

General Product Safety Regulations 2005

The UK Consumer Minister has published the General Product Safety Regulations 2005 ("the Regulations"). These implement Directive 2001/95/EC - the Revised General Product Safety Directive. The Regulations give new powers to enforcement authorities to order product recalls and come into force on 1 October 2005. The General Product Safety Regulations 1994 will be revoked when the new Regulations take effect.

The Regulations apply to all consumer products except in cases where there are specific provisions covering a type of product. For example, there are separate sectoral Directives which cover cosmetics, toys and pharmaceutical products. The Regulations will apply to these sectors to the extent that there are categories of risk not covered by the sectoral Directive.

The key points to be aware of are:

- The Regulations impose requirements concerning the safety of products used by consumers or which are likely to be used by consumers under reasonably foreseeable conditions, even if not intended for them.
- This would encompass so-called "migrating products" which are intended for professional use but are used by consumers. Second-hand products, and products supplied in the course of a service are covered by the Regulations.
- A "general safety requirement" is imposed on all producers and distributors.
- Producers are obligated to take "appropriate action" to avoid risks posed by their products, including recall as a last resort.
- Both producers and distributors must notify an enforcement authority if a product they have placed on the market or supplied is incompatible with the general safety requirement.
- The Regulations vest powers of enforcement in County Councils and District Councils throughout England, Scotland, Wales and Northern Ireland. In practical terms the Department for Trade and Industry envisage that local Trading Standards Officers will be responsible for enforcement.
- Enforcement authorities are to take account of the "precautionary principle".

- Enforcement authorities will be empowered to serve suspension notices, requirements to mark, requirements to warn, withdrawal notices and recall notices.
- A person who places unsafe products on the market, or who does not take action when required by the enforcement authorities could be fined up to £20,000. They could also be found guilty of an offence and face imprisonment for a maximum of 12 months.

Enforcement authorities will report all actions taken under the Regulations to the Secretary of State. The Secretary of State will have to notify the European Commission of measures taken. In cases of specific conditions being placed upon the marketing or use of a product due to serious risk, this notification shall be through the Community Rapid Information System (RAPEX).

* * *

This information is not intended as legal advice, which may often turn on specific facts. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

If you have any questions concerning the material discussed in this client alert, please call the following members of our product liability practice group:

Anne Ware	+44.(0)20.7067.2124	aware@cov.com
Orla Clayton	+44.(0)20.7067.2125	oclayton@cov.com

Covington & Burling is one of the world's preeminent law firms known for handling sensitive and important client matters. This alert is intended to bring breaking developments to our clients and other interested colleagues in areas of interest to them. Please send an email to unsubscribe@cov.com if you do not wish to receive future alerts.

© 2005 Covington & Burling. All rights reserved.