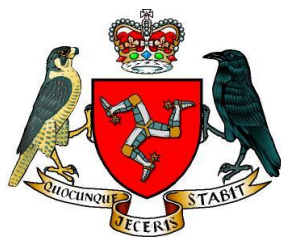




# Isle of Man Office of Fair Trading

## CONSULTATION ON PROPOSED CONSUMER SAFETY REGULATIONS PROHIBITING SALES OF SKY LANTERNS IN THE ISLE OF MAN



**Isle of Man**  
Government

*Reiltys Ellan Vannin*



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## INTRODUCTION BY THE CHAIRMAN



There have been a number of concerns expressed in recent years about the safety of sky lanterns or, as they are often, called 'Chinese' lanterns.

In September 2014, the Manx National Farmers' Union called for legislation to be introduced banning sales and the release of sky lanterns in the Island following a post-mortem on a cow which had ingested part of a sky lantern.

Whilst the primary focus of the concern was the risk to animal health and welfare, there were also issues raised with regard to the impact of sky lanterns on public safety. In resultant discussions between the Office of Fair Trading (OFT) and the Chief Fire Officer, it became clear that there were significant concerns about the potential risk to the public through fire and personal injury such as burns.

The OFT has powers under the Consumer Protection Act 1991 to introduce safety regulations which can either secure the safety of a product when it is sold or, if necessary, ban sales of a product altogether. Having regard to the advice of the Chief Fire Officer, the OFT has concluded that a case may exist for a prohibition on sales of sky lanterns in the Island.

The OFT and the Chief Fire Officer accept that the best solution would be for a **ban on the use of sky lanterns**, but neither the OFT nor the Department of Home Affairs currently have any legal powers to do that. The Department of Home Affairs will consider the inclusion of the necessary powers in future primary legislation, but this will inevitably take some time. As an interim measure, the OFT is considering making safety regulations under the Consumer Protection Act 1991, which will prohibit the sale of sky lanterns in the Island.

Before reaching a decision the OFT is, through this consultation, seeking views on this proposal.

**David Quirk MHK**  
**Chairman, Office of Fair Trading**

## LEGISLATION

### *Section 9 of the Consumer Protection Act 1991 states:*

**(1)** The Isle of Man Office of Fair Trading may by regulations under this section ("safety regulations") make such provision as it considers appropriate for the purposes of section 8(3) and for the purpose of securing: -

- (a) that goods to which this section applies are safe;
- (b) that goods to which this section applies which are unsafe, or would be unsafe in the hands of persons of a particular description, are not made available to persons generally or, as the case may be, to persons of that description; and
- (c) that appropriate information is, and inappropriate information is not, provided in relation to goods to which this section applies.

**(2)** Without prejudice to the generality of subsection (1) safety regulations may contain provision:-

- (a) with respect to the composition or contents, design, construction, finish or packing of goods to which this section applies, with respect to standards for such goods and with respect to other matters relating to such goods;
- (b) with respect to the giving, refusal, alteration or cancellation of approvals of such goods, of descriptions of such goods or of standards for such goods;
- (c) with respect to the conditions that may be attached to any approval given under the regulations;
- (d) for requiring such fees as may be determined by or under the regulations to be paid on the giving or alteration of any approval under the regulations and on the making of an application for such an approval or alteration;
- (e) with respect to appeals against refusals, alterations and cancellations of approvals given under the regulations and against the conditions contained in such approvals;
- (f) for requiring goods to which this section applies to be approved under the regulations or to conform to the requirements of the regulations or to descriptions or standards specified in or approved by or under the regulations;
- (g) with respect to the testing or inspection of goods to which this section applies (including provision for determining the standards to be applied in carrying out any test or inspection);
- (h) with respect to the ways of dealing with goods of which some or all do not satisfy a test required by or under the regulations or a standard connected with a procedure so required;
- (i) for requiring a mark, warning or instruction or any other information relating to goods to be put on or to accompany the goods or to be used or provided in some other manner in relation to the goods, and for securing that inappropriate information is not given in relation to goods either by means of misleading marks or otherwise;
- (j) for prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, goods to which this section applies and component parts and raw materials for such goods;

(k) for requiring information to be given to any such person as may be determined by or under the regulations for the purpose of enabling that person to exercise any function conferred on him by the regulations.

**(3)** Without prejudice as aforesaid, safety regulations may contain provision: -

- (a) for securing that a person shall not be guilty of an offence under section 10 unless it is shown that the goods in question do not conform to a particular standard;
- (b) for securing that proceedings for such an offence are not brought except by or with the consent of the Board or of the Attorney General;
- (c) for enabling a court of summary jurisdiction to try a complaint in respect of such an offence if the complaint was made within 12 months from the time when the offence was committed;
- (d) for determining the persons by whom, and the manner in which, anything required to be done by or under the regulations is to be done.

**(4)** Safety regulations shall not provide for any contravention of the regulations to be an offence.

**(5)** Where the Board proposes to make safety regulations it shall before it makes them: -

- (a) consult such organisations as appear to it to be representative of interests substantially affected by the proposal;
- (b) consult such other persons as it considers appropriate; and
- (c) in the case of proposed regulations relating to goods suitable for use at work, consult the Department of Infrastructure.

**(6)** Subsection (5) does not apply in the case of regulations which provide for the regulations to cease to have effect at the end of a period of not more than 12 months beginning with the day on which they come into force and which contain a statement that it appears to the Board that the need to protect the public requires that the regulations should be made without delay.

**(7)** Subsection (5)(a) does not apply in the case of regulations to the extent that they contain provision substantially corresponding to that contained in regulations made under section 11 of the Consumer Protection Act 1987 (an Act of Parliament).

**(8)** This section applies to any goods other than: -

- (a) growing crops and things comprised in land by virtue of being attached to it;
- (b) water, food, feeding stuff or fertiliser;
- (c) gas which is, is to be or has been supplied by a person authorised to supply it by or under an Act of Tynwald;
- (d) controlled drugs and licensed medicinal products.

***Section 63 of the Consumer Protection Act 1991 states:***

(1) Orders and regulations under this Act (except an order under section 65(2)) shall not have effect unless they are approved by Tynwald.

## BACKGROUND

### *Sky Lanterns Definition<sup>1</sup>:*

Also known as 'Chinese' lanterns, sky lanterns are small hot air balloons typically used at celebratory or commemorative events. They are made of paper with an opening at the bottom where a small fire is suspended. They are typically 100cm high with a diameter of approximately 60cm.

### *Potential Risks*

Sky lanterns have given rise to a number of safety concerns including: -

- **Risk to consumer safety;**
- **Fire risk and damage to crops and property;**
- Impact on the environment, including littering on land and at sea;
- Risks to aviation;
- Risk to coastal rescue services; and
- Risks to livestock and animal health (including marine animals).

### **Fire risk**

Sky lanterns contain a fuel source that keeps an exposed flame alight, allowing hot air to build up inside the lantern and causing it to float. This flame poses a fire risk. Sky lanterns rise up into the air and remain airborne for as long as they remain sufficiently buoyant. They should only fall back to the ground when the fuel cell flame is extinguished. In practice, evidence suggests that this is not always the case, and lanterns sometimes drift back to land whilst still alight. This could be due to such things as inherent design and construction weaknesses, ineffective launching procedures, or release in high winds. The result is that the lantern can fall to the ground whilst still alight. Tipping can cause hot flammable liquid to spill out. The flame can set fire to its own canopy – particularly if the lantern is not made of flame retardant material. Any of a variety of scenarios can then therefore cause the lantern to become a significant fire hazard.

One such example of the damage caused by a stray sky lantern is detailed below.

On 30 June 2013, a Chinese lantern landed on a Jayplas plastics and paper recycling plant at Smethwick, West Midlands, igniting the material stored there.

The resulting fire was the largest ever dealt with by the West Midlands Fire Service, who deployed

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<sup>1</sup> ADAS Report: Sky lanterns and helium balloons: an assessment of impacts on livestock and the environment



over 200 firefighters and nearly 40 appliances, including seven appliances borrowed from Staffordshire Fire and Rescue Service and three from Hereford and Worcester Fire and Rescue Service. The ambulance service said it had treated 13 fire-fighters for a variety of minor injuries, though three were taken to hospital overnight<sup>2</sup>.

### **Risk to consumer safety**

There is some evidence linking sky lanterns with risks to consumer safety. In the UK in November 2010 the media reported a child suffering burns as result of dripping hot oil and wax while standing underneath a lit sky lantern prior to its release<sup>3</sup>.

Also, in July 2011 a family in the UK was forced to flee their home after a Chinese sky lantern set fire to their roof. A fire quickly took hold in the timber frame house, lighting up the insulation in the roof and spreading to within two feet from where the youngest child was sleeping. Fortunately a neighbour spotted the flames, dialed 999 and helped evacuate the family<sup>4</sup>.

### **UK control measures<sup>5</sup>**

Across England and Wales, a number of local authorities have applied a voluntary ban on the release of sky lanterns. These controls are only active on council-owned land (i.e. recreation grounds and parks) and they are described by councils as being purely voluntary bans – they are not able to take legal action against infringements.

An ADAS Report for the UK Department of Environment, Food and Rural Affairs (DEFRA) suggests that where these local authority bans are in place, they have served to raise public awareness of the risks associated with the release of sky lanterns, as well as targeting specific stakeholders likely to be involved in the mass release of lanterns as part of specific events. These typically include charity fundraising groups, community groups and businesses promoting sales or products.

Making consumers aware of the risks associated with sky lanterns appears to be the key to achieving a more responsible approach to their deployment and from the evidence available; this seems to have been one of the main benefits of individual local authority action to date.

The Trading Standards Institute released an Industry Code of Practice – Sky Lanterns<sup>6</sup> which is intended as guidance on good practice for those designing, manufacturing, distributing, retailing or using sky lanterns.

In the UK, any controls are currently voluntary as existing legislation does not prohibit the deployment of sky lanterns.

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<sup>2</sup> <http://www.bbc.co.uk/news/uk-england-birmingham-23123549>

<sup>3</sup> <http://www.dailymail.co.uk/news/article-1327957/Mother-calls-Chinese-lantern-ban-son-scalded-molten-wax.html>

<sup>4</sup> <http://www.telegraph.co.uk/news/earth/earthnews/8628686/Latest-fire-caused-by-Chinese-sky-lanterns-increases-calls-for-a-ban.html>

<sup>5</sup> ADAS Report: Sky lanterns and helium balloons: an assessment of impacts on livestock and the environment

<sup>6</sup> <http://www.tradingstandards.gov.uk/policy/skylanterns.cfm>

## Measures taken in other EU Countries<sup>7</sup>

The potential risks associated with the use of sky lanterns in other Member States are largely the same as those cited in England and Wales, although greater emphasis is often placed on fire risk.

EU Member States which have banned or put restrictions on the sales and/or the use of sky lanterns include Austria, Malta, Germany and Spain. Others, including Denmark, the Netherlands and Finland have engaged with sky lantern importers, or have implemented other voluntary measures.

In the Netherlands, sky lanterns were banned from sale in 2008. However following design improvements introduced by importers in 2010 (e.g. removal of metal wire, use of flame-retardant paper, etc.) and improved consumer guidance, the risks were deemed to be mitigated. The Dutch authorities therefore permitted sale to recommence from the end of 2010. Whilst this is a good example of an industry working in partnership with government to address a specific issue, evidence suggests that it did require a blanket ban to 'force' the industry into action.

Sky lanterns were voluntarily withdrawn from the market in Finland in 2009. This action was agreed on the grounds of consumer safety concerns and fire risks from sky lanterns. This was effected by the guidelines "Safety requirements for candle products and certain products that constitute a fire hazard" and the Consumer Act. These guidelines were jointly developed by the Finnish Safety & Chemicals Agency (Tukes), and the Finnish Fire Rescue Authorities<sup>8</sup>.

Many of these countries (Malta, Austria, Spain and Finland) reported that the measures adopted had been effective. However, evidence in Austria suggests that where there is a ban on *sales*, but not on the *use* of sky lanterns, some consumers may still buy lanterns from suppliers in other countries.

**Figure 1 : Summary of actions against sky lanterns taken in other Member States<sup>9</sup>**

Option	Basis	Implemented in
National ban on sales and use of sky lanterns	High risks (fire, consumer safety, aviation)	Malta, Spain
National ban on sales	Fire risk, consumer safety	Austria
Regional/local actions	Varies in different regions - fire, consumer safety, aviation	Germany
Voluntary ban	Fire risk (sky lanterns are not widely sold)	Finland
Impose safety requirements (e.g. raised product quality standards; warnings against use during unfavourable weather conditions; change of design, material to reduce the flammability of the lantern body; restrictions on method of use – for example, attaching the lantern to a fixed point with a proper, durable and non-electricity conducting wire)	Lower quality products present higher risks	Netherlands, Denmark

<sup>7</sup> ADAS Report: Sky lanterns and helium balloons: an assessment of impacts on livestock and the environment

<sup>8</sup> [http://www.tukes.fi/Tiedostot/Kuluttajaturvallisuus/Safety\\_requirements\\_for\\_candle\\_products.pdf](http://www.tukes.fi/Tiedostot/Kuluttajaturvallisuus/Safety_requirements_for_candle_products.pdf)

<sup>9</sup> ADAS Report: Sky lanterns and helium balloons: an assessment of impacts on livestock and the environment

## PROPOSAL

The OFT proposes to introduce safety regulations, under the Consumer Protection Act 1991, banning **sales** of sky lanterns in the Isle of Man. This will mean that retailers in the Island will no longer be able to sell sky lanterns to consumers. However, it does not prevent consumers being able to continue to purchase sky lanterns from other sources, such as the internet. The Board acknowledges that the only fully effective solution would be primary legislation brought in by the Department of Home Affairs which would prohibit **use**. The Department of Home Affairs is considering introducing such legislation.

Listed below are four questions on which the OFT would like the public's views. This list is not exhaustive. Therefore, if you have any additional information you wish to share, please do not hesitate to do so as part of your response to the OFT.

### Questions

**1. Do you support the view that sky lanterns pose a significant risk to the safety of the public?**

*Please give your reasons*

**2. Do you support the view that ideally, the use of sky lanterns in the Island should be banned and if so, provide suggestions for how this measure could be achieved?**

*Please give your reasons*

**3. Do you support the view, that as an interim measure, the OFT should ban the sale of sky lanterns in the Island?**

*Please give your reasons*

**4. As an alternative approach, do you believe that it is possible through Regulations (covering for example, manufacturing methods avoiding use of metal wire) or guidance on safe use, to reduce the risk posed by sky lanterns to an acceptable level, and thus permit their continued sale?**

*Please explain how you believe that could be achieved*

## CONSULTATION PROCESS

The OFT would welcome your views and any comments you wish to make on the above proposal.

Comments should be submitted in writing by post, fax or email no later than **5 pm Friday 3 July 2015 to:**

Mrs Sara McIntyre  
Legislation Executive  
Isle of Man Office of Fair Trading  
Government Building  
Lord Street  
Douglas  
Isle of Man  
IM1 1LE  
Tel: (01624) 686576  
Fax: (01624) 686504  
Email: [sara.mcintyre@gov.im](mailto:sara.mcintyre@gov.im)

Additional copies of this document can be obtained from the OFT by telephoning (01624) 686576. Electronic copies of this document are also available at [www.gov.im/oft](http://www.gov.im/oft).

When submitting your views please indicate if you are responding on behalf of an organisation. A list of Direct Consultees can be found at [Appendix 1](#) of this document. If there is anyone not on the list who you think should be consulted please contact the officer named above.

To ensure that the process is open and honest and in line with the Government's Code of Conduct on Consultation, as attached at [Appendix 2](#), responses can only be accepted if you provide your name with your response.

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety. **Please mark your response clearly if you wish your response and name to be kept confidential.** Confidential responses will be included in any statistical summary and numbers of comments received.

A summary of responses will be published within three months of the closing date for this consultation and will be made available on the OFT website ([www.gov.im/oft](http://www.gov.im/oft)) or by contacting the above named officer.

The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to make an informed decision on the introduction of proposed sky

lanterns Safety Regulations. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

## **APPENDIX 1**

### **LIST OF DIRECT CONSULTEES**

- **Tynwald Members**
- **Attorney General**
- **Local Authorities**
- **Chief Officers of Government Departments, Boards and Offices**
- **Isle of Man Chamber of Commerce**
- **Isle of Man Law Society**
- **Manx National Farmers' Union**
- **RNLI – Isle of Man Branch**
- **Isle of Man Coastguards**
- **Isle of Man Airport**
- **Isle of Man Fire Service**
- **Local shop keepers known to have sold/likely to sell sky lanterns**

## APPENDIX 2

### Code of Practice on Consultation

This consultation follows the Code of Practice on Consultation the criteria for which are set out below.

The Six Consultation Criteria:

- 1.** Consult widely throughout the process, allowing a minimum of six weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
- 2.** Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- 3.** Ensure your consultation is clear, concise and widely accessible.
- 4.** Give feedback regarding the responses received and how the consultation process influenced the policy.
- 5.** Monitor your Department's effectiveness at consultation.
- 6.** Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

The full Code of Practice is available at [Isle of Man Government Code of Practice](#)

