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|--|---|--|--|
| <b>Title:</b><br>The Pencils and Graphic Instruments (Safety) Regulations 1998<br><br><b>IA No:</b> BIS 0387<br><br><b>Lead department or agency:</b><br>Business Innovation & Skills<br><br><b>Other departments or agencies:</b> | <b>Impact Assessment (IA)</b>                 |  |  |
|  | <b>Date:</b> 11/10/2012                       |  |  |
|  | <b>Stage:</b> Final                           |  |  |
|  | <b>Source of intervention:</b> Domestic       |  |  |
|  | <b>Type of measure:</b> Secondary legislation |  |  |
| <b>Contact for enquiries:</b> Christine Knox 0207 215 3465   |   |  |  |
| <b>Summary: Intervention and Options</b>   |   | <b>RPC Opinion:</b> RPC Opinion Status |  |

| Cost of Preferred (or more likely) Option |                            |  |   |               |
|---|----------------------------|--|---|---------------|
| Total Net Present Value                   | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, Measure qualifies as One-Out? |               |
| £m  | £m                         | £m   | Yes   | Zero Net Cost |

**What is the problem under consideration? Why is government intervention necessary?**

The Regulations above are considered to be redundant because they are outdated and no longer reflect current products and processes. More recent product safety laws exist which cover the same areas and offer consumers a comparable level of protection. In this case, the General Product Safety Regulations 2005 (GPSR) and European harmonised standards now ensure that consumers are protected from these type of unsafe products and in doing so provide a similar level of protection. Government intervention is needed to remove redundant regulations from the statute book and clarify the regulatory requirements for business.

**What are the policy objectives and the intended effects?**

The objective of the intervention is to reduce the regulatory burden on business by removing legislation that is no longer necessary. It is intended that GPSR will be used as the legislative provision with, where applicable, referenced European standards providing a strong basis for risk assessment and enforcement action under GPSR. The GPSR place certain obligations on producers and distributors, including a requirement to provide adequate warnings and instructions for use, and to notify local authorities when they become aware that a product placed on the market presents a risk to consumers. The effect will be to clarify the product safety requirements for business at no additional cost.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0 - Do nothing

Option 1 - Revoke the 1998 Pencil and Graphic Instruments (Safety) Regulations

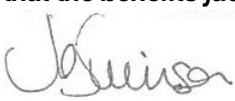
Policy Option1 is the preferred option. Under this option, the 1998 Regulations would be removed from the statute book. The level of consumer protection concerning the use of pencils and graphic instruments would continue to be safeguarded under other product safety standards and regulations, in particular: the General Product Safety Regulations (GPSR) 2005, the Toy Safety Regulations 2011 and Standard BS EN 71-3.

**Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year**

|  |              |             |                |               |                    |
|--|--------------|-------------|----------------|---------------|--------------------|
| Does implementation go beyond minimum EU requirements?   |              |             | No             |               |                    |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.                       | Micro<br>Yes | < 20<br>Yes | Small<br>Yes   | Medium<br>Yes | Large<br>Yes       |
| What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent) |              |             | Traded:<br>N/A |               | Non-traded:<br>N/A |

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

Signed by the responsible Minister:

 Date: 24 Nov 2012

# Summary: Analysis & Evidence

## Policy Option 1

Description:

### FULL ECONOMIC ASSESSMENT

| Price Base Year | PV Base Year | Time Period Years | et Benefit (Present Value (PV)) (£m) |                |                |
|-----------------|--------------|-------------------|--------------------------------------|----------------|----------------|
|                 |              |                   | Low: Optional                        | High: Optional | Best Estimate: |

| COSTS (£m)    | Total Transition<br>(Constant Price) Years |  | Average Annual<br>(excl. Transition) (Constant Price) | Total Cost<br>(Present Value) |
|---------------|--|--|---|-------------------------------|
| Low           | 0  |  | 0   | 0                             |
| High          | 0  |  | 0   | 0                             |
| Best Estimate | 0  |  |   | 0                             |

#### Description and scale of key monetised costs by 'main affected groups'

If these Regulations are revoked, manufacturers can use product standard BS EN 71-3 to demonstrate conformity with the safety requirements of GPSR. Current compliance costs are around £60 on average for a colour or black-lead pencil. However, this standard is in the process of being revised to reflect current scientific knowledge and is likely to involve more onerous testing procedures with an associated increase in costs. These costs are however a negligible part of the firm's total costs.

#### Other key non-monetised costs by 'main affected groups'

Revoking the Regulations and relying on GPSR alone may give consumers false impression of a reduction in the level of safety.

| BENEFITS (£m) | Total Transition<br>(Constant Price) Years |  | Average Annual<br>(excl. Transition) (Constant Price) | Total Benefit<br>(Present Value) |
|---------------|--|--|---|----------------------------------|
| Low           | 0  |  | 0   | 0                                |
| High          | 0  |  | 0   | 0                                |
| Best Estimate | 0  |  |   |                                  |

#### Description and scale of key monetised benefits by 'main affected groups'

#### Other key non-monetised benefits by 'main affected groups'

The safety standards referred to under the regulations are outdated and consumers will benefit from the manufacture of products to more updated safety standards under the GPSR.

#### Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Assumes business agrees that standards referred to in the 1998 Pencil Regulations are no longer relevant and that GPSR standards set out appropriate manufacturing requirements.

Assumes Trading Standards no longer use these regulations for enforcement actions and agree that existing standards are adequate to prosecute under GPSR and offer similar levels of protection.

### BUSINESS ASSESSMENT (Option 1)

| Direct impact on business (Equivalent Annual) £m: |                |           | In scope of OIOO? | Measure qualifies as |
|---|----------------|-----------|-------------------|----------------------|
| Costs: Zero                                       | Benefits: Zero | Net: Zero | Yes               | Zero net cost        |

## **Problem under consideration**

1. One of the key aims of the Government's Red Tape Challenge has been to identify those regulations which can be considered redundant or obsolete and therefore scrapped. Regulations may cease to be relevant either because subsequent legislation has been passed which delivers the same objectives in a more effective/ proportionate way or the practices and behaviours which the regulation seeks to prohibit or modify no longer takes place.
2. Under the Retail and Manufacturing themes, the Pencil and Graphic Instruments (Safety) Regulations 1998 (hereafter '*1998 Pencils Regulations*') is one of the product and safety regulations which has been highlighted as redundant. The Pencils Regulation protect adults and children from exposure to dangerous heavy metals in pencil coatings by limiting the amount of heavy metals (arsenic, cadmium, hexavalent, chromium, mercury, antimony, lead and barium) that are allowed in pencils and graphic instruments.

## **Rationale for government action**

3. The Pencils Regulation is considered to be redundant because the safety standards they refer to are outdated and no longer reflect current products and processes. With the exception of the barium limit, the 1998 Pencils Regulation use safety limits which have remained unchanged since the 1974 Regulations were introduced nearly 40 years ago. In addition, there exist today more recent product safety laws which cover the same areas and offer consumers a comparable level of protection.
4. First, the more recent Toys Safety Regulation 2011 provides a high level of safety for all toys and products for use in play by children up to the age of fourteen years. Those outside this group would be covered under the General Products Safety Regulations (GPSR) 2005
5. Second, there also exists Standard BS EN 71-3 which was passed in 1995 and concerns the safety of toys and reflects the level of heavy metals now accepted as safe. On revocation of the 1998 Regulations, the Standard will remain the safety standard for pencils and graphic instruments for use in play by children, enforceable through the Toy Safety Regulations 2011 and the GPSR 2005.
6. Government intervention is needed to remove redundant regulations from the statute book and clarify the regulatory requirements for business.

## **Analysis of options**

7. Two options have been considered in the analysis:
  - Option 0: Do nothing
  - Option 1: Revoke the 1998 Pencil and Graphic Instruments (Safety) Regulations
8. Option 1 is the preferred option. Under this option, the 1998 Pencils Regulation would be removed from the statute book. The level of consumer protection concerning the use of pencils and graphic instruments would continue to be safeguarded under other product safety standards and regulation, in particular: the General Product Safety Regulations (GPSR) 2005, the Toy Safety Regulations 2011 and Standard BS EN 71-3.

9. It is intended that GPSR will be used as the legislative provision with, where applicable, referenced European standards providing a strong basis for risk assessment and enforcement action under GPSR. The GPSR place certain obligations on producers and distributors, including a requirement to provide adequate warnings and instructions for use, and to notify local authorities when they become aware that a product placed on the market presents a risk to consumers. The effect will be to clarify the product safety requirements for business at no additional cost.

## Impact on business

10. The scope of the impact of removing the 1998 Pencils Regulation should be limited. There are two sub-sectors which we believe will be affected by these proposals. The first sub-sector is the manufacture of pens and pencils. Unfortunately, official statistics on the size of this particular industry is not published to this level of disaggregation. This industry forms part of the wider Other Manufacturing sector (as defined by 2007 Standard Industrial Classification code 32.99). In 2010, this sub-sector comprised some 4,600 enterprises and generated over £1bn in Gross Value Added. In 2009, the sub-sector employed around 52,000 people.
11. The second sub-sector is the retail sale of newspapers and stationery in specialised stores (as defined by 2007 Standard Industrial Classification code 47.62). According to the official statistics published in the Annual Business Survey, in 2010, there were around 5,100 enterprises in this sub-sector generating around £820m in Gross Value Added. In 2009, the sub-sector employed around 26,000 people.
12. According to CBI Market Information Database, the UK Writing and Drawing Instruments totalled some €489m in 2010 of which the drawing material sector (which includes pencils, crayons etc) accounted for around 10-15% of the total market.<sup>1</sup>

## Costs

13. Evidence gathered from four accredited UKAS laboratories show that the average cost of complying with the 1998 Pencils Regulation is around £60 for a coloured pencil. This comprises a cost of £30 to analyse the coating plus £30 to test the writing core. For a typical set of 12 colours this would imply a total cost of £720. The average cost of analysing a black-lead pencil where the coatings are all the same colour and the cores are also the same would be £60. If the necessary tests are carried out in-house, the average cost is around half that charged by an independent laboratory.
14. According to industry experts, the costs of complying with the current version of BS EN 71-3 are the same as there is no difference in the basic process of preparing and analysing the samples. However, BS EN 71-3 is in the process of being updated and this will mean an increase in the number of heavy metals to be tested from 8 to 19. Compliance with the new version of the standard is therefore likely to be more onerous and costly. According to an industry expert, the costs of complying with the new EN 71-3 are still uncertain (for example because it is unclear where new equipment will be required) but it is his informed opinion that costs could double. If the analysis is conducted in an independent laboratory, this would imply an average cost of around

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<sup>1</sup> CBI Market Information Database, *The UK Market for Writing and Drawing Instruments* CBI Ministry of Foreign Affairs of the Netherlands. [https://docs.google.com/viewer?a=v&q=cache:LraG\\_kXKENAJ:www.cbi.eu/?pag%3D85%26doc%3D6299%26typ%3Dmid\\_document+pencils+brands+%22uk+market%22+characteristics&hl=en&gl=uk&pid=bl&srcid=ADGEESjOIWgVU6F6uh3DKtNUxX7Zd-BFKrKtaHwRE6TjFWN94mePtGbM8vi\\_T-TaBJ081dKpz6a71cw9gepj1Bmfal9uHJuCIEB7kHO0iYQjn9062A8jnpW6QJNifm2ADN2ol4ZrGdt4&sig=AHIEtbTGWHbrwvpWzXULkyrXiSKfCBtAvA](https://docs.google.com/viewer?a=v&q=cache:LraG_kXKENAJ:www.cbi.eu/?pag%3D85%26doc%3D6299%26typ%3Dmid_document+pencils+brands+%22uk+market%22+characteristics&hl=en&gl=uk&pid=bl&srcid=ADGEESjOIWgVU6F6uh3DKtNUxX7Zd-BFKrKtaHwRE6TjFWN94mePtGbM8vi_T-TaBJ081dKpz6a71cw9gepj1Bmfal9uHJuCIEB7kHO0iYQjn9062A8jnpW6QJNifm2ADN2ol4ZrGdt4&sig=AHIEtbTGWHbrwvpWzXULkyrXiSKfCBtAvA)

£120 to test a colour or black-lead pencil. Even if costs do rise, these one-off costs will still be negligible as a proportion of total business costs.

15. It is highly probable that businesses would still incur these additional costs even in the counterfactual scenario where the 1998 Pencils Regulation are assumed to remain in place. EN 71-3 is being updated to reflect latest scientific knowledge and it is very likely that the safety limits set out in the 1998 Pencils Regulation would need to be updated in line with the nearest relevant standard which would be the new updated EN 71-3.

### *Benefits*

16. Consumers will benefit from updated safety levels which reflect latest technological knowledge and practice. This is because the standards the Pencils Regulation refers to, with the exception of barium, use safety limits which are almost 40 years old.
17. Pencil manufacturers and retailers could benefit from greater clarity and transparency of the regulatory framework compared to the Do Nothing option, reducing the amount of time they spend familiarising themselves with all the relevant rules and regulations. We have not attempted to quantify this potential because the potential time saving is very likely to be negligible and the resource cost which would be spent finding this information out would be disproportionate.

### **Impact on consumers**

18. Consumers should continue to enjoy a similar level of safety to that under the Do Nothing option and may benefit from the manufacture of products to more updated safety standards. There is a risk that revoking the 1998 Pencils Regulation and relying on GPSR alone could give consumers false impression of a reduction in the level of safety, though we believe the risk is small.
19. Children should receive sufficient cover under the Toys Safety Regulations if pencils are clearly marketed as a toy while Standard BS EN 71-3 outlines the levels of heavy metals now accepted as safe. For all other pencils and graphic instruments, GPSR can be used to ensure product safety in this area and provide an adequate legal basis upon which Trading Standards can deal effectively with any unsafe products.

### **Impact on trade**

20. Two respondents to the recent consultation argued that revoking the 1998 Pencils Regulation could lead to increased imports from low cost overseas manufacturers of pencils and graphic instruments who may enter the UK market without risk of prosecution, displacing sales by domestic firms. This is unlikely as the costs of testing and providing safety documentation under GPSR are the same as those under the current Pencils Regulations. GPSR will provide an adequate legal basis for enforcement action against any importers not meeting safety requirements.

21. Table 1 overleaf shows Non-EU countries accounted for nearly three quarters of total imports of pencils and graphic instruments into the UK 2011.

**Table 1: UK imports of pencils from EU and Non-EU countries, 2011**

|   | EU Imports       | Non-EU Imports    | Total             |
|---|------------------|-------------------|-------------------|
| 96091010 - Pencils, with leads of graphite encased in a rigid sheath                                | 4,511,188        | 5,114,852         | 9,626,040         |
| 96091090 - Pencils and crayons, with leads encased in a rigid sheath (excl. with leads of graphite) | 3,462,569        | 13,080,712        | 16,543,281        |
| 96092000 - Pencil leads, black or coloured  | 285,986          | 1,236,229         | 1,522,215         |
| 96099010 - Pastels and drawing charcoals  | 447,830          | 1,096,512         | 1,544,342         |
| 96099090 - Pencils, writing or drawing chalks and tailors' chalks                                   | 743,074          | 3,758,196         | 4,501,270         |
| <b>TOTAL</b>  | <b>9,450,647</b> | <b>24,286,501</b> | <b>33,737,148</b> |

*Source: Prodcorn, 2011*

22. Any potential risk of displacement is likely to be low as the domestic market is dominated by strong manufacturing high quality brands such as Berol, Cumberland and Staedtler.<sup>2</sup> If imports from overseas were to increase, this would ensure strong competition continued in the UK market with consumers enjoying the benefits of lower prices and better quality products.

## One-in, One-out rule

23. Given its deregulatory nature, Under the One-in One-out rule, the revocation of the Pencils and Graphic Instruments (Safety) Regulations 1998 (SI 1998/2406) can be classified as a Zero OUT.

**URN 12/1181**

<sup>2</sup> UK Brands [http://pencils.sundrymemes.com/pen\\_manf.htm](http://pencils.sundrymemes.com/pen_manf.htm)