
STATUTORY INSTRUMENTS

1994 No. 2328

CONSUMER PROTECTION

The General Product Safety Regulations 1994

<i>Made</i>	- - - -	<i>5th September 1994</i>
<i>Laid before Parliament</i>		<i>8th September 1994</i>
<i>Coming into force</i>	- -	<i>3rd October 1994</i>

Whereas the Secretary of State is a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to consumer protection as regards general product safety;

Now, the Secretary of State, in exercise of the powers conferred on him by section 2(2) of that Act and of all other powers enabling him in that behalf hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the General Product Safety Regulations 1994 and shall come into force on 3rd October 1994.

Interpretation

2.—(1) In these Regulations—

“the 1968 Act” means the Medicines Act 1968⁽³⁾;

“the 1987 Act” means the Consumer Protection Act 1987⁽⁴⁾;

“the 1990 Act” means the Food Safety Act 1990⁽⁵⁾;

“commercial activity” includes a business and a trade;

“consumer” means a consumer acting otherwise than in the course of a commercial activity;

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

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

(1) S.I. 1993/2661.
(2) 1972 c. 68.
(3) 1968 c. 67.
(4) 1987 c. 43.
(5) 1990 c. 16.

“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, council and other person on whom functions under these Regulations are imposed by or under regulation 11;

“general safety requirement” means the requirement in regulation 7;

“the GPS Directive” means Council Directive [92/59/EEC](#) on general product safety⁽⁶⁾;

“the 1991 Order” means the Food Safety (Northern Ireland) Order 1991⁽⁷⁾;

“producer” means

- (a) the manufacturer of the product, when he is established in the Community, and includes any 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 the Community—
 - (i) if the manufacturer does not have a representative established in the Community, the importer of the product;
 - (ii) in all other cases, the manufacturer’s representative; and
- (c) other professionals in the supply chain, insofar as their activities may affect the safety properties of a product placed on the market;

“product” means any product intended for consumers or likely to be used by consumers, supplied whether for consideration or not in the course of a commercial activity and whether new, used or reconditioned; provided, however, a product which is used exclusively in the context of a commercial activity even if it is used for or by a consumer shall not be regarded as a product for the purposes of these Regulations provided always and for the avoidance of doubt this exception shall not extend to the supply of such a product to a consumer;

“safe product” means any product which, under normal or reasonably foreseeable conditions of use, including duration, does not present any risk or only the minimum risks compatible with the product’s use, considered as acceptable and consistent with a high level of protection for the safety and health of persons, taking into account in particular—

- (a) the characteristics of the product, including its composition, packaging, instructions for assembly and maintenance;
- (b) the effect 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 instructions for its use and disposal and any other indication or information provided by the producer; and
- (d) the categories of consumers at serious risk when using the product, in particular children, and the fact that higher levels of safety may be obtained or other products presenting a lesser degree of risk may be available shall not of itself cause the product to be considered other than a safe product.

(2) References in these Regulations to the “Community” are references to the European Economic Area established under the Agreement signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993⁽⁸⁾.

(6) OJ No. L228, 11.8.92, p.24.

(7) S.I. [1991/762 \(N.I. 7\)](#).

(8) Protocol 47 and certain Annexes to the Agreement were amended by Decision No. 7/94 of the EEA Joint Committee, which came into force on 1st July 1994 (OJ No. L160, 28.6.94, p.1). Council Directive [92/59/EEC](#) was added to Chapter XIX of Annex II to the EEA Agreement by item N in Annex 3 to the said Decision No. 7/94.

Application and revocation

3. These Regulations do not apply to—
 - (a) second-hand products which are antiques;
 - (b) products supplied for repair or reconditioning before use, provided the supplier clearly informs the person to whom he supplies the product to that effect; or
 - (c) any product where there are specific provisions in rules of Community law governing all aspects of the safety of the product.
4. The requirements of these Regulations apply to a product where the product is the subject of provisions of Community law other than the GPS Directive insofar as those provisions do not make specific provision governing an aspect of the safety of the product.
5. For the purposes of these Regulations the provisions of section 10 of the 1987 Act to the extent that they impose general safety requirements which must be complied with if products are to be—
 - (i) placed on the market, offered or agreed to be placed on the market or exposed or possessed to be placed on the market by producers; or
 - (ii) supplied, offered or agreed to be supplied or exposed or possessed to be supplied by distributors,are hereby disapplied.
- 6.—(1) Sub-paragraph (ii) of paragraph (b) of sub-section (3) of section 10 of the 1987 Act is hereby repealed.
 - (2) The Approval of Safety Standards Regulations 1987(9)are hereby revoked.

General safety requirement

7. No producer shall place a product on the market unless the product is a safe product.

Requirement as to information

- 8.—(1) Within the limits of his activity, a producer shall—
 - (a) provide consumers with the relevant information to enable them 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 to take precautions against those risks; and
 - (b) adopt measures commensurate with the characteristics of the products which he supplies, to enable him to be informed of the risks which these products might present and to take appropriate action, including, if necessary, withdrawing the product in question from the market to avoid those risks.
- (2) The measures referred to in sub-paragraph (b) of paragraph (1) above may include, whenever appropriate—
 - (i) marking of the products or product batches in such a way that they can be identified;
 - (ii) sample testing of marketed products;
 - (iii) investigating complaints; and
 - (iv) keeping distributors informed of such monitoring.

Requirements of distributors

9. A distributor shall act with due care in order to help ensure compliance with the requirements of regulation 7 above and, in particular, without limiting the generality of the foregoing—

- (a) a distributor shall not supply products to any person which he knows, or should have presumed, on the basis of the information in his possession and as a professional, are dangerous products; and
- (b) within the limits of his activities, a distributor shall participate in monitoring the safety of products placed on the market, in particular by passing on information on the product risks and cooperating in the action taken to avoid those risks.

Presumption of conformity and product assessment

10.—(1) Where in relation to any product such product conforms to the specific rules of the law of the United Kingdom laying down the health and safety requirements which the product must satisfy in order to be marketed there shall be a presumption that, until the contrary is proved, the product is a safe product.

(2) Where no specific rules as are mentioned or referred to in paragraph (1) exist, the conformity of a product to the general safety requirement shall be assessed taking into account—

- (i) voluntary national standards of the United Kingdom giving effect to a European standard; or
- (ii) Community technical specifications; or
- (iii) if there are no such voluntary national standards of the United Kingdom or Community technical specifications—
 - (aa) standards drawn up in the United Kingdom; or
 - (bb) the codes of good practice in respect of health and safety in the product sector concerned; or
 - (cc) the state of the art and technology

and the safety which consumers may reasonably expect.

Enforcement

11. For the purposes of providing for the enforcement of these Regulations—

- (a) section 13 of the 1987 Act (prohibition notices and notices to warn) shall (to the extent that it does not already do so) apply to products as it applies to relevant goods under that section;
- (b) the requirements of these Regulations shall constitute safety provisions for the purposes of sections 14 (suspension notices), 15 (appeals against suspension notices), 16 (forfeiture: England, Wales and Northern Ireland), 17 (forfeiture: Scotland) and 18 (power to obtain information) of the 1987 Act;
- (c)
 - (i) subject to paragraph (ii) below a weights and measures authority in Great Britain and a district council in Northern Ireland shall have the same duty to enforce these Regulations as they have in relation to Part II of the 1987 Act, and Part IV, sections 37 and 38 and subsections (3) and (4) of section 42 of that Act shall apply accordingly;
 - (ii) without prejudice to the provisions of paragraphs (a) and (b) above and sub-paragraph (i) above, insofar as these Regulations apply:—
 - (aa) to products licensed in accordance with the provisions of the 1968 Act, it shall be the duty of the enforcement authority as defined in section 132(1) of the 1968 Act to enforce or to secure the enforcement of these Regulations and sections 108 to 115 and section 119 of and Schedule 3 to that Act shall

- apply accordingly as if these Regulations were regulations made under the said Act;
- (bb) in relation to food within the meaning of section 1 of the 1990 Act, it shall be the duty of each food authority as defined in section 5 of the 1990 Act to enforce or to secure the enforcement of these Regulations, within its area, in Great Britain and sections 9, 29, 30 and 32 of that Act shall apply accordingly as if these Regulations were food safety requirements made under the said Act and section 10 of that Act shall apply as if these Regulations were regulations made under Part II of that Act; and
 - (cc) in relation to food within the meaning of article 2 of the 1991 Order, it shall be the duty of the relevant enforcement authority as provided for in article 26 of that Order to enforce or to secure enforcement of these Regulations in Northern Ireland and articles 8, 29, 30, 31 and 33 of that Order shall apply accordingly as if these Regulations were food safety requirements made under that Order and article 9 of that Order shall apply as if these Regulations were regulations made under Part II of that Order;
- (d) in sections 13(4) and 14(6) of the 1987 Act for the words “six months” there shall be substituted “three months”; and
 - (e) nothing in this regulation shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

Offences and preparatory acts

- 12. Any person who contravenes regulation 7 or 9(a) shall be guilty of an offence.
- 13. No producer or distributor shall—
 - (a) offer or agree to place on the market any dangerous product or expose or possess any such product for placing on the market; or
 - (b) offer or agree to supply any dangerous product or expose or possess any such product for supply,

and any person who contravenes the requirements of this regulation shall be guilty of an offence.

Defence of due diligence

14.—(1) Subject to the following paragraphs of this regulation, in proceedings against any 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) above 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 leave of the court, be entitled to rely on the defence unless, not less than seven 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) below 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 committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided in paragraph (1) above by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him 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.

(5) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) above or by section 39(1) of the 1987 Act (defence of due diligence) if he has contravened regulation 9(b).

Liability of persons other than principal offender

15.—(1) Where the commission by any person of an offence to which regulation 14 above applies is due to the act or default committed by some other person in the course of a commercial activity of his, the other person shall be guilty of an 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) above) 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) above 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 regulation 14 above (including where it is so guilty by virtue of paragraph (1) above) 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.

Extension of the time for bringing summary proceedings

16.—(1) Notwithstanding section 127 of the Magistrates' Courts Act 1980⁽¹⁰⁾ and article 19 of the Magistrates' Courts (Northern Ireland) Order 1981⁽¹¹⁾, 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 proceedings for an offence under regulation 12 or 13 above if (in the case of England and Wales) the information is laid or (in the case of Northern Ireland) the complaint is made within twelve months from the date of the offence.

(2) Notwithstanding section 331 of the Criminal Procedure (Scotland) Act 1975⁽¹²⁾, in Scotland summary proceedings for an offence under regulation 12 or 13 above may be commenced at any time within twelve months from the date of the offence.

(3) For the purposes of paragraph (2) above, section 331(3) of the Criminal Procedure (Scotland) Act 1975 shall apply as it applies for the purposes of that section.

⁽¹⁰⁾ 1980 c. 43.

⁽¹¹⁾ S.I. 1981/1675 (N.I. 26).

⁽¹²⁾ 1975 c. 21.

Penalties

17. A person guilty of an offence under regulation 12 or 13 above shall be liable on summary conviction to—

- (a) imprisonment for a term not exceeding three months; or
- (b) a fine not exceeding level 5 on the standard scale;

or to both.

Duties of enforcement authorities

18.—(1) Every enforcement authority shall give immediate notice to the Secretary of State of any action taken by it to prohibit or restrict the supply of any product or forfeit or do any other thing in respect of any product for the purposes of these Regulations.

(2) The requirements of paragraph (1) above shall not apply in the case of any action taken in respect of any second-hand product.

Department of Trade and Industry
5th September 1994

Ferrers
Minister of State

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the provisions of Council Directive [92/59/EEC](#) on general product safety (OJNo. L228, 11.8.92, p.24). They impose requirements concerning the safety of products intended for consumers or likely to be used by consumers if such products are to be placed on the market by producers or supplied by distributors.

These Regulations do not apply to second-hand products which are antiques or products supplied for repair or reconditioning before use subject to a proviso or where specific rules of Community law govern all aspects of safety of a product (regulation 3). Also, they do not apply insofar as specific rules of Community law govern an aspect of the safety of a particular product (regulation 4). The provisions of section 10 of the Consumer Protection Act [1987 \(c. 43\)](#) are disapplied in relation to products insofar as they impose general safety requirements in respect of those products (regulation 5).

Regulation 7 provides that a product may not be placed on the market unless it is a safe product. Regulation 8 imposes requirements on a producer to provide information to consumers and adopt measures to inform himself of risks a product might present and identifies some measures which might be taken.

Requirements are imposed on distributors to act with due care to ensure that the requirements of regulation 7 are met. In particular, a distributor must not supply a dangerous product (regulation 9(a)) and he must participate, within the limits of his activities, in monitoring the safety of products placed on the market (regulation 9(b)).

Requirements in relation to preparatory acts to placing a product on the market or supplying it are provided (regulation 13).

Products which comply with specific rules of United Kingdom law laying down health and safety requirements are deemed to comply with the general safety requirement (regulation 10(1)) and the Regulations specify the means of assessing conformity with the general safety requirement in the absence of such specific rules (regulation 10(2)).

The Regulations make provision for enforcement; regulation 11 provides for enforcement authorities and makes provision in respect of powers of those authorities. These include powers to issue suspension notices and to obtain information. Regulation 12 provides for offences, including offences in respect of preparatory acts relating to placing products on the market and supplying products.

A defence of due diligence is provided in certain circumstances (regulation 14). Penalties are prescribed for offences under the Regulations; for offences under regulation 12 or 13 the penalty on summary conviction is imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

Level 5 on the standard scale is £5,000 in Great Britain and in Northern Ireland it is £2,000. Failure to comply with a prohibition notice or notice to warn under section 13 of the 1987 Act or a suspension notice under section 14 of that Act or to provide information pursuant to section 18 of that Act are offences attracting similar penalties to those prescribed in relation to offences under regulation 12 save in relation to the provision of information where failure to provide information attracts a fine on summary conviction or on conviction on indictment. Forfeiture of products may be ordered on the application of an enforcement authority.

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Regulation 6 provides for a consequential repeal of section 10(3)(b)(ii) of the 1987 Act and revocation of the Approval of Safety Standards Regulations 1987 (S.I.1987/1911).

A compliance cost assessment is available, copies of which have been placed in the libraries of both Houses of Parliament. Copies of the assessment are also available from the Consumer Affairs Division of the Department of Trade and Industry, Room 309, 10-18 Victoria Street, London SW1H 0NN.