

BERR

Department for Business
Enterprise & Regulatory Reform

**CONSULTATION ON PROPOSALS
TO IMPLEMENT THE EUROPEAN
COMMISSION DECISION ON
SAFETY WARNINGS FOR TOYS
CONTAINING MAGNETS**

Government response to
the consultation

JUNE 2008

URN 08/979

Consultation on warning requirements for toys containing magnets

Commission Decision requiring Member States to ensure that magnetic toys placed on the market display a warning about the health and safety risks they pose

A summary of replies received to the BERR consultation paper of April 2008

The anticipated tight deadline for implementing the Commission Decision, which had not been formally adopted when the consultation launched, forced us to reduce the formal consultation on implementing the Commission Decision to six weeks.

Reflecting on the responses received to the consultation and the range of informal consultations conducted with stakeholders before and after the formal exercise we are content that in this instance shortening the public consultation has had no adverse impact on the consultation process.

Over thirty organisations were directly contacted with most of these being coordinating or representative bodies that were in a position to represent the views of a large number of businesses (of all sizes and from all points of the supply chain), local authorities and consumers. The consultation ran from 2 April to 16 May 2008.

At close, we had received eight substantive responses and two 'no comment' acknowledgements. These included three local authority responses (including from Lacors and TSI), three retail sector responses, and responses from the CBI and the Royal Society for the Prevention of Accidents (RoSPA). The main toys stakeholders, who we met as part of initial consultations and with whom we have been in regular contact since, chose not to submit comments as part of this exercise.

We were not surprised by the low number of responses given the amount of ground covered during pre-consultation discussions with stakeholders representing toy manufacturers, importers and retailers (who by and large chose not to respond further to the consultation) and also the relatively straightforward requirement being introduced.

Only one response questioned our reasoning for recommending regulation over the administrative measure of directing local authorities to enforce using powers they already have. On reflection, we accept that the argument could have been better put, and this will be recast in the final Impact Assessment, but we remain of the view that regulation is the better implementation option on this occasion.

The following is a summary of the responses received to the consultation together with the Government's reaction to these. Some responses included comments about the Commission Decision, rather than our implementation of it. Such comments were outside the scope of the consultation and are not included in this summary.

**BERR Consumer & Competition Policy Directorate
June 2008**

Introduction

A European Commission Decision requiring Member States to ensure that magnetic toys placed or already available for supply on the consumer market display a warning about the health and safety risks they pose was adopted on 21 April 2008. The warning requirement is to take effect from 21 July 2008, by which date Member States must have implementing measures in place. The requirement is to apply to all magnetic toys in the supply chain, including those on shop shelves on the coming-into-force date.

The Decision was introduced under Article 13 of the General Product Safety Directive 2001/95/EC which allows temporary action to be taken at a Community level when inconsistent use of normal controls results in failure to remove a serious risk from the European consumer market. Such Decisions are valid for up to one year and are renewable.

The need for a specific warning requirement for magnetic toys was identified during the course of a comprehensive examination of European product safety controls undertaken by the European Commission following a series of worldwide toy recalls in 2007. It was seen from this examination that neither the Toys Directive 88/378/EEC nor the European Toys standard EN 71-1 specifically addressed the hazard small magnets present when swallowed or inhaled – i.e. their ability to attract to each other through human tissue and cause serious injury.

The warning requirement is a short to medium term awareness-raising measure. The longer term objective is to revise the European standard to include requirements that would remove the risk of magnets coming loose from the toy. Once a revised standard has had the effect of removing the risk from the market the Commission Decision will be allowed to expire.

Following public consultation on a number of implementing policy options the Government decided to implement the Commission Decision by making safety regulations under s11 of the Consumer Protection Act 1987. The following summarises the responses received to specific questions posed in the consultation document along with Government's response.

Q1 Have we assessed the relative merits of the various policy options correctly?

Few responses specifically addressed this question. One large retailer felt a stronger case could have been made for the voluntary agreement option, arguing that most of the businesses that would need to comply were represented and that the General Product Safety Regulations 2005 should be adequate to enable Trading Standards to deal with non-compliance among the remainder. The same respondent also felt that regulation would be too prescriptive to accommodate different business models.

The local authorities generally agreed with our reasoning, feeling that the absence of a strict liability on retailers would be too much of a handicap for effective enforcement. One safety body, while supporting the recommendation to introduce regulations, questioned the arguments we presented in recommending this option in preference to the option of issuing a direction to local authorities.

The Government response

We are pleased to note that on the whole businesses, local authorities and safety bodies agree with our preference for regulations. While we have some sympathy with the voluntary agreement comment, and we will always look for alternatives to regulation wherever possible, we feel that the absence of a strict liability on retailers (under both the voluntary agreement and direction options) could result in significant non-compliance among small retailers not specialising in toys sales given the unusual requirement for the warning to apply to products already in the supply chain.

On reflection, we accept that our argument about the burden of proof on enforcement bodies could have been better presented and this will be recast in the final Impact Assessment.

Q2 Do you agree with our assumption that large businesses (manufacturers, importers and retailers) would comply with the warning requirement regardless of Government intervention?

One large retailer disagreed that large retailers would comply regardless of Government intervention, not unreasonably pointing out that new product safety legislation normally applies only to new products being placed on the market and that stock already in the UK would be sold through. However, another large retailer agreed that voluntary compliance would be the norm among large businesses.

The Government response

Taken together with supporting views elicited from industry representative bodies during initial consultation we feel that our assumptions were largely correct. However, we will slightly increase the costs estimate in the final Impact Assessment to take account of the comments received.

Q3 Have we properly assessed the scale of burden that would fall to small businesses?

We received no responses to this question during the course of the formal consultation.

The Government response

In the absence of any additional information or comment we are confident that the small business burden estimated in the Impact Assessment, which was arrived at following in-depth discussion with bodies representing small manufacturers and retailers, is close to the mark.

Q4 Are there any costs or burdens that we have not identified?

The same large retailer that had suggested large retailers would not voluntarily comply without government intervention also felt that over-labelling cost would be up to four times greater than we had estimated (based on its own costs). One local authority confirmed there would be some additional cost to the Trading Standards service in raising awareness among small retailers but did not quantify this.

The Government response

As mentioned previously, we will be slightly increasing our estimate of retailer costs to reflect comments received. But we remain of the view that most large retailers would voluntarily comply with the requirement regardless of government intervention, and therefore the costs of doing so cannot be considered a consequence of our intervention.

We have already acknowledged that there is likely to be some cost to local authorities but unfortunately responses to the consultation have brought us no closer to identifying what these will be.

Q5 Are there any other consequences of implementation that we have not anticipated?

One large retailer felt we had not taken into account that the Commission Decision was prejudicial to certain businesses models. In particular, it was felt that there would be certain difficulties for Internet and catalogue retailers in complying with the word of the Decision – i.e. *“The wording shall appear... on the packaging or otherwise attached to the magnetic toy in such a way as to be visible to the consumer at the point of purchase”*, as the toy and its packaging are not visible to the consumer at the point of purchase in distance sales. The retailer suggested that the Regulations change this wording from *“point of purchase”* to *“point of supply”*.

One Trading Standards response expressed concern that use of the Decision’s definition of toy, in particular *“...capable of becoming detached...”*, would create uncertainty and place a burden on Trading Standards in deciding whether to test a product that had not complied with the warning requirement. Although not clearly stated in the response it is assumed that the solution was seen as leaving out this provision in the Regulations.

The Government response

We agree that the wording of the Decision does not deal specifically with the circumstances in which catalogue and distance sellers conduct their business but we have concluded that there is little scope for using different wording in the Regulations. Changing *“point of purchase”* to *“point of supply”* would move too far

away from the intent behind the warning requirement: the purpose of the warning is to ensure consumers are made aware of the risk before they buy the product. We will clarify the requirement for catalogue and Internet sellers in the guidance accompanying the Regulations.

Concerning the Trading Standards comment, we do not accept that the level of uncertainty is any greater than would normally feature in a wide range of enforcement decisions relating to small parts hazard in toys.

Q6 Do you have any other comments that might aid the consultation process?

A safety organisation suggested this implementation exercise was an opportunity to extend the requirement to other magnetic products such as fridge magnets and magnetic jewellery. This view was shared by one Trading Standards response.

One response questioned why the consultation had been reduced to six weeks.

The Government response

While we agree that the scope of the Commission Decision would suggest there are similar hazards present in fridge magnets and magnetic jewellery (and indeed other products children are in contact with) these products are not covered by the European toys standard EN 71-1. Therefore it is not appropriate for them to be covered by a Commission Decision (and by association, our implementing regulations) that justifies its existence in relation to progress being made with a revision to EN 71-1 and the effect this has on removing the magnets risk from the toy market.

We explained in the consultation document why the consultation period had to be shortened. Given the level of discussions held with toys stakeholders before (and after) the public consultation we are content that in this instance the consultation process has not suffered as a result of this.