



**CONSULTATION ON NON CHILD-  
RESISTANT CIGARETTE LIGHTERS  
AND NOVELTY LIGHTERS**

Government response to the  
consultation

SEPTEMBER 2006

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## **Consultation on Non Child Resistant Cigarette Lighters and Novelty Lighters**

**Commission Decision requiring Member States to take measures to ensure that only lighters that are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters.**

### **A summary of replies received to the DTI consultation paper of July 2006**

The DTI's short consultation on our proposals to implement the European Commission Decision concerning restrictions on the marketing of lighters and novelty lighters was felt to be worthwhile, even though we were proposing no new legislation. This would be the first use of Regulation 35 under the General Product Safety Regulations 2005 (the GPSR) and we were interested to learn what people thought of this approach to implementing Commission requirements of the kind indicated in the Decision.

Over 40 organisations were contacted with directions to the consultation document on the DTI website. The consultation ran for a period of four weeks and closed on 4<sup>th</sup> August 2006.

We received only nine written responses two from the enforcement side (with one representing an entire region), two from retail representatives, one small wholesaler, one distributor, one Swedish manufacturer with a UK distributor, one from London Fire Brigade, and one from a Scottish Council's Home Safety Initiative. This was not surprising given the low level of new burden being introduced. We are nevertheless grateful to those who did offer their views. Around the consultation exercise we additionally met with a small business branded lighter importer and with a group of small business novelty lighter importers and traders.

The following is a summary of the responses we received, together with the Government's reaction to these.

### **DTI Consumer & Competition Policy Directorate September 2006**

## ***Introduction***

The European Commission notified to Member States a Decision requiring them to introduce measures to ensure that disposable cigarette lighters placed on the market are child-resistant and to prevent the placing on the market of novelty lighters. The Decision was introduced under Article 13 of the General Product Safety Directive 2001/95/EC, which allows action to be taken at the Community level where a product presents a serious risk to consumers and where Member States would otherwise take different and collectively less effective actions. It follows several years of failure by Member States to agree on a technical standard solution to the child-resistance problem.

The objective of this Decision is to reduce the incidence of death and injury resulting from fires caused by very young children playing with lighters. Between 1999 and 2003 in the UK there was an average of 5 deaths and 220 injuries per annum; in the EU there was a range of 34-40 deaths and 1,500 to 1,900 injuries per annum. After legislation similar to the Decision was introduced in the US in 2002 they reported a 60% annual reduction in deaths and injuries due to fires started by young children.

The Decision, which is renewable after twelve months, requires Member States to prevent the placing on the market of disposable lighters that do not meet the child-resistance requirements of European standard EN 13869:2002 and all novelty lighters (as defined in the standard) from 11<sup>th</sup> March 2007. It is expected that a renewed Decision will ban the supply of these lighters to consumers from 11<sup>th</sup> March 2008. These dates indicate when specific action has to be taken across Europe. Enforcement authorities in the United Kingdom still have power under the GPSR to remove dangerous lighters (of any description) from the market at any time. From 11<sup>th</sup> March 2007, the Decision requires that manufacturers (there are currently none in the UK) and importers into the Community keep and to show on request documentation demonstrating compliance with the child-resistance requirements. Measures implementing the Commission Decision have to be put in place by 11<sup>th</sup> September 2006.

The comments received to the consultation generally supported the Government's view that very little additional burden would be introduced by the Decision's requirements. Where concern was evident, this tended to focus on the credibility of the documentation provided by the manufacturer and the resultant cost of testing each lighter model if this was found lacking, the extra work and cost that may fall on enforcement authorities, and the feeling expressed by some traders that enforcement action still being carried out was in contravention of the Decision's intent.

The following summary provides more detail on the comments received and also indicates the Government's response to these.

**Q1 Do you agree that our proposal to use existing powers in the General Product Safety Regulations would implement the Commission Decision effectively, and that it is proportionate in balancing flexibility and control?**

From the few responses we did receive and, and from other related correspondence and telephone conversations, it would appear that there is general agreement that Article 35 powers would in this instance provide for an effective enforcement of the Commission Decision, but only if the Direction is renewed without break on an ongoing basis and is consistently enforced. More than one respondent rightly pointed out that failure to properly enforce the requirements would put compliant businesses at a commercial disadvantage to those not complying. But it was also acknowledged that if properly enforced the new requirements would open up the market currently dominated by cheap non-complying imports.

The enforcement authorities expressed concern that the Decision appears to allow dangerous products to be placed on the market until 11<sup>th</sup> March 2007. Some novelty lighter traders read this date as the point up to which they could still place novelty lighters on the market without harassment from the enforcement authorities, and on this basis were critical of recent enforcement action.

The Government Response

The importance of consistent enforcement is acknowledged, and measures are being taken to ensure that the new requirements are properly enforced. For example, the European Commission and the Member State customs and market surveillance authorities have been developing practical guidance for the enforcement of the new requirements and the exchange of information between authorities; UK-specific guidance will be prepared for the Local Authorities in addition to this, and also for businesses.

The Government acknowledges that there are difficulties in dealing with cigarette lighters that may fall within the definition of “dangerous products” prior to the Decision implementation date of 11<sup>th</sup> March 2007. It is our view that enforcement authorities may continue to take action to deal with lighters that present a risk to consumers using GPSR powers prior to that date. The Decision sets out when specific harmonised action has to take place across Europe.

**Q2 Do you agree that i) the documentation requirement being placed on businesses importing from outside the EU should entail only negligible burden for most and ii) that the risk of significant costs can be avoided by simply checking that the required documentation is available from the manufacturer before ordering?**

Most responses agreed that documentary requirement should impose no significant burden, but some raised questions of veracity and credibility, and stressed the need for enforcement authorities to have confidence in the documentation. Enforcement authorities and distributors expect there will be

the need to do some periodic testing, and enforcement responses suggested that the need for importers to continuously monitor the conformity of lighters produced could impose some burden. One small business importer commented that all additional costs would be significant in what is a low margin business sector and that a lot of businesses would be loath to pass on additional costs to the consumer.

### The Government Response

The requirements on importers to hold documentation demonstrating compliance will in most instances be satisfied by ensuring that their third-country suppliers provide this. This should become increasingly easy, as China (by far the biggest supplier of third-country lighters) has agreed to cooperate with the Commission to ensure that Chinese manufacturers understand and produce to European requirements. Nevertheless, there will be an obligation on importers to exercise due diligence in ensuring the validity of the documentation they are required to hold. That said, we have to accept that there will be occasions when documentation will invite suspicion. However, it should not be assumed that testing would always be necessary on such occasions. The guidance being produced by the Commission for the market surveillance authorities will provide pointers on visual observations that can be relied on to identify non-compliance

The unit cost of including a child-resistant mechanism in the manufacture of lighters is generally agreed to be in the range 3-5 euro cents, which is a very small amount to be absorbed within a supply chain stretching from manufacturer to consumer. It is not easy to see a significant penalty being borne by any individual business in this respect.

### **Q3 What is your view of the likely impact on small businesses?**

Responses to this question generally agreed that there should not be a significant burden, though the need for adequate policing and communication of requirements was stressed. One small business importer/distributor expressed concern that the intended transition period between the ban on placing on the market and the ban on supplying to the consumer was not long enough. The business was particularly concerned about the level of non-compliant stock it would have on its hands when its main supermarket customers switched to fully compliant stock, which it expected to happen sooner rather than later, and felt that the date for clearing such stock should be extended. Its own lead-time from ordering from overseas producers to receiving the stock was normally around 4-5 months.

### The Government Response

The majority of businesses involved in lighter distribution have been aware that this Decision was coming and most will have already planned for the changes. Re-exporting non-compliant stock from the Community will not be affected by the new requirements.

#### **Q4 Do you agree with our view that there should be no new costs for distributors and retailers?**

Respondents generally agreed that there should be no significant costs for distributors and retailers in compliance with the requirements for disposable cigarette lighters, though there was one unsubstantiated comment that there would be. Enforcement authorities felt that the consultation had ignored the additional cost burden they would face in ensuring distributors are advised of their obligations before the requirements kick in.

#### The Government Response

It is difficult to imagine any significant new costs associated with the documentary requirements as most distributors and retailers (as distinct from importers) would receive the declaration of compliance with invoice documentation, which they would have to keep anyway, and the requirement to keep records of who they acquired the product from already exists in the GPSR.

There should also be little change in respect of additional costs and burdens to the enforcement authorities apart from some initial awareness rising and checking but this can be done in the course of normal work. Lacors has already indicated that there should be no new burdens for local authorities as they currently have the enforcement powers under GPSR, and have exercised these recently in respect of unsafe lighters.

#### **Q5 We have found it difficult to learn the size of the market for novelty lighters and the number of businesses who have significant trade with this type of product. We would be grateful for any information on this.**

Our discussions with novelty lighter importers and traders has led us to understand that there are probably between 30-50 importers of novelty lighters in the UK, but a far larger number of retailers who supply varying quantities of these products (e.g. tobacconists, novelty gift shops etc).

#### **Q6 We would appreciate your general views on whether we have correctly identified the main issues in our proposals for implementation of the Commission Decision.**

Among the responses to this question we received requests for more information on who would police the requirements and what part the customs authorities (including those in other Member States) would play. The enforcement authorities also asked about the cost of testing products suspected of non-compliance. One business commented on the danger of referring to "disposable" lighters when describing the type of lighter that had to be child-resistant.

#### The Government Response

The Decision's requirements will be enforced in the UK by the local authorities (usually the trading standards departments) in cooperation with the customs

authorities. As with all risk-removal connected with the GPSR, the emphasis is on voluntary action whenever possible.

It is not currently possible to indicate the cost of testing as there are no testing facilities in Europe accredited to test against EN 13869:2002. Accredited labs will start appearing over the coming months but it should also be said that formal testing to the child-resistant requirements of the Decision should not always be necessary where the validity of documentation is under suspicion. The guidance being prepared by the Commission and Member State authorities will include advice on how to determine non-compliance short of testing.

The point made about reference to “disposable” lighters is valid. The term was used informally as an everyday name to give a feel for the main type of lighter that would be covered by the child-resistance requirements, but of course the definition of lighter covered by these requirements is more complex than this and will be set out clearly in the guidance.

**Q7 Do you have any other comments that might aid the consultation process?**

The issues raised in answer to this question (where they have not already been addressed previously in this summary) included an observation that other countries outside of Europe who have similar child-resistance requirements (e.g. the US, Canada, Australia and New Zealand) still allow child-resistant novelty lighters, and an observation from an enforcement authority that the period of the consultation was shorter than normal.

The Government Response

The European Commission and Member States took the view that the child-appealing nature of so many novelty lighters would encourage greater experimentation and persistence by young children to the extent that more of them would succeed in overcoming any child-resistant barrier. However, this is perhaps a position we should keep under review and we will try to learn more from experiences in the countries mentioned above.

The short timescales set by the European Commission did not allow for a longer consultation, and no new legislation is being proposed. Nevertheless, we still felt it preferable to have this consultation given the novel nature of a Commission Decision and our proposed method of implementing it.

**Who Responded (where we have permission to give names)**

Euroflame Accessories Ltd

Federation of Licensed Victuallers Associations

First Light International Ltd

Home Safety Scotland, North Lanarkshire Council

London Fire Brigade

National Federation of Retail Newsagents

Swedish Match

Trading Standards Institute

Trading Standards South East