



Department
for Business
Innovation & Skills

RED TAPE CHALLENGE RETAIL
AND MANUFACTURING
CONSULTATION

Second Government response

NOVEMBER 2012

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1. Background

The Red Tape Challenge was launched in April 2011 with the aim of reducing 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 the 28 July 2011 the Government announced the range of retail regulations it wished to scrap, simplify or amend. The announcement on the Manufacturing theme followed on the 29th November. This theme included the consideration of 128 regulations and the agreement to scrap 47% of these.

The Retail and Manufacturing consultation looked at 15 Regulations for revocation and amendment identified under the Red Tape Challenge process. The first Government response was published on the 16th July 2012 and listed 13 measures which will be revoked on the 1st October 2012. This Government response details the next steps for the Pyrotechnic Articles (Safety) Regulations 2010 and the Pencils and Graphic Instruments (Safety) Regulations 1998.

2. Executive Summary

The Government received 23 responses to the consultation. Mixed views were expressed on the amendment and revocation of the Regulations concerning Pyrotechnic Articles and Pencils and Graphic Instruments. They were intentionally excluded from the first Government response as they were being looked at in more detail.

After considering the responses which came through the consultation process, BIS has further analysed the impact of proceeding with our suggested changes to these two Regulations. Impact Assessments have been drawn up for both of these Regulations and they are available on the BIS website. These show the amendment and revocation of the measures are expected to have no or minimal costs for business and will open up the market for Christmas Crackers to include sales to 12 to 15 year olds and enable consumers to be protected by the latest safety limits for pencils and graphic instruments.

3. Introduction

The consultation opened on 23 March and closed on 23 May 2012. The consultation was open 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 Regulations. We were interested to hear from anyone who was concerned by the impact of the revocation of these Regulations and any cost benefit that may arise as a result. In addition to appearing on the BIS website, the consultation was also emailed to over 40 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, enforcement officers and private individuals. Not all respondents commented on all 52 questions, instead commenting on those Regulations where they had a particular interest. The large number of questions is due to the fact that this consultation included 15 Regulations for amendment and revocation.

4. Summary of Responses and Government Response

Pyrotechnic Articles (Safety) Regulations 2010

Summary of responses

We received nine responses which agreed with reducing the age at which Christmas crackers can be purchased from 16 years to 12 years, with the majority coming from Local Government. The main reasons why respondents agree with amending this regulation were that Christmas crackers are low risk items which should not require an age restriction in the first place. One of the large retailers that agree with revocation has commented further on the difficulties which may arise with policing sales. This is because of the lack of identification available to prove you are 12 which could make it difficult for store staff to comply with the law. However, under the Proof of Age Standards Scheme (PASS) which is the UK's national proof of age accreditation scheme it is possible to apply for identification to prove you are 12.

Two responses have stated that the age restriction should be removed completely with one of the large retailers commenting that even reducing the age restriction would still maintain the regulatory burden on retailers. This is because seeking the proof of age extends the transaction time at the checkout and prevents retailers from focusing on enforcing age restrictions on those products which do pose a risk to children.

Three respondents disagree with the Government's proposal to amend these Regulations. There are three main reasons for this. Firstly, this is due to the risk attached to the snaps if they are removed from the crackers. The snaps consist of two narrow pieces of thin cardboard that are treated with silver fulminate. Respondents have also commented on the risks associated with the items which are contained inside the crackers. Secondly, concerns have been raised about adding another age tier to the pyrotechnic articles market, sparklers are currently age restricted to 18 and party poppers are age restricted to 16. This could potentially cause confusion in the sale of other category 1 pyrotechnic articles such as party poppers and sparklers. Thirdly, respondents have commented on the use of under age test purchase volunteers to enforce this regulation and the need to amend the model byelaws under the Children and Young Person Act 1933 in order to do this.

Benefits of amending these Regulations identified by respondents include the possibility that there may be an increase in sales. However, this is not guaranteed. One respondent has stated that 'Crackers are normally purchased by adults and used under their supervision so there is unlikely to be any significant increase in sales'.

Respondents have identified some costs of amending the 2010 Regulations. These include costs for retraining of staff and updating guidance booklets which may have been downloaded by local authorities. Costs will also be incurred for re-programming the age prompt software on tills for the large retailers.

Quotes

‘Our customers cannot understand why the sale of these products should be age restricted and any reduction in the age limit is welcome. We would support the Government in any attempt to renegotiate the age limit in the EU legislation’.

‘We understand these to be low risk items and do not object to the age being lowered from 16 to 12.

‘We do not regard Christmas Crackers as being unconditionally harmless’.

‘Moving the age for crackers down to 12 would be difficult to enforce as I.D. isn’t readily available for children of that age group, so keeping the age at 16 would be sensible to enable businesses to comply with the law.

Government Response

We do not expect that reducing the age restriction will increase the transaction time for retailers selling Christmas crackers, many of whom will have experience of selling other age-restricted products. Similar proof of age issues are faced by enforcement authorities when overseeing the retail of 12 rated DVDs and computer games. We expect Local Authority Trading Standards Officers to use their experience of enforcing under-age sales and to take a similar risk based approach to enforcement for sales of Christmas crackers.

Crackers snaps in isolation have an overall low risk. Standard EN15947, the harmonised standard for the Pyrotechnic Directive also details the safety message that crackers should be labelled with to minimise the risk of Christmas crackers. Christmas crackers are required by standard EN15947 to be labelled with ‘Do not pull near eyes or ears, pull both ends at arms length firmly and sharply, do not remove snap’. This will ensure that even if we reduce the age at which Christmas crackers can be brought; there will be no reduction in safety.

We would expect that any additional costs for retailers in updating information or retraining staff would be minimal and absorbed in the regular management systems updates undertaken routinely by retailers.

We therefore intend to proceed with reducing the age of sale for Christmas crackers from 16 years down to 12 years which is the minimum age allowed under current European legislation.

Pencils and Graphic Instruments (Safety) Regulations 1998

Summary of responses

We received 15 responses to this Regulation in the consultation, eight of which agree with revocation, five disagree and two responses which neither agree nor disagree. Concerns have been raised by several respondents with revoking these Regulations as they specify the acceptable levels of heavy metals which can be used in pencils and graphic instruments.

Respondents have called into question the protections offered under the Toys Safety Regulations 2011 and Standard BS EN 71-3 which would be the nearest applicable standard to establish the safety of pencils and graphic instruments. This is because the 2011 Regulations and Standard BS EN 71-3 apply only to toys and products used in play by children up to the age of 14 years. Respondents have commented that pencils and graphic instruments are not toys and therefore if the 1998 Regulations are revoked then consumer protection would not be maintained. One respondent has suggested amending the Standard EN71 to include pencils and graphic instruments to protect the whole community and not just children.

Respondents have also commented that if the Pencils and Graphic Instruments (Safety) Regulations 1998 are revoked, there will be no need to obtain a certificate of compliance for the product to ensure it is safe. Doubts have also been raised about how the General Product Safety Regulations 2005 can deal with the level of heavy metals in pencils and graphic instruments unless they are specifically marketed as a toy.

Three respondents have highlighted that one of the main consequences of revoking the 1998 Regulations could be that low cost overseas producers of pencils and graphic instruments could enter the UK market. The effect of this will be twofold; firstly it could result in fewer sales for UK businesses due to increased competition from overseas producers. Therefore there is a potential cost to business if the 1998 regulation is revoked. Secondly it could put consumer safety at risk. This is because the perception is that overseas producers could enter the UK market without risk of prosecution, even if their products are toxic and contain unacceptable levels of heavy metals.

One of the large retailers has also commented that another consequence of revoking the 1998 Regulations is that under the GPSR certification would be needed to a different standard. They have stated that certification to this standard is a more onerous test.

Savings to business as a result of revoking the 1998 Regulations have also been pointed out by three respondents. This is because there would be no need to submit the products for heavy metal analysis or issue Product Data Safety Sheets. However this may potentially leave consumers at risk as manufacturers could supply products which are untested.

Quotes

‘This regulation is unnecessary as it has been superseded by the Toy Safety Regulations 2011 and the GPSR 2005’.

‘The principal benefit will be a flexible, current framework for protecting children from these hazards that will be open to new standards and changes in technology which can be used as part of the safety assessment for these products, both using GPSR and the new Toys Safety Regs’

‘The Toys Regs would offer none of the protection of the Pencils and Graphic Instruments (Safety) Regulations it is proposed to revoke’.

‘While removing a regulation appears to be an advantage it will not make it any easier as we will still have to get clarification just to a different standard’.

‘Reliance on the General Product Safety Regulations to ensure safety in this area is unlikely to be as effective as a specific regulation as the heavy metals requirement is not stated explicitly’.

Government Response

The General Product Safety Regulations 2005 (GPSR) would ensure consumer safety in respect of pencils and graphic instruments once the 1998 Regulations are revoked. The GPSR will require the safety of these products to be measured against the nearest applicable standard (eg BS EN 71-3 relating to toys in this instance and which outlines safe limits of heavy metals for inclusion in these articles) and which will require manufacturers and retailers to demonstrate their products are safe ie through the use of testing such as heavy metal analysis.

There will still be a need to provide the relevant safety documentation to prove that the product is safe and this will apply to imported products as well as those manufactured in the UK.

Moreover, the safety limits in the current Pencils Regulations are very out of date and use levels with the exception of the barium limit that were set in 1974. The Toys Safety Regulations 2011 provide a high level of safety for all Toys and products for use in play by children up to the age of 14 years. Those outside this group would be covered under the GPSR.

Standard BS EN 71-3 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.

We have therefore decided to revoke the 1998 Pencils and Graphic Instruments Regulations and rely on GPSR and updated safety levels which reflect latest technological knowledge and practice and protect the consumer.

5. Next steps

The Government seeks to take forward the amendment of the following regulation by the 6 April 2013:

- Pyrotechnic Articles (Safety) Regulations 2010 (SI 2010/1554)

The Government seeks to take forward the revocation of the following regulation by the 6 April 2013:

- 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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