

The General Product Safety Regulations 2005

The Basics

The General Product Safety Regulations 2005 ("Regulations") come into force on 1 October 2005.

The purpose of the Regulations is to ensure that all products placed commercially on the market, or supplied, and intended for or likely to be used by consumers under normal or reasonably foreseeable use are safe.

Placing a product on the market, making it available or supplying can happen in many ways, for example selling, leasing, hiring it out, or lending it; entering into a hire purchase or other credit agreement for it; exchanging it for any consideration other than money, giving it as a prize or otherwise making a gift, and providing it in the course of the delivery of a service. An example of providing the product in the course of a service would be the provision in a hotel room of a hairdryer for the guest's own use. In contrast, a hairdryer in a salon is used by the hairdresser rather than the customer and not covered by the Regulations. Similarly, the use of the product for the consumer rather than by the consumer is not covered. An example of that would be the use of a vacuum cleaner in a car valet service for the consumer.

The Regulations also extend to the preparatory acts of agreeing to place a product on the market and exposing or possessing any product for placing on the market.

What products are covered?

The Regulations apply to the supply of all new and second-hand products, excluding products supplied for repair or reconditioning prior to being used (provided the supplier clearly informs the person to whom he supplies the product to that effect) and excluding the sale of antiques.

Since products covered in the Regulations include (but are not restricted to) clothing, medicines, primary agricultural and horticultural products, DIY tools and equipment, gym equipment, chemicals, pesticides, food and drink, household goods, nursery goods and motor vehicles, it is clear that the Regulations will need to be complied with in the majority of cases: the meaning of "product" is very wide.

However, the Regulations do not apply to products used in the workplace by workers.

Neither do they apply where specific product legislation covers exactly the same ground as the Regulations. Where, however, the specific legislation deals only with certain aspects of safety,

those aspects of safety which fall outside the scope of the specific legislation and within the Regulations will be subject to the Regulations.

Meaning of "safe"

A "safe" product is any product which under normal or reasonably foreseeable conditions of use presents no risk or only the minimum risk compatible with the product's use and which is consistent with a high level of protection for consumers.

The safety of a product will be assessed having regard to a number of matters and in particular:

- The product's characteristics
- Packaging
- Instructions for assembly and maintenance, use and disposal
- The effect on other products with which it might be used
- Labelling and other information provided for the consumer
- The categories of consumers at risk when using the product, particularly children and the elderly

Safety is also assessed on the basis of either specific product safety legislation or national safety law. Where there is no such law or legislation in place, it will be assessed taking account of any voluntary European standards, Community technical specifications, national standards, industry codes of good practice, state of the art and technology and the safety which consumers may reasonably expect.

Who is affected by the Regulations?

The Regulations apply to all UK producers and distributors of products used by consumers, whether or not intended for them and whether the products were intended for use in the UK or another Member State.

A "producer" in relation to a particular product means the manufacturer (if the manufacturer is established in the Community) or the manufacturer's representative in the Community or, where there is no manufacturer or representative in the Community, an importer of the product into the Community. It also covers any person who represents himself to be the manufacturer by putting his name or trade mark on the product, any

person who repairs or reconditions the product or, in some cases, other professionals in the supply chain whose activities affect the safety of the product.

A "distributor" is any professional in the supply chain whose activities do not affect the safety of a product.

The term "supplier" does not apply to a sale or supply by a consumer: a consumer who sells personal possessions at a car boot sale is outside the scope of the Regulations unless it is done as a commercial activity.

Obligations of Suppliers

Suppliers are under an obligation to supply only products that are safe. In addition, they must undertake relevant activities to help ensure that the product remains safe throughout its reasonably foreseeable period of use. Further obligations include providing consumers with all relevant warnings and information to keep themselves informed about risk and to enable the consumer to make an informed decision as to whether to buy the products.

The most fundamental change wrought by the Regulations relates to notification: the Regulations require producers and distributors who discover a product supplied is unsafe to notify the relevant authorities of the fact and of the action they have undertaken to try to remove the risk to consumers. The information provided must include details enabling identification and tracing of the product. This need not be provided where it is clear that it is an isolated incident. Suppliers must co-operate with the authorities on request.

Enforcement

Local enforcement authorities are given various powers under the Regulations such as the power to:

- Investigate a breach of the general safety requirement or a breach of a safety notice
- Enter premises
- Make test purchases and undertake testing
- Seize records and products from producers and distributors in the supply chain whether they are in its own local authority area or another area.
- Issue a suspension notice to temporarily ban a person supplying or placing a product on the market while tests are undertaken
- Require that the product is marked and the consumer warned as to the risk
- Issue a withdrawal notice to permanently prevent a person from further supplying a product that is believed to be dangerous

- Issue a recall notice as a last resort
- Order forfeiture and destruction of the product

This wide range of powers is seen as necessary in order to minimise the risk to consumers - which is the main purpose of the Regulations.

Offences and penalties

The Regulations set out a number of offences that are punishable by imprisonment and/or fines. These offences relate to failing to meet obligations in respect of supplying only safe products, providing consumers with appropriate information, producers/distributors putting themselves in a position to identify risks, notifying and cooperating with enforcement authorities and contravening safety notices.

For the more serious offences of a 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. In addition, there are penalties and fines for directors and managers of manufacturers and distributors: where an act or default has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director or senior manager, then he too is liable to a fine of up to £20,000 and/or up to 12 months' imprisonment. For other offences the penalty is a maximum fine of £5,000 or 3 months' imprisonment.

There is clearly incentive to comply.

This information sheet has been prepared to highlight some key issues relating to The General Product Safety Regulations 2005. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at September 2005 and may be affected by subsequent changes in the law. Should you require any specific legal advice on the issues covered, please contact Nicky Androsov by email at nicky.androsov@ts-p.co.uk or call on 01892 510000.