

**GUIDANCE ON THE
PYROTECHNIC ARTICLES
(SAFETY) REGULATIONS 2010**

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Guidance Notes

The Pyrotechnic Articles (Safety)
Regulations 2010

(Statutory Instrument 2010 No. 1554)

These guidance notes have been produced to provide informal guidance on certain aspects of the Pyrotechnic Articles (Safety) Regulations 2010 (“the Regulations”).

The basic requirement is to comply with the Regulations. As you read the Regulations we hope this guidance will assist in complying with them. It is designed to provide guidance on key matters including

- what the Regulations cover and when provisions come into force,
- age limits on supply of fireworks and pyrotechnic articles,
- who enforces the various provisions,
- background to how the Regulations fit with other product safety legislation,
- the new requirements concerning “persons with specialist knowledge” and
- how the transitional provisions work.

Quick start guide

This guide is addressed primarily to those involved in placing pyrotechnic articles on the market and to manufacturers, importers, distributors, retailers notified bodies and the enforcement authorities.

The guidance is designed to comply with Code of Practice on Guidance on Regulation 2009, a copy of which can be downloaded from the Department for Business, Innovation and Skills (BIS) website at www.bis.gov.uk.

The Regulations

The Pyrotechnic Articles (Safety) Regulations 2010 are regulations which transpose into UK law European Directive 2007/23 on the placing on the market of pyrotechnic articles. In UK legislation the Regulations primarily replace the Fireworks (Safety) Regulations 1997 but have wider product coverage and cover the whole of the UK. There is a transition period until 3 July 2017 for products that comply with the existing legal requirements.

The Regulations deal with the harmonisation of standards and the safety of pyrotechnic articles placed on the market. The products covered include fireworks, theatrical pyrotechnics, and other pyrotechnic articles including car air-bag detonators, shroud cutters, and a wide variety of specialist articles. The Regulations do not generally deal with the use of these items and do not cover military and civil use explosives or marine equipment which is covered by other legislation.

It also defines those products which are available to the general public and the specific age restrictions on sale and those articles which are only for supply to specialists.

Key requirement

The main requirement of the Regulations is that anyone who places a relevant product on the UK market must ensure that it meets the essential safety requirements and is tested by a third party using the procedures outlined.

Guidance

This guidance provides a regulatory overview of the Regulations. Guidance on a clause by clause basis is also provided by the Explosives Industry Group of the CBI and Local Government Regulation (previously LACORS) at www.eig.org.uk/eig2007/?p=205.

The guidance below primarily explains how the Regulations have effect, the obligations of stakeholders and transitional provisions. It will be updated as and when there are changes to the Regulations and subject to consideration of any feedback received.

What the regulations do

The Regulations revoke the Fireworks (Safety) Regulations 1997 (S.I. 1997/2294) (the 1997 Regulations) and repeal or revoke other legislation related to pyrotechnic articles (see regulation 49).

They replace the 1997 Regulations with rules required to implement the Directive.

The key changes being:

- a much wider scope including non-firework pyrotechnic articles;
- the introduction of independent third party conformity assessment;
- free movement;
- CE marking and new labelling rules;
- the Regulations apply to the whole of the United Kingdom, not just to Great Britain; and
- new enforcement provisions.

Structure of the Regulations

The reason for the Regulations is to implement the Directive on the placing on the market of pyrotechnic articles (2007/23/EC) ("the Directive"), and for the most part the Regulations follow the structure of that Directive. However, they refer to the Directive in respect of some of the more complex and technical provisions of the Directive, such as the rules on the assessment of products.

Overview of what the Parts of the Regulations cover

Part 1 covers the commencement and extent of the Regulations, the definitions and their scope. It also covers the obligation on manufacturers or importers to categorise pyrotechnic articles.

The different categories of pyrotechnic articles are set out in Schedule 1.

Part 2 covers category 1 to 3 consumer fireworks and comes into force on 4 July 2010.

Part 3 covers category 4 professional fireworks and theatrical (referred to as category T1 and T2 articles) and other pyrotechnic articles, such as car air bag detonators, bird-scarers, etc (referred to as category P1 and P2 articles). It generally comes into force on 4 July 2013.

Part 4 covers the appointment and duties of a UK notified body. This is the independent third party that must be involved in the conformity assessment process (see regulations 6(1)(b) and 23(1)(b)). It comes into force on 4 July 2010.

Part 5 covers the time limit for proceedings under section 12 of the Consumer Protection Act 1987 for breaches of the Regulations (the Regulations are

deemed to be safety provisions for the purposes of that Act, and thus certain provisions give rise to offences and other enforcement possibilities). It comes into force on 4 July 2010, except for regulation 47 which comes into force on 4 July 2013.

It also includes the transitional provisions (see more detail below) and repeals, revocations and saving provisions.

Schedule 2 sets out the essential safety requirements that articles must meet in order to be supplied in the UK and throughout the EU.

Schedule 3 sets out the definitions of fireworks used for the UK prohibitions of specified category 2 and 3 fireworks in regulation 21.

Schedule 4 sets out the enforcement provisions for the Health and Safety Executive (HSE) (since its powers do not derive from the Consumer Protection Act 1987), together with provisions on the procedure for the issue of withdrawal notices in relation to infringing products. Recall of articles and other enforcement possibilities are dealt with under separate rules related to the Regulation setting out requirements for accreditation and market surveillance (765/2008) (RAMS) and the General Product Safety Regulations 2005 (S.I. 2005/1803).

Schedule 5 sets out amendments to Northern Ireland legislation consequential on the implementation.

Drafting approach

The Regulations generally stick closely to the wording of the Directive, except for example in areas where the UK has a practice of using different but analogous terminology, such as, in referring to the “supply” of articles rather than terms such as the “placing on the market” of articles or where a requirement of the Directive is not clear, such as, in relation to certain of the obligations of the distributor (see Regulations 8(2)(b) and 25(2)(b)).

Key matters common to Parts 2 and 3

Safety obligations of manufacturers

A manufacturer is defined in regulation 2. It covers persons that

- make pyrotechnic articles or design them or have them designed and made,
- with a view to first making them available on the EU market ,
- for distribution and/or use whether for free or not; and
- under their name or trademark.

For category 1 to 3 fireworks the rules are set out in regulation 6. For remaining pyrotechnic articles the rules are set out in regulation 23.

The requirements are

- to meet the essential safety requirements for articles set out in Schedule 2,
- for articles to be subject to and to pass a conformity assessment procedure set out in the Directive;
- such articles are to be CE marked (i.e. marked as complying with the Regulations); and
- to comply with the labelling requirements in regulation 14 for category 1 to 3 fireworks and regulations 31 and 32 for remaining pyrotechnic articles.

Safety obligations of importers

An importer is defined in regulation 2. For category 1 to 3 fireworks the rules are set out in regulation 7. For remaining pyrotechnic articles the rules are set out in regulation 24.

Where a manufacturer is not established in the EU, it is up to the importer of pyrotechnic article to comply with the Regulations.

They can do that either by ensuring that the manufacturer has complied with the Regulations or by complying with the Regulations themselves.

Legal action can be taken against importers for not complying with the Regulations, including where an act or omission is the fault of the manufacturer of an article.

Safety obligations of distributors

A distributor is defined in article 2, as a person in the supply chain other than an importer or manufacturer, who makes pyrotechnic articles available on the market in the course of that person's business. It will include both retailers and wholesalers.

For category 1 to 3 fireworks the duty is set out in regulation 8. For remaining pyrotechnic articles the duty is set out in regulation 25.

The duty of the distributor is to act with due care, similar to a duty in negligence. The duty includes ensuring that an article is accompanied by safety information intended to be provided with it and checking that an item is CE marked.

Age limits for supply of articles

From 4 July 2010

The minimum age limit for supply of category 1 fireworks is 16 years (see regulation 15(2)). Christmas crackers fall within category 1, among other low hazard, low noise fireworks. The Regulations do not however apply to toy percussion caps for toy guns etc. (see regulation 3(2)(d)).

The minimum age limit for supply of category 2 and 3 fireworks is 18 years (see regulation 15(1)).

From 4 July 2013

The minimum age limit for the supply of category T1 theatrical pyrotechnic articles and for category P1 pyrotechnic articles is 18 years.

The Regulations revoke the current almost identical age limits in regulation 6 of the 1997 Regulations¹ and section 31 of the Explosives Act 1875².

Submission etc. of pyrotechnics to independent Notified Bodies

The Department will also issue separate detailed guidance in relation to these bodies. The Regulations require pyrotechnic articles themselves or of a type either to be submitted to such bodies for assessment or for the process of manufacture to be subject to assessment by such a body (see regulations 6(1)(b) and 23(1)(b)). These bodies have duties set out in regulation 44.

A manufacturer or importer in the UK need not use a UK notified body. The Commission produces a list of current existing notified bodies.

ec.europa.eu/enterprise/newapproach/nando/index.cfm?fuseaction=directive_notifiedbody&dir_id=131581&type_dir=NO%20CPD&pro_id=999999&prc_id=999999&ann_id=999999&prc_anx=999999

Harmonised standards and free movement

Regulations 9, 10, 26 and 27 set out the effect of complying with a relevant EU harmonised standard. An article which complies with a pyrotechnic harmonised standard is in conformity with the essential safety requirements

¹ The 1997 Regulations apply an 18 year minimum age limit to fireworks, apart from caps, cracker snaps, novelty matches, party poppers, serpents and throwdowns.

² Section 31 (read with section 39) of the 1875 Act applies a general minimum age limit of 16 years to all fireworks.

set out in Schedule 2. Therefore an article which complies with the law of a Member State (other than the UK) properly implementing the Directive is in conformity with either Part 2 or Part 3 of the Regulations.

However, there are limits to this deemed compliance distributors also have to comply with their duties under regulations 8 and 25, and specific UK labelling requirements apply (beyond what is required under the Directive), the prohibitions in regulations 15, 21 and 33 apply and enforcement provisions apply.

Free movement for UK products in the rest of the EU must be provided in the law of all Member States. For example, free movement of UK products in Germany will need to be assured under German law. The Directive allows for certain divergences from its harmonised rules, in relation for example to age limits and restrictions and prohibitions on supply, the UK has used these discretions, for example, in the age limits in regulation 15, the prohibitions in regulation 21 and certain labelling provisions in regulation 14 and 31³. Manufacturers, importers and distributors who supply articles in other EU Member States will need to investigate the law of these Member States.

Specific UK labelling requirements

The labelling requirements in regulation 14 for category 1 to 3 fireworks and regulations 31 and 32 for remaining pyrotechnic articles almost all reflect the information in the Directive. However, the requirement to mark packets of sparklers with the words “Warning not to be given to children under 5 years of age” is retained from the 1997 Regulations.

Regulation 14(8) states that where a firework does not provide sufficient space to include the information required it shall be provided on the retail packaging of the article. Retail packaging here is intended to refer to packaging intended for individual consumers.

Regulation 31 includes specific labelling requirements for Category 4 fireworks and T2 and P2 pyrotechnic articles concerning labelling articles with safety distances – in each case the articles must be labelled with the statement “minimum safety distances to be determined by users using supplied product data”. This is to take account of the specialist knowledge of the users in question, who are required to have expertise, training and liability insurance.

³ A draft version of the Regulations in relation to certain provisions was notified to the Commission under the procedure Directive 98/34 on 22 December 2009.

Enforcement of the Regulations

Enforcement of Part 2

The main duty to enforce Part 2 of the Regulations rests with local weights and measures authorities in Great Britain and district councils in Northern Ireland. Their powers derive mainly from the Consumer Protection Act 1987, Part 2 of which sets out a range of enforcement powers. The Secretary of State has a default power to enforce.

Regulations 18 and 19 of the Regulations refer to those existing powers and provide further powers by reference, for example, to provisions of the General Product Safety Regulations 2005. The specific enforcement powers referred to there do not restrict further powers that may also be available to those bodies.

Since the Regulations are safety provisions⁴, sanctions include the offences for contravention of certain provisions under section 12 of that Act.

In addition regular inspection of category 1 to 3 fireworks at manufacturing sites in Great Britain is to be carried out by the HSE. In Northern Ireland the same function is the responsibility of the Secretary of State. Inspections of those fireworks at storage sites and on first entry into the EU at a port in the UK is for local weights and measures authorities (usually Trading Standards Departments) and district councils.

Enforcement of Part 3

The main duty to enforce Part 3 of the Regulations in Great Britain rests with the HSE and in Northern Ireland presently rest with the Secretary of State. In addition local weights and measures authorities and district councils have powers to enforce Part 3, where such an authority looks to enforce there is a procedure in regulation 37 to determine who is best placed to enforce. In addition in Great Britain the Secretary of State has a default power to enforce Part 3.

Regular inspections of pyrotechnic articles at manufacturing sites, storage sites and on first entry into the EU at a port in Great Britain are to be carried out by the HSE. The same function in Northern Ireland is presently to be the responsibility of the Secretary of State.

The detailed enforcement powers of the HSE are set out in Schedule 4, those powers include modified versions of those in the Health and Safety at work etc. Act 1974.

⁴ Either by virtue of being made under section 11 of the Consumer Protection Act 1987 or by being deemed to be so under regulation 48.

Part 3, in contrast to Part 2, includes specific new criminal offences, since the offences in the Consumer Protection Act 1987 are not relevant to the HSE.

Enforcement matters common to Part 2 and 3

Within England and Wales and Northern Ireland respectively local weights and measures authorities and district councils are given the power to investigate and prosecute alleged contraventions of the Regulations outside of their local area (see regulations 18(8) and (9) and 36(4) and (5)).

If an enforcement authority takes enforcement action where an article is liable to endanger the health and safety of persons, it must notify the Secretary of State.

Proposed enforcement action must take due account of the presumption that a CE marked article is in conformity with the essential safety requirements in Schedule 2.

Where an enforcer proposes to prohibit, restrict or withdraw articles regulations 20 and 38 set out that it must

- state the exact grounds for the measure,
- notify the party concerned of specified issues, and
- allow the party the opportunity to put forward its view in advance of the measure coming into effect.

If consultation is impossible because of the urgency of the measure justified by public health or safety requirements, the requirement in the final bullet does not apply.

Relationship between the Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products 765/2008 (RAMS) and the Directive

The Regulations only deal with enforcement matters that are required by the Directive, therefore the recall of articles (the taking of a product back from consumers and others on safety grounds, see Article 2.14 of RAMS) is not referred to. This matter is provided for under legislation to be adopted to implement the detail of RAMS and for consumer products in the General Product Safety Regulations 2005.

The Regulations are drafted on the basis that where there are rules which are set out in both RAMS and the Directive, the special law provisions of RAMS (see Article 15(2) (3) and (5)) disapply the rule in RAMS and therefore the enforcement rules in the Regulations apply. Where RAMS provides an enforcement rule which is not covered by the Directive that rule is applicable to pyrotechnic articles.

www.bis.gov.uk/policies/business-sectors/environmental-and-technical-regulations/new-legislative-framework

Persons with specialist knowledge

From 4 July 2013, Category 4 fireworks, category T2 theatrical and category P2 other pyrotechnic articles can only be supplied to persons with specialist knowledge. Regulation 42 sets out what is “a person with specialist knowledge”. The responsibility for assuring themselves that a person has such specialist knowledge rests with the person supplying the articles above.

To supply one of the articles above to a person who is not a person with specialist knowledge is a criminal offence under regulation 39(1), punishable on summary conviction by up to three months’ imprisonment or a fine of up to £5000 or on indictment of up to two years’ imprisonment or an unlimited fine or both.

A person seeking to be supplied with these articles will need to demonstrate to the satisfaction of the supplier they have

- undertaking training recognised in the fireworks business, the theatrical profession or the industry in question according to the articles to be supplied;
- used the category of article in question; and
- valid liability insurance for the article in question.

The concept of training recognised in the business, industry or profession does not mean that BIS will be recognising particular training. It is for the supplier to make a judgement as to whether the training in question is sufficient and provided by a person or body with a sufficient reputation in that sector.

Regulation 42(4) sets out what the training must include as a minimum. A person seeking to be supplied with these articles should be able to provide evidence of such training to the supplier.

Persons with specialist knowledge will often be users of such articles, but regulation 42 also includes persons whose trade or business is to supply these articles. Such a person is not entitled to use the articles (unless of course they otherwise meet the definition), but merely supply them to another person in accordance with the Regulations,

Transitional provisions

The Regulations provide transitional provisions based on what is permitted under Article 21.5 of the Directive.

Regulation 46 covers category 1 to 3 fireworks. In combination with the savings provisions in regulation 49 its effect is that the Regulations do not prevent the supply of a firework that had been manufactured or placed on the market (in Great Britain or Northern Ireland as the case may be) in accordance with the law in force immediately before these Regulations come into force for such fireworks (i.e. on 3 July 2010).

However, such fireworks must not contravene the age supply limitations in regulation 15 and the prohibitions on specific fireworks, etc. in regulation 21.

This means that only articles lawfully manufactured or placed on the market **before** 3 July 2010 can continue to be supplied until 3 July 2017. Category 1-3 articles manufactured or placed on the market **after** 3 July 2010 must comply with the Regulations and carry a CE marking.

Whether the firework is classified under the existing Classification and Labelling of Explosive Regulations 1983 before or after 4 July 2010; the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 on or after 24 October 2011 or the Carriage of Explosives Regulations (Northern Ireland) 2010 on or after 28 May 2012 does not affect the application of the transitional provision.

Regulation 47 comes into force on 4 July 2013 and makes similar provision for category 4 fireworks and theatrical and other pyrotechnic articles. The provision relates to articles which are manufactured or placed on the market (as the case may be in Great Britain or Northern Ireland) in accordance with the law in force immediately before 4 July 2013. These articles must not contravene the prohibitions in regulation 33.

The transitional provisions cease to apply at the end of 3 July 2017, when all articles placed on the market or supplied must comply with the Regulations.

This means that only articles lawfully manufactured or placed on the market **before** 3 July 2013 can continue to be supplied until 3 July 2017. Category 4, theatrical and other pyrotechnic articles manufactured or placed on the market **after** 3 July 2013 must comply with the Regulations and carry a CE marking.

The articles falling within the transitional provisions in regulations 46 and 47 must comply with the law as it stood when the Regulations came into force (with certain exceptions in regulations 49(13)).

Further information and feedback

If you have any questions or feedback about this guidance document, please contact christine.knox@bis.gsi.gov.uk

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