

**BERR**

Department for Business  
Enterprise & Regulatory Reform

**NEW REQUIREMENTS FOR THE  
FIRE SAFETY OF CHILDREN'S  
NIGHTWEAR**

Nightwear Advisory Note

OCTOBER 2008

## **NEW REQUIREMENTS FOR THE FIRE SAFETY OF CHILDREN'S NIGHTWEAR**

This is an advisory note regarding new flammability performance requirements for children's nightwear introduced by the European standard: BS EN 14878 *Textiles - Burning behaviour of children's nightwear - Specification*, which comes into effect in November 2008.

Children's nightwear in the UK must comply with the Nightwear (Safety) Regulations 1985 ("the UK Regulations"), and continue to do so even after November. On the whole, the flammability performance requirements of the UK Regulations are more stringent than those set out in the new European Standard. However, there are some requirements of BS EN 14878 that are a little more onerous or which are different to those prescribed in the UK Regulations.

This note sets out the differences between these two sets of requirements and gives guidance on how to ensure that products comply with both.

**However, this Advisory Note is a guide compliance with the statutory requirements only. It is not a definitive explanation of the law. If in doubt about whether a product satisfies the legislative requirements, you should seek legal advice.**

### **Key Differences between BS EN 14878 and the Nightwear (Safety) Regulations 1985**

1. BS EN 14878 covers nightwear garments, and fabrics intended for nightwear for babies and children from birth up to age 14 years only. The UK Regulations apply to nightwear for children up to age 13 and adults, and all garments for babies.
2. BS EN 14878 defines a baby as up to 6 months and up to a height of 68 cm; the UK Regulations define a baby as a child under the age of 3 months and give no height limit.
3. For pyjamas: BS EN 14878 includes two levels of fabric performance for flammability, dependent upon the garment styling. While these performance requirements are low by comparison with the UK Regulations, they will nevertheless eliminate the most hazardous fabrics and design combinations.
4. For bath robes: BS EN 14878 does not distinguish between bath robes and dressing gowns in setting flammability performance requirements. This reflects changing consumer behaviour. The UK Regulations exempt cotton terry bath robes from the flammability performance requirements (although there are compulsory labelling requirements).
5. For other nightwear garments such as nightdresses and dressing gowns (but not cotton terry towelling bath robes) the requirements of the UK Regulations are more onerous than BS EN 14878.
6. The test methods for assessing flammability performance for BS EN 14878 are different from those used under the UK Regulations, and results therefore cannot be directly compared.
7. BS EN 14878 does not require specimens to be tested after washing (except to assess durability of applied flame retardant finishes). The UK Regulations require all specimens to be tested after washing.
8. BS EN 14878 does not cover threads and trimmings, while the UK Regulations do.
9. It is accepted that under the UK Regulations a garment which is wholly made of and trimmed with a synthetic fabric that on the application of heat melts without decomposing, complies with the flammability performance requirements. BS EN 14878 requires **all** fibre types to be assessed.

10. BS EN 14878 includes a toxicity assessment for all applied flame retardants such as those which might be applied to cotton fabrics. The UK Regulations do not include any requirements for assessing flame retardants.
11. BS EN 14878 does not specify a minimum performance requirement to assess durability of flame retardants, only that they must be durable "*for the expected life time of the garment*" according to "*normal washing procedures to which the garment could reasonably be expected to be subjected*".
12. Labelling is compulsory under the UK Regulations. Labels must meet strict criteria, including legibility and durability of text. Under BS EN 14878, labelling is optional but if taken, the text to be used is prescribed.
13. The UK Regulations include specific requirements for advertisements for children's nightwear, while advertising is not mentioned in BS EN 14878.
14. The General Product Safety Regulations 2005 (GPSR), under which BS EN 14878 can be used to assess safety of products, apply for the lifetime of the product, i.e. to new and second-hand products. The UK Regulations do not apply to second-hand garments.

### **Summary**

BS EN 14878 concerns nightwear and fabrics intended as nightwear for babies and children up to age 14. The major differences between this standard and the UK Regulations are that the standard has performance requirements for pyjamas and bath robes, as well as a requirement for a toxicology assessment of applied flame retardant finishes. These topics should also be considered as part of the risk assessment process (which is required under the GPSR) in addition to the UK Regulations. A few requirements of BS EN 14878 contradict the UK Regulations, while others are less onerous, leading to the possibility of less safe garments for children.

In addition, the GPSR require second-hand products to be as safe as new products, but the UK Regulations do not apply to second-hand garments.

There are no flammability requirements for babies' daywear and adult's nightwear in BS EN 14878, and such garments should continue to comply with the UK Regulations (under which there is an optional flammability requirement and a compulsory labelling requirement).

### **Recommended Practice from end November 2008 onward**

In order to comply with the Nightwear (Safety) Regulations 1985 and BS EN 14878 it is recommended that the following be adopted:

**Performance & Labelling**

<b>Pyjamas</b>		
<b>Category Of Intended Wearer</b>	<b>UK Performance Requirements</b>	<b>Labelling Text</b>
Birth up to (6 months) height 68cm	None	<b>KEEP AWAY FROM FIRE</b>
Over 68cm (6 months) and up to height: Girls 176cm (14 years) Boys 182cm (14 years)	Meet BS EN 14878 <i>EITHER</i> Class A When tested to BS EN 1103 <ul style="list-style-type: none"> <li>• no surface flash flame</li> <li>• 520mm trip thread severed in not less than 15s</li> <li>• no design limitations</li> </ul> <b>OR</b> Class B When tested to BS EN 1103 <ul style="list-style-type: none"> <li>• no surface flash flame</li> <li>• 520mm trip thread severed in not less than 10s</li> <li>• with design limitations see BS EN 14878 clause 10</li> </ul>	<b>KEEP AWAY FROM FIRE</b>

<b>Night Dresses, Dressing Gowns Bath Robes (not cotton terry towelling) and similar garments</b>		
<b>Category Of Intended Wearer</b>	<b>UK Performance Requirements</b>	<b>Labelling Text</b>
Birth up to 3 months	None	<b>KEEP AWAY FROM FIRE</b>
Over 3 months and up to height 68cm (6 months)	Meet UK regulations, BS 5722: when tested to BS 5438 <ul style="list-style-type: none"> <li>• 300mm trip thread severed in not less than 25s</li> </ul> and <ul style="list-style-type: none"> <li>• 600mm trip thread severed in not less than 50s</li> </ul>	<b>KEEP AWAY FROM FIRE</b>  <b>LOW FLAMMABILITY TO BS 5722</b>
Over 68cm (6 months) and up to height Girls 176cm (14 years) Boys 182cm (14 years)	Meet UK regulations, BS 5722: when tested to BS 5438 <ul style="list-style-type: none"> <li>• 300mm trip thread severed in not less than 25s</li> </ul> and <ul style="list-style-type: none"> <li>• 600mm trip thread severed in not less than 50s</li> </ul>	<b>KEEP AWAY FROM FIRE</b>  <b>LOW FLAMMABILITY TO BS 5722</b>

<b>Bath Robes made of cotton terry towelling only</b>		
<b>Category Of Intended Wearer</b>	<b>UK Performance Requirements</b>	<b>Labelling Text</b>
Birth up to 3 months	None	<b>KEEP AWAY FROM FIRE</b>
Over 3 months and up to 6 months	None	<b>KEEP AWAY FROM FIRE</b>
Over 68cm (6 months) and up to height Girls 176cm (14 years) Boys 182cm (14 years)	Meet BS EN 14878 Class A When tested to BS EN 1103 <ul style="list-style-type: none"> <li>• no surface flash flame</li> <li>• 520mm trip thread severed in not less than 15s</li> </ul>	<b>KEEP AWAY FROM FIRE</b>

The following remain unchanged and should be as defined in the UK Nightwear (Safety) Regulations 1985:

- Position of label in the garment
- Font, size and colour of print
- Label durability
- Permanency of labelling of garment

## **Applied Flame Retardants**

### ***Toxicology***

Where applied flame retardant finishes are used, only those approved by the EU Scientific Committee on Health and Environmental Risks (SCHER) should be used.

If there is an absence of such approved finishes by SCHER (which is the case at the time of writing this note), another means of toxicological assessment of the flame retardant, which includes toxicity and eco-toxicity, could be adopted, for example:

- during manufacture of the finish and its application, including any other chemicals used during application;
- for the user, considering the user may be a baby who might suck and ingest the finish, or will have more sensitive skin which may be sensitised;
- for disposal of garment at the end of its life via land fill or incineration.

### ***Durability***

Finishes must be durable for the lifetime of the garment when cleansed by the recommended methods.

At a minimum, garments with these finishes should be durable to 12 repeat washes according to BS 5651:1978 *Specification for cleansing and wetting procedures for use in the assessment of the effect of cleansing wetting on the flammability of textile fabric and fabric assemblies*, and meet the flammability performance requirements of BS EN 14878 or the UK Regulations as appropriate.

### ***Labelling***

All garments with an applied flame retardant finish should be labelled as currently required by the UK Regulations, i.e. "**DO NOT WASH AT MORE THAN 50°C. CHECK SUITABILITY OF WASHING AGENT**" This text, in black letters should be placed below the fire warning text.

Note: suitable washing agents or laundry detergents carry information on the packet labels.

## **Second-Hand Nightwear (Pre-Worn and Washed Garments)**

While the UK Regulations state that the legislation does not apply to second-hand nightwear, the GPSR clearly require all products to be safe for the life time of the product.

Experience has shown that most garments remain safe for the lifetime of the product. Provided the labelling meets the criteria above and the wording is legible, garments may be sold second-hand. However, for fabrics treated with a flame retardant, the situation is less clear because the degree of adherence by previous users to laundry recommendations is obviously unknown. Any garment likely to have been treated with a flame retardant should therefore be destroyed and not offered for sale. No second-hand garments bearing the words '**DO NOT WASH AT MORE THAN 50°C. CHECK SUITABILITY OF WASHING AGENT**' should be offered for sale (suggested as a pragmatic solution to the implications of the GPSR).

\* \* \*

## **Background to the UK Regulations and BS EN 14878**

UK accident data shows a significant reduction in the occurrence of serious injuries resulting from accidental ignition of nightwear since the introduction of the UK Regulations.

Other European countries (apart from Ireland) lack similar legislation. However, a number of serious injuries in Europe prompted the European Commission to ask CEN (the European standards making body) to investigate the feasibility of developing a Europe-wide standard for flammability of nightwear. This was intended to be used to demonstrate fire safety of nightwear in the context of the safety requirements of the General Product Safety Directive (Directive 2001/95/EC) which requires

producers to place only safe products on the market. It was intended that compliance with this new European nightwear standard would confer the presumption of safety in the context of the safety requirements of the GPSD (enacted in the UK as the General Product Safety Regulations 2005 ("GPSR")). Following CEN's subsequent study - which included UK input through the British Standards Institution - CEN agreed that such a standard was feasible. As a result, the Commission issued a mandate to CEN to develop "a specification for safe nightwear to cover burning characteristics and toxicology of applied flame retardant finishes". After lengthy debate, this was published by CEN as 'EN 14878:2007 *Burning Behavior of Children's Nightwear - Specification*' in 30 European countries, and implemented in the UK as BS EN 14878:2007.

However, in relation to compliance with the safety requirements of the GPSD, some requirements of BS EN 14878 are weaker than those in the UK Regulations; consequently the UK was obliged to enter an "A Deviation", to state that the UK's more onerous requirements remain and **must** be followed. This A Deviation was published as an annex in all European Member States' editions of the standard.

On the other hand, in some respects BS EN 14878 is more onerous than the UK Regulations, or the requirements are different. So, on the basis that the UK is obliged to meet the safety requirements of the GPSD, it is recommended that UK producers to do so by meeting the relevant requirements of BS EN 14878.

### **The General Product Safety Regulations 2005**

The General Product Safety Regulations 2005 (GPSR) require all products intended for consumers or likely to be used for consumers to be safe or to pose only the minimum of risk compatible with the product's use -

- under normal use and foreseeable use
- for the lifetime of the product.

The GPSR **affect all persons who are involved as producers or distributors of products, in this case nightwear**. It should be noted that the terms "producers" and "distributors" have particular meanings and responsibilities, as explained in the BERR Guide to the GPS Regulations (see Further Information below), but in effect, this includes everyone involved in the manufacture and supply of nightwear whose actions may affect the safety properties of nightwear.

The GPSR provide no specific requirements for determining safety or "acceptable risk": it is the responsibility of the manufacturer, retailer, importer etc to decide. In general, a product is presumed to conform to the general safety requirement if:

- it is in compliance with national legislation setting out specific safety requirements in order to be marketed in the UK (e.g. *The Nightwear (Safety) Regulations 1985*), or
- it conforms to a voluntary national standard which gives effect to a European standard, the reference to which has been published in the Official Journal in accordance with Article 4 of the GPSD. It is worth noting that standard EN 14878 has not yet been referenced in the Official Journal.

Where either of these circumstances does not exist or if they do not cover specific aspects of safety, then the safety of a product will be assessed taking into account :

- any voluntary standard of the UK giving effect to a EU standard other than one referred to above e.g. *BS EN 14878 Burning Behavior Of Children's Nightwear Specifications*
- other national standards
- recommendation of the European Commission setting guidelines on product safety assessment
- product safety codes of good practice
- state of the art and technology
- reasonable consumer expectations concerning safety

Hence, while compliance with BS EN 14878 is not compulsory, it is a recognised way of demonstrating a minimum level of safety of the product for flammability.

In principle, it is recommended that the more onerous of the requirements of the UK Regulations and GPSR/BS EN 14878 should be applied to children's nightwear in order to meet the statutory requirements of the GPSR and the UK Regulations.

### **Frequently asked questions**

**Q1. Where can I get my nightwear tested to ensure it meets the necessary requirements?**

A. You should have your products tested by a UKAS (United Kingdom Accreditation Service) or an equivalent test laboratory with accreditation to ISO 17025 where the accreditation body has mutual recognition with UKAS. A list of UKAS accredited laboratories can be obtained from UKAS, Tel: +44(0)20 8996 7001; [www.ukas.com](http://www.ukas.com)

**Q2. I am selling the same range of children's nightwear to the UK and European Markets; what flammability performance requirements do I need to meet?**

A. You must ensure any such product sold in the UK meets the flammability performance requirements of the UK Regulations 1985 and the safety requirements of the GPSR. To do this they should also meet the additional requirements of BS EN 14878 listed in this Advisory Note. This will ensure the product can be sold in both the UK and the rest of Europe. \*

**Q3. I am selling a range of nightwear in the UK and elsewhere in Europe. The UK Nightwear (Safety) Regulations stipulate I label them in a specific manner but BS EN 14878 gives an alternative text for labels. What should I do?**

A. It is recommended that you use the labelling suggested in this Advisory Note. \*

**Q4. I am exporting a range of nightwear for sale in Europe but not the UK; what requirements do I need to meet?**

A. You must ensure your products conform to the General Product Safety Directive and it is therefore recommended, as a minimum, they meet the requirements of BS EN 14878. \*

**Q5. Will the UK Nightwear (Safety) Regulations be withdrawn at the end of the transition period mentioned in BS EN 14878?**

A. No. Compliance with the UK Regulations should mean safer garments for children. To rely on BS EN 14878 alone would be to adopt a significant reduction in safety of nightwear.

The eighteen-month transition period given to retailers and manufacturers to clear their stocks of non-conforming product ends in November 2008. All garments must continue to meet the requirements of the UK Regulations from November 2008, and it is recommended garments also meet BS EN 14878 where its requirements are more onerous.

**Q6. What is an "A deviation"?**

A. A CEN member country may request an "A deviation" where it has pre-existing national legislation and the proposed EN standard sets a lower level of safety.

The UK Regulations stipulate some requirements which are more onerous than EN 14878, consequently the UK requested an A deviation. The same text describing the A deviation appears in all Member States' editions of BS EN 14878.

**Q7. For several years I have been selling nightwear treated with a flame retardant. Should I have a toxicity check carried out?**

**A.** While the nightwear may meet the flammability performance requirements of the UK Regulations, compliance with the GPSR is also required, for which the BS EN 14878 toxicity assessment clause is the simplest means of meeting the minimum requirements.

**Q8. My range of nightdresses is for age 13 and 14 years. Should the garments for 14 year olds comply with BS EN 1478 or the UK Nightwear (Safety) Regulations?**

**A.** Best practice is to apply the higher requirements of both BS EN 14878 and the UK Regulations to the whole range. This ensures neither manufacturers nor consumers are confused.

**Q9. Why does BS EN 14878 refer to the age *and* the height of a child?**

**A.** The age of the child indicates stage of development and normal expected behaviours, which is helpful in safety risk assessments. However, in most EU countries children's clothing is sold by height, not age.

**Q10. How do I check the pyjama design features?**

**A.** The retailer or manufacturer will know the size of child the garments are intended to fit. This will be documented on their size chart and be part of their garment style file. Comparison of the garment dimensions with this information will provide the design feature assessment.

**Q11. I carry out only one stage in the production process. Am I responsible for the fire safety of the garment?**

**A.** Producers, distributors or anyone in the supply chain is responsible for those aspects of safety of the product that their work affects.

*\* Please note: a few European countries have adopted national industry agreements for nightwear flammability performance and labelling requirements. Advice should be sought from your legal or technical advisor for each country you are exporting to.*

### **Further Information**

For further information and advice, contact Trading Standards, your trade association, test houses who are accredited to UKAS, or BERR.

BERR publishes the following guides on its website:

- Nightwear and Fire - a guide to the Nightwear (Safety) Regulations <http://www.berr.gov.uk/files/file25421.pdf>
- General Product Safety Regulations fact sheet: <http://www.berr.gov.uk/consumers/fact-sheets/page38252.html> and the BERR guide to the General Product Safety Regulations 2005: <http://www.berr.gov.uk/files/file22713.pdf>

### **Obtaining Legislation and Standards**

Legislation such as the General Product Safety Regulations (SI 1803 2005) can be downloaded from <http://www.opsi.gov.uk>.

Copies of all legislation can be purchased from:  
The Stationery Office, PO Box 29, Norwich, NR3 1GN  
Tel: 0870 600 5522 Fax: 0870 600 5533 <http://www.tso.co.uk/>

British Standards may be purchased from BSI British Standards: tel +44(0)20 8996 9001 or [orders@bsi-global.com](mailto:orders@bsi-global.com). Or visit [www.bsi-global.com/british\\_standards](http://www.bsi-global.com/british_standards)

### **Applicable British Standards**

Please note that the UK Regulations refer to specific dated editions of the relevant British standards. Although these standards have been revised since the introduction of the UK Regulations, the older versions must be used in order to ensure product compliance.

#### *The UK Regulations:*

- BS 5722:1984 *Flammability Performance of Fabric and Fabric Assemblies Used in Sleepwear and Dressing Gowns* describes the performance requirements for UK regulations.
- BS 5438:1976 *Methods of test for Flammability of Vertically Orientated Textile Fabrics and Fabric Assemblies* describes how to burn the fabrics for compliance with BS5722.
- BS 5651:1978 *Specification for Cleansing and Wetting Procedures for Use in the Assessment of the Effect Of Cleansing Wetting on the Flammability of Textile Fabric and Fabric Assemblies* describes how to cleanse fabric prior to testing to BS 5438.

#### *The European standard:*

- BS EN 14878 *Textiles - Burning Behaviour of Children's Nightwear - Specification* describes the requirements.
- BS EN 1103 *Textiles - Fabric For Apparel - Detailed Procedure for Determination of the Burning Behaviour* describes how to burn fabrics for compliance with EN 14878.

### **Enforcement**

1. The UK Regulations are safety regulations made under Section 11 of the Consumer Protection Act 1987.
2. The UK Regulations are enforced by local trading authorities in England, Scotland and Wales, and in Northern Ireland by District Council Environmental Health Officers.
3. Breach of the UK Regulations made under section 11 of the Consumer Protection Act 1987 constitute offences under section 13 of that Act. This Act makes it an offence to "to supply, offer to supply, agree to supply, expose for supply or possess for supply" any children's nightwear not compliant with the UK Regulations. A person who commits an offence is currently liable to a summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding £5000 or both.
4. Under the General Product Safety Regulations 2005 it is an offence for:
  - a producer to place a product (in this case, nightwear) on the market or supply it (or undertake any of the preparatory acts to do either) unless the product is safe;
  - a distributor to expose or possess for supply, offer or agree to supply or supply a product (in this case, nightwear) which he knows or should have presumed, on the basis of the information in his possession and as a professional, is a dangerous product.

For a person who commits a serious breach of the general safety requirement or the breach of a safety notice, the maximum penalty is a fine of £20,000 or 12 months imprisonment or both.

For other offences the penalty is a maximum fine of £5,000 or 3 months imprisonment or both.