

**EXPLANATORY MEMORANDUM TO
THE FURNITURE AND FURNISHINGS (FIRE) (SAFETY) (AMENDMENT)
REGULATIONS 2010**

2010 No. 2205

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

2. **Purpose of the instrument**
 - 2.1 To amend Schedules 1 and 3 of the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (“the 1988 Regulations”).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None

4. **Legislative Context**
 - 4.1 The 1988 Regulations are national safety regulations made under section 11 of the Consumer Protection Act 1987 and aim to protect consumer safety by requiring upholstered furniture and furnishings supplied in the UK to comply with a number of fire-resistance standards. These amending Regulations substitute a specification for a test cover fabric in Schedules 1 and 3 to the 1988 Regulations as it is difficult to manufacture fabric meeting the current specification commercially.
 - 4.2 The 1988 Regulations were notified to the Commission in accordance with the requirements of Directive 98/34/EC as amended (the Technical Standards Directive) as they constituted a potential barrier to trade in requiring products to comply with certain safety standards. These amending Regulations have also been notified to the Commission and no objections have been received by member states or the Commission.

5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The 1988 Regulations provide consumer protection by stipulating fire-resistance standards for upholstered furniture and furnishings. Products which fall under the regulations must be tested to demonstrate they are safe. Test houses carry out a variety of tests to show that products meet these requirements. The cover fabric to be used in one of these tests is specified in Schedules 1 and 3 of the Regulations.

7.2 The test cover fabric specified in the Regulations is not available commercially because it is difficult to manufacture in accordance with the specification. The amending Regulations will update the specification of the test cover fabric so as to include fabric that is currently manufactured commercially and still meets required performance standards. This will enable test houses to carry out the necessary tests as required under the Regulations. It will also enable effective enforcement to ensure that only compliant products are supplied in the UK.

- *Consolidation*

7.3 It is not proposed to consolidate the 1988 Regulations at this time. A review of the Regulations will be starting shortly and it is considered that consolidation would be more appropriate when the review is completed.

8. Consultation outcome

8.1 A statutory consultation exercise on the amending Regulations closed on 23rd December 2009. The Consultation document included a copy of the draft regulations and was sent to over 50 stakeholders, including furniture industry trade associations, test laboratories, enforcement agencies, independent experts and Other Government Departments.

8.2 Twenty responses were received, all of which supported updating the fabric specification and sixteen of which gave substantive replies. The consensus was to use a simplified specification based on British Standards. This is very similar to what is proposed in the amending Regulations. The proposed specification has been agreed with industry representatives and enforcement authorities. A government response to the consultation was published on the Department website in March 2010.

9. Guidance

9.1 There is currently guidance in place. The Department will consider amending the guidance in due course.

10. Impact

- 10.1 There will be no new impact on test houses or manufacturers or retailers of furniture and furnishings. The amendment will give a legal basis to use of the test cover fabric currently in use and will involve no additional costs for industry or enforcers.
- 10.2 There will be no impact on charities or voluntary bodies.
- 10.3 The impact on the public sector will be minimal. The Regulations will continue to be enforced by Local Authority trading standards departments.
- 10.4 An Impact Assessment is attached to this Memorandum.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to change the specification to a test cover fabric that is available commercially to all businesses.
- 11.3 The basis for the final decision on what action to take to assist small business was taken by this Department. There are around 10 -1 5 UK testing houses that test furniture fillings under the FFRs. Of these approximately 80 percent are SMEs. The UK Textile Laboratory Forum represents nearly all of these test houses and has petitioned the Department to make the proposed changes. The new regulations will benefit all enterprises by authorising use of the test cover fabric currently in use and making it possible to use commercially available fabrics which are cheaper and easier to source.

12. Monitoring and review

- 12.1 The Regulations will be reviewed by the Department in 2015, five years after coming into force.

13. Contact

- 13.1 Christine Knox at the Department for Business, Innovation and Skills (Tel: 0207 215 3465 or email: christine.knox@bis.gsi.gov.uk) can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Department for Business, Innovation and Skills	Title: Final Impact Assessment of amendment to Furniture and Furnishings (Fire) (Safety) Regulations 1988	
Stage: Post consultation	Version: Final	Date: March 2010
Related Publications:		

Available to view or download at:

<http://www.berr.gov.uk/files/file53555>

Contact for enquiries: Christine Knox / Terry Edge

Telephone: 020 7215 3465

What is the problem under consideration? Why is government intervention necessary?

A problem has recently come to light with the use of the cover fabric required to test the safety of products under the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (FFRs). This means that the FFRs are, for practical purposes, not simple to comply with and to enforce in this respect. Intervention is necessary to facilitate compliance with the regulations and ensure that only safe products are placed on the market.

What are the policy objectives and the intended effects?

The objective is to give a legal basis to the test cover fabric currently in use. This will be achieved by amending the current regulations and revising the specification of the test cover fabric that should be used when testing certain products under the FFRs.

The intended effects are to facilitate compliance with the regulations without jeopardising consumer safety or causing cost to industry, and to facilitate enforcement thereby ensuring the safety of furniture and furnishings on the UK market and the protection of the consumer.

What policy options have been considered? Please justify any preferred option.

- (i) do nothing, and maintain current unsatisfactory position of non compliance and difficulties with enforcement;
- (ii) insist that test houses use the test cover fabric specified in the regulations, which would impose a heavy cost on industry without substantively improving safety; and
- (iii) amend the specifications in the regulations so as to enable use of the test cover fabric currently in use (the preferred option). This will ensure an appropriate level of consumer safety and enforcement without overburdening industry at a difficult time.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The new regulations will be reviewed by the UK, 5 years after coming into force, i.e. in 2015.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Edward Davey

..... Date: 5th September
2010

Summary: Analysis & Evidence

Policy Option: Implement the 2008 Directive	Description: Assessment of costs and benefits of the amendment to the Furniture and Furnishings (Fire) (Safety) Regulations 1988
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' There should be no associated costs as test houses are already using a test cover fabric of the kind which will be specified in the amended regulations.		
	One-off (Transition) Yrs			
	£ 0		0	
	Average Annual Cost (excluding one-off)			
	£ None		Total Cost (PV)	£ 0.0 million
Other key non-monetised costs by 'main affected groups' Costs to the Market Surveillance Authority are likely to be minimal and will mainly be due to updating and disseminating information on the amendment.				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' It has not been possible to quantify any of the benefits that will result from the new regulations.		
	One-off Yrs			
	£ -			
	Average Annual Benefit			
	£ -		Total Benefit (PV)	£ -
Other key non-monetised benefits by 'main affected groups' Test Houses will have easy access to a commercially available test cover fabric. Trading Standards will have clarification of the regulations for the purposes of enforcement.				

Key Assumptions/Sensitivities/Risks None

Price Base Year 2010	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	Approx late 2010				
Which organisation(s) will enforce the policy?	UK Trading				
What is the total annual cost of enforcement for these	£ minimal				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	Yes				
What is the value of the proposed offsetting measure per year?	£ 0				
What is the value of changes in greenhouse gas emissions?	£ 0				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro £0</td> <td style="width: 25%; text-align: center;">Small £0</td> <td style="width: 25%; text-align: center;">Medium £0</td> <td style="width: 25%; text-align: center;">Large £0</td> </tr> </table>	Micro £0	Small £0	Medium £0	Large £0
Micro £0	Small £0	Medium £0	Large £0		

Are any of these organisations exempt?	No	No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase	£ 0	Decrease	£ 0	Net £ 0

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

OVERVIEW

The FFRs currently cannot be complied with and are difficult to enforce due to the ongoing use of a non-specified cover fabric being used to test whether certain products / furniture fillings comply with the regulations.

This is a technical issue arising from the original specification of the test cover fabric. The proposed amendment will change the specification of the test cover fabric so as to permit the use of commercially available fabrics, thus enabling the test houses to continue using the test cover fabric currently used by them.

BACKGROUND

The FFRs provide consumer protection by stipulating fire-resistance standards for furniture and furnishings. Since their introduction in 1988 they have been very successful in saving lives and preventing injuries. Products sold under the FFRs must be tested to show they are safe for consumer use. Accredited test houses carry out a variety of tests, for manufacturers, retailers and enforcement authorities, which demonstrate whether or not products meet the requirements of the regulations. Schedule 1 of the FFRs gives specifications of the test cover fabric to be used.

The tests used by the test houses are the most stringent in Europe. There are three tests, two of which are not in question - match and cigarette tests on cover fabrics, do not use the specified test cover fabric.

Recent independent advice suggests that the use of the alternative test cover fabric would enable furniture products to meet the flammability requirements of the FFRs. This is a technical issue arising from the original specification of the test cover fabric, but there is no reason at present to think that safety has been at risk due to the use of this alternative fabric.

Trading Standards has also continued to work with companies who find themselves in breach of the FFRs - only in very exceptional circumstances have these companies not co-operated fully. Unsafe products have therefore continued to be removed from the market without recourse to the courts. The General Product Safety Regulations 2005 (GPSR) require that all products put on the market are safe. So consumer safety has not been at risk because of non-compliance with this aspect of the FFRs.

INTERACTION WITH OTHER LEGISLATORY PROVISIONS

- The Consumer Protection Act 1987 (CPA): This provides the legal basis for much of the consumer safety legislation introduced in the UK, including the FFRs. Infringement of the FFRs would attract enforcement action under the CPA.
- The General Product Safety Regulations 2005 (GPSR) require that all consumer products put on the market are safe. They are not disapplied by the

SCALE AND SCOPE

There are around 10-15 UK Test Laboratories which test furniture fillings under the FFRs. Broadly speaking in the region of 10,000–20,000 furniture regulations tests take place annually. Not all of these will be testing fillings used the disputed fabric; some will be cigarette and match tests.

RATIONALE FOR GOVERNMENT INTERVENTION

Currently, compliance with the FFRs is difficult due to the use by test houses of the non-specified test cover fabric and non-availability of the specified test cover fabric, which this has made it difficult to enforce the FFRs. While Trading Standards can ensure the safety of furniture by use of the GPSR in order to ensure consumer protection, intervention is necessary to clarify the FFRs and ensure that only safe products are placed on the market under their provisions

The objective is to give a legal basis to the test fabric currently in use. This will be achieved by amending the current FFRs and revising the specification of the test cover fabric that should be used when testing furniture fillings under the FFRs.

DETAILED PROPOSALS

The new Regulations will implement a change to the specification of the test cover fabric to be used when testing furniture fillings under the FFRs.

The intention is to simplify the specification for the test cover fabric as detailed in Schedules 1 and 3 (also referenced in Schedule 2) to the FFRs by way of amendment to those Schedules. The new specification will clarify the statutory requirement and reduce the burden to industry in meeting the existing specification in the regulations.

The new specification will be simpler and will include tolerances for measurements.

MONITORING AND EVALUATION

The new regulations will be reviewed by the UK, 5 years after coming into force ie in 2015.

IDENTIFICATION OF OPTIONS

There are three main options under consideration in this Impact Assessment:

Option (i) Do nothing

Option (ii) Insist that test houses use the test cover fabric as specified in the regulations

Option (iii) Amend the regulations to refer to the test cover fabric currently in use (preferred option).

Option (i) – Do nothing

The first option to consider is to do nothing. This would mean continued non-compliance with the requirements of the FFRs, and difficulties of enforcement for breach.

Option (ii) – Insist that test houses use the fabric specified in the regulations

BIS could insist that the test cover fabric specified in the 1988 regulations is used. However this would carry a considerable cost to industry. Set up costs alone for manufacture of the specified fabric could be around £250,000. On the other hand, consumer safety would not be substantively improved, as independent expert advice is that use of the fabric currently in use by test houses would enable furniture products to meet the flammability standards of the regulations.

Option (iii) – Amend the regulations to refer to the fabric currently in use (PREFERRED OPTION)

This is the preferred option. This would involve preparing draft regulations amending the test cover fabric specification to a simpler version which we would then notify to the commission.

The advantages are: no extra cost to industry as they will be able to use the test cover fabric currently in use. Enforcement of the FFRs will be straightforward. Moreover, consumer safety is not jeopardised by the proposal as recent independent expert advice suggests that furniture products which passed the test using the alternative cover test fabric would meet the flammability requirements of the FFRs.

Benefits

Economic:

The amended regulations would involve no burden on industry. The proposed test cover fabric is commercially available and is cheaper and easier to source than the original test cover fabric specified in the FFRs.

Social:

The main social benefits of the change to the regulations would be to consumers in the form of continued safety of furniture due to the easier enforceability of the regulations. This may also represent a cost saving, in that the change will help to prevent the import of non-compliant furniture which is often highly flammable, i.e. causes and prolongs fires which represent high costs in terms of loss of income through injury, property damage, etc.

Costs

None. The proposed fabric is already in use by test houses.

SMALL FIRMS IMPACT TEST

There are around 10-15 UK Test Laboratories which test furniture fillings under the FFRs. Of these approximately 80% are SMEs. The UK Textile Laboratory Forum represents nearly all of these test houses and has petitioned the Department to make the proposed changes to the FFRs. The new regulations will benefit all enterprises by authorising use of the test cover fabric currently in use and making it possible to use commercially available fabrics which are cheaper and easier to source.

IMPACT ON THE PUBLIC SECTOR- ENFORCEMENT AND SANCTIONS

The amended regulations will continue to be enforced by local authorities' Trading Standards departments. Trading Standards are already enforcing the 1988 regulations and will also enforce these updated requirements. There is no reason to believe this revision of the regulations will have any substantial impact on them. There may in fact be a cost saving to Trading Standards in that currently, they are enforcing against unsafe furniture fillings materials by using the General Product Safety Regulations. However, the GPSR places the onus of proof of lack of safety on Trading Standards, which means they may have to pay for expert witnesses to provide views on which suitable safety measures apply and how they may have been breached. By contrast, under the FFRs, they usually need only pay for a suitable test house to test the product to the specific requirements of the Regulations.

HEALTH IMPACT ASSESSMENT

The amended regulations will benefit consumers. The amended safety standards will have benefits through preventing potential injury from unsafe furniture.

GENDER EQUALITY IMPACT TEST

This has been considered and it is not thought that there will be any possibility of consumers being excluded from benefiting from any potential changes on the ground of their gender. In that context and in terms of costs, it has not been possible to ascertain the extent to which any revision to the regulations would fall disproportionately on a particular gender. In particular, the duty under section 76A of the Sex Discrimination Act 1975 has been considered and does not give rise to any issues.

DISABILITY EQUALITY IMPACT TEST

This has been considered and it is not thought that there will be any possibility of consumers being excluded from benefiting from any potential changes on the ground of any disability. In that context and in terms of costs, it has not been possible to ascertain the extent to which any revision to the regulations would fall

disproportionately on those with disabilities. In particular, the duty under section 49A of the Disability Discrimination Act 1995 has been considered and does not give rise to any issues.

RACE EQUALITY IMPACT TEST

This has been considered and it is not thought that there will be any possibility of consumers being excluded from benefiting from any potential changes on the ground of their ethnicity. In that context and in terms of costs, it has not been possible to ascertain the extent to which any revision to the regulations would fall disproportionately on a particular ethnicity. In particular, the duty under section 71 of the Race Relations Act 1976 has been considered and does not give rise to any issues.

ENVIRONMENTAL IMPACT TEST

The effect of the changes to the regulations has been considered. Environmental protection is not within the objectives of the regulations and therefore no direct environmental impacts are expected from this proposal.

OTHER IMPACT TESTS

Other impact tests (see table in checklist below) have been considered and the proposed amendment to the regulations is not expected to have any direct impact on these areas.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No