately cover the regulations which are down to be revoked unless the GPSR is revised to incorporate all specific legislative requirements from the regulations subject to revocation.

### **Government Response**

The Government proposes to proceed with the revocation of these regulations because the majority of the responses agreed with this approach. The GPSR provide a comparable level of safety protection. GPSR are intended to ensure a high level of product safety for consumer products. Their guiding principle and requirement is that manufacturers and suppliers should place, or make available, only safe products on the market. Compliance with GPSR for these products can be demonstrated by meeting the requirements of European standards. This removes the need for detailed specific national regulation which can quickly become outdated. If these requirements were subsumed into the GPSR they too would become quickly outdated and require frequent amendment.

## Imitation Dummies (Safety) Regulations 1993

The suggested revocation of this regulation has split opinion amongst organisations. Eight organisations support revocation. This is mainly because the prevalence of imitation dummies has diminished and the GPSR provide adequate protection. However, seven organisations disagree with revocation; these include local government, charities and a large retailer. The reasons for disagreement include a perceived reduction in safety for consumers and the use of this regulation to deal with non compliant pedlars. Two respondents have also commented on the prevalence of ‘bling’ dummies in the market and the harm they pose to consumers.

### Quotes

‘Consumer safety associated with these products is not adequately covered through any other mechanism’.

‘We do not support the revocation because such as step would not leave consumers with an equivalent level of safety’.

‘GPSR is likely to give adequate protection / sanctions in relation to this’.

‘This regulation is unnecessary as it has been superseded by the General Product Safety Regulations 2005’.

### Government Response

Two respondents mentioned the placing of ‘bling’ dummies on the market. These are genuine (not imitation) dummies decorated with plastic jewels which pose a choking hazard. These can be removed from the market by enforcement of the GPSR. Imitation dummies can also be removed from the market under GPSR by applying European standard BS EN 1400:2002. The Government is committed to the effective operation of GPSR to ensure only safe products are available to consumers and consequently believe there is now no need for an overlapping piece of national legislation. We consider it to be more appropriate for all unsafe dummies to be covered under the GPSR and are satisfied this will provide comparable safety protections and therefore propose to revoke this regulation

## **The Gas Cooking Appliances (Safety) Regulations 1989**

## **The Heating Appliances (Fireguards) (Safety) Regulations 1991**

## **The Gas Catalytic Heaters (Safety) Regulations 1984**

These regulations have been grouped together as they are now covered by the Gas Appliances (Safety) Regulations 1992 as well as the GPSR.

The majority of responses that we received for these regulations are in support of revocation. One Trading Standards body has raised concern about the use of the GPSR as they are less prescriptive in their application. They have also said that enforcement action against retailers is limited under the GPSR. The same respondent also disagrees with the revocation of the Gas Catalytic Heaters (Safety) Regulations stating that the restriction of unbonded asbestos is essential to protecting users from long term damage to health.

### **Government Response**

As the majority of responses support the Government's proposal we plan to proceed with revocation of these regulations. The concerns raised by a Trading Standards body are noted however the regulations to be revoked are over 20 years old. The standards referenced are obsolete and do not reflect the level of safety that a consumer should expect. While noting evidence of the presence of chrysotile asbestos on fire retardant string in Sky Lanterns these are not gas appliances and therefore not relevant to these legislative measures.

## **The All Terrain Motor Vehicle (Safety) Regulations 1989**

We received seven responses which agree with revocation of this regulation. One organisation neither agreed nor disagreed to the revocation but did raise concerns that revocation could expose users in two specific target groups and third parties to increased risk. However they also recognise that a high level of protection exists for these products which fall within the Toy (Safety) Regulations 2011.

### **Government Response**

The Government plans to proceed with its proposal to revoke these regulations. This is because the concerns raised by one Trading Standards authority relate to measures contained in the Regulations which were revoked by the Supply of Machinery (Safety) Regulations 2008.



## **The Cooking Utensils (Safety) Regulations 1972**

The majority of respondents agree with revocation of the 1972 regulations because the 2004 EU regulations provide more enhanced protection.

There was one organisation which neither agreed nor disagreed with revocation but commented that the protections that the 1972 regulation addresses needs to be maintained to protect users from long term damage to health.

### **Government Response**

As the majority of responses support the Government's proposal and consumers will continue to be protected by newer regulations (EC 1935/2004 which require food contact materials to be safe), we plan to proceed with revocation of these regulations.

## **Indication of Prices (Beds) Order 1978**

All responses in relation to this order agree with revocation. The main reason is that the 1978 order has been superseded by the Consumer Protection from Unfair Trading Regulations 2008 and the Competition Act 1998.

### **Government Response**

The Government plans to proceed with its proposal to revoke this order. This is because the objectives of the order have been superseded by the Competition Act 1998, as highlighted by respondents to the consultation. This order banned price fixing and dual pricing in the selling of beds. Price fixing, or any other concerted practices between parties, which has the effect of restricting competition is prohibited by the Competition Act 1998.

## **Child Resistant Packaging and Tactile Danger Warnings (Safety) (Revocation) Regulations 1992**

## **Stands for Carry-cots (Safety) (Revocation) Regulations 1996**

## **Magnetic Toys (Safety) (Revocation) Regulations 2009**

These regulations have been grouped together as they are all revocation regulations

For the Child Resistant Packaging and Tactile Danger Warning (Safety) (Revocation) Regulations 1992 we received eleven responses. Ten of these were in favour of revocation and only one disagreed with revocation. However, no further comments were made to explain why this was the case.

In relation to the Stands for Carry-cots (Safety) (Revocation) Regulations 1996 we received twelve responses and all were in agreement with revocation. This is because the GPSR provides protection in this area.

For the Magnetic Toys (Safety) (Revocation) Regulations 2009 we received thirteen responses. Twelve of these support revocation of the regulation and only one opposes revocation. One of the large retailers disagrees with revocation as they have stated it would discontinue the labelling requirements for magnetics used in toy products. New standards in relation to magnetic toys were published under the Toy Directive 88/378/EEC. This Directive ensures that magnetic toys comply with safety requirements and do not pose a risk to consumers.

### **Government Response**

Almost all responses received for these regulations were in favour of revocation and the Government plans to proceed with its proposal to revoke them. The two responses that disagreed are outside the scope of this consultation as the principle for revoking these regulations has already been established and the regulations are no longer in force.

The Magnetic Toys (Safety) Regulations 2008 were introduced as an emergency measure, following a fatality and several injuries due to ingestion of high strength small magnets. Low strength magnets were found to be not an issue and high strength magnets are necessarily fixed under the new rules for magnets in EN71-1. Therefore generally the new rules make redundant the need for warnings, except in the case of magnetic/electrical experimental sets where they are still required.

## **Pyrotechnic Articles (Safety) Regulations 2010**

## **Pencils and Graphic Instruments (Safety) Regulations 1998**

### **Government Response**

These regulations were included in the consultation and we received detailed responses which we are looking into and will respond separately to.

## **Additional Comments Received**

### **General Product Safety Regulations**

**We received an additional response on the GPSR definition of ‘safe product’ which commented that this can be open to interpretation particularly regarding the “state of the art technology” element.**

### **Government Response**

We believe the GPSR does provide an appropriate level of safety and clarity particularly when backed up by standards. GPSR make clear that a product is presumed to be safe when it complies with European standards which are referenced in the Official Journal. Where referenced standards do not exist the safety of a product should be assessed taking into account UK national standards, European Commission product safety guidelines, product safety good practice codes or state of the art and technology. So wherever standards do not exist or are not appropriate then other methods of demonstrating compliance such as adhering to ‘state of the art and technology’ can be used. This can potentially be more difficult to define but the ‘state of the art’ element builds vital flexibility into these general regulations and is essential for new product innovation.

**This respondent also asked for BIS to provide up-to-date guidance so that the clarity provided by the old regulations is not lost.**

### **Government Response**

BIS will update stakeholders when these regulations are revoked so that they are aware of the legislative changes. There is already GPSR guidance on the BIS website and we do not expect to need to produce more product-specific guidance on how to demonstrate product compliance.

**Some respondents wanted to see the product specific requirements of the old regulations subsumed into GPSR.**

### **Government Response**

The GPSR principle of only supplying safe products removes the need for detailed specific national regulation which can quickly become outdated. If these requirements were subsumed into GPSR they too would become quickly outdated and require frequent amendment.

**Some respondents think GPSR is hard to apply because of difficulties around the criminal standard of proof required in GPSR.**

### **Government Response**

The perception that enforcement action can only be taken against a retailer if they knowingly supply an unsafe product under the GPSR is erroneous because action can be taken for breach of the requirements of the GPSR where goods are anywhere in the supply chain. Moreover enforcement action can be taken against a retailer who supplies a product even though he should have known, from the information in his possession or professional knowledge, that it was unsafe.

## **Food Imitations (Safety) Regulations 1989**

We received three responses on this regulation although it is not included in this consultation. The Food Imitations (Safety) Regulations 1989 prohibit the sale and supply of goods that could be mistaken for food. These responses all questioned why the Food Imitations (Safety) Regulations 1989, are not included in this consultation for revocation. All of the respondents explained that this regulation is having a negative impact on business as it prohibits the supply of products which imitate food and are a choking hazard to young children.

The Food Imitations (Safety) Regulations 1989 were not included in this consultation as they are planned to be included in the upcoming revision of the General Product Safety Directive (GPSD). However, even under the GPSD there will still be a requirement not to manufacture products which imitate food. The proposal to revise the GPSD will not be produced by the European Commission until the end of this year. Following this there will be a lengthy period of negotiations and transposition, therefore implementation is some years off. The regulations will need to remain in place until then. Revoking these regulations which implement a European Directive could make the UK subject to infraction proceedings.

## 5. Next steps

In light of the responses received in the consultation the Government seeks to take forward the revocation of the 13 statutory instruments listed below:

- Bunk Beds (Entrapment Hazards) (Safety) Regulations 1987 (SI 1987/1337)
- Children's Clothing (Hood Cords) Regulations 1976 (SI 1976/2)
- Imitation Dummies (Safety) Regulations 1993 (SI 1993/2923)
- Wheeled Child Conveyances (Safety) Regulations 1997 (SI 1997/2866)
- Gas cooking Appliances (Safety) Regulations 1989 (SI 1989/149)
- Heating Appliances (Fireguards) (Safety) Regulations 1991 (SI 1991/2693)
- Gas Catalytic Heaters (safety) Regulations 1984 (SI 1984/1802)
- All-Terrain Motor Vehicle (safety) Regulations 1989 (SI 1989/2288)
- Cooking Utensils (Safety) Regulations 1972 (SI 1972/1957)
- Indication of Prices (Beds) Order 1978 (SI 1978/1716)
- Child Resistant Packaging and Tactile Danger Warnings (Safety) (Revocation) Regulations 1992 (SI 1992/2620)
- Stands for Carry-cots (Safety) (Revocation) Regulations 1996 (SI 1996/2756)
- Magnetic Toys (Safety) (Revocation) Regulations 2009 (SI 2009/1347)

The Government is looking further into the responses received for the two regulations below and will provide a Government Response and Impact Assessment in due course.

- Pyrotechnic Articles (Safety) Regulations 2010 (SI 2010/1554)
- Pencils and Graphic Instruments (Safety) Regulations 1998 (SI 1998/2406)

## 6. List of respondents to the Consultation

1. Asda
2. Association of Convenience Stores
3. Boots UK Ltd
4. British Office Supplies & Services (BOSS) and the Writing Instruments Association (WIA)
5. British Retail Consortium (BRC)
6. British Standards Institute (BSI)
7. Central England Trading Standards Authorities (CENTSA)
8. Child Accident Prevention Trust (CAPT)
9. Cracking Creations
10. East of England Trading Standards Authorities
11. Leicestershire County Council
12. London Borough of Redbridge Trading Standards
13. Nottingham City Trading Standards
14. The Royal Society for the Prevention of Accidents (RoSPA)
15. Trading Standards Institute (TSI)
16. Trading Standards South East Ltd (TSSE)
17. WHSmith

We have received two responses from private individuals as well as a number of anonymous responses from large businesses and charity/social enterprises.

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