

EXPLANATORY MEMORANDUM FOR THE FIREWORKS REGULATIONS 2004

SI 2004 No. 1836

This explanatory memorandum is laid before Parliament by Command of Her Majesty. It has been prepared by the Department of Trade and Industry.

1. PURPOSE OF THE INSTRUMENT

The Fireworks Regulations 2004 implement a number of the provisions of the Fireworks Act 2003 (c.22). These Regulations also revoke the Fireworks Regulations 2003 - which were made under the emergency procedure and so cease to have effect after 12 months of coming into force. The 2003 Regulations, which relate to possession offences, will be incorporated into the new Regulations.

2. EUROPEAN CONVENTION ON HUMAN RIGHTS

The Minister for Employment Relations, Competition and Consumers is of the view that these Regulations are compatible with the Convention rights.

3. LEGISLATIVE BACKGROUND

The Regulations are made under the Fireworks Act 2003 (c.22), which is received Royal Assent on 18th September 2003. The Fireworks Act enables the Secretary of State to make Regulations for the purpose of ensuring that there is either no risk or that the risks involved are compatible with fireworks use with regard to causing harm or distress to people or animals or causing damage to property.

The Fireworks Regulations 2003 were made under the Fireworks Act – but are to be revoked and remade by these Regulations.

4. EXTENT

The Regulations do not apply to Northern Ireland. As well as applying to England and Scotland (Regulation 7 does not apply in Scotland), the Regulations will apply to Wales.

5. POLICY BACKGROUND

The purpose of the Regulations is to tackle the anti-social use of fireworks through regulation of their use and supply. The Regulations seek to do the following:

Regulation 4

This Regulation makes it an offence for a person under the age of 18 to possess an adult firework (defined in Regulation 3) in a public place. Public place includes any place to which at the material time the public have or are permitted access. This prohibition does not include persons employed in the business of professional displays, fireworks manufacturers or importers etc. A full list of exemptions is contained in Regulation 6.

Regulation 5

This Regulation prohibits any person from possessing category 4 fireworks (professional fireworks). This prohibition does not include persons employed in the business of professional displays, fireworks manufacturers or importers etc. A full list of exemptions is contained in Regulation 6.

Regulation 7

This regulation creates a curfew on firework use. The curfew will apply between the hours of 11 pm to 7 am (the times defined in the Noise Act 1996), but with the exemption of Diwali night (which is a moveable feast), 31 December and Chinese New Year (which, again, is a moveable feast). The curfew on these nights operates from 1am until 7am. On 5 November the curfew operates from 12am until 7am. The curfew does not apply to the use of category 1 type fireworks (party poppers, crackers etc) or category 2 sparklers.

The Regulation allows local authorities to put on displays outside these times for local purposes and for national and commemorative events such as the Queen's Jubilee.

Regulation 8

Prohibits the supply of excessively loud category 3 fireworks (Consumer Display fireworks). The regulation states that no person shall supply a category 3 firework which when used produces a maximum noise level exceeding 120 decibels(AI). The regulation specifies a test measurement and the relevant sound-measuring device to be used.

Due to limitations in the Fireworks Act, under Section 5(3) we are unable to introduce similar maximum noise limits for category 1 and 2 fireworks.

Regulation 9

Controls the periods in which fireworks may be supplied and creates a licence for suppliers wishing to supply outside those periods. The regulations state that no person will supply fireworks to the general public outside the following periods:

- 4 days before and including the day of Diwali (usually in October/November);
- 4 days before and including the day of Chinese New Year (usually in January/February);
- 6 days before and including 31 December;
- 3 weeks before and 5 days after 5 November;

Suppliers who wish to supply to the general public outside these periods will need to apply for a licence (cost £500) to the relevant authority.

The Regulations allow the relevant authority the ability to refuse or revoke a licence to supply if they supply of fireworks from the premises which are not registered or licensed to store and/or by the named person if they have been convicted or are subsequently convicted of an offence under section 11 of the Fireworks Act 2003, section 12 of the Consumer Protection Act 1987 and sections 3 or 4 of the Explosives Act 1875. There is also an appeal mechanism against such decisions.

Regulation 10

This Regulation requires all suppliers (including mail order, internet and telesales) of fireworks to the general public to communicate that,

“It is illegal to sell adult fireworks to anyone under the age of 18
It is illegal for anyone under the age of 18 to possess an adult firework in a public place”

The notice must be displayed prominently at all times at which fireworks are exposed for supply on the premises or where the fireworks are advertised for sale in either catalogues or on the internet.

This Regulation also requires suppliers of fireworks to keep information (part of the paper audit – see Regulation 11 below), and make it available to a local licensing authority upon request on, about who supplied them with fireworks. This requirement does not apply to supplied fireworks with an explosive content of 50 kilogrammes or less.

Regulation 11

This Regulation is intended to introduce a part (see Also Regulation 10) of the paper trail (paper audit) for fireworks from ‘Port to Point of Sale’. The regulation places an obligation on importers to provide information at the point of entry (the port) to furnish Commissioners of Customs and Excise with the following information:

- the name and address of the importing company or companies;
- the address of the storage facility (s) to be used;

We have mandated Customs & Excise to provide this information to the relevant local licensing authorities.

6. REGULATORY IMPACTS IDENTIFIED

A Regulatory Impact Assessment has been prepared and is attached to this Memorandum.

7. COSTS TO THE PUBLIC

There will be no costs incurred by the public, either direct or indirect, as a result of these Regulations.

8. COSTS TO THE EXCHEQUER

See the attached RIA for further information.

9. CONTACT

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Final Regulatory Impact Assessment

1. Issue

1.1 The Fireworks Act 2003 (the “2003 Act”) received Royal Assent on 18 September 2003. This Act is enabling legislation – conferring power on the Secretary of State to make provision about fireworks and other explosives. The passing of the 2003 Act was in recognition that current legislation is inadequate to deal with the increasing inconsiderate and anti-social use of fireworks.

1.2 There are a number of existing Acts of Parliament and Regulations made which cover fireworks - disparate pieces of legislation regulating the supply, sale and use of such products. This legislation is as follows:

- The **Fireworks Regulations 2003** (made under the **Fireworks Act 2003**) prohibit the possession of most fireworks by those under the age of 18 in public places as well as of category 4 fireworks (professional display fireworks) by any person other than a fireworks professional.¹
- The **Fireworks (Safety) Regulations 1997² (as amended)** prohibit the supply to the general public of particular types of fireworks – such as bangers and air bombs - on the grounds of consumer safety (focussed principally on the safety of consumer products), as well as further increasing the minimum age of persons to whom fireworks could be supplied - from 16 to 18 years of age. The Regulations require that all fireworks intended for supply to the general public meet the **British Standard (BS 7114)**.³
- The **General Product Safety Regulations 1994** impose a general prohibition on supplying unsafe goods, and supplement the 1997 Regulations by serving as a residual protective measure in respect of any aspect of safety that is not covered by the 1997 Regulations.

¹ These regulations were made under the emergency procedure – which means that they can last no longer than 12 months. The proposed Firework Regulations 2004 will repeal these Regulations and incorporate them.

² Made under section 11 of the **Consumer Protection Act 1987** - which confers power on the Secretary of State to make regulations for securing, inter alia, that goods to which that section applies are safe and that appropriate information is provided.

³ Although this is due to be replaced by the new harmonised European Standard: BS EN 14035.

- The **Explosives Act 1875** (as modified by the **Control of Explosives Regulations 1991** and as amended by the **Explosives (Age of Purchase) Act 1976** and, in part, superseded by the **Consumer Protection Act 1987**) permits an unlimited quantity of fireworks to be kept, without licensing or registering the place of storage provided the fireworks are intended for private use. However, if storing fireworks for supply in the course of a business (retail or wholesale), the fireworks have to be kept on premises either registered (anything up to 1000 kg) with or licensed (between 1000 and 7200 kg) by the Local Authority or licensed by HSE (for quantities exceeding 7200kg). Additionally, in relation to use (as opposed to storage) of fireworks it is an offence under the 1875 Act to throw or discharge a firework in a street or a public place, or to tamper with or alter fireworks without a licence. The former offence is punishable by a maximum fine of £5,000, the latter with a fine, imprisonment or both.
- The **Health and Safety Act 1974** - provides for the making of health and safety regulations for the general purposes of securing the safety of persons at work. In the context of fireworks, this would generally apply to firework display operators and those events where pyrotechnic or firework displays take place in the course of business.

2. Objectives

2.1 The objective of the Regulations is to reduce the risk that the use of fireworks will cause death, injury or distress – either to persons or animals, or cause the destruction of, or damage to, property. This objective, which is set out in section 2 of the 2003 Act, will be met by a combination of supply side measures and those designed to control the use of fireworks. The 2003 Act enables the Government to address the lack of relevant provisions in existing legislation to tackle the anti-social behaviour phenomenon.

2.2 The proposed Regulations are as follows:

- **Prohibition of supply etc. to young persons:** to simply repeal the 2003 emergency Regulations and incorporate them into the Fireworks Regulations 2004. See separate regulatory impact assessment for the 2003 Regulations: <http://www.dti.gov.uk/ccp/topics1/pdf1/fireworkria2.pdf>
- **Prohibition of supply etc. in certain circumstances:** the creation of a curfew on the use of fireworks – which will prohibit the use of fireworks between the hours of 11 pm and 7 am, with the exception of November 5th, New Years Eve, Chinese New Year and Diwali.
- **Prohibition of supply etc. of certain fireworks:** to set a maximum noise level of 120 decibels (AI) for category 3 fireworks, which are usually the largest and most powerful fireworks available to consumers. 120 decibels is the level taken from the harmonised European Standard (BS EN 14035)

which is being developed by the European Standardisation body (CEN). Category 3 fireworks exceeding this level will be prohibited from sale to members of the public. It would also be an offence to possess them.⁴

- **Licensing of suppliers:** the creation of a licensing system whereby shops, that is, those outlets supplying to the general public – both retail and wholesale outlets - will be required to apply for a licence to supply all year round. Those supplying to the public during the following defined periods only will not be required to obtain a licence to supply:
 - (a) November 5 (3 weeks before and 5 days after)
 - (b) New Year (December 26th to 31st)
 - (c) Chinese New Year (4 Days before, including the Day of Chinese New Year).
 - (d) Diwali (4 Days before, including Diwali)

- **Information about fireworks (a):** requiring those supplying to the public to display a notice informing consumers of the law with respect to the sale to and possession of fireworks by those under the age of 18. The notice should read:

“It is illegal to sell adult fireworks to anyone under the age of eighteen.

It is illegal for anyone under the age of eighteen to possess adult fireworks in a public place”

- **Information about fireworks (b):** conferring power on licensing authorities to request information from suppliers pertaining to the supply – whether retail or wholesale – of fireworks transactions exceeding 50 kg net explosive content (NEC). This will enable a more comprehensive ability to follow firework movements so as to reduce the possibility that they are sold from unlicensed premises – both in terms of storage and supply licences.

- **Information about importation:** where importers, at the point of entry, will be required to provide information so as to reduce the possibility that fireworks are destined for illegal storage and/or distribution. Importers of fireworks will be required to furnish Commissioners of Customs and Excise with the following information (which will then be forwarded on the relevant licensing authority):
 - (i) the name and address of the importing company or companies; and

 - (ii) the address of the storage facility or facilities where the fireworks are destined

⁴ It is worth noting that the standard does not apply to rockets. In the absence of a specified level for category three rockets and an agreed measurement for the sound emitted from this particular firework, the Government consulted with the industry and experts on this issue. In light of these discussions, we consider that the sound level and method of testing in the standard is also applicable to rockets.

2.3 The Regulations apply to England, Wales and Scotland but not to Northern Ireland. However, Scottish Ministers are expected to be conferred with concurrent functions (with the Secretary of State) under sections 4 and 6 – “Prohibition of supply etc, in certain circumstances” and “Public fireworks displays”, so far as the functions are exercisable in or as regards Scotland. The Scottish Executive’s proposals under section 4 are included in the joint consultation document, of which this document forms a part.

2.4 Regulatory issues arising from the Scottish Regulations have been considered in conjunction with the English and Welsh proposals – and are therefore included in this regulatory impact assessment. As this RIA reveals, the Scottish proposals will have no impact on business, charities or the voluntary sector.

3. Risk Assessment

3.1 Despite the current Regulations that are in force, the table below sets out the risks that fireworks pose were the status quo to be maintained:

Risks Identified	Implications
Firework related Injuries	Firework related injuries historically fluctuate around the 1000 per year mark. The figures for 2003 indicate an 11% rise from the previous year’s figure: from 1017 in 2002 to 1136 in 2003.
Anti-social Behaviour	Anti-social behaviour in all of its manifestations is a problem that the Government is tackling head-on by the introduction of specifically targeted Regulations. In the context of fireworks, this particular product has increasingly become a tool for troublesome elements to cause a nuisance in local communities and, in certain instances, cause deliberate damage to property. The Government needs to act to implement all of these proposed measures so that the danger, noise and nuisance of fireworks misuse are reduced.
Noise and Nuisance	Since 2001, the Department of Trade and Industry (DTI) has received quite

	<p>substantial levels of complaints from the public and interest/ cause groups about firework nuisance - especially associated with the noise and misuse caused by fireworks use in the streets.</p> <p>Assuming that the current trend continues, incidents of misuse are likely to present more in the way of misery to particular individuals and groups in the community. Where acceptance was once the norm, increasing usage could lead to some members of the community feeling desperate and distressed.</p>
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4. Benefits

Noise and Nuisance

4.1 The curfew would have benefits for those in areas where firework use beyond acceptable times has become the rule rather than the exception. Many of the complaints that the DTI has received in relation to noise relate not only to the use of fireworks outside of the traditional season (something which the licence to supply is designed to tackle) but also to firework use late at night and in the early hours of the morning. Indeed, responses to the formal consultation on these Regulations confirmed that many members of the public are in favour of restricting the night hours that fireworks can be used.

4.2 We hope for a reduction in the noise late at night as a result of the curfew – and expect that this regulation will be an important deterrent for many law-abiding citizens who use fireworks.

4.3 Although we agree that there are likely to be certain instances where those breaking the curfew could not be brought to account – and, additionally, we recognise that this regulation should not be considered a police priority - we nonetheless believe that the curfew will be enforceable in many cases if the offenders are caught in the act. In this regard, detection will be similar to that of the offence of letting off fireworks in a public place, which is an offence under the Explosives Act 1875.⁵ The combination of these two factors would mean reductions in the noise and nuisance suffered by local residents; reductions in the distress caused to domestic, working (particularly guide dogs) and farm animals (where fireworks late at night can be more distressing in the absence of day time ambient noise levels); and with the possibility

⁵ This offence is punishable by fixed penalty notice (FPN) in England and Wales –under section 1(1) of the **Criminal Justice and Police Act 2001**. The Home Office are working to add the possession and curfew laws to the list of offences that can be dealt with in this way. The Scottish Executive is considering the position for Scotland.

of fewer noise and nuisance complaints being made to local authorities as a result of fireworks use.

4.4 By imposing a maximum level of 120 decibels on category 3 fireworks, we hope to reduce the number of extremely loud bangs that have characterised bonfire nights and caused distress to older people, working animals and pets. This is a first step to applying maximum levels on most consumer fireworks, which the Government intends to do and will keep constantly under review.

4.5 Whilst we sympathise with the recent RSPCA campaign to reduce the level of permitted fireworks noise to 97 decibels⁶ we consider that the European Standard level is the best starting point at which to set the level – this is the first time consumer fireworks have been subject to a maximum noise limit. 120 db has not been randomly picked, but arrived at by fireworks and noise experts forming the relevant firework safety committee within the European Standardisation body (CEN). This level will act as our starting point - a starting point that will be kept under review.

Licensing of Suppliers

4.6 It is envisaged that the licensing regime will ensure that firework sales, for retailers and wholesalers, are restricted to the traditional times of the year. This also includes sale periods for multi-cultural events. Those outlets wishing to supply all year round will be encouraged, given the licence conditions, to be both responsible and more mindful of the impact that fireworks can have on local communities.

4.7 HSE are in the process of drawing up new Regulations – the Manufacture and Storage of Explosives Regulations, which will update the existing regulations made under the Explosives Act 1875 – particularly with regard to registration and licences to store. The two licensing schemes will be complementary insofar as a pre-condition for having a licence to supply would be the possession of a licence to store and, where the storage licence is revoked (which will be possible under the new HSE Regulations) – so too will the licence to supply. See HSE’s MSER consultation document at:

www.hse.gov.uk/consult/condocs/cd174.pdf

Information about fireworks

4.8 As with the use of notices in shops where alcohol and cigarettes are purchased, we believe that communication of the law in this way is essential for the purpose of making both retailers and consumers aware of their respective responsibilities – and, additionally, highlight the serious nature of fireworks use among not only the former

⁶ It should be noted that during the consultation some respondents were confusing the measurements for decibels. The measurement that the RSPCA has used in its campaign is “db (A)” whereas the European Standard uses “db (AI)” The RSPCA’s proposal of 95 db (A) in terms of db (AI) equates to 97db and conversely, the Government’s proposal of 120db(AI) equates to around 113 db (A). We have opted for the European measurement that appears in BS EN 14035 as it is an appropriate measurement to use for short bursts of sound. The measurement of db (A) is more suitable for measuring constant noise emitted from, for example, factories and building sites.

but also those that may be tempted to purchase fireworks on behalf of someone under the legal age of purchase.

Information about Importation

4.9 This regulation will help reduce the possibility that imported fireworks are destined for illegal storage and distribution – by requiring importers to provide information to enforcers which will allow for the tracking of fireworks consignments. It should be noted that as a response to the formal consultation – particularly as a result of industry representation - we revised the initial proposal which required, in addition to the name of the importer, the names and addresses of all fireworks facilities that the fireworks were to be stored at, up to the point of retail sale. Firework distribution down to this level is not always known – and such a requirement would thus constitute an unreasonable burden on the industry. It is for this reason that we have changed the requirements so that fireworks can be traced up to the first point of storage upon leaving the port of entry.

4.10 However, given the desirability of tracking the movement of fireworks (to reduce the risk that from the first point of storage they are not supplied to illegal stores), section 8 of the Fireworks Act will be used to give power to licensing authorities to see records of fireworks movements exceeding 50kg net explosive content (NEC). This will not only allow enforcers to detect those illegally storing fireworks, but it is also complementary to the proposed HSE MSER regulations. Under the proposals, it would be an offence to purchase fireworks exceeding 50kg NEC if you do not have a licence to store – and, conversely, an offence to supply a quantity exceeding this amount to anyone without an appropriate licence to store. HSE suggest that with the ability to see records of transactions, this regulation could enable a more effective means of enforcement.

5. Options

5.1 In formulating these Regulations under the 2003 Act, we have considered a number of options. In doing so, an important guiding principle has been the belief that regulation should be the last resort. The following options set out some of our thinking in terms of the problems identified, the shortfalls of existing legislation and possible non-regulatory solutions to the former:

(a) **do nothing** and rely on existing legislation in this area, e.g. principally the 1997 Regulations and the 1875 Act;

(b) secure **voluntary guidelines** and rely on existing **public awareness campaigns** to ensure consumer safety and control noise and nuisance; or

(c) accept and **enact the selected provisions of the 2003 Act** to tackle the anti-social use of fireworks with measures designed to tackle both the supply of fireworks and their use by consumers.

5.2 Option (a) is acceptable insofar as the following provisions of the 2003 Act are concerned:

- **Section 7 Licensing of Suppliers (Two Tier System)** – many questioned the need and the wisdom of having a two tier licensing system whereby to supply fireworks, irrespective of the times that you supply, you would first need to apply for a licence from the relevant licensing authority – in addition to the payment of a fee. Some went further in suggesting that the anti-social behaviour problem has little to do with supply so much as being a contemporary socio-cultural problem. With regard to the former point, we believe that if it is one of our objectives to achieve a reduction in sales beyond the defined periods, then the best way to achieve this, while avoiding the creation of an excessive and unfair system (and in addition to storage licences), is to require those intending to sell outside of the periods to have a licence. Anyone caught supplying on a day outside of the prescribed periods, for example, would be committing an offence. Regarding the latter point on anti-social behaviour, while the supply of fireworks, strictly speaking, has little bearing on the intention of the user, it is nonetheless the case that the availability of a particular product – such as those products restricted under the Intoxicating Substances Supply Act 1985 (covering products such as glue) - correlates to the frequency of misuse. In the context of fireworks, we believe that restricting sales to within defined periods would therefore have an impact on the times that the product is used.
- **Section 6 Public fireworks displays** - which allows the making of Regulations requiring, among other things, operators to be trained and for firework displays to give notice of planned displays. We do not believe, at this time, that public firework display operators pose a particular danger to the general public. There is no clear evidence that the recorded injuries at public displays were as a direct result of incompetence or the unprofessional use of fireworks by operators. Furthermore, we do not wish to burden display operators with the requirement to notify for the reason that this could increase the already high level of private displays – thereby potentially increasing the frequency of firework noise around the fireworks period. We therefore consider that the existing legislation in this area, which is the Health and Safety Act 1974 (or Regulations made under that Act), is sufficient for the purposes of ensuring that displays are operated responsibly. No further regulation is required at this time, although the DTI and Scottish Executive will continue to monitor during the 2004 firework season.
- **Section 10 Training courses** – related to the above, there is no clear evidence of major incidence of death or serious injury caused by the use of fireworks by display operators and therefore little justification to regulate so as to require professional display operators to undergo mandatory training. Event organisers and display operators have duties under the Health and Safety at Work Act to ensure, so far as reasonably practicable, the safety of members of the public, as well as theirs and others' employees. These duties would, for example, require operators to carry out a full site assessment; ensure that the equipment they use is suitable for the purpose; and ensure

that they and their staff are competent and properly trained.⁷ Furthermore, the Health and Safety Executive (HSE) believe that the fireworks display industry has a generally very good safety record. Again, this will be reviewed after the 2004 fireworks season.

5.3 However, in the light of growing complaints about firework nuisance and damage to properties resulting from their misuse - and the possibility of increasing incidents of injury as a result of the increasing abuse of fireworks - doing nothing in the broader sense is not an option. The scope of existing legislation, which could be said to cover certain aspects of what the Regulations hope to tackle, is limited in the following ways:

- The **Consumer Protection Act 1987** (under which the 1997 **Fireworks (Safety) Regulations** were made) is limited to the safety of consumer products and is therefore insufficient for the purpose of controlling the sale of nuisance products; their time of use; and to address the issue of imports destined for illegal storage.
- The **Explosives Act 1875**, which deals with the storage (registration of or licensing to store) and criminal use of fireworks, is complementary to the 2003 Act but insufficient in the sense that it cannot specify who can and who cannot possess particular types of fireworks – and cannot prohibit the supply of certain types of firework.
- The **Noise Act 1996**, as amended by the Anti-social Behaviour Act 2003, is applicable in England, Wales and Northern Ireland and deals with unacceptable levels of domestic noise beyond 11 pm.
- The **Environmental Protection Act 1990**, applicable throughout the UK, contains statutory nuisance legislation which includes noise but it does not specifically prohibit firework use beyond that time. Additionally, the judgement of whether a noise is a nuisance requires the professional judgement of Environmental Health Officers - who monitor noise over periods of time. In most cases, this would preclude the possibility that those using fireworks beyond this point could be prosecuted given intermittency and the relatively short duration of use. A complete prohibition would remedy this inadequacy by making it an offence to let off any individual firework after 11 pm.

5.4 Option (b) would require the fireworks industry to agree and adhere to voluntary guidelines. The effectiveness of this approach is questionable in the light of the experience with Air Bombs⁸ – where despite the existence of a voluntary ban this

⁷ Specifically, under the Management of Health and Safety at Work Regulations 1999, employers must ensure that their employees are competent to carry out their jobs in a safe manner, with the minimum of risk to themselves or others. This is informed by the requirement that employees undertake an extensive risk assessment to, among other things, identify the hazards and appropriate precautions to take.

⁸ Prior to the recent legislation banning the supply of Air Bombs under the recent **Fireworks (Safety) (Amendment) Regulations 2004**, Local Trading Standards officers reported that certain retailers

particular type of firework has gradually made its way back onto the market.⁹ In the context of the free market, were one competitor to flout a voluntary agreement, the likely outcome would be a domino effect.

5.5 While it should be acknowledged that public awareness campaigns are a valuable way to disseminate important information with a view to influencing public behaviour, the available evidence indicates that there are still an unacceptable number of injuries. The increasing use of fireworks all year round would entail corresponding campaign activity, which would be difficult (and expensive) to sustain for such a period. One of the principal reasons for this is that broadcasters are unlikely to extend the free airtime given to Government TV 'fillers' throughout the year - and certainly not with the same intensity as they do pre-November 5th.

5.6 Option (c), in its entirety, is the recommended option – and one which would plug the gap in existing legislation - and focus specifically on the issue of anti-social use.

6. Business Sectors Affected/ Competition Assessment

6.1 The markets affected by the proposed Regulations are firework manufacturers (or more accurately, importers, as no real manufacture of consumer fireworks takes place in the UK¹⁰), importers, professional firework display operating companies and retail and wholesale outlets. The majority of retailers that would be affected are outlets such as newsagents, garden centres and supermarkets - whose principal merchandise are products other than fireworks.

6.2 The results of applying the competition filter¹¹ for all of the proposed regulations indicate that there is little in the way of significant effects on competition. Questions 1, 2 and 3 (industry concentration) were answered 'yes', as was question 5 on market structure. The other five questions were answered in the negative. On that basis, a full competition assessment is not needed.

6.3 Although question 5 of the filter was answered "yes" with regard to licences to supply all year round, we believe that the possible outcome is not significant. It is certain that for those suppliers that currently supply fireworks all year round there will be a disadvantage inasmuch as they will have to pay for a licence to supply whereas others supplying within the defined periods will not. However, it is expected that the cost of the licence to supply (£500) would be negligible to those whose market niche is satisfying year round demand for fireworks at weddings, birthdays and other such events – as well as during the peak firework season. It is therefore likely that the

across the country were selling Air Bombs despite the agreed voluntary ban on such items. However, as it was not an offence to supply Air Bombs to the public, there is no quantitative data available.

⁹ 2004 Regulations available at: <http://www.legislation.hmsso.gov.uk/si/si2004/20041372.htm>

¹⁰ With the exception of minor product assembly.

¹¹ For further details see: www.cabinet-office.gov.uk/regulation/ria-guidance/content/competition/index.asp

existing customer base of both the seasonal outlets and those supplying all year round will remain the same.¹²

6.4 We consider the proposals made under section 3, 4, and 5, that is, the creation of a curfew, the possession of fireworks in public places by under 18s and the prohibition of possession of category 4 by anyone other than a fireworks professional, respectively, to have no impact on competition.

6.5 Similarly, with the introduction of a maximum decibel limit on category 3 fireworks, in line with the European Standard, this, if anything, reduces barriers to trade by making manufactured fireworks marketable throughout the European Union.

6.6 Importers will be required to ensure that they are able to furnish Commissioners of Customs and Excise with the relevant information. This is considered to present little in the way of an obstacle to competition on the free market.

6.7 As regards the information requirement – that is, licensing authorities checking records of suppliers - during the formal consultation on the proposed Regulations the fireworks industry indicated that it is normal practice to keep such records – thus involving little in the way of an extra burden on business.

7. Small Businesses: ‘*The impact Test*’

7.1 In both our informal and formal consultations with representative bodies of small businesses, there was a mixed response to the licensing section of the Act. In our consultation on the Act before it became law there were three main concerns about the form that a licensing regime may take:

- the licensing regime should be fair, that is, in the context of possible higher costs for licences for ethnic community retailers;
- the requirement that small businesses would have to undergo some sort of training as a condition to the licence being granted - as this may prove difficult for family businesses; and
- the total cost of a licence and how that will impact on yearly net profits.

7.2 In formulating Regulations, we considered carefully both these and more recently expressed concerns. We believe that we have dealt with them in the following ways:

- The licensing regime is fair to ethnic minorities because a licence to supply is not needed during those festivals where minority faiths and cultures traditionally use fireworks, that is, Diwali and Chinese New Year.

¹² It should be noted, however, that with the coming into force of the Manufacture and Storage of Explosives Regulations the overall cost to all suppliers is likely to rise. HSE are currently consulting on the appropriate costs.

- We do not see the need for retailers/wholesalers to undergo training (for the reasons set out in section 3, above). This is usually provided by the companies that supply them with fireworks.
- Those outlets supplying within the defined periods are not required to have a licence to supply - so no costs will be incurred in this regard.¹³ The impact on specialist outlets whose principal merchandise is fireworks is not expected to be significant as the cost of the licence is likely to be relatively small in relation to annual turnover. The rise from the original cost proposal of £200 (as set out in the consultation document) to £500 was in part on advice from specialist outlets and the industry itself – acting as a deterrent to seasonal suppliers while allowing for effective enforcement of the licensing system.

8. Issues of Equity and Fairness

8.1 As with the RIA for the Fireworks Bill, our consultations revealed concern by particular religious and cultural communities in relation to Regulations creating a curfew on firework use and a licensing requirement for suppliers. With regard to the latter, as above, there was particular concern with the idea of a two-tier licence scheme where suppliers to local communities for multicultural events might have to apply for the more expensive second tier of licence to supply all year round. After consultation with a number of faith and cultural groups, we were able to identify which groups traditionally use fireworks for particular events. We have therefore included the dates of Diwali and Chinese New Year in our list of exemptions - thus precluding the requirement that such outlets would have to apply for a year round licence. Similarly, we have also included exemption to the curfew for those celebrating these events.

8.2 We believe that with the list of exemptions and allowances included in the Regulations we have dealt with these concerns and achieved the right balance between fairness and the need to reduce nuisance and anti-social behaviour in general.

8.3 We will meet with the commitments to assess and consult on the likely impact of proposed policies set out in DTI's Race Equality Scheme which is available at: www.dti.gov.uk/race-equality-scheme/index.htm

9. Enforcement, Sanctions, Monitoring and Review

Possession Offences and a Curfew on Firework Use

¹³ Although, as aforementioned, all those that store fireworks will have to have to be registered or licensed– as under the current legislation and that to follow under the proposed MSER.

9.1 The police will continue to have primary responsibility for enforcement of the possession offences. The police will also have responsibility of enforcing the curfew on fireworks use. As stated in paragraph 5.3 above, some police representatives have expressed concern about the enforceability of this measure. ACPO and ACPOS, for example, were concerned that public expectations would be raised disproportionate to what is practicably possible with regard to eliminating fireworks nuisance beyond the curfew times. We agree with the police insofar as we recognise that in certain circumstances, given the ephemeral nature of fireworks use, investigation would be difficult. However, again as suggested in 5.3, we consider that this measure is comparable to other measures in place such as the offence of letting fireworks off in a public place – or any other offence where the presence of a police officer in the vicinity of an offence is the best circumstance for action.

9.2 Some police representatives gave their support for the idea of community support officers (CSOs) taking on the responsibility for enforcement of curfew breaches. In addition to other minor offences, the Home Office is looking into extending the enforcement responsibilities for the curfew to CSOs – with the possibility of improved enforcement.

9.3 The Home Office is also working improve the sanctions available to the police to deal with curfew breaches and possession offences. We believe that the most suitable and cost effective way is to issue a FPN. This will require amendment to the Criminal Justice and Police Act 2001. The Home Office will be laying affirmative resolution Regulations in July (before Parliamentary recess) to ensure that possession offences that are breaches of a curfew will be punishable by this means. The Scottish Executive is also assessing the situation.

9.4 Currently, the powers of the 2003 Act give police officers the power to issue a summons and seize the prohibited item. Under Section 11(4) of the Fireworks Act, any person found in breach of Regulations made under that Act is liable on summary conviction to:

- an imprisonment term not exceeding six months; or
- a fine not exceeding level 5 (£5000)

9.5 The Home Office is looking into the possibility of giving power to the police to stop and search in the context of possession offences. In the formal consultation the police expressed their enthusiasm for such a power. The Scottish Executive is also considering this issue.

9.6 The regulations proposed in the consultation document included a dispensation provision for local authorities to grant to private and professional display operators. However, in response to the consultation the Government has removed this from the final Regulations – as there would seem to be little in the way of fireworks displays that do take place past the hour of 11 pm – and, additionally, we agree with respondents that there seems to be little reason for professional public display operators to set fireworks off at this time – the same as for non-professionals.

9.7 In terms of enforcement, this is likely to reduce the regulatory burden on Local Authority licensing departments in issuing permits – as well as eliminating the need to set up a communication system between the police and the Local Authorities i.e. where local authorities would have been required to inform the police of a fireworks display permitted beyond 11 pm.

Notice to consumers

9.8 The enforcement of this regulation would fall to local Trading Standards Officers. We do not consider that this constitutes a new burden as such and thus not does not entail much in the way of extra costs. It would be enforced in the course of Trading Standards duties under the Firework (Safety) Regulations 1997 (enforcement of the restrictions on under age sales, etc.).

Importation

9.9 Importers of goods, or representatives contracted to complete Customs formalities on their behalf, are required to declare goods on Customs declaration form C88 (either in writing or by data processing techniques) as laid down by Article 62 of Council Regulation 2913/92 and Article 205 of Commission Regulation 2454/93. Section 9 of the Fireworks Act will make an additional mandatory requirement for the importers to provide both the name and address of their business, as well as the address of the storage facility or facilities to where the fireworks are destined (the first drop off points after leaving the port). Customs and Excise will require this information to be given in form C88. The effectiveness of the proposed regulation is self evident, as the information collected will be passed on to the relevant storage licensing bodies, who will then be able to carry out checks against current data that they have or physical spot checks for those suspected of breaking their storage licence conditions (such as exceeding the permitted gross weight of explosive content at particular storage premises).

9.10 It is envisaged that the Local Trading Standards Office at each port where fireworks are imported (mainly at Felixstowe) will be passed the information collected by Customs and Excise and then process that information - distributing the details to the relevant local authorities responsible for issuing licences to store.

9.11 The relevant authorities responsible for registration and licensing of storage premises, that is, HSE, Trading Standards or the Fire Rescue Services, etc, will be responsible for acting on information once it is handed to them by the Trading Standards Office at port. This particular regulation – given the necessity to set up the machinery - will not come into force until 1st January 2005.

10. Costs

Enforcement

10.1 There will be no extra costs in enforcing the possession offences as under section 3 and 5 of the 2003 Act – as this is currently in place under the Fireworks Regulations

2003¹⁴ (emergency Regulations). However, in relation to the fireworks curfew, where we might expect an increase in the cost of enforcement, ACPO and ACPOS advise that it is difficult to estimate costs for enforcement of a curfew - as it is unknown how many offences are likely to occur and with how many action can be taken. This will become clearer with the benefit of experience.

10.2 However notwithstanding the above, it is envisaged that the powers and sanctions that the Home Office hope to give the police, such as the ability to deal with offences by FPN, are expected to reduce the time involved in dealing with these offences – as well as reducing overall court costs.

10.3 With regard to the licensing of suppliers, LACORS believe that the overall cost of administration and effective enforcement will be covered by the cost of the licence.

10.4 In relation to the importation regulation, the machinery for processing and distributing collected information is still under discussion. It is therefore too early to estimate the costs for such a system until the details are finalised. LACORS are to advise the Government in due course.

10.5 Customs and Excise, in relation to the passing of information about fireworks imports, do not expect the costs to be significant – but rather see it as an extension to the system that is currently in operation. It should be noted, however, the final cost will depend on how rigorous the collection and subsequent passing on of the information is. We are still in discussion with Customs and Excise on this point of administration, and it is our preference for the system to be robust enough to ensure the regulation is effective.

Licensing of retailers

10.6 The regulatory impact assessment of the Fireworks Bill noted that while representative bodies of the retail sector were generally supportive of the Bill's provisions, they still had concerns that the cost of a licence to supply would be damaging to retailers – if significantly above the current £13 registration fee for storage (which is the form of storage that most retailers currently have). As explained in paragraph 7.2, above, as a result of listening to the concerns of retailers in our informal consultations, we believe that we have addressed those concerns by exempting the majority of outlets - an estimated 97%¹⁵ who sell during seasonal times, from the requirement to be licensed.

10.7 Those who supply fireworks to the public – that is retailers, wholesale, mail order or internet suppliers - are likely to incur minor costs in terms of familiarisation with the new laws, particularly with regard ensuring that the notices that they are required to display conform to the Regulations and to ensure that they do not sell into periods where they would be required to be licensed. We expect this cost to be minimal however.

¹⁴ See RIA for the 2003 Fireworks Regulations:
<http://www.dti.gov.uk/ccp/topics1/pdf1/fireworkria2.pdf>.

¹⁵ This figure is an estimate provided by the **British Fireworks Association**.

11. Consultation

11.1 To date the following stakeholders were among those consulted, both formally and informally, and have had key input into the formulation of these Regulations:

Small Business Service

CAFOA

*Association of Chief Police Officers
(ACPO)*

Home Office

Fire and Rescue Service

*Association of Chief Police Officers n
Scotland (ACPOS)*

*National Association of
Shopkeepers*

Defra

*CBI – Explosives Industry Group
(CBI EIG)*

Association of Convenience Stores

*Animal Welfare Coalition – incl. Blue
Cross and RSPCA*

*Department of Constitutional Affairs
(DCA)*

British Fireworks Association (BFA)

British Pyrotechnics Association

LACORS

Trading Standards Institute

Welsh Assembly

*Chartered Institute of Environmental
Health*

British Retail Consortium

Local Government Association

Customs and Excise

London Chinatown Association

Health and Safety

Executive/Commission

To date we have received 293 individual responses sent directly from organisations and members of the public – and a further 681 responses from constituents sent via MPs. We will issue a formal response to the points raised in the consultation in late August.

12. Conclusions and Recommendation

12.1 The Fireworks Act 2003 sets out the purpose of the enabling provisions under section 2, that is to reduce the possibility that firework use can cause death, injury or distress, either to persons or animals, or cause the destruction of, or damage to, property, to which these proposed measures are designed to achieve. While the Government is guided by better regulation principles – and, in particular, committed, wherever possible, to avoiding regulation, we believe that the Fireworks Act itself is invaluable legislation in its scope in the area of fireworks, that is, in providing a framework by which to tackle any new problems on the horizon - and now especially in the context of anti-social behaviour and the consequent public dissatisfaction with the law as it is. We have carefully chosen - with these principles and the specific problems of fireworks in mind – which of the provisions of the Act are necessary to enact in order to reduce the risks set out in section 2. And with these proposals, we believe that this represents a first significant step to address the problems in an effective and measured way and therefore recommend that these Regulations be implemented as soon as possible.

Signed by the Minister responsible: *Gerry Sutcliffe*

(Parliamentary Under-Secretary of State for Employment Relations, Competition and Consumers)

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