

EXPLANATORY MEMORANDUM TO
THE PYROTECHNIC ARTICLES (SAFETY) REGULATIONS 2015

2015 No. 1553

1. 1.1 This explanatory memorandum has been prepared by the Department of Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**

2.1 The purpose of this instrument is to implement two Directives: Directive 2013/29/EU of the European Parliament and of the Council (OJ No L178, 28.6.2013, p27) (“the 2013 Directive”) which recasts the 2007/23/EU Directive (“the 2007 Directive”) on the harmonisation of laws relating to the making available on the market of pyrotechnic articles and Commission Implementing Directive 2014/58/EU (OJ No L115, 17.4.2014, p28) (“the 2014 Directive”) on setting up a system for the traceability of pyrotechnic articles.

2.2 This instrument will meet the United Kingdom’s legal obligation to implement the Directives. The intended effects of implementing the Directives are to improve the safety of pyrotechnic articles made available on the market by (i) ensuring that the obligations of all of the economic operators in the supply chain are clearer (and in particular, those of importers and distributors); (ii) making pyrotechnic articles easier to trace; and (iii) providing a more structured market surveillance regime.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 Although the power available under section 11 of the Consumer Protection Act 1987 would permit the making of this instrument to implement some aspects of the 2013 Directive and the 2014 Directive, this instrument is made solely under section 2(2) of the European Communities Act 1972.

3.2 Section 2(2) alone has been relied upon for two main reasons. First, it enables a more consistent and comprehensible approach to be taken to the enforcement provisions. Under the Pyrotechnic Articles (Safety) Regulations 2010, reliance on the regulation-making power in section 11 of the Consumer Protection Act 1987 alongside section 2(2) resulted in inconsistencies between the enforcement regimes applying to category 1 to 3 fireworks and the other categories of pyrotechnic article. It also made it more difficult to understand the 2010 Regulations. Second, it allows more consistency between the wording of this instrument and future Regulations that are expected to be prepared to

implement other Directives forming part of the EU's New Legislative Framework programme.

4. Legislative Context

4.1 This instrument is being made in order to implement the 2013 Directive and the 2014 Directive.

4.2 This instrument revokes and replaces the Pyrotechnic Articles (Safety) Regulations 2010, which implemented the 2007 Directive. It contains substantial transitional and savings provisions. It also contains consequential amendments to the Explosives Act 1875 and secondary legislation regulating the use of fireworks.

4.3 The approach taken to implementing the 2013 Directive and the 2014 Directive is to copy-out the obligations in the Directive where possible. A Transposition Note has been prepared and is attached as an Annex to this Memorandum.

4.4 The Department deposited an Explanatory Memorandum in Parliament concerning the draft proposal for the 2013 Directive. In its 52nd Report, the House of Commons European Scrutiny Committee considered the draft proposal for the Directive not to raise questions of sufficient legal or political importance to warrant a substantive report to the House.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Small Business, Industry and Enterprise has made the following statement regarding Human Rights:

In my view the provisions of the Pyrotechnic Articles (Safety) Regulations 2015 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The 2013 Directive sets harmonised rules relating to the safety of pyrotechnic articles. It repeals and replaces the 2007 Pyrotechnics Directive. In particular, the 2013 Directive applies the EU's New Legislative Framework (the "Framework") approach to the pyrotechnics sector. The Framework is a set of general principles and rules which aims to make legislation on the single market for goods clearer, more consistent and more effective. The key changes that are to be made are the following.

- The definitions have been brought in line with the Framework.
- The obligations of economic operators have been extended and clarified. For example, manufacturers and importers will need to monitor the conformity of pyrotechnic articles placed on the market.
- New requirements have been introduced to increase the traceability of pyrotechnic articles placed on the market, including a requirement to label pyrotechnic articles with a registration number and a requirement for economic operators to keep records of other economic operators in the supply chain for 10 years.
- More detailed requirements have been introduced concerning the process by which, and the criteria which must be satisfied before, bodies carrying out conformity assessment procedures can be considered notified bodies able authorised to carry out tasks under the Directive.
- Enforcing authorities have been given additional powers (including issuing recall notices), but are also subject to more detailed requirements as to how they use their powers. For example, in the cases of pure formal non-compliance, it is necessary for enforcement authorities to give economic operators an opportunity to bring pyrotechnic articles into compliance before taking further action.

7.2 The 2014 Directive supplements the traceability obligations in the 2013 Directive.

7.3 The UK must implement the Directives and we propose to meet our EU obligations by implementing this instrument.

- Consolidation

7.4 This instrument makes amendments to the Explosive Act 1875, the Fireworks Regulations 2004 and the Explosives (Fireworks) Regulations (Northern Ireland) 2002. The Department is not planning to consolidate any of these pieces of legislation.

8. Consultation outcome

8.1 The Department for Business, Innovation and Skills carried out a six week public consultation on the new Regulations which started on 11 December 2014 and ended on 22 January 2015. A shortened consultation was carried out as industry have already been closely involved with the development of the 2013 Directive and are already aware of its provisions and potential impacts.

8.2 There were 17 responses to the consultation: nine were from industry or trade bodies, five from trading standards officers and three from the emergency services. 13 of the 15 respondents who commented agreed that the draft regulations were effective and proportionate. Of the two that did not, one objected to any regulation of pyrotechnic articles. The other raised a question about the interpretation of the Directive, which will be addressed as a matter of enforcement policy, rather than through the drafting of this instrument.

9. Guidance

9.1 Guidance is being developed and will be issued shortly.

10. Impact

10.1 The impact on business is outlined in the Impact Assessment and the best estimate is a cost of around £6.4 million over 10 years.

10.2 The impact on charities or voluntary bodies is negligible.

10.3 The impact on the public sector is negligible.

10.4 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to small business. The Government considers that the legislation will not impose a disproportionate cost on small firms.

12. Monitoring & review

12.1 The new Regulations will be reviewed by the UK five years after coming into force, in July 2020.

13. Contact

13.1 Christine Knox at the Department for Business, Innovation and Skills
Tel: 020 7215 3465 or email: Christine.knox@bis.gsi.gov.uk can answer any queries regarding the instrument.