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STATUTORY INSTRUMENTS

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**2010 No. 1554**

**CONSUMER PROTECTION  
HEALTH AND SAFETY**

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

*Made - - - - 9th June 2010*

*Laid before Parliament 11th June 2010*

*Coming into force in accordance with regulation 1.*

The Secretary of State is a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to pyrotechnic articles.

It appears to the Secretary of State that it is expedient for certain references to provisions of EU instruments to be construed as references to those provisions as amended from time to time.

In accordance with section 11(5) of the Consumer Protection Act 1987<sup>(3)</sup> the Secretary of State has consulted such organisations as appear to him to be representative of interests substantially affected by these Regulations, such other persons as he considers appropriate and, in relation to the application of the Regulations to Great Britain, the Health and Safety Executive.

The Secretary of State, makes regulations 1, 2, 3, 4, 18, 19, 20 and 22 to 44 and 46 to 49 in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972<sup>(4)</sup> and makes all other provisions in these Regulations in exercise of the powers in section 11 of the Consumer Protection Act 1987.

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(1) S.I. 2009/2743.

(2) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51) section 27(1)(a) and by the European Union (Amendment) Act (c.7), Schedule Part 1.

(3) 1987 c.43. Subsection (5) was amended by S.I. 2008/960.

(4) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51). The references in paragraph (1A) to “EU instrument” were inserted by the European Union (Amendment) Act 2008 (c.7), Schedule Part 1.

## PART 1

### General

#### Citation, commencement and extent

1.—(1) These Regulations may be cited as the Pyrotechnic Articles (Safety) Regulations 2010 and, except as provided for in paragraph (2) and (3), come into force on 4th July 2010.

(2) Part 3 and regulations 4(3), (4) and 47 come into force on 4th July 2013.

(3) For the purposes of regulation 18(4) to (7), regulations 36(6), 37(1), (5), (6), (8), (9) and (13) and 38 and Schedule 4 come into force on 4th July 2010.

(4) These Regulations extend to England and Wales, Scotland and Northern Ireland, except—

- (a) paragraphs 1 and 2 of Schedule 4 which extend to England and Wales and Scotland only,
- (b) regulation 49(11) and Schedule 5 which extend to Northern Ireland only.

#### Interpretation

2.—(1) In these Regulations—

the “Act” means the Consumer Protection Act 1987;

the “1974 Act” means the Health and Safety at Work etc. Act 1974(5);

“category”, in relation to a pyrotechnic article, means a category of pyrotechnic article referred to in Schedule 1;

“CE marking” means the CE marking applied in accordance, as the case may be, with regulation 12 or 29;

“the Directive” means Directive 2007/23/EC on the placing on the market of pyrotechnic articles(6);

“distributor” means a person in the supply chain, other than a manufacturer or an importer, who makes a pyrotechnic article available on the market in the course of that person’s business;

“enforcement authority” means—

in Great Britain, within its area, a weights and measures authority; and

in Northern Ireland, within its area, a district council;

“firework” means a pyrotechnic article intended for entertainment purposes;

“harmonised standard” means a European standard adopted by a European standardisation body under a mandate from the European Commission in conformity with the procedures laid down in Directive 98/34/EC(7) and with which compliance is not compulsory;

“importer” means a person established in the EU who makes a pyrotechnic article originating from a third country available on the EU market for the first time in the course of that person’s business;

“manufacturer” means a person who designs or manufactures a pyrotechnic article, or who causes such an article to be designed and manufactured, with a view to—

first making it available on the EU market, and

its distribution and use, distribution or use, whether for payment or free of charge,

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(5) 1974 c.37.

(6) OJ L154, 14.06.2007, p.1.

(7) OJ L24, 24.7.1998, p.37, as amended by Directive 98/48/EC (L217, 5.8.1998, p.18) and Directive 2006/96/EC (L363, 20.12.2006, p.81).

under the name or trademark of that person;

“notified body” means a body (including a UK notified body) notified to the European Commission under Article 10 of the Directive to carry out conformity assessment procedures referred to in Article 9 of the Directive;

“other pyrotechnic article” means a pyrotechnic article falling within paragraph 3 of Schedule 1 (categories of pyrotechnic articles), including pyrotechnic articles for vehicles;

“person with specialist knowledge” means a person falling within regulation 42 (persons with specialist knowledge);

“pyrotechnic article” means any article containing explosive substances or an explosive mixture of substances designed to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions;

“pyrotechnic articles for vehicles” means components of safety devices in vehicles which contain pyrotechnic substances used to activate these or other devices;

“supply” includes offering to supply, agreeing to supply, exposing for supply and possession for supply, and related expressions shall be construed accordingly;

“theatrical pyrotechnic article” means a pyrotechnic article falling within paragraph 2 of Schedule 1 (categories of pyrotechnic articles) designed for indoor or outdoor stage use, including film and television productions or similar use; and

“UK notified body” means a body appointed to carry out the conformity assessment procedures and any other tasks for which it is appointed under regulation 43.

### Scope and exclusions

3.—(1) These Regulations apply to pyrotechnic articles.

(2) These Regulations do not apply to—

(a) pyrotechnic articles intended for non-commercial use by—

- (i) the armed forces,
- (ii) a police force in England and Wales,
- (iii) a police force within the meaning of section 3 of the Police (Scotland) Act 1967<sup>(8)</sup>,
- (iv) the Police Service of Northern Ireland, the Police Service of Northern Ireland Reserve or the Northern Ireland Policing Board,
- (v) the British Transport Police Force,
- (vi) the Ministry of Defence Police Force,
- (vii) the Civil Nuclear Constabulary,
- (viii) a police force for a harbour, port, airport, park, garden or forest in the United Kingdom or with a specialised function in the United Kingdom,
- (ix) the Serious Organised Crime Agency,
- (x) the Scottish Crime and Drug Enforcement Agency,
- (xi) a fire and rescue authority within the meaning of section 1 or a combined authority within the meaning of section 2 or 4 of the Fire and Rescue Services Act 2004<sup>(9)</sup>,

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<sup>(8)</sup> c.77. Section 3 was substituted by the Police and Magistrates’ Courts Act 1994, section 47(1); subsections (3) and (4) were inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006, (2006 asp 10), section 48.

<sup>(9)</sup> c.21. Section 1 was amended by the Civil Contingencies Act 2004, Schedule 2, paragraph 10(1) and (2).

- (xii) a fire and rescue authority within the meaning of section 1 or a joint fire and rescue board within the meaning of section 2 or a joint fire board within the meaning of section 5 of the Fire (Scotland) Act 2005<sup>(10)</sup>, or
- (xiii) the Northern Ireland Fire and Rescue Board;
- (b) equipment falling within the scope of Council Directive 96/98/EC on marine equipment<sup>(11)</sup>;
- (c) pyrotechnic articles intended for use in the aerospace industry;
- (d) percussion caps intended specifically for toys falling within the scope of Council Directive 88/378/EEC concerning the safety of toys<sup>(12)</sup>;
- (e) explosives falling within the scope of Council Directive 93/15/EEC on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses<sup>(13)</sup>;
- (f) ammunition, meaning projectiles and propelling charges and blank ammunition used in portable firearms, other guns and artillery.
- (3) A reference to a body in paragraph (2)(a) includes a reference to a—
  - (a) person or constable who is under the direction and control of a chief officer (by whatever name called) of police or of a fire and rescue authority or board, as the case may be, and acting in that capacity; and
  - (b) a training or associated establishment of such a body.

### **Categorisation**

4.—(1) A manufacturer or, where regulation 7(1)(b) applies, an importer must categorise a firework as falling within category 1, 2 or 3 according to—

- (a) its type of use; or
- (b) its purpose and level of hazard, including its noise level.

(2) The notified body to which the firework is submitted shall confirm the category assigned under paragraph (1).

(3) A manufacturer or, where regulation 24(1)(b) applies, an importer must categorise a pyrotechnic article, other than a category 1, 2 or 3 firework, as a firework falling within category 4, a pyrotechnic article falling within category T1 or T2 or a pyrotechnic article falling within category P1 or P2 according to—

- (a) its type of use; or
- (b) its purpose and level of hazard, including its noise level.

(4) The notified body to which the pyrotechnic article is submitted shall confirm the category assigned under paragraph (3).

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<sup>(10)</sup> 2005 asp 5.

<sup>(11)</sup> OJ No L046, 17.02.97, p.25.

<sup>(12)</sup> OJ No L187, 16.7.1988, p.1.

<sup>(13)</sup> OJ No L121, 15.05.93. p.20.

## PART 2

### Category 1, 2 and 3 fireworks

#### Scope of Part 2

5. This Part does not apply to category 4 fireworks, theatrical pyrotechnic articles or other pyrotechnic articles.

#### Safety obligations of manufacturers

6.—(1) No manufacturer or, where regulation 7(1)(b) applies, no importer shall supply a category 1, 2 or 3 firework unless the firework—

- (a) complies with the essential safety requirements set out in paragraphs 1 and 2 of Schedule 2;
- (b) has been submitted to a notified body or is otherwise subject to a conformity assessment procedure;
- (c) has passed a conformity assessment procedure in accordance with regulation 11 carried out by a notified body;
- (d) has affixed to it a CE marking in accordance with regulation 12; and
- (e) complies with the labelling requirements set out in regulation 14.

(2) A firework built by a manufacturer for its own use which complies with the law applicable to such a firework (excluding these Regulations) need not comply with this regulation.

#### Safety obligations of importers

7.—(1) Where a manufacturer of a category 1, 2 or 3 firework is not established within the EU, the importer of the firework shall—

- (a) ensure the manufacturer has complied with the obligations under Part 2 which would apply to the firework if the manufacturer were established within the EU, or
- (b) comply with the obligations under Part 2 which would apply to the firework if the importer were a manufacturer established within the EU.

(2) An importer shall be liable for any contravention of paragraph (1)(a) or (b), including a contravention caused by an action, omission or default of the manufacturer.

#### Safety obligations of distributors

8.—(1) A distributor shall act with due care in relation to a category 1, 2 or 3 firework.

(2) The duty of a distributor referred to in paragraph (1) shall, in particular, include a requirement to check that a category 1, 2 or 3 firework—

- (a) bears the CE marking, and
- (b) is accompanied by any separate safety warnings or instructions provided by the manufacturer or, where article 7(1)(b) applies, the importer.

#### Harmonised standards for category 1, 2 or 3 fireworks

9.—(1) Subject to paragraph (2), a category 1, 2 or 3 firework which complies with a standard of a Member State which implements a harmonised standard adopted for the purposes of Article 8 of the Directive (harmonised standards) is in conformity with the essential safety requirements set out in Schedule 2 to these Regulations.

(2) Paragraph (1) does not apply to the extent that the committee referred to in Article 8(4) of the Directive finds that the harmonised standard does not satisfy the essential safety requirements set out in paragraphs 1 and 2 of Schedule 2.

### **Free movement**

**10.**—(1) Subject to paragraph (2), a category 1, 2 or 3 firework which complies with all legally binding measures of a Member State, other than the United Kingdom, which fully implement the Directive is in conformity with Part 2.

(2) Paragraph (1) does not affect—

- (a) the duty of a distributor under regulation 8;
- (b) the labelling requirements in regulation 14(2) and (7);
- (c) the prohibitions on supply of category 1, 2 or 3 fireworks in regulation 15;
- (d) the exercise by enforcement authorities or the Secretary of State of powers referred to in, or conferred by, regulations 18 and 19 (market surveillance and enforcement actions), the Act or the General Product Safety Regulations 2005(14); and
- (e) the prohibitions on the supply of certain category 2 or 3 fireworks in regulation 21.

### **Conformity assessment procedures**

**11.**—(1) For the assessment of conformity of category 1, 2 or 3 fireworks the manufacturer or, where regulation 7(1)(b) applies, the importer shall follow, and comply with the obligations of, one of the following procedures—

- (a) the EC type-examination (Module B) procedure referred to in Annex II, Section 1 and, at the choice of the manufacturer, either—
  - (i) the conformity to type (Module C) procedure referred to in Annex II, Section 2;
  - (ii) the production quality assurance (Module D) procedure referred to in Annex II, Section 3; or
  - (iii) the product quality assurance (Module E) procedure referred to in Annex II, Section 4;
- (b) the unit verification (Module G) procedure referred to in Annex II, paragraph 5.

(2) References in paragraph (1) to the expression “Annex II” refer to Annex II to the Directive, as amended from time to time.

### **Obligation to affix the CE marking**

**12.**—(1) After successful completion of a conformity assessment using one of the procedures prescribed by regulation 11, manufacturers or, where regulation 7(1)(b) applies, importers shall visibly, legibly and indelibly affix the CE marking to category 1, 2 and 3 fireworks.

(2) Where it is not possible to comply with paragraph (1), the CE marking shall be affixed to an identification label attached to the firework or to the packaging.

(3) An identification label must be designed to make its reuse impossible.

(4) The CE marking must take the form set out in Annex IV to the Directive (conformity marking).

(5) Other markings may be affixed to a category 1, 2 or 3 firework, only if the visibility and legibility of the CE marking is not impaired as a result.

(6) The application of the CE marking to a category 1, 2 or 3 firework in accordance with these Regulations indicates that the firework is presumed (which presumption shall be rebuttable) to conform to other EU legislation that applies to category 1, 2 or 3 fireworks and requires the affixing of a CE marking.

### **Prohibition on improper use of the CE marking**

**13.**—(1) No person shall affix a CE marking to a category 1, 2 or 3 firework that does not conform to the requirements of these Regulations.

(2) No person shall affix to a category 1, 2 or 3 firework a marking or inscription which may confuse a third person as to the meaning of the CE marking.

(3) Where it comes to the knowledge of an enforcement authority that a person has affixed a CE marking to a category 1, 2 or 3 firework which does not conform to the requirements of these Regulations the enforcement authority shall inform the Secretary of State.

(4) The Secretary of State shall inform the European Commission where paragraph (3) applies.

### **Labelling requirement**

**14.**—(1) No manufacturer or, where regulation 7(1)(b) applies, no importer shall supply a category 1, 2 or 3 firework unless it is visibly, legibly and indelibly labelled in accordance with this regulation in the official language of the Member State in which the firework is supplied to the consumer.

(2) A category 1, 2 or 3 firework for supply to a consumer in the United Kingdom must be labelled in English.

(3) The labelling of a category 1, 2 or 3 firework shall include, at least—

- (a) the name and address of the manufacturer;
- (b) where the manufacturer is not established in the EU, the name of the manufacturer and the name and address of the importer;
- (c) the name, type and category of the firework;
- (d) the minimum age limits, in accordance with regulation 15 or the limits of the Member State in which the firework is supplied to the consumer;
- (e) instructions for use;
- (f) the net explosive quantity of active explosive material; and
- (g) where appropriate, a minimum safety distance.

(4) In addition, the labelling of a category 1 firework shall include, where appropriate, at least—

- (a) the statement “for outdoor use only”; and
- (b) a minimum safety distance.

(5) In addition, the labelling of a category 2 firework shall include at least—

- (a) the statement “for outdoor use only”; and
- (b) where appropriate, a minimum safety distance.

(6) In addition, the labelling of a category 3 firework shall include at least—

- (a) the statement “for outdoor use only”;
- (b) a minimum safety distance; and
- (c) the year of production.

(7) The labelling of the packet in which a sparkler is contained shall include the words “Warning: not to be given to children under 5 years of age”.

(8) If a category 1, 2 or 3 firework does not provide sufficient space for the labelling requirements in paragraphs (3) to (6), the information shall be provided on the retail packaging of the firework.

(9) Paragraph (8) shall not prevent information being provided on other packaging of the firework.

(10) This regulation does not apply to a firework falling within regulation 16 or 17 (exceptions for trade fairs, etc and research and development).

(11) In this regulation, “sparkler” means a rigid wire article partially coated along one end with slow-burning pyrotechnic composition, with or without an ignition head and designed to be held in the hand, the principal effect of which is to emit sparks, with or without aural effects (other than a report).

### **Prohibition on supply of category 1, 2 or 3 fireworks**

15.—(1) No person shall supply a category 2 or 3 firework to any person under the age of eighteen years.

(2) No person shall supply a category 1 firework to any person under the age of sixteen years.

### **Exception for trade fairs, exhibitions and demonstrations**

16.—(1) Where paragraph (2) is complied with, nothing in these Regulations prevents the showing and using at trade fairs, exhibitions and demonstrations for the marketing of pyrotechnic articles of a firework which does not comply with Part 2.

(2) While a firework within paragraph (1) is being shown or used a clear and visible sign must indicate—

- (a) the name and date of the trade fair, exhibition or demonstration;
- (b) that the firework does not conform with Part 2; and
- (c) that the firework is not for sale, until brought into conformity with the Regulations.

### **Exception for research and development**

17.—(1) Where paragraph (2) is complied with, nothing in these Regulations prevents the use or free movement of a firework which does not comply with Part 2 which was manufactured for the purpose of research, development and testing.

(2) In relation to a firework within paragraph (1) a clear and visible sign must indicate that—

- (a) the firework does not conform with Part 2; and
- (b) it is not available other than for purposes of research, development and testing.

### **Market surveillance and enforcement**

18.—(1) It shall be the duty of an enforcement authority to enforce regulation 4(1) and Part 2 within its area.

(2) In addition, the Secretary of State may enforce regulation 4(1) and Part 2.

(3) Enforcement authorities shall carry out regular inspections in relation to category 1, 2 or 3 fireworks following entry into the EU and at storage sites.

(4) The Health and Safety Executive shall carry out regular inspections in relation to category 1, 2 and 3 fireworks at manufacturing sites within Great Britain and the Secretary of State shall carry out the same duty within Northern Ireland.

(5) Where as a result of an inspection under paragraph (4) a contravention of regulation 4(1) or of Part 2 is suspected the Health and Safety Executive within Great Britain may take action in accordance with regulations 36(6), 37(1), (5), (6), (8) and (9) and 38 and Schedule 4.

(6) Schedule 4 applies for the purposes of an inspection under paragraph (4).

(7) For the purposes of paragraphs (5) and (6), regulations 36(6), 37(1), (5), (6), (8) and (9), 38 and Schedule 4 shall be read as if any reference to—

- (a) Part 3 were a reference to Part 2;
- (b) a pyrotechnic article were, as the case may be, a reference to a category 1, 2 or 3 firework;
- (c) a reference to regulation 4(3) were a reference to regulation 4(1);
- (d) a reference to a provision in Part 3 were a reference to the corresponding provision in Part 2.

(8) A weights and measures authority in England or Wales shall have the power to investigate and prosecute for an alleged contravention of these Regulations which was committed outside its area in any part of England or Wales.

(9) A district council in Northern Ireland shall have the power to investigate and prosecute for an alleged contravention of these Regulations which was committed outside its area in any part of Northern Ireland.

(10) Any action of an enforcement authority or the Secretary of State under this regulation or regulation 19 shall take due account of the presumption (which presumption shall be rebuttable) that category 1, 2 or 3 fireworks marked with a CE marking are in conformity with the essential safety requirements set out in paragraphs 1 and 2 of Schedule 2.

(11) The Secretary of State may appoint a person to act on behalf of the Secretary of State for the purposes of paragraph (2) or (4).

### **Enforcement actions**

**19.**—(1) An enforcement authority under the duty referred to in regulation 18 (market surveillance and enforcement), and the Secretary of State under the power referred to in that regulation, may use any provisions of the Act relating to enforcement to enforce regulation 4(1) and Part 2.

(2) Where an enforcement authority or, where appropriate, the Secretary of State becomes aware that a category 1, 2 or 3 firework, used in accordance with its intended purpose, is liable to endanger the health and safety of persons the enforcement authority shall take, and the Secretary of State may take, such of the following actions as is most appropriate in the circumstances against the manufacturer, importer or distributor as the case may be.

(3) The actions include—

- (a) in relation to the Secretary of State, serving a prohibition notice (within the meaning of section 13(1)(a) of the Act);
- (b) in relation to the Secretary of State, serving a notice to warn (within the meaning of section 13(1)(b) of the Act);
- (c) serving a suspension notice (within the meaning of section 14 of the Act); or

- (d) serving a withdrawal notice (within the meaning of regulation 14 of the General Product Safety Regulations 2005(15)).
- (4) For the purposes of taking the action referred to in paragraph (3)(d), regulations 14, 16, and 17 of the General Product Safety Regulations 2005 shall be applied.
- (5) Where a withdrawal notice is served under paragraph 3(d), the conditions for serving the notice that would otherwise apply under the General Product Safety Regulations 2005 are satisfied by complying with these Regulations.
- (6) For the purpose of applying the provisions referred to in paragraph (4), a “producer” referred to in those provisions is a “manufacturer” or an “importer” and a “distributor” referred to in those provisions has the meaning specified in regulation 2.
- (7) Where an enforcement authority takes any action under paragraph (2) it shall notify the Secretary of State as soon as practicable, specifying its reasons for taking the action.
- (8) Where an enforcement authority has notified the Secretary of State under paragraph (7), it shall notify the Secretary of State of any modification or lifting of any such action.
- (9) Where the Secretary of State is notified under paragraph (7) or (8) in relation to a category 1, 2 or 3 firework which bears a CE marking and is accompanied by an EC declaration of conformity, the Secretary of State shall inform the European Commission and other relevant Member States of the action.
- (10) This paragraph applies where the Secretary of State has sufficient reason to believe that a category 1, 2 or 3 firework presents a serious risk to the health or safety of persons in the EU.
- (11) Where paragraph (10) applies the Secretary of State shall—
- (a) inform the European Commission and other Member States of that risk;
  - (b) perform an appropriate evaluation; and
  - (c) inform the European Commission and other Member States of the background for and the results of the evaluation.
- (12) This Regulation does not prevent an enforcement authority or the Secretary of State taking other enforcement action under the General Product Safety Regulations 2005.

### **Requirements regarding prohibitions, restrictions and withdrawals**

**20.**—(1) Any measure taken by an enforcement authority or the Secretary of State under these Regulations which has the effect of prohibiting or restricting the supply or withdrawal from the market of a category 1, 2 or 3 firework must comply with the requirements in paragraph (2).

- (2) The requirements are—
- (a) the measure must state the exact grounds on which it is based;
  - (b) the party concerned must be informed, without delay, of—
    - (i) the measure,
    - (ii) the remedies available to that party, and
    - (iii) the time limits to which the remedies are subject; and
  - (c) subject to paragraph (3), the party concerned must have an opportunity to put forward its views in advance.
- (3) The requirement in paragraph (2)(c) does not apply if consultation is not possible because of the urgency of the measure to be taken, as justified in particular by public health or safety requirements.

### **Prohibitions on supply of certain category 2 or 3 fireworks**

**21.**—(1) No person shall supply a category 2 or 3 firework of the following description—

- (a) an aerial wheel;
- (b) a banger, flash banger or double banger;
- (c) a jumping cracker;
- (d) a jumping ground spinner;
- (e) a spinner;
- (f) a mini rocket;
- (g) a shot tube—
  - (i) which produces a report as its principal effect, previously known as an air bomb; or
  - (ii) the inside diameter of which is greater than 30mm, previously known as a shell-in-mortar;
- (h) a battery containing bangers, flash bangers or double bangers;
- (i) a combination (other than a wheel) which includes one or more bangers, flash bangers or double bangers.

(2) Paragraph (1)(b) does not prohibit the supply of a category 2 or 3 firework as part of a wheel.

(3) Paragraph (1) does not prohibit the supply of a category 2 or 3 firework to a person with specialist knowledge.

(4) No person who carries on a business involving, to whatever extent, the supply of fireworks by retail shall supply a category 2 or 3 firework which has been removed, caused to be removed, or that person knows to have been removed from a selection pack or primary pack of fireworks, intended for retail sale as a single unit, made up of the same or different types of fireworks.

(5) For the purposes of this regulation, the definitions of fireworks and packs of fireworks are set out in Schedule 3.

## **PART 3**

Category 4 fireworks, theatrical pyrotechnic articles and other pyrotechnic articles

### **Scope of Part 3**

**22.** This Part does not apply to category 1, 2 or 3 fireworks and a reference in this Part to a “pyrotechnic article” does not include a reference to a category 1, 2 or 3 firework.

### **Safety obligations of manufacturers**

**23.**—(1) No manufacturer or, where regulation 24(1)(b) applies, no importer shall supply a pyrotechnic article unless the article—

- (a) complies with the essential safety requirements set out in paragraph 1 and, if applicable, in paragraphs 2(1), (5), (6), (7), 3 and 4 of Schedule 2;
- (b) has been submitted to a notified body or is otherwise subject to a conformity assessment procedure;
- (c) has passed a conformity assessment procedure in accordance with regulation 28 carried out by a notified body;
- (d) has affixed to it a CE marking in accordance with regulation 29; and

(e) complies with the labelling requirements set out, as the case may be, in regulation 31 or 32.

(2) A category 4 firework built by a manufacturer for its own use which complies with the law applicable to such a firework (excluding these Regulations) need not comply with this regulation.

#### **Safety obligations of importers**

**24.**—(1) Where a manufacturer of a pyrotechnic article is not established within the EU, the importer of the article shall—

- (a) ensure the manufacturer has complied with the obligations under Part 3 which would apply if the manufacturer were established within the EU, or
- (b) comply with the obligations under Part 3 which would apply if the importer were a manufacturer established within the EU.

(2) An importer shall be liable for any contravention of paragraph (1)(a) or (b), including a contravention caused by an action, omission or default of the manufacturer.

#### **Safety obligations of distributors**

**25.**—(1) A distributor shall act with due care in relation to a pyrotechnic article.

(2) The duty of a distributor referred to in paragraph (1) shall, in particular, include a requirement to check that a pyrotechnic article —

- (a) bears the CE marking,
- (b) is accompanied by any separate safety warnings or instructions provided by the manufacturer or, where regulation 24(1)(b) applies, the importer, and
- (c) if the pyrotechnic article is a pyrotechnic article for vehicles, a safety data sheet, where required under regulation 32(4).

#### **Harmonised standards**

**26.**—(1) Subject to paragraph (2), a pyrotechnic article which complies with a standard of a Member State which implements a harmonised standard adopted for the purposes of Article 8 of the Directive (harmonised standards) is in conformity with the essential safety requirements set out in Schedule 2 to these Regulations.

(2) Paragraph (1) does not apply to the extent that the committee referred to in Article 8(4) of the Directive finds that the harmonised standard does not satisfy the essential safety requirements set out in paragraph 1 and, if applicable, in paragraphs 2(1), (5), (6), (7), 3 and 4 of Schedule 2.

#### **Free movement**

**27.**—(1) Subject to paragraph (2), a pyrotechnic article which complies with all legally binding measures of a Member State, other than the United Kingdom, which fully implement the Directive is in conformity with Part 3.

(2) Paragraph (1) does not affect—

- (a) the duty of a distributor under regulation 25;
- (b) the labelling requirement in regulation 31(2);
- (c) the prohibitions on the supply of pyrotechnic articles in regulation 33; and
- (d) the exercise by enforcement authorities or the Secretary of State of powers referred to in, or conferred by, regulations 36 and 37 (market surveillance and enforcement actions) or the General Product Safety Regulations 2005.

### **Conformity assessment procedures**

**28.**—(1) For the assessment of conformity of pyrotechnic articles the manufacturer or, where regulation 24(1)(b) applies, the importer shall follow, and comply with the obligations of, one of the following procedures—

- (a) the EC type-examination (Module B) procedure referred to in Annex II, Section 1 and, at the choice of the manufacturer, either—
  - (i) the conformity to type (Module C) procedure referred to in Annex II, Section 2;
  - (ii) the production quality assurance (Module D) procedure referred to in Annex II, Section 3; or
  - (iii) the product quality assurance (Module E) procedure referred to in Annex II, Section 4;
- (b) the unit verification (Module G) procedure referred to in Annex II, paragraph 5; or
- (c) insofar as it concerns category 4 fireworks, the full quality assurance procedure (Module H) referred to in Annex II, Section 6.

(2) References in paragraph (1) to the expression “Annex II” refer to Annex II to the Directive, as amended from time to time.

### **Obligation to affix the CE marking**

**29.**—(1) After successful completion of a conformity assessment using one of the procedures prescribed by regulation 28, manufacturers, or, where regulation 24(1)(b) applies, importers shall visibly, legibly and indelibly affix the CE marking to pyrotechnic articles.

(2) Where it is not possible to comply with paragraph (1) the CE marking shall be affixed to an identification label attached to the pyrotechnic article or to the packaging.

(3) An identification label must be designed to make its reuse impossible.

(4) The CE marking must take the form set out in Annex IV to the Directive.

(5) Other markings may be affixed to a pyrotechnic article, only if the visibility and legibility of the CE marking is not impaired as a result.

(6) The application of the CE marking to a pyrotechnic article in accordance with these Regulations indicates that the article is presumed (which obligation shall be rebuttable) to conform to other EU legislation that applies to pyrotechnic articles and requires the affixing of a CE marking.

### **Prohibition on improper use of the CE marking**

**30.**—(1) No person shall affix a CE marking to a pyrotechnic article that does not conform to the requirements of these Regulations.

(2) No person shall affix to a pyrotechnic article a marking or inscription which may confuse a third person as to the meaning of the CE marking.

(3) Where it comes to the knowledge of the Health and Safety Executive or an enforcement authority that a person has affixed a CE marking to a pyrotechnic article which does not conform to the requirements of these Regulations the Health and Safety Executive or the enforcement authority, as the case may be, shall inform the Secretary of State.

(4) The Secretary of State shall inform the European Commission where paragraph (3) applies.

### **General labelling requirement**

**31.**—(1) No manufacturer or, where regulation 24(1)(b) applies, no importer shall supply a pyrotechnic article unless it is visibly, legibly and indelibly labelled in accordance with this

regulation in the official language of the Member State in which the pyrotechnic article is supplied to the consumer.

(2) A pyrotechnic article for supply to a consumer in the United Kingdom must be labelled in English.

(3) The labelling of a pyrotechnic article shall include, at least—

- (a) the name and address of the manufacturer;
- (b) where the manufacturer is not established in the EU, the name of the manufacturer and the name and address of the importer;
- (c) the name, type and category of the pyrotechnic article;
- (d) the minimum age limits, in accordance with regulation 33(2) or the limits of the Member State in which the pyrotechnic article is supplied to the consumer;
- (e) instructions for use;
- (f) the net explosive quantity of active explosive material; and
- (g) the information required by paragraph (7).

(4) In addition, the labelling of a category 4 firework shall include at least—

- (a) the statement, “for use only by persons with specialist knowledge”;
- (b) the statement, “minimum safety distances to be determined by users using supplied product data”; and
- (c) the year of production.

(5) In addition, the labelling of a category T1 theatrical pyrotechnic article shall include, where appropriate, at least—

- (a) the statement “for outdoor use only”; and
- (b) a minimum safety distance.

(6) In addition, the labelling of a category T2 theatrical pyrotechnic article shall include at least the statements—

- (a) “for use only by persons with specialist knowledge”; and
- (b) “minimum safety distances to be determined by users using supplied product data”.

(7) The information required—

- (a) in relation to a category T1 or P1 pyrotechnic article, is, where appropriate, a minimum safety distance;
- (b) in relation to a category 4 firework or a category T2 or P2 pyrotechnic article, is, where appropriate, the statement “minimum safety distances to be determined by users using supplied product data”.

(8) If a pyrotechnic article does not provide sufficient space for the labelling requirements in paragraphs (3) to (6), the information shall be provided on the retail packaging of the article.

(9) Paragraph (8) shall not prevent information being provided on other packaging of the firework.

(10) This regulation does not apply to—

- (a) pyrotechnic articles falling within regulations 34 or 35 (exceptions for trade fairs etc. and for research and development); or
- (b) pyrotechnic articles for vehicles.

### **Labelling requirements for pyrotechnic articles for vehicles**

**32.**—(1) No manufacturer or, where regulation 24(1)(b) applies, no importer shall supply a pyrotechnic article for vehicles unless it is labelled in accordance with this regulation.

(2) The labelling of pyrotechnic articles for vehicles shall include—

- (a) the name of the manufacturer;
- (b) where the manufacturer is not established in the EU, the name of the importer;
- (c) the name and type of the article; and
- (d) the safety instructions.

(3) If an article does not provide sufficient space for the labelling requirements in paragraph (2), the information shall be provided on the packaging of the article.

(4) A safety data sheet completed in accordance with Article 31 of Regulation 1907/2006/EC(16) concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), shall be supplied to professional users—

- (a) in the language requested; and
- (b) on paper or, provided the addressee has the means to receive the information, electronically.

### **Prohibition on supply of pyrotechnic articles**

**33.**—(1) No person shall supply a category 4 firework, a category T2 theatrical pyrotechnic article or a category P2 other pyrotechnic article, except to a person with specialist knowledge falling within regulation 42.

(2) No person shall supply a category T1 theatrical pyrotechnic article or a category P1 other pyrotechnic article to a person under the age of eighteen years.

### **Exception for trade fairs, exhibitions and demonstrations**

**34.**—(1) Where paragraph (2) is complied with, nothing in these Regulations prevents the showing and using at trade fairs, exhibitions and demonstrations for the marketing of pyrotechnic articles of a pyrotechnic article which does not comply with Part 3.

(2) While a pyrotechnic article within paragraph (1) is being shown or used a clear and visible sign must indicate—

- (a) the name and date of the trade fair, exhibition or demonstration;
- (b) that the pyrotechnic article does not conform with Part 3; and
- (c) that the pyrotechnic article is not for sale, until brought into conformity with the Regulations.

### **Exception for research and development**

**35.**—(1) Where paragraph (2) is complied with, nothing in these Regulations prevents the use or free movement of a pyrotechnic article which does not comply with Part 3 which was manufactured for the purpose of research, development and testing.

(2) In relation to a pyrotechnic article within paragraph (1) a clear and visible sign must indicate that—

- (a) the article does not conform with Part 3; and

- (b) it is not available other than for purposes of research, development and testing.

### **Market surveillance and enforcement**

**36.**—(1) It shall be the duty—

- (a) in relation to Great Britain, of the Health and Safety Executive,
- (b) in relation to Northern Ireland, of the Secretary of State,

to enforce regulation 4(3) and Part 3.

(2) In addition, an enforcement authority or the Secretary of State (in relation to enforcement in Great Britain) may enforce regulation 4(3) and Part 3.

(3) The Health and Safety Executive shall carry out regular inspections in relation to category 4 fireworks, theatrical pyrotechnic articles and other pyrotechnic articles following entry into the EU and at storage and manufacturing sites within Great Britain and the Secretary of State shall carry out the same duty within Northern Ireland.

(4) A weights and measures authority in England and Wales shall have the power to investigate and prosecute for an alleged contravention of these Regulations which was committed outside its area in any part of England or Wales.

(5) A district council in Northern Ireland shall have the power to investigate and prosecute for an alleged contravention of these Regulations which was committed outside its area in any part of Northern Ireland.

(6) Any action of the Health and Safety Executive, an enforcement authority or the Secretary of State under this regulation or regulation 37 shall take due account of the presumption (which presumption shall be rebuttable) that pyrotechnic articles marked with a CE marking are in conformity with the essential safety requirements set out in paragraph 1 and, if applicable, in paragraphs 2(1), (5), (6), (7), 3 and 4 of Schedule 2.

(7) The Secretary of State may appoint a person to act on behalf of the Secretary of State for the purposes of paragraph (1)(b) or (2).

### **Enforcement actions**

**37.**—(1) For the purposes of the enforcement of regulation 4(3) and Part 3 by the Health and Safety Executive, Schedule 4 shall have effect.

(2) For the purposes of the enforcement of regulation 4(3) and Part 3 by an enforcement authority or the Secretary of State, the authority or the Secretary of State may use any provisions relating to enforcement of the Act to enforce regulation 4(3) and Part 3.

(3) Where an enforcement authority proposes to enforce under regulation 36(2), it shall notify the Health and Safety Executive (in relation to enforcement in Great Britain) or the Secretary of State (in relation to enforcement in Northern Ireland) of that fact and the bodies in question shall consider, in the circumstances of the case, which is best placed to enforce the Regulations.

(4) Where the bodies referred to in paragraph (3) decide that an enforcement authority shall enforce, the duty in regulation 36(1) no longer applies.

(5) This paragraph applies where the Health and Safety Executive, an enforcement authority or the Secretary of State becomes aware that a pyrotechnic article, used in accordance with its intended purpose, is liable to endanger the health and safety of persons.

(6) Where paragraph (5) applies—

- (a) in relation to enforcement in Great Britain, the Health and Safety Executive shall take action under Schedule 4;

- (b) in relation to enforcement in Northern Ireland, the Secretary of State shall take action as if regulation 19(3) to 19(6) applied to pyrotechnic articles falling within this Part.
- (7) Where paragraph (5) applies, an enforcement authority may take action as if regulation 19(3) to 19(6) applied to pyrotechnic articles falling within this Part.
- (8) Where the Health and Safety Executive or an enforcement authority takes any action under this regulation it shall as soon as practicable notify the Secretary of State, specifying its reasons for taking the action.
- (9) Where the Health and Safety Executive or an enforcement authority has notified the Secretary of State under paragraph (8), it shall as soon as practicable notify the Secretary of State of any modification or lifting of any such action.
- (10) Where the Secretary of State is notified under paragraph (8), in relation to a pyrotechnic article which bears a CE marking and is accompanied by an EC declaration of conformity, the Secretary of State shall inform the European Commission and other relevant Member States of that action.
- (11) This paragraph applies where the Secretary of State has sufficient reason to believe that a pyrotechnic article presents a serious risk to the health or safety of persons in the EU.
- (12) Where paragraph (11) applies the Secretary of State shall—
- (a) inform the European Commission and other Member States of that risk;
  - (b) perform an appropriate evaluation; and
  - (c) inform the European Commission and other Member States of the background for and the results of the evaluation.
- (13) This Regulation does not prevent an enforcement authority or the Secretary of State taking other enforcement action under the General Product Safety Regulations 2005.

### **Requirements regarding prohibitions, restrictions and withdrawals**

- 38.**—(1) Any measure taken by the Health and Safety Executive or an enforcement authority under these Regulations which has the effect of prohibiting or restricting the supply or withdrawal from the market of a pyrotechnic article must comply with the requirements in paragraph (2).
- (2) The requirements are—
- (a) the measure must state the exact grounds on which it is based;
  - (b) the party concerned must be informed, without delay, of—
    - (i) the measure,
    - (ii) the remedies available to that party, and
    - (iii) the time limits to which the remedies are subject; and
  - (c) subject to paragraph (3), the party concerned must have an opportunity to put forward its views in advance.
- (3) The requirement in paragraph (2)(c) does not apply if consultation is not possible because of the urgency of the measure to be taken, as justified in particular by public health or safety requirements.

### **Offences**

- 39.**—(1) A person who contravenes or fails to comply with regulations 23(1) (safety obligations of manufacturers), 24(1) (safety obligations of importers), 29(1) and (2) (obligation to affix CE marking), 30(1) and (2) (prohibition on improper use), 31(1) and (2) (general labelling requirement), 32(1) (labelling requirement for pyrotechnic articles for vehicles), 33(1) and (2)

(prohibition on supply of pyrotechnic articles), 46(4) and 47(4) (prohibition on supply outside of the United Kingdom) is guilty of an offence.

- (2) A person guilty of an offence under paragraph (1) is liable—
- (a) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale; or
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

### **Defence of due diligence**

**40.**—(1) Subject to the following provisions of this regulation, in proceedings for an offence under Part 3 or paragraph 6 of Schedule 4, a person who is shown to have taken all reasonable steps and exercised all due diligence to avoid committing the offence shall have a defence.

(2) Where, in any proceedings against a person for such an offence, the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

such defence shall not, without leave of the court, be relied on unless, not later than seven clear days before the hearing of the proceedings (or, in Scotland, the trial diet), that person has served a notice in accordance with paragraph (3) on the person bringing the proceedings.

(3) A notice under this regulation shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time it is served.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of that person's reliance on information supplied by another, unless it is shown that it was reasonable in all the circumstances for that person to have relied on the information, having regard in particular to—

- (a) the steps which that person took and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) whether that person had any reason to disbelieve the information.

### **Liability of persons other than principal offender**

**41.**—(1) Where the commission by a person of an offence under Part 3 or paragraph 6 of Schedule 4 is due to anything which another person did or failed to do in the course of business, that other person shall be guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person.

(2) Where a body corporate commits an offence and it is proved that the offence was committed—

- (a) with the consent or connivance of an officer of the body corporate; or
- (b) as a result of the negligence of an officer of the body corporate,

the officer, as well as the body corporate, shall be guilty of the offence.

(3) In paragraph (2), a reference to an officer of a body corporate includes a reference to—

- (a) a director, manager, secretary or other similar officer of a body corporate;
- (b) a person purporting to act as a director, manager, secretary or other similar officer; and
- (c) if the affairs of the body corporate are managed by its members, a member.

(4) In this regulation, a references to a “body corporate” include references to a partnership in Scotland, and in relation to such a partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

**Persons with specialist knowledge for category 4 fireworks, category T2 theatrical pyrotechnic articles or category P2 other pyrotechnic articles**

**42.**—(1) A person with specialist knowledge for category 4 fireworks is any individual who can demonstrate having—

- (a) undertaken training recognised in the fireworks business, in relation to the type of category 4 fireworks to be supplied,
- (b) used category 4 fireworks; and
- (c) valid liability insurance covering use of category 4 fireworks.

(2) A person with specialist knowledge for category T2 theatrical pyrotechnic articles is any individual who can demonstrate having—

- (a) undertaken training recognised in the theatrical profession, in relation to the type of category T2 theatrical pyrotechnic articles to be supplied;
- (b) used category T2 theatrical pyrotechnic articles; and
- (c) valid liability insurance covering use of category T2 theatrical pyrotechnic articles.

(3) A person with specialist knowledge for category P2 other pyrotechnic articles is any individual who can demonstrate having—

- (a) undertaken training recognised in the industry in question, in relation to the type of category P2 other pyrotechnic articles to be supplied;
- (b) used category P2 other pyrotechnic articles; and
- (c) valid liability insurance covering use of category P2 other pyrotechnic articles.

(4) The training referred to in paragraphs (1)(a), (2)(a) and (3)(a) must include training in—

- (a) the nature and correct use of the articles to be supplied; and
- (b) the risks associated with the transport, storage and use of such articles, and

includes such training recognised in the relevant business, profession or industry of any Member State.

(5) In paragraph (2)(a), “the theatrical profession” means the profession related to indoor and outdoor stage productions and includes film and television or similar productions.

(6) The use of articles referred to in paragraphs (1)(b), (2)(b) and (3)(b) includes use anywhere in the world.

(7) The “liability insurance” referred to in paragraph (1)(c), (2)(c) and (3)(c) may be in the name of the individual in question or the employer of that person.

(8) A person with specialist knowledge also includes—

- (a) any person whose trade or business (or a significant part of whose trade or business) is the supply of category 4 fireworks, for the purpose of supplying them in accordance with these Regulations;
- (b) any person whose trade or business (or a significant part of whose trade or business) is the supply of category T2 theatrical pyrotechnic articles, for the purpose of supplying them in accordance with these Regulations;
- (c) any person whose trade or business (or a significant part of whose trade or business) is the supply of category P2 other pyrotechnic articles, for the purpose of supplying them in accordance with these Regulations;

- (d) any person employed by or under or acting on behalf of an enforcement authority proposing to make a test purchase (as referred to in section 28 of the Act), where the authority—
  - (i) has enforcement powers, conferred by or under any enactment, applying to the category 4 firework, category T2 theatrical pyrotechnic article or category P2 other pyrotechnic article in question; and
  - (ii) before that person purchases the goods, informs the supplier that the purchase is to be made for the purposes of ascertaining whether any provision made by or under any enactment and relating to the safety of the goods has been contravened in relation to those goods;
- (e) any person who is—
  - (i) in business as a supplier of goods designed and intended for use in conjunction with a category 4 firework; and
  - (ii) intends to use the category 4 firework solely for the purposes of testing it to ensure that, when used in conjunction with fireworks of the same type, it will perform its intended function or comply with any provisions made by or under any enactment and relating to the safety of such goods;
- (f) any person who is—
  - (i) in business as a supplier of goods designed and intended for use in conjunction with a category T2 theatrical pyrotechnic article; and
  - (ii) intends to use the category T2 theatrical pyrotechnic article in question solely for the purposes of testing it to ensure that, when used in conjunction with articles of the same type, it will perform its intended function or comply with any provisions made by or under any enactment and relating to the safety of such goods.
- (g) any person who is—
  - (i) in business as a supplier of goods designed and intended for use in conjunction with a category P2 other pyrotechnic article; and
  - (ii) intends to use the category P2 other pyrotechnic article in question solely for the purposes of testing it to ensure that, when used in conjunction with articles of the same type, it will perform its intended function or comply with any provisions made by or under any enactment and relating to the safety of such goods.

## PART 4

### Conformity assessment etc.

#### **Process of appointment and notification of notified bodies etc.**

43.—(1) The Secretary of State may appoint, for the purposes of carrying out the conformity assessment procedures referred to in regulations 11 and 28, any corporate or other body as a body which is to carry out those procedures and any other tasks.

- (2) Where the Secretary of State appoints a body under paragraph (1), the appointment shall—
  - (a) be on such terms (including as to the duration of the appointment) as the Secretary of State specifies; and
  - (b) specify the tasks which the body is to carry out.

(3) The Secretary of State may appoint a UK notified body only if it is a body in relation to which the minimum criteria set out in Annex III for the assessment of notified bodies are met.

(4) The Secretary of State may, in making an appointment, have regard (in addition to the minimum criteria referred to in paragraph (3)) to any other matter which appears relevant.

(5) To the extent that a body meets the assessment criteria for notified bodies laid down in a published harmonised standard relevant to notified bodies it is presumed (which presumption shall be rebuttable) to that extent to satisfy any corresponding minimum criteria in Annex III.

(6) The Secretary of State may vary or restrict the tasks that a UK notified body may carry out, and if the Secretary of State makes a variation or restriction, those tasks as amended will be the tasks which it is appointed to carry out.

(7) The Secretary of State may vary or restrict any appointment of a UK notified body under paragraph (1) if the body so requests.

(8) The Secretary of State may revoke an appointment of a UK notified body—

- (a) at the request of the body, on the expiry of 90 day's notice in writing;
- (b) if it appears to the Secretary of State that the body no longer meets the minimum criteria set out in Annex III;
- (c) if it appears to the Secretary of State that the body has failed to carry out its functions referred to in regulation 44(1); or
- (d) if it appears to the Secretary of State that any condition of the appointment is not complied with.

(9) Before making a variation or restriction under paragraph (6) or a revocation under paragraph (8)(b) or (c) the Secretary of State shall give the body an opportunity to make representations in writing and shall take into account any such representations as are made.

(10) Where the appointment of a UK notified body is revoked the conformity assessments and any related documents made by the body remain valid, unless it is established that there is an imminent and direct risk to health and safety.

(11) For the purposes of deciding whether or not a body is one in respect of which the criteria set out in Annex III are met as respects the tasks which the body wants to carry out, or carries out, the Secretary of State may arrange to inspect or for another person to inspect—

- (a) any premises occupied or plant or equipment used in connection with the carrying out of any such task; or
- (b) any premises occupied or plant occupied or plant or equipment used by a manufacturer where the body is undertaking any task in relation to that manufacturer,

and the Secretary of State may take into account for the purposes of the decision the results of any such inspection and any refusal to afford facilities or assistance as are reasonably required in order to carry out any such inspection.

(12) The Secretary of State may request that a UK notified body supply any or all relevant information and documents, including budgetary documents, to the Secretary of State or to another person, necessary to enable the Secretary of State to verify that the body meets the criteria set out in Annex III and the body shall supply any information or documents so requested.

(13) The Secretary of State shall notify the Commission of—

- (a) a body appointed under this regulation; and
- (b) the tasks which it has been appointed to carry out.

(14) The Secretary of State shall notify the Member States of—

- (a) a body appointed under this Regulation;
- (b) the tasks which it has been appointed to carry out; and
- (c) the identification number assigned by the Commission to the body in question.

(15) If the Secretary of State revokes an appointment of a UK notified body the Secretary of State shall notify the Commission and the Member States.

(16) The reference to Annex III in paragraphs (3), (5), (8), (11) and (12) is a reference to Annex III to the Directive as amended from time to time.

### **Supplementary matters in relation to notified bodies**

**44.**—(1) Subject to the terms of appointment under regulation 43 and paragraph 2 a UK notified body shall carry out the functions of a notified body specified in the relevant modules of Annex II to the Directive as amended from time to time.

(2) A UK notified body shall not be obliged to carry out those functions where—

- (a) the documents submitted to it in relation to the carrying out of any such function (other than the instructions for an article) are not in English or another language acceptable to the body;
- (b) the manufacturer or, where regulation 7(1)(b) or 24(1)(b) applies, an importer has not submitted the amount of the fee which the body requires to be submitted with the application; or
- (c) the body reasonably believes that having regard to the number of outstanding applications made to it in relation to its appointment under these Regulations it will be unable to carry out the required work within 6 months of receiving the application.

(3) A UK notified body shall make provision for a manufacturer or, where regulation 7(1)(b) or 24(1)(b) applies, an importer to be able to make an appeal against a refusal by the UK notified body —

- (a) to issue an EC type-examination certificate referred to in point 1(5) (module B: EC type-examination) of Annex II to the Directive as amended from time to time;
- (b) to affix, or cause to be affixed, the body's identification number or to issue a certificate of conformity referred to in point 5(2) (module G: unit verification) of Annex II to the Directive as amended from time to time; or
- (c) make a positive decision in relation to the assessment decision referred to in point 6.3.3 (module H: full quality assurance) of Annex II to the Directive as amended from time to time.

(4) A UK notified body may charge such fees in connection with, or incidental to, carrying out its functions under an appointment under regulation 43 (process of appointment and notification of notified bodies etc.) as it may determine, provided that such fees shall not exceed the sum of—

- (a) the costs incurred or to be incurred by the body in performing the relevant function;
- (b) an amount on account of profit which is reasonable in the circumstances having regard to—
  - (i) the character and extent of the work done or to be done by the body on behalf of the manufacturer or, where regulation 7(1)(b) or 24(1)(b) applies, the importer of the article in question; and
  - (ii) the commercial rate normally charged on account of profit for that work or similar work.

(5) A UK notified body may require the payment of fees or a reasonable estimate of fees in advance of carrying out the work required by the relevant person referred to in paragraph 4(b)(i).

## PART 5

### Proceedings, transition and revocations, etc.

#### Proceedings

**45.**—(1) In England and Wales a magistrates' court may try an information in respect of an offence under section 12 of the Act arising from a contravention of these Regulations if the information is laid within twelve months from the time when the offence was committed.

(2) In Scotland summary proceedings for an offence under section 12 of the Act arising from a contravention of these Regulations may be brought at any time within twelve months from the time when the offence was committed.

(3) In Northern Ireland a magistrates' court may try a complaint in respect of an offence under section 12 of the Act arising from a contravention of these Regulations if the complaint is made within twelve months from the time when the offence was committed.

#### Transitional provisions in relation to category 1, 2 or 3 fireworks

**46.**—(1) Subject to paragraphs (2), (3) and (4), nothing in regulation 4(1), (2) or Part 2 of these Regulations prevents the supply in a part of the United Kingdom of a category 1, 2 or 3 firework that it is lawful to supply in that part of the United Kingdom immediately before 4th July 2010.

(2) Paragraph (1) does not apply to regulations 15 and 21 (prohibitions on supply of fireworks).

(3) Paragraph (1) applies until 3rd July 2017.

(4) No person shall supply a category 1, 2 or 3 firework falling within paragraph (1) for use in the territory of a Member State outside the United Kingdom.

(5) A category 1, 2 or 3 firework that falls within paragraph (1) benefits from that provision whether it is classified for the purposes of, as the case may be, the Classification and Labelling of Explosives Regulations 1983<sup>(17)</sup> or the Classification and Labelling of Explosives Regulations (Northern Ireland) 1991<sup>(18)</sup>, before or after 4th July 2010.

#### Transitional provisions in relation to category 4 fireworks, theatrical pyrotechnic articles and other pyrotechnic articles

**47.**—(1) Subject to paragraphs (2), (3) and (4), nothing in regulation 4(1), (2) or Part 3 of these Regulations prevents the supply in a part of the United Kingdom of a category 4 firework, a theatrical pyrotechnic article and an other pyrotechnic article that it was lawful to supply in that part of the United Kingdom immediately before 4th July 2013.

(2) Paragraph (1) does not apply to regulation 33 (prohibition on supply of pyrotechnic articles).

(3) Paragraph (1) applies until 3rd July 2017.

(4) No person shall supply a category 4 firework, a theatrical pyrotechnic article or an other pyrotechnic article, falling within paragraph (1) for use in the territory of a Member State outside the United Kingdom.

(5) A theatrical pyrotechnic article or an other pyrotechnic article or a category 4 firework that falls within paragraph (1) benefits from that provision whether it is classified for the purposes, as the case may be, of the Classification and Labelling of Explosives Regulations 1983 or the Classification and Labelling of Explosives Regulations (Northern Ireland) 1991, before or after 4th July 2013.

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<sup>(17)</sup> S.I. 1983/1140; as amended by S.I. 2004/568, 2007/1573, there are other amendments which are not relevant.

<sup>(18)</sup> S.R. (N.I.) 1991 No 516; as amended by S.R. (N.I.) 2006 No 182 and 2006 No 425.

## Contravention of the Regulations

**48.** Subject to regulation 36(2), notwithstanding that they are made partly or wholly in exercise of powers other than those conferred by section 11 of the Act, these Regulations (except for regulations 39, 40 and 41) shall be regarded as safety regulations as defined in the Act for purposes relating to enforcement by an enforcement authority or the Secretary of State (whether by criminal proceedings, notices or otherwise), and any provision of these Regulations made under those other powers shall be regarded for those purposes as a safety provision as defined in the Act.

## Repeals, revocations, amendments and savings

**49.**—(1) In section 31 of the Explosives Act 1875(**19**)(penalty for sale of gunpowder to children), which becomes subsection (1) of that section, at the end insert—

“(2) On and after 4 July 2010, subsection (1) does not apply to—

- (a) category 1, 2 or 3 fireworks; or
- (b) percussion caps.

(3) On and after 4 July 2013, subsection (1) does not apply to—

- (a) category 4 fireworks,
- (b) category T1 or T2 theatrical pyrotechnic articles, or
- (c) category P1 or P2 other pyrotechnic articles.

(4) The references to categories of fireworks, theatrical and other pyrotechnic articles are to be construed in accordance with Directive [2007/23/EC](#) of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles.

(5) The reference to percussion caps is a reference to percussion caps intended specifically for toys falling within the scope of Council Directive [88/378/EEC](#) of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys.”

(2) Subject to paragraph (13), sections 5 and 6 of, and the Schedule to, the Fireworks Act 1951(**20**) (marking of fireworks, etc.) are repealed.

(3) Subject to paragraph (13), the Fireworks Act 1964(**21**) (exemption of fireworks for export from marking requirements) is repealed.

(4) Subject to paragraph (13), in regulation 3 of the Classification and Labelling of Explosives Regulations 1983 after paragraph (3) insert—

“(4) Pyrotechnic articles which comply with the labelling requirements of the Pyrotechnic Articles (Safety) Regulations 2010 satisfy the labelling requirements for inner packaging imposed by these Regulations.

(5) For the purposes of paragraph (4) the expression “pyrotechnic article” has the meaning given in regulation 2 of the Pyrotechnic Articles (Safety) Regulations 2010.”.

(5) Subject to paragraph (13), in regulation 3 of the Classification and Labelling of Explosives Regulations (Northern Ireland) 1991 after paragraph (3) insert—

“(4) Pyrotechnic articles which comply with the labelling requirements of the Pyrotechnic Articles (Safety) Regulations 2010 satisfy the labelling requirements for inner packaging imposed by these Regulations.

(5) For the purposes of paragraph (4) the expression “pyrotechnic article” has the meaning given in regulation 2 of the Pyrotechnic Articles (Safety) Regulations 2010.”.

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(19) [1875 c.17](#).

(20) [1951 c.58](#).

(21) [1964 c.23](#).

- (6) Subject to paragraphs (12) and (13), the Fireworks (Safety) Regulations 1997<sup>(22)</sup> are revoked.
- (7) Subject to paragraphs (12) and (13), the Fireworks (Safety)(Amendment) Regulations 2004<sup>(23)</sup> are revoked.
- (8) Subject to paragraph (13), in the Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003<sup>(24)</sup>, in Part 1 of the Schedule—
- (a) omit the entry referring to the Explosives Act 1875,
  - (b) omit the entry referring to the Fireworks (Safety) Regulations 1997, and
  - (c) in the appropriate place, insert in the first column “Pyrotechnic Articles (Safety) Regulations 2010” and opposite it in the second column, insert “Regulation 15 (prohibition on supply of category 1 fireworks to persons under 16 years and category 2 or 3 fireworks to persons under 18 years).”.
- (9) Subject to paragraph (13), in the Enterprise Act 2002 (Part 8 Notice to OFT of Intended Prosecution Specified Enactments, Revocation and Transitional Provision) Order 2003<sup>(25)</sup> in the Schedule—
- (a) for the entry referring to the Consumer Protection Act 1987 in the second column for “Fireworks (Safety) Regulations 1997” substitute “Pyrotechnic Articles (Safety) Regulations 2010”;
  - (b) omit the entry referring to the Fireworks (Safety) Regulations 1997;
  - (c) in the appropriate place, insert in the first column “Pyrotechnic Articles (Safety) Regulations 2010” and opposite it in the second column insert “Regulation 15 (prohibition on supply of category 1 fireworks to persons under 16 years and category 2 or 3 fireworks to persons under 18 years)”.
- (10) Subject to paragraph (13), in the Fireworks Regulations 2004<sup>(26)</sup>—
- (a) for the definition of “the 1997 Regulations” substitute ““the 2010 Regulations” means the Pyrotechnic Articles (Safety) Regulations 2010””; and
  - (b) in paragraph (1)(c) of regulation 6 and paragraphs (2A)(a) and (5)(b) of regulation 9 for “1997 Regulations” substitute “2010 Regulations””; and
  - (c) omit regulation 8 (prohibition of supply of excessively loud category 3 fireworks).
- (11) Subject to paragraph (12) and (13), the provisions of the Explosives (Fireworks) Regulations (Northern Ireland) 2002<sup>(27)</sup> set out in Schedule 5 are, as the case may be, amended or revoked.
- (12) The regulations referred to in paragraphs (6), (7) and (11) continue to apply to category 4 fireworks as they did immediately before their amendment or revocation, as the case may be, for all purposes until 4th July 2013.
- (13) The provisions referred to in paragraphs (2) to (11) (save for regulations 4, 5 and 6 of the Fireworks (Safety) Regulations 1997 and regulation 11 of the Explosives (Fireworks) Regulations (Northern Ireland) 2002) continue to apply as they did immediately before their repeal, revocation or amendment for all purposes in relation to fireworks falling within regulation 46 or category 4 fireworks falling within regulation 47(1).
- (14) Paragraph (13) applies to a theatrical pyrotechnic article or an other pyrotechnic article falling within regulation 47 that amounts to a firework.

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<sup>(22)</sup> S.I. 1997/2294; as amended by S.I. 2004/1372.

<sup>(23)</sup> S.I. 2004/1372.

<sup>(24)</sup> S.I. 2003/1593; as amended by S.I. 2008/1277.

<sup>(25)</sup> S.I. 2003/1376; as amended by S.I. 2004/2095, 2008/1277 and 2008/2095.

<sup>(26)</sup> S.I. 2004/1836, as amended by S.I. 2004/3262.

<sup>(27)</sup> S.R. (N.I.) 2002 No 147.

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9th June 2010

*Edward Davey*  
Minister for Employment Relations, Consumer  
and Postal Affairs  
Department for Business, Innovation & Skills

## SCHEDULE 1

Regulation 2(1)

### Categories of pyrotechnic articles

1. In relation to fireworks—
  - (a) category 1 is a category of fireworks which present a very low hazard and negligible noise level and which are intended for use in confined areas, including fireworks which are intended for use inside domestic buildings;
  - (b) category 2 is a category of fireworks which present a low hazard and low noise level and which are intended for outdoor use in confined areas;
  - (c) category 3 is a category of fireworks which present a medium hazard, which are intended for outdoor use in large open areas and whose noise level is not harmful to human health;
  - (d) category 4 is a category of fireworks which present a high hazard, which are intended for use only by persons with specialist knowledge (commonly known as fireworks for professional use) and whose noise level is not harmful to human health.
2. In relation to theatrical pyrotechnic articles—
  - (a) category T1 is a category of pyrotechnic articles for stage use which present a low hazard;
  - (b) category T2 is a category of pyrotechnic articles for stage use which are intended for use only by persons with specialist knowledge.
3. In relation to other pyrotechnic articles—
  - (a) category P1 is a category of pyrotechnic articles, other than fireworks and theatrical pyrotechnic articles, which present a low hazard;
  - (b) category P2 is a category of pyrotechnic articles, other than fireworks and theatrical pyrotechnic articles, which are intended for handling or use only by persons with specialist knowledge.

## SCHEDULE 2

Regulation 6 and 23

### Essential Safety Requirements

#### **Essential safety requirements**

1.—(1) Each pyrotechnic article must attain the performance characteristics specified by the manufacturer to the UK notified body or a body notified to the European Commission under Article 10 of the Directive in order to ensure maximum safety and reliability.

(2) Each pyrotechnic article must be designed and manufactured in such a way that it can be disposed of safely by a suitable process with minimum effect on the environment.

(3) Each pyrotechnic article must function correctly when used for its intended purpose.

Each pyrotechnic article must be tested under realistic conditions. If this is not possible in a laboratory, the tests must be carried out under the conditions in which the pyrotechnic article is to be used.

The following information and properties, where applicable, must be considered or tested:

- (a) design, construction and characteristic properties, including detailed chemical composition (mass and percentage of substances used) and dimensions;
- (b) the physical and chemical stability of the pyrotechnic article in all normal, foreseeable environmental conditions;

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- (c) sensitivity to normal, foreseeable handling and transportation;
- (d) compatibility of all components as regards their chemical stability;
- (e) resistance of the pyrotechnic article to moisture where it is intended to be used in humid or wet conditions and where its safety or reliability may be adversely affected by moisture;
- (f) resistance to low and high temperatures, where the pyrotechnic article is intended to be kept or used at such temperatures and its safety or reliability may be adversely affected by cooling or heating of a component or of the pyrotechnic article as a whole;
- (g) safety features intended to prevent untimely or inadvertent initiation or ignition;
- (h) suitable instructions and, where necessary, markings in respect of safe handling, storage, use (including safety distances) and disposal in the official language or languages of the recipient Member State;
- (i) the ability of the pyrotechnic article, its wrapping or other components to withstand deterioration under normal, foreseeable storage conditions;
- (j) specification of all devices and accessories needed and operating instructions for safe functioning of the pyrotechnic article.

During transportation and normal handling, unless specified by the manufacturer's instructions, the pyrotechnic articles should contain the pyrotechnic composition.

(4) Pyrotechnic articles must not contain—

- (a) commercial blasting agents, except for black powder or flash composition;
- (b) military explosives.

(5) The various groups of pyrotechnic articles must at least also comply with the following requirements.

## **A. Fireworks**

2.—(1) The manufacturer or, where regulation 7(1)(b) or regulation 24(1)(b) applies, the importer must assign fireworks to different categories according to, as the case may be, regulation 4(1) or 4(3) characterised by net explosive content, safety distances, noise level, or similar. The category must be clearly indicated on the label.

(2) For category 1 fireworks, the following conditions must be met—

- (a) the safety distance must be at least 1 metre. However, where appropriate, the safety distance may be less;
- (b) the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance;
- (c) category 1 must not comprise bangers, banger batteries, flash bangers and flash banger batteries;
- (d) throwdowns in category 1 must not contain more than 2.5 mg of silver fulminate.

(3) For category 2 fireworks, the following conditions must be met—

- (a) the safety distance must be at least 8 metres. However, where appropriate, the safety distance may be less;
- (b) the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance.

(4) For category 3 fireworks, the following conditions must be met—

- (a) the safety distance must be at least 15 metres. However, where appropriate the safety distance may be less;

- (b) the maximum noise level must not exceed 120 dB (A, imp), or an equivalent noise level as measured by another appropriate method, at the safety distance.
- (5) Fireworks may only be constructed of materials which minimise risk to health, property and the environment from debris.
- (6) The method of ignition must be clearly visible or must be indicated by labelling or instructions.
- (7) Fireworks must not move in an erratic and unforeseeable manner.
- (8) Fireworks of category 1, 2 and 3 must be protected against inadvertent ignition either by a protective cover, by the packaging, or by the construction of the article. Fireworks of category 4 must be protected against inadvertent ignition by methods specified by the manufacturer.

### **B. Other pyrotechnic articles**

- 3.—(1) Pyrotechnic articles must be designed in such a way as to minimise risk to health, property and the environment during normal use.
- (2) The method of ignition must be clearly visible or must be indicated by labelling or instructions.
- (3) The pyrotechnic article must be designed in such a way as to minimise risk to health, property and the environment from debris when initiated inadvertently.
- (4) Where appropriate, the pyrotechnic article must function properly until the ‘use by’ date specified by the manufacturer.

### **C. Ignition devices**

- 4.—(1) Ignition devices must be capable of being reliably initiated and be of sufficient initiation capability under all normal, foreseeable conditions of use.
- (2) Ignition devices must be protected against electrostatic discharge under normal, foreseeable conditions of storage and use.
- (3) Electric igniters must be protected against electromagnetic fields under normal, foreseeable conditions of storage and use.
- (4) The covering of fuses must be of adequate mechanical strength and adequately protect the explosive filling when exposed to normal, foreseeable mechanical stress.
- (5) The parameters for the burning times of fuses must be provided with the article.
- (6) The electrical characteristics (for example, no-fire current, resistance) of electric igniters must be provided with the article.
- (7) The wires of electric igniters must be sufficiently insulated and must be of sufficient mechanical strength, including the solidity of the link to the igniter, taking account of their intended use.

## SCHEDULE 3

Regulation 21

### Definitions of fireworks in regulation 21

For the purposes of regulation 21 the following expressions mean—

“aerial wheel” means tubes containing propellant charges and sparks, flame or noise-producing pyrotechnic composition (or all three), the tubes being fixed to a supporting structure, the principal effect of which is rotation and ascent, with emission of sparks and flames, producing a visual or aural effect (or both) in the air;

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“banger” means a firework (other than a firework falling within regulation 21(1)(g)(i)(type of shot tube))—

which comprises a non-metallic tube which contains pyrotechnic composition and has a fuse; and

whose functioning principally involves report;

“battery” means an assembly which includes two or more fireworks of the same type;

“combination” means an assembly, other than a battery, which includes two or more fireworks;

“double banger” means a firework (other than a firework falling within regulation 21(1)(g)(i)(type of shot tube))—

which comprises a non-metallic tube containing two portions of pyrotechnic composition connected by a delay fuse; and

whose functioning principally involves one report, followed by ascent and a further report;

“flash banger” means a firework (other than a firework falling within regulation 21(1)(g)(i)(type of shot tube))—

which comprises a non-metallic tube containing metal-based pyrotechnic composition; and

whose functioning principally involves report and a flash of light;

“jumping cracker” means a paper tube containing black powder, folded back on itself several times and bound together, the principal effect of which is reports in succession with jumping motions;

“jumping ground spinner” means a non-metallic tube containing gas and sparks producing pyrotechnic composition, with or without whistling pyrotechnic composition, the principal effect of which is rotation on the ground frequently interrupted by a jumping motion and emission of sparks and flame, with or without an aural effect (other than report);

“mini-rocket” means a firework which is designed so that, on functioning, it propels itself into the air and which comprises a body or motor—

which contains pyrotechnic composition or pyrotechnic units; and

the outside diameter of which, at the point where the diameter is greatest, is less than 12 millimetres; or

if equipped with a stick or sticks for the purposes of stabilising its flight—

where the firework is intended to be supplied singly, whose overall length (including the length of any such sticks) is less than 900 millimetres or (not including the length of any such sticks) is less than 195 millimetres; or

where the firework is intended to be supplied in a primary pack, whose overall length (including the length of any such stick or sticks) is less than 400 millimetres or (not including the length of any such stick or sticks) is less than 125 millimetres; or

where the firework is intended to be supplied in a selection pack, whose overall length (including the length or any such stick or sticks) is less than 300 millimetres; or

if not equipped with a stick or sticks for the purposes of stabilising its flight—

whose overall length is less than 300 millimetres; and

is intended to be supplied singly or in a primary pack;

“primary pack” means a package of fireworks of the same type, all of which are either category 1, 2 or 3 fireworks, which is intended to be offered for retail sale as a single unit;

“selection pack” means a package of fireworks of more than one type intended to be offered for retail sale as a single unit;

“shot tube” means a tube containing propellant charge and a pyrotechnic unit, with or without a transmitting fuse, the principal effect of which is the ejection of the pyrotechnic unit producing a visual and/or aural effect in the air;

“spinner” means a tube containing pyrotechnic composition, with or without aerofoils attached, the principal effect of which is rotation and ascent with the emission of sparks, flames or both, with or without aural effect (other than report);

“wheel” means an assembly—

which includes a tube or tubes containing pyrotechnic composition;

which is designed to be attached to a support and to rotate about a fixed point or axis and which is provided with a means of attaching it securely to such a support so that it can so rotate; and

whose functioning involves rotation around a fixed point and the emission of sparks and flames, with or without aural effect.

#### SCHEDULE 4

Regulation 18 and 37

#### Enforcement powers under Part 3

#### **Powers of Health and Safety Executive**

**1.**—(1) In relation to the enforcement of regulation 4(3) and of Part 3 by the Health and Safety Executive—

- (a) sections 19 to 28, 33 to 35, 38, 39, 41 and 42 of the 1974 Act shall apply as modified by paragraph 2; and
- (b) sections 36(1) and (2) and 37 of that Act shall apply in relation to offences under section 33 as modified by paragraph 2.

(2) The application of section 33 (and Schedule 3A) by paragraph (1) is subject to a penalty on summary conviction being no more than 3 months’ imprisonment or a fine of level 5 on the standard scale.

**2.** For the purposes of the enforcement of these Regulations by the Health and Safety Executive the provisions specified in paragraph 1 shall apply as if—

- (a) references to “relevant statutory provisions” were references to those provisions as modified by this paragraph and to these Regulations;
- (b) references to an “enforcing authority” were references to the Health and Safety Executive;
- (c) reference to the “field of responsibility” of an enforcing authority, however expressed, were omitted;
- (d) in section 20, subsection (3) were omitted;
- (e) section 22, as well as permitting an inspector to serve a prohibition notice in the circumstances specified in section 22(2), permitted an inspector to serve a prohibition notice in any case where—

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- (i) a manufacturer, or where regulation 24(1)(b) applies, an importer, has failed to comply with the requirements of these Regulations in relation to the CE marking; and
- (ii) the manufacturer or importer, as the case may be, has been served with an improvement notice under section 21 in respect of that failure and has continued to fail to comply after the period for remedying the contravention specified in the improvement notice;
- (f) in section 23, subsections (3), (4) and (6) were omitted;
- (g) in section 33, in subsection (1), the whole of paragraphs (a) to (d) were omitted;
- (h) in section 34—
  - (i) paragraphs (a) and (b) of subsection (1) were omitted; and
  - (ii) in subsection (3) for “six months” there were substituted “twelve months”; and
- (i) in section 42, subsections (3A), (4) and (5) were omitted.

### **Withdrawal notices**

3.—(1) Subject to regulation 36(6) (presumption of conformity for CE marked articles) and 38 (requirements regarding prohibitions, restrictions and withdrawals), where the Health and Safety Executive or the Secretary of State, as the case may be, believes a pyrotechnic article—

- (a) in relation to which a manufacturer or, where regulation 24(1)(b) applies, an importer contravenes regulation 4(3) (categorisation) or in relation to which regulation 4(4) is contravened, or
- (b) falling within Part 3 of the regulations,

is liable to endanger the health and safety of persons the Health and Safety Executive or the Secretary of State may serve a notice (“a withdrawal notice”) requiring the person on whom it is served to take measures aimed at preventing a pyrotechnic article in the supply chain from being supplied, without its consent.

(2) A withdrawal notice may require the person on whom it is served to take action to alert consumers to the risks that the pyrotechnic article presents.

(3) A withdrawal notice may require the person on whom it is served to keep the Health and Safety Executive or the Secretary of State informed of the whereabouts of any pyrotechnic article referred to in the notice in which the person on whom it is served has an interest.

(4) A consent given by the Health and Safety Executive or the Secretary of State for the purposes of paragraph (1) may impose such conditions on the supply of a pyrotechnic article for which the consent is required as the Health and Safety Executive or the Secretary of State considers appropriate.

### **Supplementary provisions relating to withdrawal notices**

4.—(1) A withdrawal notice shall have effect throughout the United Kingdom.

(2) Where the Health and Safety Executive or the Secretary of State serves a withdrawal notice in respect of a pyrotechnic article, the Health and Safety Executive or the Secretary of State shall be liable to pay compensation to a person having an interest in the article in respect of any loss or damage suffered by reason of the notice if—

- (a) the pyrotechnic article was not an article which contravened regulation 4(3), (4) or a provision in Part 3 of these Regulations nor an article which was liable to endanger the health and safety of persons; and
- (b) the exercise by the Health and Safety Executive or the Secretary of State of the power to serve the withdrawal notice was not attributable to any neglect or default by that person.

(3) Subject to regulation 36(6) (presumption of conformity for CE marked articles) and 38 (requirements regarding prohibitions, restrictions and withdrawals), the Health and Safety Executive or the Secretary of State may revoke a withdrawal notice which that person has served.

(4) Subject to regulation 36(6) (presumption of conformity for CE marked articles) and 38 (requirements regarding prohibitions, restrictions and withdrawals), the Health and Safety Executive or the Secretary of State may vary a withdrawal notice which that person has served, provided it is not made more restrictive for the person on whom it is served or more onerous for that person to comply with.

(5) Where the conditions for serving a withdrawal notice are satisfied and either—

- (a) the Health and Safety Executive or the Secretary of State, as the case may be, has been unable to identify any person on whom to serve such a notice; or
- (b) the person on whom such a notice has been served has failed to comply with it,
- (c) then the Health and Safety Executive or the Secretary of State may instead take such action as could have been required by a withdrawal notice.

(6) Where the Health and Safety Executive or the Secretary of State has exercised powers under paragraph (5) to take action following the failure of the person on whom the withdrawal notice has been served to comply with that notice, the Health and Safety Executive or the Secretary of State may if considered appropriate recover from that person summarily as a civil debt, any costs or expenses reasonably incurred by the Health and Safety Executive or the Secretary of State in undertaking the action under paragraph (5).

(7) A civil debt recoverable under the preceding paragraph may be recovered—

- (i) in England and Wales by way of complaint (pursuant to section 58 of the Magistrates' Courts Act 1980<sup>(28)</sup>),
- (ii) in Northern Ireland in proceedings under Article 62 of the Magistrate's Court (Northern Ireland) Order 1981<sup>(29)</sup>.

### **Appeals against withdrawal notices**

5.—(1) A person on whom a withdrawal notice has been served and a person having an interest in a pyrotechnic article in respect of which a withdrawal notice has been served may, before the end of the period of 21 days beginning with the day on which the notice was served, apply for an order to vary or set aside the terms of the notice.

(2) On an application under paragraph (1) the appropriate court shall make an order setting aside the notice only if satisfied that—

- (a) the pyrotechnic article was not an article liable to endanger the health and safety of persons, or
- (b) where applicable, regulation 38(1) (requirements regarding prohibitions etc) has not been complied with by, as the case may be, the Health and Safety Executive or the Secretary of State.

(3) On an application to vary the terms of a notice the appropriate court may vary the requirements specified in the notice as it considers appropriate.

(4) The appropriate court for the purposes of this paragraph is—

- (a) the court in England and Wales or Northern Ireland in which proceedings have been brought in relation to the pyrotechnic article for—
  - (i) contravention of a provision of these Regulations;

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<sup>(28)</sup> 1980 c.43.

<sup>(29)</sup> SI 1675/1981 (N.I. 26).

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- (ii) an offence imposed by these Regulations;
  - (b) the employment tribunal seized of appeal proceedings against a notice which relates to the pyrotechnic article and which has been served under or by virtue of paragraph 1 of Schedule 4; or
  - (c) in any other case, a magistrates' court in England and Wales or Northern Ireland, or in Scotland a sheriff for any sheriff court district in which a withdrawal notice has been served on a person.
- (5) A person aggrieved by an order made pursuant to an application under paragraph (1) by a magistrates' court in England, Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—
- (a) in England and Wales, to the Crown Court;
  - (b) in Northern Ireland, to the county court.
- (6) A person aggrieved by an order made by an employment tribunal pursuant to an application under paragraph (1) or by a decision of an employment tribunal not to make such an order, may—
- (a) appeal against that order or decision in England and Wales to the High Court on a point of law in accordance with section 11(1) of the Tribunals and Inquiries Act 1992<sup>(30)</sup>;
  - (b) seek review of the order or decision by the employment tribunal in accordance with Rules 34 to 36 of the Employment Tribunal Rules.
- (7) For the purposes of this paragraph, "Employment Tribunal Rules" means the rules set out in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004<sup>(31)</sup>, as modified by the provisions of Schedule 4 to those Regulations.

#### **Offence of contravening a withdrawal notice**

- 6.—(1) A person who contravenes a withdrawal notice is guilty of an offence and liable on summary conviction to—
- (a) imprisonment for a term not exceeding three months; or
  - (b) a fine not exceeding level 5 on the standard scale.

### SCHEDULE 5

Regulation 49(11)

#### Revocations and amendments of provisions of the Explosives (Fireworks) Regulations (Northern Ireland) 2002

#### **Revocations and amendments to the Explosives (Fireworks) Regulations (Northern Ireland) 2002**

1. The Explosives (Fireworks) Regulations (Northern Ireland) 2002<sup>(32)</sup> are revoked or amended as provided in this Schedule.

#### **Revocations**

- 2.—(1) In regulation 2 (interpretation), the following definitions are omitted—

<sup>(30)</sup> 1992 c.53. There are amendments to this section which are not relevant.

<sup>(31)</sup> S.I. 2004/1861, as amended by the [Constitutional Reform Act \(c.4\)](#) and by the following S.I.s: 2004/2351, 2005/435, 2005/1865, 2007/2142, 2007/2602, 2008/2683, 2008/3240 and 2010/131.

<sup>(32)</sup> S.R. (N.I.) 2002 No 147.

- (a) “air bomb”;
- (b) “another member State”;
- (c) “assembly”;
- (d) “aural effect”;
- (e) “banger”;
- (f) “BS7114”;
- (g) “category 4 firework”;
- (h) “competent authority”;
- (i) “firework of erratic flight”;
- (j) “mini-rocket”; and
- (k) “visual effect”.

(2) In regulation 4 (prohibition on possession, purchase, sale, acquisition, handling or use for fireworks), paragraph (2) is omitted.

(3) Regulation 5 (exemption for special effects purposes) is omitted.

(4) Regulation 8 (labelling requirements) is omitted.

(5) In regulation 9 (fireworks exempt from prohibition)—

- (a) paragraph (a) from “or their equivalents” to the end is omitted;
- (b) paragraph (c) is omitted.

(6) In regulation 13 (offences) “, 8” is omitted.

## Amendments

3.—(1) In regulation 2, for the definition of “category 1 firework” substitute—

““category 1 firework” means a firework falling within the description in paragraph 1(a) of Schedule 1 to the Pyrotechnic Articles (Safety) Regulations 2010.”.

(2) In regulation 2, for the definition of “category 2 firework” substitute—

““category 2 firework” means a firework falling within the description in paragraph 1(b) of Schedule 1 to the Pyrotechnic Articles (Safety) Regulations 2010;

“category 3 firework” means a firework falling within the description in paragraph 1(c) of Schedule 1 to the Pyrotechnic Articles (Safety) Regulations 2010.”.

(3) In regulation 2, for the definition of “firework” substitute—

““firework” has the meaning given in regulation 2 of the Pyrotechnic Articles (Safety) Regulations 2010.”.

(4) In regulation 9—

- (a) it becomes paragraph (1) of regulation 9;
- (b) after paragraph (1) is inserted

“(2) In paragraph (1), “classified” has the meaning assigned to it by the Classification and Labelling of Explosives Regulations (Northern Ireland) 1991.”.(33)

(5) In regulation 11, in paragraph (1) for the words “It is illegal to sell fireworks to anyone under the age of 16” substitute “It is illegal to sell category 1 fireworks to anyone under the age of 16 and category 2 and 3 fireworks to anyone under the age of 18”.

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(33) S.R. (N.I.) 1991 No 516.

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(6) For Schedule 1 (fireworks exempt from the provisions of regulation 4(1)) substitute—

- “1. Category 1 fireworks.
2. Sparklers in category 2.”.

(7) For Schedule 2 (fireworks to which the provisions of section 1(1) and (2) of the Explosives Act (Northern Ireland) 1970 do not apply) substitute (leaving the title of the Schedule unchanged)—

- “1. Category 1 fireworks.
2. Category 2 fireworks if the total weight of fireworks does not exceed 900 kilograms.
3. Fireworks which comply with the Pyrotechnic Articles (Safety) Regulations 2010.”.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement the Directive of the European Parliament and of the Council on the placing on the market of pyrotechnic articles, Directive 2007/23 (OJ L154, 14.06.2007, page 1) (“the Directive”). The Directive sets out harmonised provisions for placing pyrotechnic articles, including fireworks and more specialised articles like gas generators used in car airbags, on the market to guarantee free movement of such articles, whilst ensuring a high level of protection of human health and safety and the protection of consumers and professional end users.

Part 2 deals with category 1, 2 and 3 fireworks (categories are set out in Schedule 1 to Regulations). Regulations 6 to 8 deal with the obligations of manufacturers, importers and distributors. Regulation 9 provides that a firework which complies with a harmonised standard adopted for the purposes of the Directive complies with the essential safety requirements of the Directive which are set out in Schedule 2 to the Regulations. Regulation 10 sets out that a firework that complies with all the legally binding measures of another EU Member State which fully implement the Directive complies with UK law, subject to certain exceptions including the need to comply with the UK age limits and prohibitions set out in regulations 15 and 21. Regulations 11 to 14 set out the procedure for ensuring fireworks are properly tested, are marked to demonstrate that fact and are labelled appropriately. Regulation 15 prohibits the supply of category 2 and 3 fireworks to persons under the age of 18 and the supply of category 1 fireworks to persons under the age of 16. Regulation 18 to 20 deal with enforcement responsibilities. The primary enforcing authorities for Part 2 will be weights and measures authorities in Great Britain and district councils in Northern Ireland. The Secretary of State also has a power to enforce this Part. These enforcing authorities are able to use the provisions of the Consumer Protection Act 1987 to enforce the Regulations, in addition the Regulations provide additional powers where necessary. Regulation 21 provides specific prohibitions on the supply of particular category 2 and 3 fireworks in the United Kingdom (the definition of the fireworks are set out in Schedule 3).

Part 3 deals with category 4 fireworks, theatrical pyrotechnic articles and other pyrotechnic articles. Part 3 follows the same scheme as Part 2. Regulation 33 sets out prohibitions on supply of category 4 fireworks and category T2 theatrical pyrotechnic articles and P2 other pyrotechnic articles to persons other than persons with specialist knowledge. Category T1 and P1 pyrotechnic articles cannot be supplied to persons under 18 years of age. Regulations 36 to 38 deal with enforcement responsibilities, in this case the primary enforcement authorities are the Health and Safety Executive

in Great Britain and the Secretary of State in Northern Ireland (the Health and Safety Executive's enforcement powers are set out in Schedule 4 and the Secretary of State's enforcement powers are mainly set out in the Consumer Protection Act 1987). Weights and measures authorities and district councils in Northern Ireland also have powers to enforce this Part. Regulations 39 to 41 make contravention of specified regulations in Part 3 criminal offences, provide for defences and deal with liability of other persons. Regulation 42 defines who are persons with specialist knowledge.

Part 4 deals with the appointment of bodies that will perform independent checks on conformity assessment of pyrotechnic articles.

Part 5 includes repeals, revocations, transitional and savings provisions (Schedule 5 contains revocations and amendments of Northern Ireland legislation). Regulations 46 and 47 provide for transitional provisions as permitted by Article 21(5) of the Directive. Pyrotechnic articles which take advantage of the transitional provision (where they do not comply with the requirements of the Regulations) must comply with the law existing immediately before 4th July 2010 (or 2013 as the case may be), by virtue of the saving provision in regulation 49(12). Regulation 49(1) makes an amendment to section 31 of the Explosives Act 1875 to exclude from the prohibition on supply of gunpowder to young persons, pyrotechnic articles covered by the Directive (plus percussion caps for toys). Section 39 of that Act applies the same prohibition to other explosives (including fireworks) and therefore the new exclusion from section 31 also applies to section 39.

These Regulations were notified in draft to the European Commission in accordance with Directive [98/34/EC](#) (OJ No. L204, 21.07.98, page 37) which lays down the procedure for the provision of information in the field of technical standards and regulations. Minor amendments have been made to the Regulations since that notification.

A transposition note and a Regulatory Impact Assessment of the effect that this instrument will have on the costs to business and the voluntary sector are available from the BIS website ([www.bis.gov.uk](http://www.bis.gov.uk)). They are also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website ([www.opsi.gov.uk](http://www.opsi.gov.uk)). Copies have also been placed in the Libraries of both Houses of Parliament.