

PRODUCT SAFETY

General

The General Product Safety Regulations impose criminal sanctions on producers and suppliers of unsafe goods. This legislation supplements product liability and consumer protection legislation which gives consumers rights of compensation for damage caused and rights under sale contracts for faulty and unsafe products. It applies only to goods supplied in the course of a commercial activity. The legislation places obligations on producers and distributors. The regulations apply to second hand goods.

The Consumer Protection Act 1987 placed statutory duties on suppliers of goods. These have been extended and updated by the General Product Safety Regulation 2005. Examples of unsafe goods include unstable carry cots, goods causing strangulation, explosive oil heaters, toys with sharp edges or spikes, flammable night dresses etc.

The Secretary of State (Government Department) has power to make regulations in relation to product safety. These could include provisions in relation to composite and content design, construction finishing, standards to be adopted, testing and inspection requirements, marks, symbols, warning symbols, first aid instructions, list of ingredients and other information. Industry consultation is required before regulations are made.

There are enforcement powers including suspension notices and prohibition notices. Prohibition notices is aimed at a particular trader. There is power to order the recall of dangerous goods.

Duties on Producers and Others

The General Product Safety Regulation 2005 gives effect to the EU General Products Safety Directives. The EU General Product Safety directives create duty and obligations

or producers and others not to offer or market a product unless it is safe. The product must not be sold, offered to be sold, exposed for sale, agreed to be sold or supplied by a producer unless it is a safe product.

There is a general duty on producers and others, such as distributors and importers to ensure compliance with product safety obligations. They must participate in monitoring the safety of a product in the market. They must pass on information on risk that could be proposed by the product. They must keep necessary documentation regarding the place of origin. They must produce documentation if the enforcement authority requires.

A producer means the manufacturer or any other person representing himself as manufacturer by affixing the product with his name, trademark, or distinctive mark. When a manufacturer is not represented in the member state, its representative or the importer who imported the product is deemed to be the producer. Others potentially liable include distributors, suppliers and others who undertake activities that may affect the safety of products. These criminal regulations are parallel to the product liability legislation.

Dangerous Products

A dangerous product is a product other than a safe product. A safe product is one which under normal and reasonable foreseeable condition of use including of duration of where applicable putting into service, installation and maintenance requirements does not present any risk or only minimum risk compatible with the products used considered to be acceptable and consistent with a high level of protection for the safety and health of persons.

The characteristics of the product in relation to which its safety must be considered, include its composition, packaging, instructions and the way it interacts and affect other products which is reasonably foreseeable. The presentation of the product, warning labels, the instructions for use, disposal information, indication of the categories of consumer at risk (in particular children and elderly), are to be considered in determining whether a product is safe.

Information Obligations

There are duties on producers to provide consumers with information to enable them to assess the risk that the products may pose. Where normal and reasonable foreseeable uses of products pose risks that are not immediately obvious without adequate warnings, precautions must be taken against such risks. The presence of warning does not exempt a producer from compliance with other requirements. The producer must adopt measures to deal with the risks which a product may cause and must take appropriate action. This may include withdrawal and recall where the safety risk is significant and cannot otherwise be dealt with.

Certain products must have a traceability system to facilitate dealing with safety problems. Packaging may require a reference and where applicable a batch number to facilitate isolation of faulty batches. Producers must do sample testing of marketed products. They must investigate and maintain a register of complaints. They must keep the distributors informed of the results, monitoring where a product presents a risk or may present a risk. There are equivalent duties on distributors.

Enforcement of the regulations is undertaken by the local authority trading standards services. They have power to serve safety notices, suspension notices, requirement to mark notice, withdrawal notice and recall notices. There are significant fines and penalties for breach of legislation.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.