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STATUTORY INSTRUMENTS

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**2010 No. 1554**

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

**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(1) 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.

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(1) OJ No L396, 30.12.2006, p1.

### **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.