

**GOVERNMENT RESPONSE TO THE
CONSULTATION ON A PROPOSED
AMENDMENT TO SCHEDULES 1
AND 3 TO THE FURNITURE AND
FURNISHINGS (FIRE) (SAFETY)
REGULATIONS 1988**

MARCH 2010

CONSULTATION ON A PROPOSED AMENDMENT TO SCHEDULES 1 AND 3 TO THE FURNITURE AND FURNISHINGS (FIRE) (SAFETY) REGULATIONS 1988

Summary of responses and Government response to the consultation

1. Introduction

The Furniture and Furnishings (Fire) (Safety) Regulations 1988 (FFRs) set levels of fire resistance for domestic upholstered furniture, furnishings and other products containing upholstery. In November 2009, the Department for Business, Innovation and Skills (BIS) published a consultation document (URN 09/1361) seeking views on the Government's intention to simplify the specification for the test cover fabric as detailed in Schedules 1 and 3 (also referenced in Schedule 2) to the FFRs by way of amendment to those Schedules. The new specification will clarify the statutory requirement and reduce the burden to industry in meeting the existing specification in the FFRs.

The consultation document was sent to over 50 stakeholders, including furniture industry associations, test laboratories, enforcement bodies, independent experts and other Government Departments. A full list of the organisations and individuals consulted is given at Annex D of the consultation document.

A total of twenty written responses were received, sixteen of which were substantive. The twenty responses were from:

- 1 small and medium sized business
- 5 trade associations/unions
- 3 local authorities/enforcement organisations
- 2 standards bodies/accreditation services
- 2 fire and rescue services
- 5 test laboratories, and
- 2 independent experts.

A list of all respondents can be found at the annex to this document.

The Department is very grateful for the responses to the questions we asked and for the useful additional comments we received. We have considered all your views very carefully. Because the responses were often of a highly technical nature, we decided to consult further with key stakeholders, and subsequently held a meeting at BIS headquarters on 15th January 2010 to this end (see 5 below).

2. Summary of responses to consultation questions and the Government response to them

Question 1

What do you think about the proposed new specification for test cover fabric at Annex A? Is it clear and unambiguous?

Responses

There were thirteen responses to this question. Nine respondents agreed that the proposed specification was clear and unambiguous. Two said it was too detailed/not very clear. The remaining two suggested alternative specifications, based on the test fabric definition provided in BS 7176 and BS 7177.

Government response

After taking further advice from key respondents (see 5 below), the Government agrees that the test fabric definition specified in BS 7176 and BS 7177 provides the most effective basis for a revised amended specification.

Question 2

Is the new specification too detailed? Should the fabric be referred to as:

"The fabric shall be made of 100 per cent flame retardant polyester. The polyester polymer should be a copolymer comprising the normal ethylene terephthalate repeat unit together with a phosphinic acid (2-methyl-2, 5 dioxo-1-oxo-2-phosphalane) repeat yielding a reported overall filament/fibre phosphorus concentration of 0.6-0.8 wt %."

Or should a simpler reference be used, such as:

"The fabric shall be made of standard 100 per cent flame retardant polyester."

Please give reasons for your choice.

Responses

There were twelve responses to this question. Six respondents thought the new specification was too detailed; six did not. Six agreed that a simpler definition should be used; four offered a slightly different interpretation to the suggested definition. Two did not think the simpler specification should be used. Overall, four respondents suggested using the test cover fabric specification in BS 7176 and BS 7177 instead of both the suggested specifications in this question (see 5 below).

Government response

After taking further advice from key respondents (see 5 below), the government agrees that the specification in BS 7176 and BS 7177, slightly modified, is effective, accurate and available and provides the basis for an effective and safe balance between the two specifications provided in this consultation. It lends itself to universal manufacture without a high cost and we consider it fit for purpose.

Question 3

Will this new specification meet the requirements of the FFRs? If not, please provide details.

Responses

There were eleven responses to this question. Three respondents agreed the specification would meet the requirements of the FFRs, one if re-worded slightly. Four said they assumed it would do so, citing lack of technical knowledge, or the belief that tests should first be carried out on the new specification, as reasons for not being totally positive. Two expressed the view that the specification in BS 7176 and BS 7177 should be used instead. Two expressed the view that endorsements from fabric suppliers should be made available.

Government response

After taking further advice from key respondents (see 5 below), the government agrees that the specification in BS 7176 and BS 7177, slightly modified, is effective, accurate and available and provides the basis for an effective and safe balance between the two specifications provided in this consultation. It lends itself to universal manufacture without a high cost and we consider it fit for purpose.

Question 4

What do you think is the purpose of the use of the specified test cover fabric?

Responses

There were ten responses to this question. Six respondents expressed the view that the purpose of the test cover fabric is to hold in the fillings materials. Seven said that the test cover fabric does not affect the ignitability of the fillings materials it is covering.

Government response

The Government is satisfied that the main purpose of the test cover fabric is to hold in the fillings materials to be tested, and that it does not affect the ignitability of those fillings.

Question 5

A draft Impact Assessment has been attached at Annex C. Have you any comments to make about this assessment? Are there any savings or costs that have not been taken into account?

There were eight responses to this question:

Response (i)

The respondent agreed with the draft impact assessment that making the proposed change simply brings the FFRs in line with the prevailing situation regarding test cover fabric and expressed the view that the cost of the additional text for the specification would be minimal.

Government response

We agree that this cost would be minimal.

Response (ii)

The respondent commented that there will be a cost saving to Trading Standards; that currently, Trading Standards are enforcing against unsafe furniture fillings materials by using the General Product Safety Regulations. However, the GPSR places the onus of proof of lack of safety on Trading Standards, which means they have to pay for expert witnesses. Under the FFRs, they need only pay for a suitable test house to test the product, i.e. this amendment will represent a cost saving to the enforcement authorities.

Government response

The Government agrees that the General Product Safety Regulations place the burden of proof on Trading Standards and that this amendment could lead to cost savings for them.

Response (iii)

Two respondents commented that while the draft impact assessment covers the financial and regulatory costs savings of the amended specification from a testing point of view, it does not address the impact that failing to act would have on fire safety in the UK.

Government response

The draft impact assessment makes clear that this amendment is required in order to facilitate better enforcement, which in turn will protect the consumer by ensuring the fire safety of furniture for the UK market. It is very difficult to assess the impact of failing to act in this matter. Until the amendment is implemented, Trading Standards will continue to use the General Product Safety Regulations 2005 in any necessary moves to prosecute those who place unsafe furniture fillings on the UK domestic market. However, it is not known if Trading Standards' current inability to use the FFRs to prosecute against unsafe fillings will lead to any increase in attempts to place non-compliant furniture on the market.

Response (iv)

One respondent commented that the draft impact assessment was 'rather elaborate'; also that there will be a minor cost in removing the template disclaimers test houses are currently using (required by the accreditation service, UKAS) regarding the test fabric now in use.

Government response

We accept that there may be a minor cost to test houses in this respect.

Response (v)

Two respondents made the comment that savings will result from the amendment, in that Trading Standards will be able to fully enforce the FFRs, thereby cutting down on illegal

imports and the costs associated with resulting fires and injuries. One of these respondents also made the point that non-compliant furniture has the greatest impact on those suffering the most social and economic deprivation.

Government response

We agree that it is possible Trading Standards may be able to prevent more non-compliant imports reaching the UK market when they are able to use the full range of enforcement provisions provided by the FFRs (under the Consumer Protection Act 1987). Evidence also suggests that non-compliant furniture is more likely to end up in the homes of those suffering the most social and economic deprivation.

Response (vi)

One respondent made the comment that costs involved with implementing the amendment will be minimal, and that the amendment offers a 'neat solution to a hitherto unforeseen problem'.

Government response

The Government agrees that the proposed option c (see 3 below) presents minimal cost to industry.

3. **Responses to the three options put forward in the consultation document**

The consultation sought views on the three options regarding the FFRs' test cover fabric, as detailed in the draft impact assessment:

Option a: Do nothing, and maintain current unsatisfactory position of non-compliance and difficulties with enforcement;

Option b: Insist that test houses use the test cover fabric specified in the regulations, which would impose a heavy cost on industry and without substantively improving safety; and

Option c: Amend the specifications in the FFRs so as to enable use of the test cover fabric currently in use. This will ensure an appropriate level of consumer safety and enforcement without overburdening industry at a difficult time.
[PREFERRED OPTION.]

Responses

Ten respondents expressed direct support for Option c. Another four indicated support for Option c, either by implication or verbal affirmation. One agreed with Option c with the provision, 'only if the evidence supports it'.

No respondents expressed support for Option a or Option b.

4. **Additional comments**

Comment (i)

The respondent was 'opposed to the second part of Q2 in para 1.20 of the Consultation Questions, i.e. the proposal that "The fabric shall be made of standard 100 per cent flame retardant polyester". It would be possible to produce such a fabric which was extremely thick, did not immediately melt away, and had a significant adverse effect on the test results'.

Government response

We acknowledge this could be an issue but believe that the revised specification (see 5 below) ensures that such a fabric will not pass the requirements.

Comment (ii)

The respondent believed that 'whilst intended to make furniture safer for the general public, the Regulations are meant to be used by persons that are technically competent, whether as a manufacturer/supplier of test fabric, a fire test technician or a regulator. Given that kind of audience, it is considered that the longer, more detailed specification is more appropriate. The reason for this is straightforward; the aim is, or should be, to have a thoroughly standardised test regime. By giving a more, rather than less, detailed specification it further reduces the risk of variability in extraneous factors having a bearing upon the outcome of the various fire tests . . . On the assumption that the chosen covering material does not serve to somehow mask undesirable fire performance (and that, hopefully, 'in service' coverings do not have a worse performance than the test coverings) it really doesn't matter what the covering is as long as it is the same for every test'.

Government response

The Government acknowledges that the aim of this amendment is to provide a standardised test regime. We also agree, after further consultation with stakeholders, that the proposed shorter specification is not entirely adequate in this respect. The revised specification (see 5 below) will therefore be more detailed.

We agree that the proposed specification should result in a test cover fabric that represents a standardised test condition, and that it should not mask undesirable fire performance. However, we do not necessarily agree that it doesn't matter what this cover fabric is, as long as it's the same for every test. This will be a matter for consideration in the Government's current review of the FFRs overall.

Comment (iii)

The respondent said, 'We are unhappy with the wording of this section since it implicates only polyurethane foam in pre-1988 fire hazards. In fact it was easily demonstrated that the ease of ignition and rapid combustion of such furniture derived from synthetic ignitable fabrics and a variety of fillings (latex foam and fibres). You may remember that our industry demonstrated this by burning furniture containing mineral fibre filling under untreated acrylic pile fabric. (The strength of the SI 1324 fire safety measures lies in the combined ignition resistance of covers and fillings; partial controls via ignition resistant cover or ignition resistant fillings in isolation are demonstrably less worthwhile.) We would therefore appreciate a revision of this section prior to its further circulation'.

Government response

Schedule 1 of the FFRs was introduced to deal with the highly dangerous large volume fillings of polyurethane foam used in furniture. Such foam remains a potential risk and indeed is often used in non-compliant, illegal furniture fillings. The case for any other

fillings materials which now should be also included in the Schedule 1 test procedure will be examined in the Government's current review of the FFRs overall.

Comment (iv)

The respondent said, 'I am supporting the Proposed Amendment, which has been awaited for some time. I do necessarily accept the need for other Amendments to SI 1324 [the FFRs] such as have been mooted elsewhere. I am strongly opposed to calling up latest versions of BS5852 for the reason that the 15sec gas flame therein is a safety reduction compared to existing 20sec'.

Government response

This is a matter that will be examined in the Government's current review of the FFRs overall.

Comment (v)

The respondent said, '[We] believe[s] that it is essential to specify the flame retardant used as this can have a significant impact on the performance of the fabric. However, [we] believe[s] that by specifying the threads per centimeter in warp and weft, and by defining the mass per square metre, the fabric is accurately defined and defining the fibre in great detail is not of any benefit'.

Government response

The government believes that the revised specification (see 5 below), as drafted following additional feed-back from key stakeholders, covers this point.

Comment (vi)

The respondent said, 'In the opinion of our members, in many respects worse than the original specification as, in trying to incorporate tolerances on various parameters, you have actually made it less precise and more open to variation. In addition the majority of our members are of the opinion that there is no need to specify the polymer and flame retardancy mechanism. Indeed it is not known by our members what the actual method of imparting flame retardancy is and to rely on such a restrictive specification may impose additional burdens on the producers and end-users in maintaining an evidential trail to demonstrate that the fabric is compliant with the specification. [We] would prefer to see the existing wording modified to delete all references to the decitex of the fibres used in both warp and weft yarn and to amend or delete the part of the specification relating to the turns per metre of both warp and weft yarns'.

Government response

The government believes that the revised specification (see 5 below), as drafted following additional feed-back from key stakeholders, covers this respondent's main points.

Comment (vii)

The respondent said, 'One member reported that the current fabric is tending to be towards the lower end of the permitted range and that the tolerance on mass should be extended. However no other members have reported any concerns in this respect. A number of members expressed concerns that by specifying the polymer and the inclusion of phosphinic acid and the resultant phosphorus content would be to store up similar problems for the future. Whilst polyester is by definition composed of ethylene

terephthalate repeats there are no guarantees that phosphinic acid will continue to be used as the means of imparting flame retardancy'.

Government response

The government believes that the revised specification (see 5 below), as drafted following additional feed-back from key stakeholders, covers this respondent's main points.

5. **Additional meeting**

The consultation feed-back almost unanimously agreed that the best option for an amendment was to base the specification on the test cover fabric currently in use. However, there was also strong support for a specification somewhere between the two proposed by the government, and based on one that already exists in two British Standards. For this reason, and because the responses to this consultation were so detailed and often of a highly technical nature, the Department for Business, Innovation and Skills (BIS) decided to consult further with key stakeholders, towards ensuring the proposed specification was framed correctly.

A meeting was subsequently held at BIS's headquarters in Victoria, London, on 15th January 2010. 11 people attended the meeting, including representatives from Government, industry, test houses, the British Standards Institute and Trading Standards. The result was a revised specification for the amendment, based on, but slightly more detailed than, the one provided by:

BS 7176: Specification for resistance to ignition of upholstered furniture for non-domestic seating by testing composites; and
BS 7177: Specification for resistance to ignition of mattresses, mattress pads, divans and bed bases.

Revised specification:

"The fabric shall be made of 100% flame-retardant polyester fibre. Its construction shall be woven to a plain weave. The yarn in the warp shall be spun to a linear density of 37 tex \pm 5%. The fabric shall be woven to 20.5 \pm 1 threads per centimetre in the warp. The yarn in the weft shall be spun to a linear density of 100 tex \pm 5%. The fabric shall be woven to 12.5 \pm 1 threads per centimetre in the weft. The fabric shall be scoured and heat set. Its mass shall be 220 g/m² \pm 5%."

However, following further consideration and discussion, including with the current main supplier, this was modified slightly again:

Final agreed specification:

"The fabric shall be made from 100% flame-retardant polyester fibre. Its construction shall be woven to a plain weave. The yarn in the warp shall be spun to a linear density of 37 tex \pm 10% and the yarn in the weft shall be spun to a linear density of 100 Tex \pm 10%. The fabric shall be scoured and heat set and woven so as to have a finished fabric construction of 20.5 \pm 1 threads per centimetre in the warp and 12.5 \pm 1 threads per centimetre in the weft, and a mass of 220 grammes per square metre \pm 5%."

The Government believes this specification will ensure the high levels of consumer safety provided by the FFRs, best facilitate Trading Standards in enforcing the Regulations and allow industry to test products in a commercially viable way.

6. **Impact Assessment**

The Impact Assessment is unchanged from how it appears in the consultation document:
<http://www.berr.gov.uk/files/file53555.pdf>.

7. **Next Steps**

The final draft specification and impact assessment will be submitted to the BIS Minister for approval in Feb/March 2010. The draft specification must then be notified to the European Commission. The Commission in turn will notify all other Member States who have three months in which to respond. If one or more Member States returns a detailed opinion, the standstill period will be extended to six months, which will be to around end-September 2010. After that, the amended regulation will be implemented, which will take around another two months, i.e. end-November 2010.

LIST OF RESPONDENTS

1. British Furniture Confederation
2. British Standards Institute
3. BPF Flexible Foam Group
4. Bureau Veritas
5. Chief Fire Officers Association
6. Durham and Darlington Fire Rescue Service
7. Fire Industry Research Association
8. Fire Brigades Union
9. Greater Manchester Fire and Rescue Service
10. Dr David Hawkrige
11. Intertek
12. Dr David King
13. Local Authorities Coordinators of Regulatory Services
14. SATRA
15. Texconsul Ltd
16. Trading Standards Institute
17. West Yorkshire Materials Testing Service
18. West Yorkshire Trading Standards
19. United Kingdom Textile Laboratory Forum
20. United Kingdom Accreditation Service

Department for Business, Innovation and Skills

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