

**EXPLANATORY MEMORANDUM TO  
THE TOYS (SAFETY) (AMENDMENT) REGULATIONS 2010**

**2010 No. 1928**

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This instrument amends the Toys (Safety) Regulations 1995 in order to implement the provision (Article 2) of Council Directive 2008/112/EC (O.J. L 345/68, 23.12.2008) (“the Directive”) which amends provisions of Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys (O.J. L. 187, 16.7.1988, p.1) (“the Principal Directive”). The purpose of Article 2 of the Directive is to adapt the references to classification criteria in the Principal Directive to the new system introduced by Regulation (EC) No 1272/2008 of 16 December 2008 on classification, labelling and packaging of substances and mixtures (O.J. L.353, 31.12.2008, p.1). That Regulation incorporates the criteria for classification and labelling of substances and mixtures provided for by the United Nations Globally Harmonised System of Classification and Labelling of Chemicals (GHS).

2.2 The Principal Directive requires Member States to ensure that toys for use in play by children less than 14 years of age are not placed on the market unless they meet essential safety requirements which include certain restrictions on the inclusion of chemicals. The Principal Directive made reference to dangerous substances or preparations within the meaning of Council Directive 67/548/EEC (OJ No 196, 16.8.67, p 1).

2.3 From 27 August 2010 the words “preparation” or “preparations” in the Toys (Safety) Regulations 1995 will be replaced with “mixture” or “mixtures” respectively and from 1 December 2010 the essential safety requirements and the warnings and indications of precautions to be taken when using toys will also make reference to stated hazard classes or categories in Annex I of Regulation (EC) No 1272/2008.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

#### **4. Legislative Context**

4.1 The Regulations are made under section 11 of the Consumer Protection Act 1987 (safety regulations).

4.2 This instrument is being made to transpose amendments made to the Principal Directive by Directive 2008/112/EC. These amendments adapt provisions of the Principal Directive to the new terminology resulting from the new classification rules for substances and mixtures set out in Regulation (EC) No 1272/2008.

4.3 The Department for Work & Pensions submitted an EM on Council Doc No 14110/07 on 1st November 2007 relating to " Draft Decision amending Council Directives 76/768/EEC, 88/378/EEC, 1999/13/EC and Directives 2000/53/EC, 2002/96/EC and 2004/42/EC in order to adapt them to Regulation (EC) ... on Classification, Labelling and Packaging of Substances and Mixtures, and amending Directive 67/548/EEC and Regulation (EC) No.1907/2006. ". The Commons European Scrutiny Committee cleared it, (Report 2, Session 07/08). The Lords Select Committee on the EU cleared it. (P.O.S. 23rd November 2007 session 07/08). Scrutiny history of the Toy Safety Directives is attached in an Annex.

4.4 A Transposition note is attached to this memorandum.

#### **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 Regulation (EC) No 1272/2008 of 16 December 2008 provides for the harmonisation of the classification and labelling of substances and mixtures by aligning existing EU legislation with the United Nations Globally Harmonised System (GHS) and contributes to the GHS aim that the same hazards will be described and labelled in the same way all around the world. It substantively changes hazard descriptions and classes from the previous EU legislation covering dangerous substances: Council Directive 67/548/EEC (OJ No 196, 16.8.67, p 1).

7.2 Article 2 of Directive 2008/112 reflects these changes in the nomenclature of particular classes of substances. It amends the Principal Directive so as to prevent undesired changes in its scope or in the obligations it imposes.

7.3 Regulations implementing Article 2 of the Directive should have been published by 1<sup>st</sup> April 2010 and they should have come into force partially on 1 June and partially on 1 December 2010. We have not yet done this but action now should prevent further infraction action by the Commission.

Consolidation

7.4 Not applicable.

## **8. Consultation outcome**

8.1 The Department has consulted key stakeholders, primarily the British Toy & Hobby Manufacturers Association and other concerned bodies. Those approached were aware of EU Regulation 1272/2008 and content with our proposals. We are also notifying industry and stakeholders of the measures by publishing an information exercise and the draft regulations to implement Article 2 of the Directive on the BIS website and publicity is also being disseminated through Business Link. The notification will also be sent directly to the Health & Safety Executive who are aware of this Directive.

## **9. Guidance**

9.1 No specific guidance is required as the Statutory Instrument is self-explanatory and the changes are of terminology only.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation applies to small business in the toy sector but does not impose any burdens on them.

## **12. Monitoring & review**

12.1 The effects of this Directive will be monitored as part of the monitoring of the Principal Directive.

### **13. Contact**

- 13.1 Tony Eden-Brown at the Consumer and Competition Policy Directorate, Department for Business, Innovation and Skills, tel: 020 7215 0360 or e-mail: [tony.edenbrown@bis.gsi.gov.uk](mailto:tony.edenbrown@bis.gsi.gov.uk) can answer any queries regarding the instrument.

**Transposition Note for Article 2 of Directive 2008/112/EC of the European Parliament and of the Council of 16 December 2008 (OJ No L 345, 23.12.2008, p.68) amending Council Directives 76/768/EEC, 88/378/EEC, 1999/13/EC and Directives 2000/53/EC, 2002/96/EC and 2004/42/EC of the European Parliament and of the Council in order to adapt them to Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures**

Directive 2008/112/EC (“the Amending Directive”) amends provisions of the Directives specified in its title in order to adapt them to the new system introduced by Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures (OJ L 353, 31.12.2008, p.1). That Regulation provides for the harmonisation of the classification and labelling of substances and mixtures by aligning existing EU legislation with the United Nations Globally Harmonised System (GHS) and contributes to the GHS aim that the same hazards will be described and labelled in the same way all around the world.

Article 2 of the Amending Directive amends provisions of Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys (O.J. L. 187, 16.7.1988, p.1) (“the Toy Safety Directive”). The Toy Safety Directive requires toys for use in play by children less than 14 years of age to meet essential safety requirements which include certain restrictions on the inclusion of chemicals, and is implemented by the Toys (Safety) Regulations 1995 (SI 1995/204).

The Toys (Safety) (Amendment) Regulations 2010 implement Article 2(1), (2) (4) and (6) of the Amending Directive. Article 2(3), (5) and (7) of the Amending Directive make amendments to the Toy Safety Directive as from 1 June 2015. However, these provisions have now been superseded by Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (O.J. No L 170/1, 30.6.2009) which repeals the Toy Safety Directive in its entirety by 20 July 2013. Accordingly, Article 2(3), (5) and (7) will not be transposed.

As mentioned above, the Toy Safety Directive has been superseded by Directive 2009/48/EC. This requires Member States to transpose it by 20 January 2011, and to apply its requirements from 20 July 2011.

The Department for Business, Innovation and Skills has lead responsibility for implementation of the Toy Safety Directive.

<b>Article 2 of the Directive</b>	<b>Objectives</b>	<b>Implementation in the Regulations</b>
Article 2(1)	Replacement of the words “preparation” and “preparations” with “mixture” or “mixtures” throughout the text of the Toy Safety Directive	Regulation 2(2) and 2(3)
Article 2(2)	Replaces point (b) in section 2 of part II of Annex II of the Toy Safety Directive to take account of the adoption of Regulation (EC) No 1272/2008	Regulation 3(2) and 3(3)(a)
Article 2(3)	Replaces point (b) of section 2 of part II of Annex II of the Toy safety Directive with effect from 1 <sup>st</sup> June 2015	Will not be transposed in the Toys (Safety) (Amendment) Regulations 2010 because Article 2(3) has been superseded by Directive 2009/48/EC
Article 2(4)	Replaces the first paragraph of point 3 in section 3 of part II of Annex II of the Toy Safety Directive to take account of the adoption of Regulation (EC) No 1272/2008	Regulation 3(2) and 3(3)(b)
Article 2(5)	Replaces the first paragraph of point 3 in section 3 of part II of Annex II of the Toy Safety Directive with effect from 1 <sup>st</sup> June 2015	Will not be transposed in the Toys (Safety) (Amendment) Regulations 2010, because Article 2(5) has been superseded by Directive 2009/48/EC
Article 2(6)	Replaces the title and point (a) in section 4 of Annex IV of the Toy Safety Directive to take account of the adoption of Regulation (EC) No 1272/2008	Regulation 3(2) and 3(4)
Article 2(7)	Replaces point (a) in section 4 of Annex IV of the Toy Safety Directive with effect from 1 <sup>st</sup> June 2015	Will not be transposed in the Toys (Safety) (Amendment) Regulations 2010, because Article 2(7) has been superseded by Directive 2009/48/EC.

## Annex

### Scrutiny History of Directive 88/378EC (Safety of Toys)

1 The Department of Business, Enterprise and Regulatory Reform submitted an EM on Council Document 5938/08 on 18 November 2008 relating to “Proposal for a Directive of the European Parliament and of the Council on the safety of toys and accompanying Commission staff working documents to the proposal amending Directive 88/378/EEC on the Safety of Toys – Impact Assessment and Executive Summary of Impact Assessment”. The Commons European Scrutiny Committee considered it politically important and cleared it (Report 40 session 08/09). It was referred for debate on 19<sup>th</sup> January 2009 and was cleared on 20<sup>th</sup> January 2009. The Lords Select Committee on the EU cleared it (POS 19 December 2009 Session 08/09).

2 DTI submitted an EM (PE-CONS 3645/1/05 REV 1) on 9/1/06 on a "Directive of the European Parliament and Council amending for the 22nd time Council Directive 78/769/EEC on the approximation of the laws, regulations and administrative provisions of member States relating to restrictions on marketing and use of certain dangerous substances and preparations (phthalates in toys and childcare articles)". The Commons European Scrutiny Ctte considered it politically important and cleared it by the Minister's letter of 6/2/06 to the Chairman (Report 19, Item 27127, Session 05/06). The Lords Select Ctte on the EU did not report on it (Progress of Scrutiny, 23/1/06, Session 05/06).

3 DTI submitted EM 13308/99 on 14/1/2000 on a "Proposal for a Directive of the European Parliament and of the Council amending for the 22nd time Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of member States relating to the restrictions on marketing and use of certain dangerous substances and preparations (Phthalates) and amending Council Directive 88/378/EEC on the approximation of laws of the Member States concerning the safety of toys". The Commons European Scrutiny Ctte considered it politically important and cleared it (Report 33, Item 20750, Session 03/04). The Lords Select Ctte on the EU did not report on it (Progress of Scrutiny, 21/1/00, Session 99/00).

4 The Department for Trade and Industry submitted an EM on Council Document 5715/88 on 23 May 1988 relating to “A re-examined proposal for a Council Directive on the approximation of the Laws of the Member States concerning the safety of toys”. The Commons European Scrutiny Committee cleared it (Report 33 session 03/04). The Lords Select Committee on the EU cleared it (POS 21 January 2000 Session 99/00).