

2005 No. 1803

CONSUMER PROTECTION

The General Product Safety Regulations 2005

Made - - - - 30th June 2005

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Coming into force - - 1st October 2005

*(except for the reference to a civil partner
in regulation 43(2))*

The reference to a civil partner in regulation

43(2) 5th December 2005

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Whereas the Secretary of State is a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to general product safety;

Now therefore the Secretary of State, in exercise of the powers conferred on him by section 2(2) of that Act hereby makes the following Regulations:

^(a) S.I. 1992/2870.
^(b) 1972 c.68.

PART 1

GENERAL

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the General Product Safety Regulations 2005 and shall come into force on 1st October 2005 with the exception of the reference to a civil partner in regulation 43(2) which shall come into force on 5th December 2005.

(2) The General Product Safety Regulations 1994^(a) are hereby revoked.

Interpretation

2. In these Regulations:-

“the 1987 Act” means the Consumer Protection Act 1987^(b);

“Community law” includes a law in any part of the United Kingdom which implements a Community obligation;

“contravention” includes a failure to comply and cognate expressions shall be construed accordingly;

“dangerous product” means a product other than a safe product;

“distributor” means a professional in the supply chain whose activity does not affect the safety properties of a product;

“enforcement authority” means the Secretary of State, any other Minister of the Crown in charge of a government department, any such department and any authority or council mentioned in regulation 10;

“general safety requirement” means the requirement that only safe products should be placed on the market;

“the GPS Directive” means Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety^(c);

“magistrates’ court” in relation to Northern Ireland, means a court of summary jurisdiction;

“Member State” means a member State, Norway, Iceland or Liechtenstein;

“notice” means a notice in writing;

“officer”, in relation to an enforcement authority, means a person authorised in writing to assist the authority in carrying out its functions under or for the purposes of the enforcement of these Regulations and safety notices, except in relation to an enforcement authority which is a government department where it means an officer of that department;

“producer” means—

- (a) the manufacturer of a product, when he is established in a Member State and any other person presenting himself as the manufacturer by affixing to the product his name, trade mark or other distinctive mark, or the person who reconditions the product;
- (b) when the manufacturer is not established in a Member State—
 - (i) if he has a representative established in a Member State, the representative,
 - (ii) in any other case, the importer of the product from a state that is not a Member State into a Member State;
- (c) other professionals in the supply chain, insofar as their activities may affect the safety properties of a product;

^(a) S.I. 1994/2328.

^(b) 1987 c.43.

^(c) OJ No L11, 15/1/2002, p.4.

“product” means a product which is intended for consumers or likely, under reasonably foreseeable conditions, to be used by consumers even if not intended for them and which is supplied or made available, whether for consideration or not, in the course of a commercial activity and whether it is new, used or reconditioned and includes a product that is supplied or made available to consumers for their own use in the context of providing a service. “product” does not include equipment used by service providers themselves to supply a service to consumers, in particular equipment on which consumers ride or travel which is operated by a service provider;

“recall” means any measure aimed at achieving the return of a dangerous product that has already been supplied or made available to consumers;

“recall notice” means a notice under regulation 15;

“record” includes any book or document and any record in any form;

“requirement to mark” means a notice under regulation 12;

“requirement to warn” means a notice under regulation 13;

“safe product” means a product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product’s use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons. In determining the foregoing, the following shall be taken into account in particular—

- (a) the characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, instructions for installation and maintenance,
- (b) the effect of the product on other products, where it is reasonably foreseeable that it will be used with other products,
- (c) the presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other indication or information regarding the product, and
- (d) the categories of consumers at risk when using the product, in particular children and the elderly.

The feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering a product to be a dangerous product;

“safety notice” means a suspension notice, a requirement to mark, a requirement to warn, a withdrawal notice or a recall notice;

“serious risk” means a serious risk, including one the effects of which are not immediate, requiring rapid intervention;

“supply” in relation to a product includes making it available, in the context of providing a service, for use by consumers;

“suspension notice” means a notice under regulation 11;

“withdrawal” means any measure aimed at preventing the distribution, display or offer of a dangerous product to a consumer;

“withdrawal notice” means a notice under regulation 14.

Application

3.—(1) Each provision of these Regulations applies to a product in so far as there are no specific provisions with the same objective in rules of Community law governing the safety of the product other than the GPS Directive.

(2) Where a product is subject to specific safety requirements imposed by rules of Community law other than the GPS Directive, these Regulations shall apply only to the aspects and risks or category of risks not covered by those requirements. This means that:

- (a) the definition of “safe product” and “dangerous product” in regulation 2 and regulations 5 and 6 shall not apply to such a product in so far as concerns the risks or category of risks covered by the specific rules, and
- (b) the remainder of these Regulations shall apply except where there are specific provisions governing the aspects covered by those regulations with the same objective.

4. These Regulations do not apply to a second-hand product supplied as a product to be repaired or reconditioned prior to being used, provided the supplier clearly informs the person to whom he supplies the product to that effect.

PART 2

OBLIGATIONS OF PRODUCERS AND DISTRIBUTORS

General safety requirement

5.—(1) No producer shall place a product on the market unless the product is a safe product.

(2) No producer shall offer or agree to place a product on the market or expose or possess a product for placing on the market unless the product is a safe product.

(3) No producer shall offer or agree to supply a product or expose or possess a product for supply unless the product is a safe product.

(4) No producer shall supply a product unless the product is a safe product.

Presumption of conformity

6.—(1) Where, in the absence of specific provisions in rules of Community law governing the safety of a product, the product conforms to the specific rules of the law of part of the United Kingdom laying down the health and safety requirements which the product must satisfy in order to be marketed in the United Kingdom, the product shall be deemed safe so far as concerns the aspects covered by such rules.

(2) Where a product conforms to a voluntary national standard of the United Kingdom giving effect to a European standard the reference of which has been published in the Official Journal of the European Union in accordance with Article 4 of the GPS Directive, the product shall be presumed to be a safe product so far as concerns the risks and categories of risk covered by that national standard. The Secretary of State shall publish the reference number of such national standards in such manner as he considers appropriate.

(3) In circumstances other than those referred to in paragraphs (1) and (2), the conformity of a product to the general safety requirement shall be assessed taking into account—

- (a) any voluntary national standard of the United Kingdom giving effect to a European standard, other than one referred to in paragraph (2),
- (b) other national standards drawn up in the United Kingdom,
- (c) recommendations of the European Commission setting guidelines on product safety assessment,
- (d) product safety codes of good practice in the sector concerned,
- (e) the state of the art and technology, and
- (f) reasonable consumer expectations concerning safety.

(4) Conformity of a product with the criteria designed to ensure the general safety requirement is complied with, in particular the provisions mentioned in paragraphs (1) to (3), shall not bar an enforcement authority from exercising its powers under these Regulations in relation to that product where there is evidence that, despite such conformity, it is dangerous.

Other obligations of producers

7.—(1) Within the limits of his activities, a producer shall provide consumers with the relevant information to enable them—

- (a) to assess the risks inherent in a product throughout the normal or reasonably foreseeable period of its use, where such risks are not immediately obvious without adequate warnings, and
- (b) to take precautions against those risks.

(2) The presence of warnings does not exempt any person from compliance with the other requirements of these Regulations.

(3) Within the limits of his activities, a producer shall adopt measures commensurate with the characteristics of the products which he supplies to enable him to—

- (a) be informed of the risks which the products might pose, and
- (b) take appropriate action including, where necessary to avoid such risks, withdrawal, adequately and effectively warning consumers as to the risks or, as a last resort, recall.

(4) The measures referred to in paragraph (3) include—

- (a) except where it is not reasonable to do so, an indication by means of the product or its packaging of—
 - (i) the name and address of the producer, and
 - (ii) the product reference or where applicable the batch of products to which it belongs; and
- (b) where and to the extent that it is reasonable to do so—
 - (i) sample testing of marketed products,
 - (ii) investigating and if necessary keeping a register of complaints concerning the safety of the product, and
 - (iii) keeping distributors informed of the results of such monitoring where a product presents a risk or may present a risk.

Obligations of distributors

8.—(1) A distributor shall act with due care in order to help ensure compliance with the applicable safety requirements and in particular he—

- (a) shall not expose or possess for supply or offer or agree to supply, or supply, a product to any person which he knows or should have presumed, on the basis of the information in his possession and as a professional, is a dangerous product; and
- (b) shall, within the limits of his activities, participate in monitoring the safety of a product placed on the market, in particular by—
 - (i) passing on information on the risks posed by the product,
 - (ii) keeping the documentation necessary for tracing the origin of the product,
 - (iii) producing the documentation necessary for tracing the origin of the product, and cooperating in action taken by a producer or an enforcement authority to avoid the risks.

(2) Within the limits of his activities, a distributor shall take measures enabling him to cooperate efficiently in the action referred to in paragraph (1)(b)(iii).

Obligations of producers and distributors

9.—(1) Subject to paragraph (2), where a producer or a distributor knows that a product he has placed on the market or supplied poses risks to the consumer that are incompatible with the general safety requirement, he shall forthwith notify an enforcement authority in writing of that information and—

- (a) the action taken to prevent risk to the consumer; and
 - (b) where the product is being or has been marketed or otherwise supplied to consumers outside the United Kingdom, of the identity of each Member State in which, to the best of his knowledge, it is being or has been so marketed or supplied.
- (2) Paragraph (1) shall not apply—
- (a) in the case of a second-hand product supplied as an antique or as a product to be repaired or reconditioned prior to being used, provided the supplier clearly informed the person to whom he supplied the product to that effect,
 - (b) in conditions concerning isolated circumstances or products.
- (3) In the event of a serious risk the notification under paragraph (1) shall include the following—
- (a) information enabling a precise identification of the product or batch of products in question,
 - (b) a full description of the risks that the product presents,
 - (c) all available information relevant for tracing the product, and
 - (d) a description of the action undertaken to prevent risks to the consumer.
- (4) Within the limits of his activities, a person who is a producer or a distributor shall co-operate with an enforcement authority (at the enforcement authority's request) in action taken to avoid the risks posed by a product which he supplies or has supplied. Every enforcement authority shall maintain procedures for such co-operation, including procedures for dialogue with the producers and distributors concerned on issues related to product safety.

PART 3

ENFORCEMENT

Enforcement

10.—(1) It shall be the duty of every authority to which paragraph (4) applies to enforce within its area these Regulations and safety notices.

(2) An authority in England or Wales to which paragraph (4) applies shall have the power to investigate and prosecute for an alleged contravention of any provision imposed by or under these Regulations which was committed outside its area in any part of England and Wales.

(3) A district council in Northern Ireland shall have the power to investigate and prosecute for an alleged contravention of any provision imposed by or under these Regulations which was committed outside its area in any part of Northern Ireland.

(4) The authorities to which this paragraph applies are:

- (a) in England, a county council, district council, London Borough Council, the Common Council of the City of London in its capacity as a local authority and the Council of the Isles of Scilly,
- (b) in Wales, a county council or a county borough council,
- (c) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994^(a),
- (d) in Northern Ireland any district council.

(5) An enforcement authority shall in enforcing these Regulations act in a manner proportionate to the seriousness of the risk and shall take due account of the precautionary principle. In this context, it shall encourage and promote voluntary action by producers and distributors. Notwithstanding the foregoing, an enforcement authority may take any action under these

(a) 1994 c.39.

Regulations urgently and without first encouraging and promoting voluntary action if a product poses a serious risk.

Suspension notices

11.—(1) Where an enforcement authority has reasonable grounds for suspecting that a requirement of these Regulations has been contravened in relation to a product, the authority may, for the period needed to organise appropriate safety evaluations, checks and controls, serve a notice (“a suspension notice”) prohibiting the person on whom it is served from doing any of the following things without the consent of the authority, that is to say—

- (a) placing the product on the market, offering to place it on the market, agreeing to place it on the market or exposing it for placing on the market, or
- (b) supplying the product, offering to supply it, agreeing to supply it or exposing it for supply.

(2) A suspension notice served by an enforcement authority in relation to a product may require the person on whom it is served to keep the authority informed of the whereabouts of any such product in which he has an interest.

(3) A consent given by the enforcement authority for the purposes of paragraph (1) may impose such conditions on the doing of anything for which the consent is required as the authority considers appropriate.

Requirements to mark

12.—(1) Where an enforcement authority has reasonable grounds for believing that a product is a dangerous product in that it could pose risks in certain conditions, the authority may serve a notice (“a requirement to mark”) requiring the person on whom the notice is served at his own expense to undertake either or both of the following, as specified in the notice—

- (a) to ensure that the product is marked in accordance with requirements specified in the notice with warnings as to the risks it may present,
- (b) to make the marketing of the product subject to prior conditions as specified in the notice so as to ensure the product is a safe product.

(2) The requirements referred to in paragraph (1)(a) shall be such as to ensure that the product is marked with a warning which is suitable, clearly worded and easily comprehensible.

Requirements to warn

13. Where an enforcement authority has reasonable grounds for believing that a product is a dangerous product in that it could pose risks for certain persons, the authority may serve a notice (“a requirement to warn”) requiring the person on whom the notice is served at his own expense to undertake one or more of the following, as specified in the notice—

- (a) where and to the extent it is practicable to do so, to ensure that any person who could be subject to such risks and who has been supplied with the product be given warning of the risks in good time and in a form specified in the notice,
- (b) to publish a warning of the risks in such form and manner as is likely to bring those risks to the attention of any such person,
- (c) to ensure that the product carries a warning of the risks in a form specified in the notice.

Withdrawal notices

14.—(1) Where an enforcement authority has reasonable grounds for believing that a product is a dangerous product, the authority may serve a notice (“a withdrawal notice”) prohibiting the person on whom it is served from doing any of the following things without the consent of the authority, that is to say—

- (a) placing the product on the market, offering to place it on the market, agreeing to place it on the market or exposing it for placing on the market, or
- (b) supplying the product, offering to supply it, agreeing to supply it or exposing it for supply.

(2) A withdrawal notice may require the person on whom it is served to take action to alert consumers to the risks that the product presents.

(3) In relation to a product that is already on the market, a withdrawal notice may only be served by an enforcement authority where the action being undertaken by the producer or the distributor concerned in fulfilment of his obligations under these Regulations is unsatisfactory or insufficient to prevent the risks concerned to the health and safety of persons.

(4) Paragraph (3) shall not apply in the case of a product posing a serious risk requiring, in the view of the enforcement authority, urgent action.

(5) A withdrawal notice served by an enforcement authority in relation to a product may require the person on whom it is served to keep the authority informed of the whereabouts of any such product in which he has an interest.

(6) A consent given by the enforcement authority for the purposes of paragraph (1) may impose such conditions on the doing of anything for which the consent is required as the authority considers appropriate.

Recall notices

15.—(1) Subject to paragraph (4), where an enforcement authority has reasonable grounds for believing that a product is a dangerous product and that it has already been supplied or made available to consumers, the authority may serve a notice (“a recall notice”) requiring the person on whom it is served to use his reasonable endeavours to organise the return of the product from consumers to that person or to such other person as is specified in the notice.

(2) A recall notice may require—

- (a) the recall to be effected in accordance with a code of practice applicable to the product concerned, or
- (b) the recipient of the recall notice to—
 - (i) contact consumers who have purchased the product in order to inform them of the recall, where and to the extent it is practicable to do so,
 - (ii) publish a notice in such form and such manner as is likely to bring to the attention of purchasers of the product the risk the product poses and the fact of the recall, or
 - (iii) make arrangements for the collection or return of the product from consumers who have purchased it or for its disposal,

and may impose such additional requirements on the recipient of the notice as are reasonable and practicable with a view to achieving the return of the product from consumers to the person specified in the notice or its disposal.

(3) In determining what requirements to include in a recall notice, the enforcement authority shall take into consideration the need to encourage distributors, users and consumers to contribute to its implementation.

(4) A recall notice may only be issued by an enforcement authority where—

- (a) other action which it may require under these Regulations would not suffice to prevent the risks concerned to the health and safety of persons,
- (b) the action being undertaken by the producer or the distributor concerned in fulfilment of his obligations under these Regulations is unsatisfactory or insufficient to prevent the risks concerned to the health and safety of persons, and
- (c) the authority has given not less than seven days notice to the person on whom the recall notice is to be served of its intention to serve such a notice and where that person has

before the expiry of that period by notice required the authority to seek the advice of such person as the Institute determines on the questions of—

- (i) whether the product is a dangerous product,
- (ii) whether the issue of a recall notice is proportionate to the seriousness of the risk, and the authority has taken account of such advice.

(5) Paragraphs (4)(b) and (c) shall not apply in the case of a product posing a serious risk requiring, in the view of the enforcement authority, urgent action.

(6) Where a person requires an enforcement authority to seek advice as referred to in paragraph (4)(c), that person shall be responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the authority.

(7) In paragraphs 4(c) and (6) “the Institute” means the charitable organisation with registered number 803725 and known as the Chartered Institute of Arbitrators.

(8) A recall notice served by an enforcement authority in relation to a product may require the person on whom it is served to keep the authority informed of the whereabouts of any such product to which the recall notice relates, so far as he is able to do so.

(9) Where the conditions in paragraph (1) for serving a recall notice are satisfied and either the enforcement authority has been unable to identify any person on whom to serve a recall notice, or the person on whom such a notice has been served has failed to comply with it, then the authority may itself take such action as could have been required by a recall notice.

(10) Where—

- (a) an authority has complied with the requirements of paragraph (4); and
- (b) the authority has exercised its powers under paragraph (9) to take action following the failure of the person on whom the recall notice has been served to comply with that notice,

then the authority may recover from the person on whom the notice was served summarily as a civil debt, any costs or expenses reasonably incurred by it in undertaking the action referred to in sub-paragraph (b).

(11) A civil debt recoverable under the preceding paragraph may be recovered—

- (a) in England and Wales by way of complaint (as mentioned in section 58 of the Magistrates’ Courts Act 1980^(a)),
- (b) in Northern Ireland in proceedings under Article 62 of the Magistrate’s Court (Northern Ireland) Order 1981^(b).

Supplementary provisions relating to safety notices

16.—(1) Whenever feasible, prior to serving a safety notice the authority shall give an opportunity to the person on whom the notice is to be served to submit his views to the authority. Where, due to the urgency of the situation, this is not feasible the person shall be given an opportunity to submit his views to the authority after service of the notice.

(2) A safety notice served by an enforcement authority in respect of a product shall—

- (a) describe the product in a manner sufficient to identify it;
- (b) state the reasons on which the notice is based;
- (c) indicate the rights available to the recipient of the notice under these Regulations and (where applicable) the time limits applying to their exercise; and
- (d) in the case of a suspension notice, state the period of time for which it applies.

(3) A safety notice shall have effect throughout the United Kingdom.

^(a) 1980 c.43.

^(b) SI 1675/1981 (N.I.26).

(4) Where an enforcement authority serves a suspension notice in respect of a product, the authority shall be liable to pay compensation to a person having an interest in the product in respect of any loss or damage suffered by reason of the notice if—

- (a) there has been no contravention of any requirement of these Regulations in relation to the product; and
- (b) the exercise by the authority of the power to serve the suspension notice was not attributable to any neglect or default by that person.

(5) Where an enforcement authority serves a withdrawal notice in respect of a product, the authority shall be liable to pay compensation to a person having an interest in the product in respect of any loss or damage suffered by reason of the notice if—

- (a) the product was not a dangerous product; and
- (b) the exercise by the authority of the power to serve the withdrawal notice was not attributable to any neglect or default by that person.

(6) Where an enforcement authority serves a recall notice in respect of a product, the authority shall be liable to pay compensation to the person on whom the notice was served in respect of any loss or damage suffered by reason of the notice if—

- (a) the product was not a dangerous product; and
- (b) the exercise by the authority of the power to serve the recall notice was not attributable to any neglect or default by that person.

(7) An enforcement authority may vary or revoke a safety notice which it has served provided that the notice is not made more restrictive for the person on whom it is served or more onerous for that person to comply with.

(8) Wherever feasible prior to varying a safety notice the authority shall give an opportunity to the person on whom the original notice was served to submit his views to the authority.

Appeals against safety notices

17.—(1) A person on whom a safety notice has been served and a person having an interest in a product in respect of which a safety notice (other than a recall notice) has been served may, before the end of the period of 21 days beginning with the day on which the notice was served, apply for an order to vary or set aside the terms of the notice.

(2) On an application under paragraph (1) the court or the sheriff, as the case may be, shall make an order setting aside the notice only if satisfied that—

- (a) in the case of a suspension notice, there has been no contravention in relation to the product of any requirement of these Regulations,
- (b) in the case of a requirement to mark or a requirement to warn, the product is not a dangerous product,
- (c) in the case of a withdrawal notice—
 - (i) the product is not a dangerous product, or
 - (ii) where applicable, regulation 14(3) has not been complied with by the enforcement authority concerned,
- (d) in the case of a recall notice—
 - (i) the product is not a dangerous product, or
 - (ii) regulation 15(4) has not been complied with,
- (e) in any case, the serving of the safety notice concerned was not proportionate to the seriousness of the risk.

(3) On an application concerning the period of time specified in a suspension notice as the period for which it applies, the court or the sheriff, as the case may be, may reduce the period to such period as it considers sufficient for organising appropriate safety evaluations, checks and controls.

(4) On an application to vary the terms of a notice, the court or the sheriff, as the case may be, may vary the requirements specified in the notice as it considers appropriate.

(5) A person on whom a recall notice has been served and who proposes to make an application under paragraph (1) in relation to the notice may, before the end of the period of seven days beginning with the day on which the notice was served, apply to the court or the sheriff for an order suspending the effect of the notice and the court or the sheriff may, in any case where it considers it appropriate to do so, make an order suspending the effect of the notice.

(6) If the court or the sheriff makes an order suspending the effect of a recall notice under paragraph (5) in the absence of the enforcement authority, the enforcement authority may apply for the revocation of such order.

(7) An order under paragraph (5) shall take effect from the time it is made until—

- (a) it is revoked under paragraph (6),
- (b) where no application is made under paragraph (1) in respect of the recall notice within the time specified in that paragraph, the expiration of that time,
- (c) where such an application is made but is withdrawn or dismissed for want of prosecution, the date of dismissal or withdrawal of the application, or
- (d) where such an application is made and is not withdrawn or dismissed for want of prosecution, the determination of the application.

(8) Subject to paragraph (6), in Scotland the sheriff's decision under paragraph (5) shall be final.

(9) An application under this regulation may be made—

- (a) by way of complaint to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland—
 - (i) in respect of a contravention in relation to the product of a requirement imposed by or under these Regulations; or
 - (ii) for the forfeiture of the product under regulation 18;
- (b) where no such proceedings have been brought, by way of complaint to any magistrates' court; or
- (c) in Scotland, by summary application to the sheriff.

(10) A person aggrieved by an order made pursuant to an application under paragraph (1) by a magistrates' court in England, Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court.

Forfeiture: England and Wales and Northern Ireland

18.—(1) An enforcement authority in England and Wales or Northern Ireland may apply for an order for the forfeiture of a product on the grounds that the product is a dangerous product.

(2) An application under paragraph (1) may be made—

- (a) where proceedings have been brought in a magistrates' court for an offence in respect of a contravention in relation to the product of a requirement imposed by or under these Regulations, to that court,
- (b) where an application with respect to the product has been made to a magistrates' court under regulation 17 (appeals against safety notices) or 25 (appeals against detention of products and records) to that court, and
- (c) otherwise, by way of complaint to a magistrates' court.

(3) An enforcement authority making an application under paragraph (1) shall serve a copy of the application on any person appearing to it to be the owner of, or otherwise to have an interest

in, the product to which the application relates, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the product should not be forfeited.

(4) A person on whom notice is served under paragraph (3) and any other person claiming to be the owner of, or otherwise to have an interest in, the product to which the application relates shall be entitled to appear at the hearing of the application and show cause why the product should not be forfeited.

(5) The court shall not make an order for the forfeiture of a product—

- (a) if any person on whom notice is served under paragraph (3) does not appear, unless service of the notice on that person is proved, or
- (b) if no notice under paragraph (3) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The court may make an order for the forfeiture of a product only if it is satisfied that the product is a dangerous product.

(7) Any person aggrieved by an order made by a magistrates' court for the forfeiture of a product, or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court.

(8) An order for the forfeiture of a product shall not take effect until the later of—

- (i) the end of the period within which an appeal under paragraph (7) may be brought or within which an application under section 111 of the Magistrates' Courts Act 1980^(a) or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981^(b) (statement of case) may be made, or
- (ii) if an appeal or an application is so made, when the appeal or application is determined or abandoned.

(9) Subject to the following paragraph, where a product is forfeited it shall be destroyed in accordance with such directions as the court may give.

(10) On making an order for forfeiture of a product a magistrates' court may, if it considers it appropriate to do so, direct that the product shall (instead of being destroyed) be delivered up to such person as the court may specify, on condition that the person—

- (a) does not supply the product to any person otherwise than as mentioned in paragraph (11), and
- (b) on condition, if the court considers it appropriate, that he complies with any order to pay costs or expenses (including any order under regulation 28) which has been made against him in the proceedings for the order for forfeiture.

(11) The supplies which may be permitted under the preceding paragraph are—

- (a) a supply to a person who carries on a business of buying products of the same description as the product concerned and repairing or reconditioning them,
- (b) a supply to a person as scrap (that is to say, for the value of materials included in the product rather than for the value of the product itself),
- (c) a supply to any person, provided that being so supplied the product is repaired by or on behalf of the person to whom the product was delivered up by direction of the court and that following such repair it is not a dangerous product.

Forfeiture: Scotland

19.—(1) In Scotland a sheriff may make an order for forfeiture of a product on the grounds that the product is a dangerous product—

^(a) 1980 c.43.

^(b) SI 1675/1981 (N.I.26).

- (a) on an application by a procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995^(a), or
- (b) where a person is convicted of any offence in respect of a contravention in relation to the product of a requirement imposed by or under these Regulations, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under paragraph (1)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the product to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the product should not be forfeited.

(3) Service under paragraph (2) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.

(4) A person upon whom notice is served under paragraph (2) and any other person claiming to be the owner of, or otherwise to have an interest in, the product to which the application relates shall be entitled to appear at the hearing of the application to show cause why the product should not be forfeited.

(5) The sheriff shall not make an order following an application under paragraph (1)(a)—

- (a) if any person on whom notice is served under paragraph (2) does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under paragraph (2) has been served, unless the sheriff is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff may make an order under this regulation only if he is satisfied that the product is a dangerous product.

(7) Where an order for the forfeiture of a product is made following an application by the procurator-fiscal under paragraph (1)(a), any person who appeared, or was entitled to appear to show cause why the product should not be forfeited may, within twenty-one days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under this paragraph as it applies to a stated case under Part X of that Act.

(8) An order following an application under paragraph (1)(a) shall not take effect—

- (a) until the end of the period of twenty-one days beginning with the day after the day on which the order is made; or
- (b) if an appeal is made under paragraph (7) within that period, until the appeal is determined or abandoned.

(9) An order under paragraph (1)(b) shall not take effect—

- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995; or
- (b) if an appeal is made within that period, until the appeal is determined or abandoned.

(10) Subject to paragraph (11), a product forfeited under this regulation shall be destroyed in accordance with such directions as the sheriff may give.

(11) If he thinks fit, the sheriff may direct that the product be released to such person as he may specify, on condition that that person does not supply the product to any other person otherwise than as mentioned in paragraph (11) of regulation 18.

Offences

20.—(1) A person who contravenes regulations 5 or 8(1)(a) shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding 12 months or to a

(a) 1995 c.46.

fine not exceeding £20,000 or to both, or on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

(2) A person who contravenes regulation 7(1), 7(3) (by failing to take any of the measures specified in regulation 7(4)), 8(1)(b)(i), (ii) or (iii) or 9(1) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(3) A producer or distributor who does not give notice to an enforcement authority under regulation 9(1) in respect of a product he has placed on the market or supplied commits an offence where it is proved that he ought to have known that the product poses risks to consumers that are incompatible with the general safety requirement and he shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(4) A person who contravenes a safety notice shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding 12 months or to a fine not exceeding £20,000 or to both, or on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

Test purchases

21.—(1) An enforcement authority shall have power to organise appropriate checks on the safety properties of a product, on an adequate scale, up to the final stage of use or consumption and for that purpose may make a purchase of a product or authorise an officer of the authority to make a purchase of a product.

- (2) Where a product purchased under paragraph (1) is submitted to a test and the test leads to—
- (a) the bringing of proceedings for an offence in respect of a contravention in relation to the product of any requirement imposed by or under these Regulations or for the forfeiture of the product under regulation 18 or 19, or
 - (b) the serving of a safety notice in respect of the product, and
 - (c) the authority is requested to do so and it is practicable for the authority to comply with the request,

then the authority shall allow the person from whom the product was purchased, a person who is a party to the proceedings, on whom the notice was served or who has an interest in the product to which the notice relates, to have the product tested.

Powers of entry and search etc.

22.—(1) An officer of an enforcement authority may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by the following provisions of this regulation.

(2) The officer may, for the purposes of ascertaining whether there has been a contravention of a requirement imposed by or under these Regulations, enter any premises other than premises occupied only as a person's residence and inspect any record or product.

(3) The officer may, for the purpose of ascertaining whether there has been a contravention of a requirement imposed by or under these Regulations, examine any procedure (including any arrangements for carrying out a test) connected with the production of a product.

(4) If the officer has reasonable grounds for suspecting that the product has not been placed on the market or supplied in the United Kingdom since it was manufactured or imported he may for the purpose of ascertaining whether there has been a contravention in relation to the product of a requirement imposed by or under these Regulations—

- (a) require a person carrying on a commercial activity, or employed in connection with a commercial activity, to supply all necessary information relating to the activity, including by the production of records,

- (b) require any record which is stored in an electronic form and is accessible from the premises to be produced in a form —
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible.
 - (c) for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain samples of the product,
 - (d) take copies of, or of an entry in, any records produced by virtue of sub-paragraph (a).
- (5) If the officer has reasonable grounds for suspecting that there has been a contravention in relation to a product of a requirement imposed by or under these Regulations, he may—
- (a) for the purpose of ascertaining whether there has been any such contravention, require a person carrying on a commercial activity, or employed in connection with a commercial activity, to supply all necessary information relating to the activity, including by the production of records,
 - (b) for the purpose of ascertaining whether there has been any such contravention, require any record which is stored in an electronic form and is accessible from the premises to be produced in a form –
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible,
 - (c) for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain samples of the product,
 - (d) take copies of, or of an entry in, any records produced by virtue of sub-paragraph (a).
- (6) The officer may seize and detain any products or records which he has reasonable grounds for believing may be required as evidence in proceedings for an offence in respect of a contravention of any requirement imposed by or under these Regulations.
- (7) If and to the extent that it is reasonably necessary to do so to prevent a contravention of any requirement imposed by or under these Regulations, the officer may, for the purpose of exercising his power under paragraphs (4) to (6) to seize products or records—
- (a) require any person having authority to do so to open any container or to open any vending machine; and
 - (b) himself open or break open any such container or machine where a requirement made under sub-paragraph (a) in relation to the container or machine has not been complied with.

Provisions supplemental to regulation 22 and search warrants etc.

23.—(1) An officer seizing any products or records shall, before he leaves the premises, provide to the person from whom they were seized a written notice—

- (a) specifying the products (including the quantity thereof) and records seized,
- (b) stating the reasons for their seizure, and
- (c) explaining the right of appeal under regulation 25.

(2) References in paragraph (1) and regulation 25 to the person from whom something has been seized, in relation to a case in which the power of seizure was exercisable by reason of the product having been found on any premises, are references to the occupier of the premises at the time of the seizure.

(3) If a justice of the peace—

- (a) is satisfied by written information on oath that there are reasonable grounds for believing either—
 - (i) that any products or records which an officer has power to inspect under regulation 22 are on any premises and that their inspection is likely to disclose evidence that

there has been a contravention of any requirement imposed by or under these Regulations, or

- (ii) that such a contravention has taken place, is taking place or is about to take place on any premises, and
- (b) is also satisfied by such information either—
 - (i) that admission to the premises has been or is likely to be refused and that notice of the intention to apply for a warrant under this paragraph has been given to the occupier, or
 - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return.

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise any officer of an enforcement authority to enter the premises, if need be by force.

(4) An officer entering premises by virtue of regulation 22 or a warrant under paragraph (3) may take him such other persons and equipment as may appear to him necessary.

(5) On leaving any premises which a person is authorised to enter by a warrant under paragraph (3), that person shall, if the premises are unoccupied or the occupier is temporarily absent—

- (a) leave the premises as effectively secured against trespassers as he found them,
- (b) attach a notice such as is mentioned in paragraph (1) in a prominent place at the premises.

(6) Where a product seized by an officer of an enforcement authority under regulation 22 or 23 is submitted to a test, the authority shall inform the person mentioned in paragraph (1) of the result of the test and, if—

- (a) proceedings are brought for an offence in respect of a contravention in relation to the product of any requirement imposed by or under these Regulations or for the forfeiture of the product under regulation 18 or 19; or
- (b) a safety notice is served in respect of the product; and
- (c) the authority is requested to do so and it is practicable for him to comply with the request,

then the authority shall allow a person who is a party to the proceedings or, on whom the notice was served or who has an interest in the product to which the notice relates to have the product tested.

(7) If a person who is not an officer of an enforcement authority purports to act as such under regulation 22 or under this regulation he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) In the application of this section to Scotland, the reference in paragraph (3) to a justice of the peace shall include a reference to a sheriff and the reference to written information on oath shall be construed as a reference to evidence on oath.

(9) In the application of this section to Northern Ireland, the reference in paragraph (3) to a justice of the peace shall include a reference to a lay magistrate and the references to an information on oath shall be construed as a reference to a complaint on oath.

Obstruction of officers

24.—(1) A person who—

- (a) intentionally obstructs an officer of an enforcement authority who is acting in pursuance of any provision of regulations 22 or 23; or
- (b) intentionally fails to comply with a requirement made of him by an officer of an enforcement authority under any provision of those regulations; or
- (c) without reasonable cause fails to give an officer of an enforcement authority who is so acting any other assistance or information which the officer may reasonably require of

him for the purposes of the exercise of the officer's functions under any provision of those regulations,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person shall be guilty of an offence if, in giving any information which is required by him by virtue of paragraph (1)(c)—

- (a) he makes a statement which he knows is false in a material particular; or
- (b) he recklessly makes a statement which is false in a material particular.

(3) A person guilty of an offence under paragraph (2) shall be liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

Appeals against detention of products and records

25.—(1) A person referred to in regulation 23(1) may apply for an order requiring any product or record which is for the time being detained under regulation 22 or 23 by an enforcement authority or by an officer of such an authority to be released to him or to another person.

(2) An application under the preceding paragraph may be made—

- (a) to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland—
 - (i) for an offence in respect of a contravention in relation to the product of a requirement imposed by or under these Regulations, or
 - (ii) for the forfeiture of the product under regulation 18,
- (b) where no such proceedings have been brought, by way of complaint to a magistrates' court;
- (c) in Scotland, by summary application to the sheriff.

(3) On an application under paragraph (1) to a magistrates' court or to the sheriff, the court or the sheriff may make an order requiring a product or record to be released only if the court or sheriff is satisfied—

- (a) that proceedings
 - (i) for an offence in respect of any contravention in relation to the product or, in the case of a record, the product to which the record relates, of any requirement imposed by or under these Regulations; or
 - (ii) for the forfeiture of the product or, in the case of a record, the product to which the record relate, under regulation 18 or 19,have not been brought or, having been brought, have been concluded without the product being forfeited; and
- (b) where no such proceedings have been brought, that more than six months have elapsed since the product or records was seized.

(4) In determining whether to make an order under this regulation requiring the release of a product or record the court or sheriff shall take all the circumstances into account including the results of any tests on the product which have been carried out by or on behalf of the enforcement authority and any statement made by the enforcement authority to the court or sheriff as to its intention to bring proceedings for an offence in respect of a contravention in relation to the product of any requirement imposed by or under these Regulations.

(5) Where—

- (a) more than 12 months have elapsed since a product or records were seized and the enforcement authority has not commenced proceedings for an offence in respect of a contravention in relation to the product (or, in the case of records, the product to which

the records relate) of any requirement imposed by or under these Regulations or for the forfeiture of the product under regulation 18 or 19, or

- (b) an enforcement authority has brought proceedings for an offence as mentioned in subparagraph (a) and the proceedings were dismissed and all rights of appeal have been exercised or the time for appealing has expired,

the authority shall be under a duty to return the product or records detained under regulation 22 or 23 to the person from whom they were seized.

(6) Where the authority is satisfied that some other person has a better right to a product or record than the person from whom they were seized, the authority shall, instead of the duty in paragraph (5), be under a duty to return it to that other person or, as the case may be, to the person appearing to the authority to have the best right to the product or record in question.

(7) Where different persons claim to be entitled to the return of a product or record that is required to be returned under paragraph (5), then it may be retained for as long as it reasonably necessary for the determination in accordance with paragraph (6) of the person to whom it must be returned.

(8) A person aggrieved by an order made under this regulation by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court;

and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980^(a) or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981^(b) (statement of case)).

Compensation for seizure and detention

26. Where an officer of an enforcement authority exercises any power under regulation 22 or 23 to seize and detain a product, the enforcement authority shall be liable to pay compensation to any person having an interest in the product in respect of any loss or damage caused by reason of the exercise of the power if—

- (a) there has been no contravention in relation to the product of any requirement imposed by or under these Regulations, and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

Recovery of expenses of enforcement

27.—(1) This regulation shall apply where a court—

- (a) convicts a person of an offence in respect of a contravention in relation to a product of any requirement imposed by or under these Regulations, or
- (b) makes an order under regulation 18 or 19 for the forfeiture of a product.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted or, as the case may be, any person having an interest in the product to reimburse an enforcement authority for any expenditure which has been or may be incurred by that authority—

- (a) in connection with any seizure or detention of the product by or on behalf of the authority, or

^(a) 1980 c.43.

^(b) SI 1675/1981 (N.I.26).

- (b) in connection with any compliance by the authority with directions given by the court for the purposes of any order for the forfeiture of the product.

Power of Secretary of State to obtain information

28.—(1) If the Secretary of State considers that, for the purposes of deciding whether to serve a safety notice, or to vary or revoke a safety notice which he has already served, he requires information or a sample of a product he may serve on a person a notice requiring him:

- (a) to furnish to the Secretary of State, within a period specified in the notice, such information as is specified;
- (b) to produce such records as are specified in the notice at a time and place so specified (and to produce any such records which are stored in any electronic form in a form in which they are visible and legible) and to permit a person appointed by the Secretary of State for that purpose to take copies of the records at that time and place;
- (c) to produce such samples of a product as are specified in the notice at a time and place so specified.

(2) A person shall be guilty of an offence if he—

- (a) fails, without reasonable cause, to comply with a notice served on him under paragraph (1); or
- (b) in purporting to comply with a requirement which by virtue of paragraph (1)(a) or (b) is contained in such a notice—
 - (i) furnishes information or records which he knows are false in a material particular, or
 - (ii) recklessly furnishes information or records which are false in a material particular.

(3) A person guilty of an offence under paragraph (2) shall—

- (a) in the case of an offence under sub-paragraph (a) of that paragraph, be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) in the case of an offence under sub-paragraph (b) of that paragraph, be liable—
 - (i) on conviction on indictment, to a fine;
 - (ii) on summary conviction, to a fine not exceeding the statutory maximum.

Defence of due diligence

29.—(1) Subject to the following provisions of this regulation, in proceedings against a person for an offence under these Regulations it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another, or
- (b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not less than seven clear days before, in England, Wales and Northern Ireland, the hearing of the proceedings or, in Scotland, the trial diet, he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who—

- (a) committed the act or default, or
- (b) gave the information,

as is in the possession of the person serving the notice at the time he serves it.

(4) A person may not rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances to have relied on the information, having regard in particular—

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

Defence in relation to antiques

30.—(1) This regulation shall apply in proceedings against any person for an offence under regulation 20(1) in respect of the supply, offer or agreement to supply or exposure or possession for supply of second hand products supplied as antiques.

(2) It shall be a defence for that person to show that the terms on which he supplied the product or agreed or offered to supply the product or, in the case of a product which he exposed or possessed for supply, the terms on which he intended to supply the product, contemplated the acquisition of an interest in the product by the person supplied or to be supplied.

(3) Paragraph (2) applies only if the producer or distributor clearly informed the person to whom he supplied the product, or offered or agreed to supply the product or, in the case of a product which he exposed or possessed for supply, he intended to so inform that person, that the product is an antique.

Liability of person other than principal offender

31.—(1) Where the commission by a person of an offence under these Regulations is due to an act or default committed by some other person in the course of a commercial activity of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) Where a Scottish partnership is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner in the partnership, he, as well as the partnership, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

PART 4

MISCELLANEOUS

Reports

32.—(1) It shall be the duty of the Secretary of State to lay before each House of Parliament a report on the exercise during the period to which the report relates of the functions which are exercisable by enforcement authorities under these Regulations.

(2) The first such report shall relate to the period beginning on the day on which these Regulations come into force and ending on 31 March 2008 and subsequent reports shall relate to a

period of not more than five years beginning on the day after the day on which the period to which the previous report relates ends.

(3) The Secretary of State may from time to time prepare and lay before each House of Parliament such other reports on the exercise of those functions as he considers appropriate.

(4) The Secretary of State may direct an enforcement authority to report at such intervals as he may specify in the direction on the discharge by that authority of the functions exercisable by it under these Regulations.

(5) A report under paragraph (4) shall be in such form and shall contain such particulars as are specified in the direction of the Secretary of State.

Duty to notify Secretary of State and Commission

33.—(1) An enforcement authority which has received a notification under regulation 9(1) shall immediately pass the same on to the Secretary of State, who shall immediately pass it on to the competent authorities appointed for the purpose in the Member States where the product in question is or has been marketed or otherwise supplied to consumers.

(2) Where an enforcement authority takes a measure which restricts the placing on the market of a product, or requires its withdrawal or recall, it shall immediately notify the Secretary of State, specifying its reasons for taking the action. It shall also immediately notify the Secretary of State of any modification or lifting of such a measure.

(3) On receiving a notification under paragraph (2), or if he takes a measure which restricts the placing on the market of a product, or requires its withdrawal or recall, the Secretary of State shall (to the extent that such notification is not required under article 12 of the GPS Directive or any other Community legislation) immediately notify the European Commission of the measure taken, specifying the reasons for taking it. The Secretary of State shall also immediately notify the European Commission of any modification or lifting of such a measure. If the Secretary of State considers that the effects of the risk do not or cannot go beyond the territory of the United Kingdom, he shall notify the European Commission of the measure concerned insofar as it involves information likely to be of interest to Member States from the product safety standpoint, and in particular if it is in response to a new risk which has not yet been reported in other notifications.

(4) Where an enforcement authority adopts or decides to adopt, recommend or agree with producers and distributors, whether on a compulsory or voluntary basis, a measure or action to prevent, restrict or impose specific conditions on the possible marketing or use of a product (other than a pharmaceutical product) by reason of a serious risk, it shall immediately notify the Secretary of State. It shall also immediately notify the Secretary of State of any modification or withdrawal of any such measure or action.

(5) On receiving a notification under paragraph (4), or if he adopts or decides to adopt, recommend or agree with producers and distributors, whether on a compulsory or voluntary basis, a measure or action to prevent, restrict or impose specific conditions on the possible marketing or use of a product (other than a pharmaceutical product) by reason of a serious risk, the Secretary of State shall immediately notify the European Commission of it through the Community Rapid Information System, known as RAPEX. The Secretary of State shall also inform the European Commission without delay of any modification or withdrawal of any such measure or action.

(6) If the Secretary of State considers that the effects of the risk do not or cannot go beyond the territory of the United Kingdom, he shall notify the European Commission of the measures or action concerned insofar as they involve information likely to be of interest to Member States of the European Union from the product safety standpoint, and in particular if they are in response to a new risk which has not been reported in other notifications.

(7) Before deciding to adopt such a measure or take such an action as is referred to in paragraph (5), the Secretary of State may pass on to the European Commission any information in his possession regarding the existence of a serious risk. Where he does so, he must inform the European Commission, within 45 days of the day of passing the information to it, whether he confirms or modifies that information.

(8) Upon receipt of a notification from the European Commission under article 12(2) of the GPS Directive, the Secretary of State shall notify the Commission of the following—

- (a) whether the product the subject of the notification has been marketed in the United Kingdom;
- (b) what measure concerning the product the enforcement authorities in the United Kingdom may be adopting, stating the reasons, including any differing assessment of risk or any other special circumstance justifying the decision as to the measure, in particular lack of action or follow-up; and
- (c) any relevant supplementary information he has obtained on the risk involved, including the results of any test or analysis carried out.

(9) The Secretary of State shall notify the European Commission without delay of any modification or withdrawal of any measures notified to it under paragraph (8)(b).

(10) In this regulation—

- (a) references to a product excludes a second hand product supplied as an antique or as a product to be repaired or reconditioned prior to being used, provided the supplier clearly informs the person to whom he supplies the product to that effect;
- (b) “pharmaceutical product” means a product falling within Council Directive 2001/83/EC of the European Parliament and of the Council on the Community code relating to medicinal products for human use^(a).

Provisions supplemental to regulation 33

34.—(1) A notification under regulation 33(2) to (6), (8) or (9) to the Secretary of State or the Commission shall be in writing and shall provide all available details and at least the following information—

- (a) information enabling the product to be identified,
- (b) a description of the risk involved, including a summary of the results of any test or analysis and of their conclusions which are relevant to assessing the level of risk,
- (c) the nature and the duration of the measures or action taken or decided on, if applicable,
- (d) information on supply chains and distribution of the product, in particular on destination countries.

(2) Where a measure notified to the Commission under regulation 33 seeks to limit the marketing or use of a chemical substance or preparation, the Secretary of State shall provide to the Commission as soon as possible either a summary or the references of the relevant data relating to the substance or preparation considered and to known and available substitutes, where such information is available. The Secretary of State shall also notify the Commission of the anticipated effects of the measure on consumer health and safety together with the assessment of the risk carried out in accordance with the general principles for the risk evaluation of chemical substances as referred to in article 10(4) of Council Regulation (EEC) No. 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances^(b), in the case of an existing substance, or in article 3(2) of Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances^(c) in the case of a new substance.

(3) Where the Commission carries out an investigation under paragraph 5 of Annex II to the GPS Directive, the Secretary of State shall supply the Commission with such information as it requests, to the best of his ability.

^(a) OJ No L311, 28/11/2001, p.67.

^(b) OJ L084, 05/04/1993 p1.

^(c) OJ 196, 16/08/1967 P.0001; English Special Edition Series I Chapter 1967 p.0234.

Implementation of Commission decisions

35.—(1) This regulation applies where the Commission adopts a decision pursuant to article 13 of the GPS Directive.

(2) The Secretary of State shall—

- (a) take such action under these Regulations, or
- (b) direct another enforcement authority to take such action under these Regulations

as is necessary to comply with the decision.

(3) Where an enforcement authority serves a safety notice pursuant to paragraph (2), the following provisions of these Regulations shall not apply in relation to that notice, namely regulations 14(3), 15(4) to (6) and 16(1), 16(2)(c) and (d), 16(5) to (7) and 17.

(4) Unless the Commission's decision provides otherwise, export from the Community of a dangerous product which is the subject of such a decision is prohibited with effect from the date the decision comes into force.

(5) The enforcement of the prohibition in paragraph (4) shall be treated as an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979^(a).

(6) The measures necessary to implement the decision shall be taken within 20 days, unless the decision specifies a different period.

(7) The Secretary of State or, where the Secretary of State has directed another enforcement authority to take action under paragraph (2)(b), that enforcement authority shall, within one month, give the parties concerned an opportunity to submit their views and shall inform the Commission accordingly.

Market surveillance

36. In order to ensure a high level of consumer health and safety protection, enforcement authorities shall within the limits of their responsibility and to the extent of their ability undertake market surveillance of products employing appropriate means and procedures and co-operating with other enforcement authorities and competent authorities of other Member States which may include:

- (a) establishment, periodical updating and implementation of sectoral surveillance programmes by categories of products or risks and the monitoring of surveillance activities, findings and results,
- (b) follow-up and updating of scientific and technical knowledge concerning the safety of products,
- (c) the periodical review and assessment of the functioning of the control activities and their effectiveness and, if necessary revision of the surveillance approach and organisation put in place.

Complaints procedures

37. An enforcement authority shall maintain and publish a procedure by which complaints may be submitted by any person on product safety and on surveillance and control activities, which complaints shall be followed up as appropriate.

Co-operation between enforcement authorities

38.—(1) It shall be the duty of an enforcement authority to co-operate with other enforcement authorities in carrying out the functions conferred on them by these Regulations. In particular—

- (a) enforcement authorities shall share their expertise and best practices with each other;

(a) 1979 c.2.

- (b) enforcement authorities shall undertake collaborative working where they have a shared interest.

(2) The Secretary of State shall inform the European Commission as to the arrangements for the enforcement of these Regulations, including which bodies are enforcement authorities.

Information

39.—(1) An enforcement authority shall in general make available to the public such information as is available to it on the following matters relating to the risks to consumer health and safety posed by a product—

- (a) the nature of the risk,
- (b) the product identification,

and the measures taken in respect of the risk, without prejudice to the need not to disclose information for effective monitoring and investigation activities.

(2) Paragraph (1) shall not apply to any information obtained by an enforcement authority for the purposes of these Regulations which, by its nature, is covered by professional secrecy, unless the circumstances require such information to be made public in order to protect the health and safety of consumers.

(3) The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information)(Amendment and Specification) Order 2003^(a) is amended—

- (i) by the omission of the “General Product Safety Regulations 1994” from Schedules 3 and 4; and
- (ii) by the insertion of the “General Product Safety Regulations 2005” at the end of Schedules 3 and 4.

Service of documents

40.—(1) A document required or authorised by virtue of these Regulations to be served on a person may be so served—

- (a) on an individual by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;
- (b) on a body corporate other than a limited liability partnership, by serving it in accordance with sub-paragraph (a) on the secretary of the body;
- (c) on a limited liability partnership, by serving it in accordance with sub-paragraph (a) on a member of the partnership; or
- (d) on a partnership, by serving it in accordance with sub-paragraph (a) on a partner or a person having the control or management of the partnership business;
- (e) on any other person by leaving it at his proper address or by sending it by post to him at that address.

(2) For the purposes of paragraph (1), and for the purposes of section 7 of the Interpretation Act 1978^(b) (which relates to the service of documents by post) in its application to that paragraph, the proper address of a person on whom a document is to be served by virtue of these Regulations shall be his last known address except that—

- (a) in the case of a body corporate (other than a limited liability partnership) or its secretary, it shall be the address of the registered or principal office of the body;
- (b) in the case of a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership;

^(a) SI 2003/1400.
^(b) 1978 c.30.

- (c) in the case of a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership,

and for the purposes of this paragraph the principal officer of a company constituted under the law of a country or territory outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(3) A document required or authorised by virtue of these Regulations to be served on a person may also be served by transmitting the request by any means of electronic communication to an electronic address (which includes a fax number and an e-mail address) being an address which the person has held out as an address at which he or it can be contacted for the purposes of receiving such documents.

(4) A document transmitted by any means of electronic communication in accordance with the preceding paragraph is, unless the contrary is proved, deemed to be received on the business day after the notice was transmitted over a public electronic communications network.

Extension of time for bringing summary proceedings

41.—(1) Notwithstanding section 127 of the Magistrates' Courts Act 1980(a) or article 19 of the Magistrates' Courts (Northern Ireland) Order 1981(b), in England, Wales and Northern Ireland a magistrates' court may try an information (in the case of England and Wales) or a complaint (in the case of Northern Ireland) in respect of an offence under these Regulations if (in the case of England and Wales) the information is laid or (in the case of Northern Ireland) the complaint is made within three years from the date of the offence or within one year from the discovery of the offence by the prosecutor whichever is the earlier.

(2) Notwithstanding section 136 of the Criminal Procedure (Scotland) Act 1995(c), in Scotland summary proceedings for an offence under these Regulations may be commenced within three years from the date of the offence or within one year from the discovery of the offence by the prosecutor whichever is the earlier.

(3) For the purposes of paragraph (2), section 136(3) of the Criminal Procedure (Scotland) Act 1995 shall apply as it applies for the purposes of that section.

Civil proceedings

42. These Regulations shall not be construed as conferring any right of action in civil proceedings in respect of any loss or damage suffered in consequence of a contravention of these Regulations.

Privileged information

43.—(1) Nothing in these Regulations shall be taken as requiring a person to produce any records if he would be entitled to refuse to produce those records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, that they contain a confidential communication made by or to an advocate or solicitor in that capacity, or as authorising a person to take possession of any records which are in the possession of a person who would be so entitled.

(2) Nothing in these Regulations shall be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person's spouse or civil partner.

(a) 1980 c.43.

(b) S.I. 1675/1981 (N.I.26).

(c) 1995 c.46.

Evidence in proceedings for offence relating to regulation 9(1)

44.—(1) This regulation applies where a person has given a notification to an enforcement authority pursuant to regulation 9(1).

(2) No evidence relating to that statement may be adduced and no question relating to it may be asked by the prosecution in any criminal proceedings (other than proceedings in which that person is charged with an offence under regulation 20 for a contravention of regulation 9(1)), unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

Transitional provisions

45. Where, in relation to a product, a suspension notice (within the meaning of the 1987 Act) has (by virtue of regulation 11(b) of the General Product Safety Regulations 1994^(a)) been served under section 14 of the 1987 Act and is in force immediately prior to the coming into force of these Regulations, it shall continue in force notwithstanding the revocation of the General Product Safety Regulations 1994 by these Regulations, and those Regulations shall continue to apply accordingly.

Amendments to the Consumer Protection Act 1987

46.—(1) The 1987 Act is amended as follows:

(2) Omit section 10 (general safety requirement).

(3) In section 11(1), omit the words “for the purposes of section 10(3) above and”.

(4) In section 13, add the following after subsection (6)—

“(7) A notice may not be given under this section in respect of any aspect of the safety of goods, or any risk or category of risk associated with goods, concerning which provision is contained in the General Product Safety Regulations 2005.”.

(5) In section 19(1), in the definition of “safe”, omit the words ““safer” and”.

(6) In section 39(5), omit the word “10,”.

(7) In section 45(1), in the definition of “safety provision”, omit the words “the general safety requirement in section 10 above or”.

Consequential amendments to other legislation

47.—(1) Omit paragraph 15(1) of Schedule 4 to the Gas Act 1995^(b).

(2) The Criminal Justice and Police Act 2001^(c) is amended as follows.

(3) In section 66(4), insert the following after paragraph (n)—

“(o) regulation 22 of the General Product Safety Regulations 2005 (powers of entry and search etc)”.

(4) In Schedule 1, insert the following after paragraph 73F^(d)—

“General Product Safety Regulations 2005

73G. Each of the powers of seizure conferred by the provisions of regulation 22(4) to (6) of the General Product Safety Regulations 2005 (seizure for the purposes of ascertaining whether safety provisions have been contravened etc).”.

(a) S.I. 1994/2328.

(b) 1995 c.45.

(c) 2001 c.16, section 66(4)(n) was inserted by paras 5(1) and (3) of Sch. 6 to the Human Tissue Act 2004 c.30.

(d) Paragraph 73F is prospectively inserted by para. 18 of Schedule 16 to the Gambling Act 2005 c.19.

(5) In Schedule 2—

(a) insert the following after paragraph 4—

“**4A** Regulation 23(6) of the General Product Safety Regulations 2005 (provision about the testing of seized products) shall apply in relation to items seized under section 50 of this Act in reliance on the power of seizure conferred by regulation 23 of those Regulations as it applies in relation to items seized under regulation 22 of those Regulations.”.

(b) insert the following after paragraph 9—

“**9A** Regulation 26 of the General Product Safety Regulations 2005 (compensation for seizure and detention) shall apply in relation to the seizure of items under section 50 of this Act in reliance on the power of seizure conferred by regulation 22 of those Regulations, and the retention of products under regulations 22 of those Regulations.”.

Date 30th June 2005

Gerry Sutcliffe
The Parliamentary Under-Secretary of State
for Employment Relations and Consumer Affairs,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ No. L11, 15/1/2002 p.4). This Directive superseded Council Directive 92/59/EEC (OJ No. L228 11/8/1992 p.24) on general product safety which was implemented by the General Product Safety Regulations 1994 (SI 1994/2328). The 1994 Regulations are consequently revoked by regulation 1(2) of these Regulations.

These Regulations impose requirements concerning the safety of products intended for consumers or which are likely to be used by consumers. The products covered are defined in regulation 2 and extend to second-hand products, ones intended for professional use which it can be foreseen may be used by consumers, and products supplied in the course of a service. Regulation 2 defines other key terms such as enforcement authority, distributor and producer. Regulation 3 provides that the Regulations apply except where there are no other specific provisions in rules of Community law other than the Directive. Where there are those other rules apply. Regulation 4 excludes second-hand products which are expressly supplied for repair or reconditioning.

Regulation 5 requires producers only to place safe products on the market. Regulation 6 provides that a product which complies with certain safety standards is presumed to be safe unless there is evidence to the contrary. Regulation 7 requires producers to inform customers about the risks of products and to monitor the risks their products pose. Regulation 8 requires distributors to act with due care so as not to supply unsafe products and to co-operate in monitoring the safety of products. Regulation 9 requires producers and distributors to notify an enforcement authority if a product placed on the market poses risks that are incompatible with the general product safety requirement. This does not apply to antiques or products supplied for repair or reconditioning.

Regulation 10 imposes a duty on certain enforcement authorities to enforce the Regulations. It requires all enforcement authorities to act in a proportionate manner, to take account of the precautionary principle and to encourage voluntary compliance with the Regulations except in cases of serious risk.

Regulations 11-15 contain the enforcement powers which enforcement authorities may exercise in appropriated cases by issuing safety notices of various kinds. These are *suspension notices* to suspend the supply of a product (regulation 11); *requirements to mark* which require warnings to be marked on a product (regulation 12); *requirements to warn* those who have already been supplied with a product (regulation 14); *withdrawal notices* requiring products not to be placed on the market or supplied (regulation 13); and *recall notices* requiring the recall from consumers of products that have been supplied to them (regulation 14). Regulations 16 to 20 contain ancillary provisions providing for appeals against safety notices, compensation, forfeiture of dangerous products and offences.

Regulations 21-23 confer on enforcement authorities powers of test purchase, entry and search and seizure and detention of products. Regulations 24 to 27 contain ancillary provisions in respect of the offence of obstructing an officer of an enforcement authority, appeals against seizure and detention of products, compensation and the recovery of an enforcement authority's costs. Regulation 28 confers on the Secretary of State powers to require information and samples of products in order to decide whether to serve, vary or revoke a safety notice. Regulations 29-30 provide defences of due diligence and a defence in respect of the supply of antiques.

Regulations 32-34 sets out the system whereby enforcement authorities are to notify the Secretary of State of notifications they have received under regulation 9 and of enforcement action they have taken. The Secretary of State in turn is required to notify the European Commission and competent authorities in those other Member States where the product has been placed on the market. Regulation 35 provides for the implementation of Commission decisions in respect of products that pose serious risks. Regulations 36-38 provide for market surveillance by enforcement authorities, handling of safety complaints and co-operation between authorities.

Regulation 39 requires enforcement authorities to publish safety information with some restrictions in respect of professionally secret information. It also makes information obtained under the regulations subject to Part 9 of the Enterprise Act (restrictions on disclosure of information) and enables information subject to Part 9 to be disclosed for the purposes of enforcing these Regulations.

Regulations 40 provides for service of documents. Regulation 41 extends the time for bringing summary proceedings for an offence under the Regulations. Regulation 42 provides that the Regulations do not confer a right of civil action for their breach. Regulation 43 provides for legal professional privilege and privilege against self incrimination or incrimination of a spouse or civil partner. Regulation 44 provides that a notification under regulation 9(1) is in general inadmissible in criminal proceedings under the Regulations.

Regulation 44 makes transitional provision where a suspension notice has been issued under regulation 11 of the General Product Safety Regulations 1994. Regulation 46 amends the Consumer Protection Act 1987 by repealing section 10 (the general safety requirement) and regulation 47 makes consequential amendment to other legislation.

A full regulatory impact assessment of the effect that this instrument will have on costs to business is available from the Consumer and Competition Policy Directorate of the Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET or at www.dti.gov.uk/ccp/topics1/safety.htm. Copies of a transposition note relating to these Regulations have been placed in the libraries of both Houses of Parliament. Copies are also available to the public from the Consumer and Competition Policy Directorate of the Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET.