

Direction of the Secretary of State under regulation 35(2) of the General Product Safety Regulations 2005

Recitals

- (1) On 11 May 2006 the Commission of the European Communities adopted a Decision¹ requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters. This decision is attached as Annex 1 to this Direction.
- (2) The Decision was adopted under Article 13 of Directive 2001/95/EC² of the European Parliament and of the Council of 3 December 2001 on general product safety. The UK implemented Directive 2001/95 by the General Product Safety Regulations 2005³ (the “Regulations”). Regulation 35(2) gives the Secretary of State the power to take action under the Regulations in order to comply with a Commission decision.
- (3) On 11 September 2006 the Secretary of State made a Direction under regulation 35(2) requiring local authorities to take action to comply with the Decision.
- (4) On 12 April 2007 the Commission adopted a further Decision⁴ amending and extending the validity of the Decision for a further twelve months and prohibiting the supply of non-child-resistant lighters or novelty lighters. This Decision is attached as Annex 2.
- (5) On 9 May 2007 the Secretary of State made a second Direction under regulation 35(2) requiring local authorities to take action to comply with the Decision.
- (6) On 18 April 2008 the Commission adopted a further Decision⁵ amending and prolonging the validity of the Decision for a further twelve months. This Decision is attached as Annex 3.
- (7) On 10 May 2008 the Secretary of State made a third Direction under regulation 35(2) requiring local authorities to take action to comply with the Decision.
- (8) On 29 March 2009 the Commission adopted a further Decision⁵ amending and prolonging the validity of the Decision for a further

¹2006/502/EC OJ L198, 20.7.2006 p. 41

² 2001/95/EC OJ L11, 15.1.2002 p.4

³ S.I. no 2005/1803

⁴ 2007/231/EC OJ L99, 14.4.2007 p. 16

⁵ 2008/322/EC OJ L109, 19.4.2008 p. 40

⁵ 2009/298/EC O J L81, 27.3.2009 p.23

twelve months. This Decision is attached as Annex 4. The Decision of 11 May 2006, as amended by the Commission Decisions of 12 April 2007, 18 April 2008 and 26 March 2009, is referred to in this Direction as “the Decision”.

- (9) As a result of the Decision, every model of lighter (other than certain refillable lighters specified in the Decision) must be subject to proof of child resistance showing that it is a safe product. The Decision makes it clear that lighters that are novelty lighters or not child-resistant lighters are dangerous products for the purposes of the Regulations.

Direction

1. This Direction is addressed to each authority referred to in regulation 10(4) (each a “Local Authority”).
2. It is made in accordance with regulation 35(2) and comes into force on 11 May 2009 and shall, unless renewed, expire on 11 May 2010. It replaces the Direction dated 10 May 2008.
3. In this Direction:

“child-resistant lighter” means a lighter designed and manufactured so that it cannot, under reasonably foreseeable conditions of use, be operated by children under 51 months of age because, for example, of the force needed to operate it, its design, the protection of its ignition mechanism or the complexity or sequence of operations needed for ignition;

“lighter” means a manually operated flame-producing device employing a fuel, normally used for deliberately igniting cigarettes, cigars and pipes, and which may be used to ignite materials such as paper, wicks, candles and lanterns, manufactured with an integral supply of fuel, whether intended to be re-fuelled or not. This definition excludes refillable lighters fulfilling the conditions set out in the Decision;

“model” means lighters from the same producer that do not differ in design or other characteristic in any manner that may affect child resistance; and

“novelty lighter” means a flame-producing product commonly used to ignite cigarettes, cigars and pipes, including any holder which can be incorporated later or any attachment which can be fixed later, that resembles another object commonly recognised as appealing to or intended for use by children younger than 51 months, or has entertaining audio effects or animated effects. A novelty lighter can operate on any fuel, including butane or liquid fuel. This includes, but is not limited to, lighters or holders that are clearly intended to hold lighters, the shape of which resembles cartoon characters, toys, guns, watches, telephones, musical instruments, vehicles, human body

or parts of the human body, animals, food or beverages, or that play musical notes, or have flashing lights or moving objects or other entertaining features. This excludes lighters that are printed or decorated with logos, labels, decals, artwork or heat shrinkable sleeves.

4. Terms used in this Direction which are defined in the Regulations shall have the same meaning in this Direction. A reference to a particular regulation is to one of the Regulations. A reference to a paragraph is to a paragraph of this Direction.

5. The Secretary of State directs each Local Authority to take action under the Regulations (including the issue of withdrawal notices in accordance with regulation 14) to ensure that:

- (a) only child-resistant lighters are placed on the market; and
- (b) no novelty lighters are placed on the market.

6. The Secretary of State directs each Local Authority, from 11 March 2009, to take action under the Regulations (including the issue of withdrawal notices in accordance with regulation 14) to ensure that:

- (a) only child-resistant lighters are supplied to consumers; and
- (b) no novelty lighters are supplied to consumers.

7. The Secretary of State directs each Local Authority to take action as necessary to comply with article 3 of the Decision, including:

- (a) serving a requirement to mark on any producer that may place lighters on the market, in order to impose the conditions set out in paragraph 8; and
- (b) exercising its powers under regulation 22 to determine that the conditions set out in any requirement to mark are complied with.

8. A requirement to mark shall include the following conditions:

- (a) a requirement that the recipient keep a child-resistance test report for each model of lighter placed or to be placed on the market together with a sample of that model;
- (b) a requirement that the recipient keep documentation on the testing and control programme necessary to show that all lighters produced or imported conform to the model tested;
- (c) a requirement to monitor conformity of the lighters produced or imported with the technical solutions adopted to ensure child resistance and maintain the production records necessary to show that all lighters produced conform to the model tested; and

- (d) a requirement to keep a report of a new child-resistance test if any changes are made to a model of lighter that may adversely affect the ability of the model to be child-resistant.

9. The child-resistance test report referred to in paragraph 8 must be made by a testing body specified on a list published by the EC Commission pursuant to the Decision or any other testing body that meets the criteria set out in article 4(2) of the Decision and must include the following:

- (a) the name, address and principal place of business of the manufacturer and the importer (if any);
- (b) a complete description of the lighter, including size, shape, weight, fuel, fuel capacity, ignition mechanism, and child-resistance devices, design, technical solutions and other features that make it a child-resistant lighter including a detailed description of all dimensions, force requirements, or other features that could affect its child-resistance, including the manufacturer's tolerances for each such feature;
- (c) a detailed description of the tests and of the results obtained, the dates of the tests, the location where the tests have been performed, the identity of the testing body that conducted the tests and details of the qualification and competence of such testing body to conduct the tests concerned;
- (d) the identification of the place where the lighters are or have been manufactured;
- (e) the location where any supporting documentation is kept;
- (f) references of the accreditation or recognition of the testing body; and
- (g) certification that the model is a child-resistant lighter.



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