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# Fireworks

In recent years there has been considerable public and Government concern about the number of firework injuries and the public nuisance that the illegal use of fireworks can cause. This Paper provides a detailed explanation of the current legislative and voluntary provisions regulating the importation, sale and use of fireworks in Great Britain. Department of Trade and Industry statistics on the number of firework injuries in Great Britain over the past six years are reproduced.

This Paper also summarises the main provisions of the *Fireworks Bill* 1997-98. This Private Members' Bill was introduced in the House of Commons on 18 June 1997 and has Government support. Its stated aim is to provide a framework for fireworks regulations that will regulate all aspects of the sale and storage of fireworks and public fireworks displays. The Bill has passed through the Commons and the Lords, where it was amended. However, it was talked out when the Lords' amendments were considered in the Commons on 3 July 1998 and it is unlikely that time will be found for the Bill to complete its passage this session.

Lorraine Conway

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## Summary of existing regulatory control

The main regulations controlling the supply and use of fireworks in Great Britain are summarised below.

All fireworks supplied in this country, irrespective of their place of manufacture, must meet the same safety standards, established by the British Standard 7114.

There is also a legal duty on suppliers of all consumer goods (including fireworks) under the *Consumer Protection Act 1987* to supply only those goods that meet an acceptable standard of safety.

The *Fireworks (Safety) Regulations 1997* provide that fireworks and assemblies classified as category 1, category 2 or category 3 under British Standard 7114 must comply with that Standard. The Regulations also impose size and weight requirements for certain specified fireworks and assemblies. Subject to certain exceptions, the Regulations prohibit the supply of fireworks and assemblies that contravene these requirements. The Regulations prohibit the supply of fireworks of erratic flight and mini-rockets. They also prohibit the supply of aerial shells, shells-in-mortar, aerial maroons, maroons-in-mortar, certain assemblies that include these devices and the supply of bangers. These prohibitions are subject to certain exceptions.

The *General Product Safety Regulations 1994* impose a general prohibition on supplying any unsafe goods, and therefore provide an additional safety control over the supply of fireworks.

Suppliers of imported fireworks are under exactly the same legal obligations, established by the *Consumer Protection Act 1987* and the *Fireworks (Safety) Regulations 1997*, in terms of these fireworks. In addition, the importation of fireworks can only be authorised by the Health and Safety Executive pursuant to the *Placing on the Market and Supervision of Transfers of Explosives Regulations 1993 (POMSTER)*.

The use of fireworks by the public is regulated by the *Explosives Act 1875* (as modified by the *Control of Explosives Regulations 1991* and as amended by the *Explosives (Age of Purchase) Act 1976* and the *Consumer Protection Act 1987*). It is an offence to sell fireworks to persons under 18 years old. It is an offence to throw or discharge a firework in a street or public place, to sell or expose fireworks for sale in a street or public place. Finally, it is also an offence to tamper with or alter fireworks.

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## I Introduction

A range of measures covering authorisation, manufacture, transport, storage and sale regulates the fireworks industry. Statutory and voluntary regulations now dictate when fireworks can be bought, by whom, and the types of fireworks that can be offered for sale.

There have been three fatalities associated with aerial shells (one in November 1994 and two in November 1996). These deaths combined with the overall level of injuries in 1994 caused by the illegal use of fireworks, and the fact that many of those injured were under 16 years of age, led to a review of firework legislation in 1996 and again in 1997. This Paper provides a brief explanation of the current legislative and voluntary provisions regulating the sale and use of fireworks in England, Scotland and Wales. Separate legislation controls the sale of fireworks in Northern Ireland and is the responsibility of the Northern Ireland Office. Department of Trade and Industry (DTI) statistics on the number of firework injuries in Great Britain over the past six years are reproduced in Section VI.

This Paper also summarises the main provisions of the *Fireworks Bill*, Bill 216 1997-98. This Private Members' Bill was introduced by Linda Gilroy MP on 18 June 1997 and has Government support. The main aim of the Bill is to provide powers that are not available under existing consumer safety legislation and to provide a new framework for fireworks regulation. The House of Commons considered the Lords' amendments to the Bill on 3 July 1998, when the debate stood adjourned.<sup>1</sup>

## II The Supply of Fireworks

To a large extent, the present arrangement for controlling the level of safety of fireworks offered for sale to the public depends on an interaction between British Standard 7114, the *Fireworks (Safety) Regulations 1997* and the *Consumer Protection Act 1987*.

### A. British Standard 7114

All fireworks sold in this country, irrespective of their place of manufacture, must meet the same safety standards, established by the British Standard 7114 (BS 7114).<sup>2</sup> Regulation 3(1) of the *Fireworks (Safety) Regulations 1997* states:

3. -(1) Subject to paragraphs (3) and (4) and without prejudice to regulation 7 below, no person shall supply a category 1 firework, a category 2 firework or a category 3 firework which does not comply with the relevant requirements of Part

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<sup>1</sup> HC Deb 3 July 1998 cc 633-704

<sup>2</sup> Regulation 3(1) of the *Fireworks (Safety) Regulations 1997* SI 1997 No 2294

2 of BS 7114 when tested in accordance with the appropriate test method (if any) in Part 3 of BS 7114.

BS 7114 was introduced in 1989. It consists of three parts covering: the classification of fireworks (Part 1); specifications and labelling of fireworks (Part 2); and methods by which they are tested (Part 3).

Part 1 of the Standard classifies fireworks into three specific categories considered suitable for use by the general public and a fourth category of fireworks which are suitable for use only by professional users, as follows:

**Category 1** – fireworks suitable for use inside domestic buildings.

**Category 2** – fireworks for outdoor use in relatively confined areas.

**Category 3** – fireworks for use in large outdoor spaces.

**Category 4** – fireworks not intended for sale to the general public.

Fireworks and assemblies classified as category 1, category 2 or category 3 must comply with the requirements of BS 7114.<sup>3</sup> This is in addition to the legal duty placed on suppliers of all consumer goods - under the *Consumer Protection Act 1987* - to supply only those goods that meet an acceptable standard of safety.

Under *Part II* of the *Consumer Protection Act 1987* (CPA 1987), it is an offence for the supplier of any consumer good (unless specifically exempted) to supply goods that are not "reasonably safe" with regard to all the circumstances, including "any standards of safety published by any person either for goods of a description which applies to the goods in question or for matters relating to goods of that description."<sup>4</sup> Standards, in this context, "are expected to be British Standards although those from Europe or elsewhere may be taken into account but only if the level of safety provided by them is sufficiently high".<sup>5</sup> Part II empowers trading standards officers to prevent suppliers selling unsafe goods by means of a suspension notice, by seizing the goods in question, and by prosecuting suppliers who contravene the CPA 1987. Those found guilty of the offence of supplying unsafe goods are liable on summary conviction for imprisonment of up to six months and/or a maximum fine set at level 5 on the standard scale (currently £5,000).

In the case of fireworks, trading standards officers will use BS 7114 as their definition of a safe firework.<sup>6</sup>

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<sup>3</sup> Regulation 3(1) of the *Fireworks (Safety) Regulations 1997*, SI 1997 No 2294

<sup>4</sup> *Consumer Protection Act 1987*, Section 10(2)(b)

<sup>5</sup> "Encyclopaedia of Consumer Law", Sweet & Maxwell 1994; commentary on Section 10 (2)(b) of CPA 1987, paragraph 1432

<sup>6</sup> HC Deb 9 December 1993 c 343W

## B. The Fireworks (Safety) Regulations 1997

The *Fireworks (Safety) Regulations 1997*<sup>7</sup> (the 1997 Regulations) revoke and re-enact with amendments the provisions of the *Fireworks (Safety) Regulations 1996*<sup>8</sup> and make other provision relating to the safety of fireworks and assemblies which include fireworks. The 1997 Regulations do not extend to Northern Ireland.

Regulation 3(1) provides that fireworks and assemblies classified as category 1, category 2 or category 3 under British Standard BS 7114 must comply with that Standard.<sup>9</sup>

The 1997 Regulations prohibit the supply of all sizes of aerial shells, aerial maroons, shells in mortar, maroons in mortar and any firework combinations which include any of these devices but with exceptions for persons who may still be supplied with these devices. A 'combination' means an assembly that includes two or more fireworks, at least one of which is an aerial shell or an aerial maroon, and which has one or more points of ignition. The aim of the Regulations is to prevent injuries to, and deaths of, inexperienced users of these fireworks.

It has been estimated that the number of aerial shells sold in Great Britain has increased five-fold since 1990.<sup>10</sup> Aerial maroons are included in the prohibition because although they are not sold in appreciable numbers they can be attractive as substitutes for aerial shells.

The prohibition also applies to both conventionally fused and electrically fired devices. (Supplying the latter to members of the public is also an offence under the *General Product Safety Regulations 1994*). Rockets are specifically excluded from the Regulations.

The 1997 Regulations are careful to define each type of firework in turn. For example, an "aerial shell" is defined as a firework:

- (a) which is designed to be projected from a mortar tube;
  - (b) which contains a propellant charge, a bursting charge and either pyrotechnic units and/or loose pyrotechnic composition; and
  - (c) whose functioning involves ascent and subsequent bursting of the firework case and ejection of any pyrotechnic units;
- but, for the avoidance of doubt, shall not include a rocket.

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<sup>7</sup> SI 1997 No 2294

<sup>8</sup> SI 1996 No 3200

<sup>9</sup> Regulation 3(1) of the *Fireworks (Safety) Regulations 1997*, SI 1997 No 2294

<sup>10</sup> Compliance Cost Assessment and Regulatory Appraisal to the *Fireworks (Safety) Regulations 1996*, 19 December 1996

An "aerial maroon" is defined as a firework:

- (a) which is designed to be projected from a mortar tube;
- (b) which contains a propellant charge and a bursting charge; and
- (c) whose functioning involves ascent and report;

but, for the avoidance of doubt, shall not include a rocket.

A "maroon- in-mortar" is defined as:

- (a) an assembly comprising an aerial maroon inside a tube, from which the aerial maroon is designed to be projected; or
- (b) an assembly comprising two or more tubes at least one of which contains an aerial maroon, where the maroons are designed to be projected from the tubes.

A "shell in mortar" is defined as:

- (a) an assembly comprising an aerial shell inside a tube, from which the aerial shell is designed to be projected; or
- (b) an assembly comprising two or more tubes at least one of which contains an aerial shell, where the shells are designed to be projected from the tubes.

It is clear that aerial shells and aerial maroons are similar in design. Both devices are projected from the mortar tube at a very high speed and pose the same risk to users.

Importantly, the Regulations do not ban aerial shells and similar devices from properly organised professional displays. They only ban their use by members of the general public.

In addition to re-enacting the 1996 emergency regulations (banning aerial shells and maroons) with amendments, the 1997 Regulations made further provisions to be introduced in two stages. The first stage came into force on 15 October 1997 and includes the following measures:

- A requirement that all fireworks intended for use by the public must comply with BS 7114.
- A permanent ban on the supply to the public of category 3 bangers (including flash bangers, jumping crackers and Chinese crackers) and fireworks with erratic flight.

- An increase in the minimum age of persons who can be supplied with fireworks from 16 to 18. (Supply of caps, cracker snaps, novelty matches, party-poppers, serpents and throwdowns are exempted from this prohibition, but remain subject to the prohibition on sale to persons apparently under the age of 16 in the *Explosives Act 1875* (as amended)).
- A prohibition on retailers splitting large boxes of fireworks and selling them individually (previously part of the voluntary agreement).
- An increase in the permitted length of hand-held sparklers from 450mm to 470mm.

The second stage came into force on 31 December 1997. Further measures include:

- A prohibition on the supply to the public of category 2 bangers (all bangers are now banned).
- A prohibition on the supply of mini-rockets except for the purpose of special effects in the theatre, film and television.
- A requirement that all fireworks not suitable for use by the general public (as defined in the 1997 Regulations) have clear warning labels to that effect.
- A requirement for sparklers to carry an additional warning "not to be given to children under five years of age".
- Imposition of size limits for supply to the public of certain fireworks such as Roman Candles, mines, batteries (eg a cake of Roman Candles), wheels and combinations.

The DTI argued that a two-stage process was necessary to ensure stocks were used up, so limiting the scope for future illegal supply.

Under Regulation 5, the following exemptions apply to the prohibitions on supply:

- (a) any person whose trade or business is the professional organisation or professional operation of firework displays;
- (b) any person whose trade or business, or part of whose trade or business, is the supply of fireworks or assemblies, for the purpose of supplying them in accordance with the provisions of these Regulations;
- (c) any local authority for the purposes of a firework display;
- (d) any person for use, in the course of a trade or business of his, for special effects purposes in the theatre, on film or on television;

(e) any local authority, enforcement authority or other body, where that authority or body:

(i) has enforcement powers, conferred by or under enactment, applying to the firework or assembly in question; and,

(ii) before it purchases the goods, informs the supplier that the purchase is to be made for the purposes of ascertaining whether any provision made by or under any enactment and relating to the safety of the goods has been contravened in relation to those goods;

(f) any department of the Government of the United Kingdom for the purposes of a firework display put on by that department, for use by that department at a national public celebration or a national commemorative event or for use by that department for research or investigations purposes;

(g) any person who:

(i) is in business as a supplier of goods designed and intended for use in conjunction with fireworks or assemblies; and

(ii) intends to use the firework or assembly in question solely for the purposes of testing those goods to ensure that, when used in conjunction with fireworks or assemblies of the same type, they will perform their intended function or comply with any provision made by or under any enactment and relating to the safety of those goods; or

(h) any establishment of the naval, military or air forces of the Crown for the purposes of a firework display or for use at a national public celebration or a national commemorative event.

Local authorities' trading standards officers are responsible for the day to day enforcement of the 1997 Regulations. In addition to suspending the supply of fireworks that contravene the 1997 Regulations, trading standards officers may seek orders for forfeiture of stocks and prosecute suppliers (this applies to anyone in the distribution chain, including retailers). Penalties for infringement of the requirements are, on conviction in a magistrates court, a fine of up to £5,000 and/or a maximum prison sentence of up to six months.

## **C. The General Product Safety Regulations 1994**

The *General Product Safety Regulations 1994* (the 1994 Regulations) impose a general prohibition on supplying unsafe goods, including fireworks. The Regulations define a safe product as one which:

... under normal or reasonably foreseeable conditions of use, including duration, does not present any risk or only the minimum risks compatible with the

product's use, considered as acceptable and consistent with a high level of protection for the safety and health of persons.

It is an offence under the 1994 Regulations for a retailer to supply to any person a product which he knows, or should have presumed on the basis of the information in his possession, is a dangerous product.

Under the 1994 Regulations a retailer must only supply products which the public are able to use safely. In assessing whether a particular type of firework is safe, a court would take into account a number of factors including the requirements of BS 7114. Local authority trading standards officers have a duty to enforce the 1994 Regulations and in doing so can draw on the range of powers supporting consumer safety legislation. There are various offences (depending on whether the supplier is a producer or distributor<sup>11</sup>), punishable by a fine not exceeding £5,000 or a maximum prison term of three months, or both.

It is clear that a retailer risks committing an offence if he supplies category 4 fireworks to inexperienced or untrained members of the general public (category 4 fireworks are for use only in professional firework displays). The nature of category 4 fireworks, the hazards involved in using them and the clear recommendation in the British Standard that they should not be supplied to the general public indicate that such fireworks are unsafe in the hands of the ordinary consumer.

However, it should be pointed out that because the *Fireworks (Safety) Regulations 1997* provide their own safety requirements for fireworks<sup>12</sup>, the 1994 Regulations will only apply to fireworks if some remote aspect of safety is not covered by the 1997 Regulations.

There exists in Great Britain a market in imported fireworks, and suppliers are under exactly the same safety obligations, established by the *Consumer Protection Act 1987* and the *Fireworks (Safety) Regulations 1997*, in terms of these fireworks. In addition, the importation of any fireworks can only be authorised by the Health and Safety Executive (HSE), which uses BS 7114 as the standard by which to allow any imports. The *Placing on the Market and Supervision of Transfers of Explosives Regulations 1993* (POMSTER), which came into effect on 1 December 1993, replaced the old licensing system with a legal requirement that the supply of all explosives, including fireworks, must be authorised by the HSE. The HSE will not grant authorisation unless the fireworks fully meet existing standards.

Following the introduction of POMSTER, the Government has been concerned to reassure consumers that imported fireworks are not subject to any different safety criteria from those covering British fireworks.

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<sup>11</sup> Note that these terms have specific meanings for the purpose of the 1994 Regulations

<sup>12</sup> Regulation 3(1)

On 2 June 1998, in a written answer to a PQ asked by Mrs Ewing MP, Mr Nigel Griffiths said:

There have been no changes to import controls on fireworks since November 1996.

The *Fireworks (Safety) Regulations 1997*, which I made in September 1997, introduced a number of firework safety measures including banning bangers, flash bangers, fireworks with erratic flight, aerial shells, maroons and other large fireworks from sale to the public. The Regulations also place limits on the size of certain fireworks - such as Roman Candles - that can be sold to the public. These restrictions apply both to imported fireworks and to those manufactured in the United Kingdom.

I am currently discussing with the firework industry the 'traceability' of imported fireworks to improve the interception of dangerous ones.<sup>13</sup>

#### **D. The Explosives Act 1875**

Under the *Explosives Act 1875*<sup>14</sup> it is an offence to keep fireworks (except for private use) on premises which have not been registered or licensed by the local authority for that purpose. This offence is punishable by a maximum fine of £5,000.

### **III Purchase and use of fireworks**

#### **A. Current regulation under statute**

The legislative provisions regulating the use of fireworks are contained in the *Explosives Act 1875* (as modified by the *Control of Explosives Regulations 1991* and as amended by the *Explosives (Age of Purchase) Act 1976* and the *Consumer Protection Act 1987*) and the *Fireworks (Safety) Regulations 1997*.

Under the terms of the Acts and Regulations it is an offence:

- (i) to keep fireworks (except for private use) on premises which have not been registered or licensed with the local authority for that purpose;
- (ii) to sell fireworks to persons apparently under 18 years old (the maximum statutory penalty for this offence is £5,000);

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<sup>13</sup> HC Deb 2 June 1998 c 162W

<sup>14</sup> As modified by the *Control of Explosives Regulations 1991*

- (iii) to throw or discharge a firework in a street or a public place (the maximum statutory penalty for this offence is £5,000);
- (iv) to sell or expose fireworks for sale in a street or public place; or
- (v) to tamper or alter fireworks (tampering with fireworks without a licence can result in a fine, or a term of imprisonment, or both).

## **B. The firework industry's voluntary code**

In addition to the legislative provisions regulating the industry, the firework industry itself has taken various voluntary initiatives to promote the safer use of fireworks. It introduced a number of voluntary safety measures between 1969 and 1974 and these were brought together in 'The 1976 Firework Package Deal' which was endorsed by the Government. This voluntary code encompassed the following seven measures:

- (i) fireworks to be displayed for sale to the public for a period of only three weeks before 5 November and a few days afterwards;
- (ii) the phasing out of flash bangers (i.e. a banger containing aluminium perchlorate or aluminium nitrate powder instead of black powder);
- (iii) a severe reduction in the explosive content of black powder bangers;
- (iv) bangers to be sold only in boxes and not singly;
- (v) the phasing out of fireworks with unpredictable flight (e.g. jumping crackers, flying squibs, mini-rockets);
- (vi) all but the larger fireworks to be available to the public only in boxes;
- (vii) all boxed fireworks to be accompanied by the "Firework Code".

Only one part of this voluntary agreement has not been subsequently enforced by legislation. This is the requirement that the period during which fireworks are generally available for sale in the shops should be limited to three weeks before November 5 and a few days thereafter. There are currently no provisions in the *Consumer Protection Act 1987* that allow the Government to regulate the selling period.

If the *Fireworks Bill 1997* were to become law (see below) the Government would be able to regulate the selling period and the voluntary code would become redundant.

## **C. Government publicity campaigns**

For over twenty years, the Government has organised firework safety awareness campaigns. These campaigns have employed a number of measures to heighten public awareness of the

dangers from the misuse of fireworks including the preparation and distribution of leaflets and television advertisements aimed at the general public, children, retailers and display organisers. The campaigns have been run in collaboration with local authority trading standards departments and fire services and the fireworks industry.

In 1997, the Government spent £350,000 on a firework safety campaign focussed on informing the public on how to enjoy fireworks in the safest possible way. On 14 October 1997, the Consumer Affairs Minister, Nigel Griffiths, announced he was mounting a concentrated publicity effort in five cities with a record for hooligan related fireworks injuries; Newcastle, Manchester, Liverpool, Leeds and Glasgow.<sup>15</sup> The publicity included cinema adverts to be shown throughout the fireworks sale period. The targets of these advertisements were boys aged 10 to 15 years.

On 17 November 1997, in answer to a written PQ asked by Mr Goggins on the amount of Government expenditure spent on firework safety campaigns for each year since 1979, Mr Griffiths said:

The cost of fireworks safety campaigns between 1979 and 1983 cannot be produced without incurring disproportionate cost. The figures from 1984 are as follows:<sup>16</sup>

	£000
1984	35
1985	40
1986	51
1987	78
1988	57
1989	64
1990	111
1991	74
1992	84
1993	160
1994	191
1995	185
1996	284
1997	350

#### **IV Recent reviews on the control of the availability of fireworks**

On 28 March 1996, John Taylor, then Minister for Consumer Affairs, published statistics for firework injuries during the period around 5 November 1995.<sup>17</sup> Although these showed a

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<sup>15</sup> Department of Trade & Industry press notice, *Minister to launch cinema advertisement in Glasgow*, 10 October 1997 and “*Firework Injuries. Data Year 1997*”, Department of Trade & Industry, March 1998

<sup>16</sup> HC Deb 17 November 1997 cc 47-8W

<sup>17</sup> HC Deb 28 March 1996 c 734W

small decline from 1994, the level of injuries in 1994 was high and there was concern that injuries had not declined further. Other disturbing aspects of the statistics included the substantial proportion of injuries caused by illegal use of fireworks, and the fact that many of those injured were under 16 years of age. Widespread concerns about the variety of types and power of fireworks available to the general public also influenced the Minister's decision to initiate a comprehensive review by the DTI of the effectiveness of both voluntary and statutory controls on the sale of fireworks to the public.<sup>18</sup>

A consultation paper was published on 31 July 1996 entitled *Controls on the Availability of Fireworks: A Discussion Paper by the Department of Trade and Industry*<sup>19</sup>. In this consultation paper the Conservative Government clearly stated its position:

Whilst the government believes that fireworks can provide an enjoyable form of family entertainment provided they are used sensibly and safely, there are growing concerns about the variety and power of fireworks now available to the general public; the increasing numbers of fireworks sold; the way fireworks are used; the nuisance they can cause to persons and animals; and the elevated level of firework related injuries reported over the past two years. The Government believes that there may be scope for improving the controls on fireworks in ways that address many of these concerns without imposing undue restrictions on consumers' access to fireworks or unnecessary burdens on business.<sup>20</sup>

The paper discussed a number of possible changes to existing statutory and voluntary controls on fireworks. The consultation period ended on 11 October 1996.

On 19 December 1996, emergency regulations were introduced to prohibit the supply to the public of aerial shells, aerial maroons, shells-in-mortar, maroons-in-mortar or any of these devices in combination with each other or other fireworks. The *Fireworks (Safety) Regulations 1996* came into force on 20 December 1996 and applied to all forms of supply, including mail order.<sup>21</sup> The Regulations were made using powers in section 11 of the *CPA 1987*, which allows for the introduction of emergency regulations which expire after 12 months without the usual consultation with interested bodies which is required in the case of permanent regulations. The 1996 Regulations therefore had a limited life of only 12 months.

There had been three fatalities associated with aerial shells (one in November 1994 and two in November 1996). The Government was keen, therefore, to introduce the new *Fireworks (Safety) Regulations 1996* before the New Year celebrations began. Announcing the Regulations, John Taylor said:

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<sup>18</sup> Department of Trade & Industry press notice, *Review Of Firework Controls*, 31 July 1996

<sup>19</sup> *Controls on the availability of fireworks: A discussion paper by the Department of Trade and Industry*, URN 96/887, July 1996

<sup>20</sup> Ibid

<sup>21</sup> *Fireworks (Safety) Regulations 1996* SI 1996 No 3200

It has now become clear that aerial shells and aerial maroons - both of which are launched from mortar tubes - pose a very high risk to users which cannot be adequately addressed by publicity or purely voluntary measures. I have therefore taken action to make sure they are only supplied to those who are in the business of operating fireworks displays, or are in the business of supplying fireworks. I have acted now since I am concerned to do all I can to prevent further fatalities or serious injuries during the New Year celebrations.<sup>22</sup>

The Government's intention was for a 'root and branch' review of statutory and voluntary controls. In a written answer to a PQ asking for a timetable for further reform of firework legislation, Mr John Taylor stated:

I expect to make an announcement shortly of the conclusions arising from my review of the voluntary and statutory controls on fireworks. If it is considered appropriate to tighten the existing statutory controls, a public consultation on specific proposals will be undertaken.<sup>23</sup>

In the event, proposals to tighten the statutory controls on fireworks were made by the new Labour Government. On 19 June 1997 a consultation document, *Consultation on Draft Fireworks (Safety) Regulations 1997*, and draft regulations on firework safety were published. Launching the consultation, Nigel Griffiths, the new Consumer Affairs Minister, said:

Firework injuries have soared to unacceptable levels. I am taking tough action to protect the public, while ensuring that families can continue to enjoy fireworks.

Too many children are injured. Too many elderly people live in fear because of hooligan fireworks. The three tragic deaths last year might have been avoided if the sale of large display fireworks had been restricted to professionals.

This two month public consultation exercise will allow us to take action before 5 November this year.<sup>24</sup>

The consultation period ended on 22 August 1997 and the *Fireworks (Safety) Regulations 1997* [the 1997 Regulations] were laid on 24 September 1997. The new Regulations remade in permanent form the emergency measures contained in the *Fireworks (Safety) Regulations 1996*. They also introduced new measures to improve consumer safety and to ban certain fireworks that are favourites with hooligans. Commenting on the new 1997 Regulations, Mr Griffiths said:

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<sup>22</sup> Department of Trade and Industry press notice, *Supply of Aerial Shells and Fireworks to the Public Banned*, 19 December 1996

<sup>23</sup> HC Deb 6 February 1997 c 694W

<sup>24</sup> Department of Trade and Industry press notice, *Ruth Hattersley joins Minister to launch consultation document*, 19 June 1997

... with fireworks officially on sale tomorrow, the focus of our publicity in the next two weeks will be on discouraging hooliganism, the mis-use and throwing of fireworks, thus reinforcing our legislative effort.

It is already illegal to let off fireworks in the street – the offence carries a £5,000 fine. In tightening the law I have, for the sake of public safety, concentrated on choking off the supply and eliminating the fireworks most likely to cause injury<sup>25</sup>

However, a number of the proposals contained in the consultation document have yet to be implemented because they require primary legislation.

## V Fireworks Bill 1997-98

A Private Members' Bill introduced by Linda Gilroy MP on 18 June 1997 seeks to further regulate the sale and use of fireworks by individuals.<sup>26</sup>

Existing consumer safety legislation under the *Consumer Protection Act 1987* (CPA 1987) already provides regulation-making powers to deal with the safety of goods, including fireworks. It was under the CPA 1987 regulation-making powers that the 1997 Regulations were brought forward. The proposed aim of the Bill is to provide powers that are not available under the CPA 1987.

Section 11 of the CPA 1987 allows regulations to be made: for the purpose of securing that the goods to which the section applies are safe; or, to restrict the supply of goods which are unsafe, or to limit the people to whom potentially unsafe goods may be supplied; or, to control the information which is provided in relation to the goods.

However, there are limitations on the ways in which the powers under the CPA 1987 may be exercised. For example, they do not enable the safe use of goods to be regulated. The main purpose of the *Fireworks Bill* is therefore to “provide the capability to address, by way of regulations, a number of firework issues which cannot be addressed using powers presently available to the Government”.<sup>27</sup>

Clause 2 of the Bill sets out the basis on which the Secretary of State may make fireworks regulations and the procedure that must be followed. Clause 2(1) confers the power that allows the Secretary of State to make any provision (by “fireworks regulations”) which he considers appropriate for the purpose of securing that fireworks are used safely. Clause

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<sup>25</sup> Department of Trade and Industry press notice, *Griffiths Bans Bangers and Boys Behaving Badly*, 14 October 1997

<sup>26</sup> *Fireworks Bill* Bill 25 1997/8. The rest of this Paper refers to clauses in the Bill as it left the Lords (HL Bill 122 and HC Bill 216)

<sup>27</sup> Department of Trade and Industry Memorandum to the *Fireworks Bill*, paragraph 4

2(2) specifies the circumstances when fireworks are used safely. Clause 2(1) and 2(2) are set out below:

2. -(1) The Secretary of State may by regulations (“firework regulations”) make any provision which he considers appropriate for the purpose of securing that fireworks are used safely.

(2) For this purpose fireworks are used safely when they are used so that there is no risk, or only the minimum risk compatible with their use, that they will cause-

(a) the death of any person or injury, alarm, distress or anxiety to any person,

(b) the death of any animal or injury or distress to any animal, or

(c) destruction of, or damage to, any property.

Under Clause 2(3) ‘permanent regulations’ (that is regulations which remain in force until revoked) can only be made following a public consultation. However, clause 2(3) does not apply to ‘emergency regulations’ (which can remain in force for no longer than 12 months). Under clause 2(4) the Secretary of State can make emergency regulations without consultation where it appears to the Secretary of State that the need to protect the public requires that the regulations should be made without delay, and the regulations contain a statement to that effect.

A key element in the Bill is the fact that the regulation-making powers allow for the introduction of national training qualifications for organisers of public firework displays and for specific criteria to define persons who can be supplied with dangerous display fireworks.

**Clause 5** provides that regulations may include provisions prohibiting the supply, purchase or possession of fireworks or specified fireworks. This prohibition may be applied in relation to all persons or only in relation to persons of a specified description. The specified description can include persons who are not satisfactorily trained or experienced in the use of fireworks or who are not covered by insurance. The DTI have stated that the purpose of this clause is “broadly to provide a more satisfactory basis, when taken with other clauses, for defining persons who may be exempted from the prohibitions on supplying specified fireworks for example, the prohibitions in the *Fireworks (Safety) Regulations 1997*”.<sup>28</sup> Clauses 5(3) and 5(4) state:

Clause 5(3) The descriptions of persons which may be specified in fireworks regulations under this section include in particular persons who do not satisfy any conditions which are specified in the regulations and relate to any of the matters mentioned in subsection (4).

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<sup>28</sup> *The Fireworks Bill – Notes on Clause*, Department of Trade and Industry, February 1998

(4) Those matters are-

(a) the satisfactory completion of a course, or courses, of training in the use of fireworks and the means of proving the satisfactory completion of such a course or courses,

(b) proficiency or experience in the use of fireworks and the means of proving such proficiency or experience, and

(c) the possession of insurance cover against liability arising from the use of fireworks and the means of proving possession of such cover.

In effect, the Regulations could require the completion of a course, experience and insurance.

**Clause 6** provides that regulations may include provisions to prevent public displays taking place if certain conditions are not met. These conditions could include the training of the people in charge of the display, the age of the people operating the fireworks and the notice and information given to the local authority of the intention to hold a display. In relation to training courses, the Bill says:

Clause 6 (2) Fireworks regulations may include provision prohibiting persons from operating public fireworks displays unless they satisfy-

(a) any conditions which are specified in the regulations and relate to the satisfactory completion of a course, or courses, of training in the use of fireworks and to the means of proving the satisfactory completion of such a course or courses, or

(b) any other conditions which are so specified.

The purpose of the Bill is to limit the supply of certain more hazardous types of fireworks to qualified individuals, and then only allow those qualified individuals to carry out public displays.

**Clause 10** of the Bill provides further details of how accredited courses may be operated and financed. Again the legislation is largely permissive: it says how things may be done, not how they will be done. The actual details would appear in secondary legislation.

Clause 10. -(1) If fireworks regulations specify conditions relating to the satisfactory completion of a course, or courses, of training in the use of fireworks, they may make provision for courses to be provided by-

(a) the Secretary of State,

(b) a body or bodies established or recognised by the Secretary of State, or

(c) licensed persons.

(2) If fireworks regulations make provision for courses to be provided by licensed persons, they may-

(a) make provision for the licensing of persons by the Secretary of State or by any body or bodies established or recognised by the Secretary of State,

(b) authorise the making by the Secretary of State of provision about the charging of fees for the grant or variation of licences, and

(c) authorise the making by the Secretary of State, or by any such body or bodies, of provision about any of the matters mentioned in subsection (3).

(3) Those matters are-

(a) the grant, variation and revocation of licences,

(b) conditions which may be attached to licences, and

(c) appeals against refusals to grant or vary, or variations of, licences.

(4) Fireworks regulations may authorise-

(a) the making by the Secretary of State of provision about the charging of fees for attendance at courses of training in the use of fireworks, and

(b) the making by the Secretary of State, or by any body or bodies established or recognised by the Secretary of State under this section, of provision about any of the matters mentioned in subsection (5).

(5) Those matters are-

(a) the descriptions of persons who are to be eligible to attend courses of training in the use of fireworks,

(b) the subject matter to be covered by courses and the conduct of courses,

(c) the criteria to be applied in determining whether persons have satisfactorily completed courses,

(d) the form and content of certificates to be awarded to persons who have satisfactorily completed courses,

(e) appeals against refusals to award certificates to persons who have attended courses, and

(f) the keeping of records about persons who have attended courses.

The Bill's regulation-making powers also provide that only the Secretary of State can make provisions relating to fees for the granting or variation of training licences and attendance at training courses. This clause was the main topic of debate during the Commons' debate on the Lords' amendments to the Bill on 3 July 1998.<sup>29</sup> Mr Edward Leigh, for example, argued that:

Neither the Bill nor the amendment tell us exactly how the training courses will be organised, who will take part or what the fees on industry will be. All we have is broad regulation-making powers being conferred on the Secretary of State, as is the case throughout the Bill. We are discussing a serious matter, as presumably the amendment would seriously curtail who the industry can train, how much it can charge and where training courses will be held. The Minister may wish to reassure us on that point, and to claim that that will not happen, but the history of fireworks legislation and of the House's interest in it demonstrates that that fear needs to be raised here, and that he needs to deal with it.<sup>30</sup>

Similarly, Mr Andrew Rowe argued:

We would all be delighted if we could have prevented the deaths of four people in the past four years. However, the Bill and the amendments are deeply troubling. The entire process is in the hands of the Secretary of State; no provisions are laid down. Clause 10(1), to which the amendments apply, begins with the word 'if', and clause 10(2) also begins with the word 'if'. It states: "*If, fireworks regulations make provision for courses to be provided by licensed persons, they may...make provision*" for certain things. Their Lordships have amended provisions that may never be brought in; there is nothing in the Bill to say that they will. The alternative, of course, is more alarming: because the Bill and its amendments are drafted in this way, there is nothing to stop the Bill being extended further and further.<sup>31</sup>

In reply to these points, Nigel Griffiths, Minister for Competition and Consumer Affairs, said that the Government fully supports the Lords amendments to clause 10. He said that the amendments give the powers needed to ensure that display and larger fireworks are used by properly trained people. On the question of charging fees for the grant or variation of licences, Mr Griffiths said:

I come to my second point, which relates to fees. We are giving the Secretary of State the back-up powers to set fees if there is not agreement on them by those who run the courses. There are two sets of fees. First, there are fees for licensing. It is interesting that Opposition Members now say that those who are licensed

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<sup>29</sup> HC Deb 3 July 1998 cc 676-80

<sup>30</sup> HC Deb 2 July 1998 c 637

<sup>31</sup> HC Deb 3 July 1998 cc 664-65

should set their fees. I did not notice them advance that argument for taxi drivers, publicans, builders or developers. That is a red herring. The second set of fees is course fees. Everyone in the House of Commons agrees that if agreement can be reached on course fees, that is fine. We want a lot of providers to come forward and run courses. If a number of people are running courses, it is likely that the level of fees will reflect the market. That is what we all hope for and it is exactly what is in the Bill.

What the other place has wisely suggested in its amendments, and in backing up the essence of clause 10, is that if there is not agreement on fees or, if someone should, as hon. Members have suggested, have a monopoly of the market, the Secretary of State should have the backstop powers to set the fees herself.<sup>32</sup>

The other main areas where the Bill provides for regulations to be made are:

- Control of particular types of fireworks on grounds of nuisance or distress (clause 2).
- Notification to enforcement bodies by UK manufacturers and importers of information about consignments of fireworks before they are placed on the market. Regulations made under this clause may specify the information that must be provided, when it is to be provided and the authority or authorities to whom such information must be supplied. This clause will allow consignments of fireworks to be tracked and checked for safety where necessary (clause 9).
- To prohibit persons from supplying, offering or agreeing to supply all fireworks, or specified types of fireworks, to persons who are below a specified age (clause 3(1)).
- To prohibit the purchase or possession of all fireworks, or specified types of fireworks, by persons who are below a specified age (clause 3(2)). (Currently, it is an offence to supply fireworks to people below the age of 18. The new powers would allow the possession of certain types of fireworks to be an offence with a maximum penalty of six month's imprisonment or a fine not exceeding level 5 (currently £5,000) or both).
- Restriction of the supply of specified fireworks to trained operators with insurance (clause 6).
- Restriction of the supply, purchase, possession or use of fireworks (or fireworks of a specified description) to specified times of the day and specified periods of the year, or to places or circumstances specified in the regulations (clause 4).

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<sup>32</sup> HC Deb 3 July 1998 c 677

- Application of the provisions of Section 11 of the *CPA 1987* to regulations under the Bill. This would deal with the enforcement of the regulations and allow for powers to search premises and seize fireworks (clause 12).

In effect, the Bill is a framework for fireworks regulations that will regulate all aspects of fireworks safety, in particular the sale and storage of fireworks and public fireworks displays.

Under clause 11, the penalty on summary conviction for contravention of the regulations is a fine not exceeding level 5 on the standard scale (currently £5,000), and/or a term of imprisonment not exceeding six months.

The drafting of the Bill is based on existing consumer safety legislation. If the Bill becomes law subsequent regulations would be introduced under the combined powers of the *Consumer Protection Act 1987* and the new powers contained in the Bill. Clause 12 of the Bill provides that certain provisions of the CPA 1987 are to apply to regulations made under the Bill as they apply to safety regulations made under Section 11 of the CPA 1987. The provisions deal with the enforcement of regulations and include powers to search premises and to seize and detain fireworks.

The Bill had a purely formal Second Reading debate in the Commons on 28 November 1997.<sup>33</sup> It was, however, debated and amended during its Committee stage in the Commons, where Ms Gilroy was able to explain the aims of the Bill for the first time.<sup>34</sup> The Bill was brought from the Commons to the Lords on 23 March 1998.<sup>35</sup>

The Bill was spoken to in the Lords at Second Reading on 8 April 1998 and committed to a Committee of the Whole House.<sup>36</sup> Much of the debate in the Lords concentrated on the width of discretion in the delegated powers. The Government was prepared to accept amendments on some of these issues, and also to give assurances about how the powers would be used. These concerns over the enabling powers of the Bill were initially raised by the House of Lords' Select Committee on Delegated Powers and Deregulation (the Committee) in its Sixteenth Report on the *Fireworks Bill* published on 22 April 1998 – before the Committee Stage started.<sup>37</sup>

The Bill is described in the Sixteenth Report as essentially a framework for fireworks regulations, which will regulate all aspects of firework safety. The Committee scrutinised the extent of the powers given to the Government by the Bill. It considered whether this was a “skeleton Bill” which was little more than a licence to legislate at a later date. In

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<sup>33</sup> HC Deb 28 November 1997 c 1272

<sup>34</sup> SC A Deb 11 March 1998

<sup>35</sup> *Fireworks Bill* HL Bill 92 1997/98

<sup>36</sup> HL Deb 8 April 1998 cc 829-846

<sup>37</sup> Select Committee on Delegated Powers and Deregulation, *Sixteenth Report on the Fireworks Bill*, HL 96 1997/98, 22 April 1998

considering this question the Committee took into account, firstly, the fact that legislation in this field has traditionally proceeded by regulation-making powers, and secondly, the fact that Clause 2 of the Bill provides that permanent regulations can only be made following a public consultation.

The Committee was nonetheless so concerned about the potential width of the powers in the Bill that it invited officials from the DTI to give oral evidence on it. The evidence was heard in the presence of Lord Monkswell, who is the sponsor of this Bill in the House of Lords. The Committee assessed the oral evidence as follows:

During the course of this clear and helpful evidence officials gave repeated assurances that it was the Government's intention that although the powers in the Bill were wide, they would be used narrowly. They also stated that a ministerial undertaking might be given that a full regulatory appraisal, including the compliance costs to industry, would be published before any permanent regulations were made, in addition to the public consultation provided for in the Bill. The Committee believes that such an appraisal would provide a valuable discipline. The Bill has the support of the Government, and it is in this context that we refer both here and elsewhere in this report to ministerial undertakings.

Officials persuaded the Committee that the legislation was necessary to widen the ambit of consumer protection in this area. As an example, the Government had recently been unable to make regulations to restrict the times in which it is permitted to use fireworks, despite the obvious considerations of noise and general nuisance. The existing power to make regulations (in the *Consumer Protection Act 1987*) was essentially aimed at ensuring that products, which were sold or supplied, were safe to use and did not extend to ensuring that the products were then actually used safely. This limited the protection against fireworks accidents that could be achieved without the new powers.<sup>38</sup>

The Committee was concerned over a number of aspects of the Bill. For example, it was concerned that regulations made under the Bill are subject to the negative procedure. The Committee considered whether the negative procedure provided sufficient parliamentary control for a power which is wide ranging and important to those it affects. Similarly, the Committee was concerned at so-called Henry VIII powers. Section 1(2) allows the Secretary of State to amend the definition of fireworks in section 1(1). The report states:

The fact that the Bill sets no limits on what might be brought within the definition and so within the scope of the Bill caused the Committee particular concern. This concern was exacerbated by the fact that regulations under Clause 1(2) would not be subject to the requirement for consultation under clause 2(3) of the Bill. The

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<sup>38</sup> Select Committee on Delegated Powers and Deregulation, *Sixteenth Report on the Fireworks Bill*, HL 96 1997/98, 22 April 1998

Department indicated that a ministerial undertaking might be given to indicate the very limited circumstances in which this power would be used.<sup>39</sup>

The Committee also considered that the power granted by Clause 2 of the Bill to make regulations about fireworks is another disturbingly wide power. It includes the power to: “make any provision...for the purpose of securing that fireworks are used...so that there is no risk, or only the minimum risk compatible with their use, that they will cause...the death of any person or injury, alarm, distress or anxiety to any person”.

In effect, the Committee drew attention to the wider powers conferred by the Bill. However, the report states:

During the course of the oral evidence officials indicated that ministerial undertakings might be made in response to each of the Committee's particular concerns...In the light of this...the Committee concluded that the Bill did not ‘inappropriately delegate legislative power’.<sup>40</sup>

The Bill with the Lords’ amendments returned to the House of Commons on 29 June 1998.<sup>41</sup> The Lords’ amendments were considered on 3 July 1998 when the debate stood adjourned.<sup>42</sup> In effect, the Bill was talked out and it is unlikely that time will be found for it to complete its passage during this session of Parliament.

## VI Firework injuries

Each year the Consumer Safety Unit of the DTI carries out a census of all fireworks related injuries receiving hospital treatment during a four-week period comprising the run-up to 5 November and a few days afterwards (14 October to 10 November). This period encompasses the peak incidence of firework use in Great Britain. Over 550 hospitals with an Accident & Emergency Department that treats fireworks injuries submit returns. Statistics on firework injuries requiring hospital treatment have been recorded in this way for England and Wales since 1962 (when they stood at 2,800). Since 1969 the statistics have included injuries in Scotland. Injuries dropped to below 1000 in the mid 1970s (largely due to the voluntary action by the fireworks industry) before increasing to over 1000 in 1993. Injuries in 1994 showed a 50 per cent increase from in 1993 to 1574 and in 1995 the figure was only slightly less (1530).

Surveying the DTI’s statistics, it is clear that fatalities resulting from firework accidents have been relatively rare. There were two deaths in 1994 (one resulting from illegal tampering with a firework). In 1996 three fatalities were reported. The first death was of a

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<sup>39</sup> Ibid, paragraph 7

<sup>40</sup> Select Committee on Delegated Powers and Deregulation, *Sixteenth Report on the Fireworks Bill*, HL 96 1997/98, 22 April 1998, paragraph 5

<sup>41</sup> HL Deb 29 June 1998 c 436 and Lords Amendments to the *Fireworks Bill* HC Bill 216 1997/98

<sup>42</sup> HC Deb 3 July 1998 cc 633-704

ten year old boy, Dale Mitchell, who died in October after a lit firework was pushed through the letterbox of his family home in Nottingham.<sup>43</sup> The second death was of Mr David Hattersley, Headmaster of Hazlemere Primary School in High Wycombe, Buckinghamshire. He is reported to have stumbled forward as he was supervising the school's annual display on 1 November 1996, and took the full impact of an 8lb mortar-style firework.<sup>44</sup> The third death was of Mr Steven Timcke from Wilmington, Kent. He died from facial injuries when he lit a firework at a private bonfire party on 2 November 1996. According to press reports, the firework weighed 4 lbs. and was meant to be fired from a mortar tube, but the instructions were in Chinese, Mr Timcke is believed to have used a match.<sup>45</sup>

In March 1998, the DTI published the following data on firework injuries for 1997:

- 908 people required hospital treatment in 1997 (this represents a 26 per cent drop on the previous year's figure of 1233 and the lowest figure for six years).
- Injuries in the following three age groups fell to their lowest for six years:
  - Children aged under 13 years – 303 injuries (compared to the 387 injuries in 1996).
  - Children aged between 13-15 years old – 125 injuries (compared to the 218 injuries in 1996).
  - Young people aged between 16-20 years old – 91 injuries (compared to the 174 injuries in 1996).
- In 1997 injuries caused by bangers, rockets and Roman Candles fell by nearly one-third to 189, 158 and 58 respectively (compared to the 1996 figures of bangers 273, rockets 222 and Roman Candles 79 respectively).
- Injuries caused by firework hooliganism fell by one-third in 1997 to 256 (compared to a figure of 379 for 1996).

A table is reproduced overleaf that provides a six-year summary of firework injuries in Great Britain from 1992 to 1997. Two pie charts are also reproduced showing the outcome of firework injuries and the types of firework causing injury in 1997. This information is taken directly from the DTI's survey on firework injuries for Great Britain in 1997.<sup>46</sup>

The DTI's next fireworks safety campaign for 1998 is scheduled to begin in mid October.

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<sup>43</sup> "Dead boy's relatives in No.10 fireworks protest", *Press Association*, 4 November 1996

<sup>44</sup> Health and Safety Executive press notice, *HSE to investigate tragic firework accident*, 4 November 1996

<sup>45</sup> "Mortar firework ban urged as two die", *Times*, 4 November 1996

<sup>46</sup> Department of Trade & Industry, *Firework Injuries Data Year 1997*, March 1998

<b>Firework Injuries in Great Britain (4 week Period in October – November)</b>						
	<b>1997</b>	<b>1996</b>	<b>1995</b>	<b>1994</b>	<b>1993</b>	<b>1992</b>
<b>Place of Accident</b>						
1. Family or private party	378	428	515	642	365	310
2. Semi public party (e.g. scouts, club)	56	100	107	118	88	92
3. Large public display	137	223	207	213	156	171
4. Casual incident in street or other public place	256	379	534	475	338	288
5. Indoors	22	23	30	24	21	25
6. Other	21	75	137	102	90	56
7. Not Specified	38	5	-	-	-	-
<b>Type of Firework</b>						
1. Banger	189	273	316	268	169	170
2. Rocket	158	222	212	215	156	169
3. Air Bomb	50	82	107	93	45	0
4. Roman Candle	58	79	86	95	40	71
5. Sparkler	200	196	163	253	189	177
6. Other proprietary fireworks	104	139	132	188	102	75
7. Home made or extracted powder	18	16	20	37	14	30
8. Not known (not bonfires)	125	226	494	425	343	250
9. Not Specified	6	-	-	-	-	-
Air Bombs were included with Other Proprietary Fireworks prior to 1993.						
<b>Outcome of Injury*</b>						
1. No further treatment required	359	373	488	459	332	-
2. Referred to G.P.	115	141	177	230	145	-
3. Referred to out patient dept. of this or other hospital.	301	463	565	612	410	-
4. Detained in this hospital for at least one night	49	58	57	68	75	65
5. Transferred to another hospital	22	38	46	62	-	-
6. Died	0	2	0	2	0	0
7. Not known	23	158	197	141	96	103
8. Not Specified	39	-	-	-	-	-
*Categories changed in 1993						
<b>Age Group of Injured Persons</b>						
1. Over 20 years	389	438	487	558	376	296
2. 16-20	91	174	173	208	140	158
3. 13-15	125	218	292	290	191	170
4. Under 13	303	387	533	518	351	318
5. Not known	0	16	45	-	-	-
<b>Total Eye Injuries</b>	<b>262</b>	<b>413</b>	<b>437</b>	<b>450</b>	<b>305</b>	<b>295</b>
<b>Year total</b>	<b>908</b>	<b>1233</b>	<b>1530</b>	<b>1574</b>	<b>1058</b>	<b>942</b>



