



Department for  
Business, Energy  
& Industrial Strategy

# UK NATIONAL MARKET SURVEILLANCE PROGRAMME

2017



October 2017

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# 1. General Market Surveillance Organisation and Infrastructure

## 1.1 Identification and responsibilities of national Market Surveillance Authorities

The United Kingdom has a comprehensive system of market surveillance underpinned by primary and secondary legislation. Market Surveillance in the UK is organised on the basis of individual Directives and Regulations. The UK generally implements European Directives into UK law individually, and for European Regulations, the UK establishes the arrangements for Market Surveillance through national implementing Regulations. The subject matter of the European legislation will determine what Market Surveillance is established. This is informed by the UK's principles of Good Regulation, established through the Legislative and Regulatory Reform Act 2006 to ensure the approach is proportionate and risk based.

The UK has a comprehensive framework of powers, sanctions and corrective actions. Often such powers will derive from the Consumer Rights Act (2015), the Consumer Protection Act (1987), the Health and Safety at Work Act 1974 or bespoke powers will be provided within the specific legislation e.g. where there is no "safety" rationale or where Directives require the provision of specific powers such as the General Product Safety Regulations 2005.

Responsibility for conducting Market Surveillance of particular Directives and Regulations is determined is assigned to different organisations. Policy responsibility for consumer product safety, and weights and measures, lies with the Department for Business, Energy and Industrial Strategy, and the Regulations are enforced by the UK's Local Authorities (Trading Standards in Great Britain and District Councils in Northern Ireland), exercised within the framework of local democratic accountability. There are over 200 such Local Authorities in the UK.

Policy on Construction Products lies with the Department for Communities and Local Government (DCLG); the regulations are enforced by Local Authorities.

The safety of goods for workplaces and related matters are the responsibility of the Health and Safety Executive (HSE) in Great Britain and the Health and Safety Executive for Northern Ireland (HSENI).

Medical Devices Regulations and related legislation (which includes products for professional use) are enforced by the Department for Health's (DH) specialist Medicines and Healthcare products Regulatory Agency (MHRA).

Automotive related products are the responsibility of the Driver & Vehicle Standards Agency (DVSA).

Other non-safety legislation is enforced by a number of other sector-specialist enforcement bodies e.g. the Regulatory Delivery Directorate<sup>1</sup> within the Department for Business, Energy and Industrial Strategy (BEIS) provides Market Surveillance delivery services for BEIS and several other Government Departments covering a range of environmental protection and fair trading legislation. They have responsibility for the regulations which cover Ecodesign, Energy Labelling, RoHS, Batteries, the Labelling of Tyres, Timber, Heat Networks, Noise Emissions, Waste, electrical and electronic equipment, ELVs, and Weighing and Measuring Equipment including Gas and Electricity Meters. The UK's responsibilities for market surveillance continue to be fulfilled by the UK's Market Surveillance Authorities (MSAs), working in co-operation with HM Revenue and Customs (HMRC) and Border Force, who have responsibilities for customs and border force policies respectively. BEIS has legal responsibility for the implementation of most EU single market Directives and Regulations. However, implementation of the Construction Products Regulation lies with the Department for Communities and Local Government (DCLG).

All of the UK MSAs are independent enforcement bodies which set their own planning targets and outcomes. The UK's view is that ring fencing of their budgets would be contrary to their independent nature. As the UK has a diverse Market Surveillance network with a range of Market Surveillance Authorities, it is not feasible for these organisations to provide detailed data about the overall resources at their disposal such as budget, staff and technical means. As an example, it is very difficult to give an accurate estimation of the number of staff working on Market Surveillance in the UK; there are hundreds of staff engaged on Market Surveillance activities within Local Authorities and the amount of time which each of these officers is committed to spending on Market Surveillance will vary by team and by organisation, according to local priorities which are in turn coordinated at regional and national level.

## 1.2 Coordination and cooperation mechanisms between national Market Surveillance Authorities

The UK co-ordinates its Market Surveillance activities through a number of established mechanisms; these are led by the Department for Business, Energy and Industrial Strategy. The Market Surveillance Coordination Committee (MSCC), established in 2009, provides the central role in providing coordination and strategic direction. It is now a well-established forum for cooperation and coordination. It meets twice per year and comprises all UK Government Departments and representative organisations with responsibility for Market Surveillance, including BEIS, DCLG, HSE, HSENI, Ofcom (the Communications Regulator), MHRA and representatives from Local Authority trading standards teams.

There is currently a review of the MSCC operation to ensure that it continues to provide the UK and EU partners with the most effective Market Surveillance support mechanism possible.

Another well-established forum is the sub-groups that focus on priority issues. The MSCC border controls comprises representatives from UK Government Departments, agencies and authorities with responsibility for Market Surveillance and/or customs controls at points of entry to the UK. The sub-group acts as an intelligence task and co-ordination group for the UK's Market Surveillance Authorities. The two main aims of the sub-group are to agree

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<sup>1</sup> Regulatory Delivery was created on 1 April 2016 to focus on regulation and enforcement, bringing together the Better Regulation Delivery Office and the National Measurement and Regulation Office as a directorate in the Department for Business, Innovation and Skills, which became the Department for Business, Energy and Industrial Strategy on 14 July 2016.

national/local priorities for the targeted and risk-based approach to the control of products at the UK's points of entry and to identify post importation data requirements for assisting inland Market Surveillance controls on products imported from 3rd countries.

The UK's two largest MSAs, Local Authorities and the HSE, require greater co-operation because of their size and the large number of competing priorities for their activities. The National Product Safety Focus Group (NPSFG) was established in 2012 to coordinate activity between authorities with responsibility for consumer product safety legislation, and construction products. It comprises Trading Standards representatives from all regions of the UK, the HSE, BEIS and the Chartered Trading Standards Institute (CTSI). CTSI is a professional body representing Trading Standards Officers, and continues to be a member of PROSAFE.

The NPSFG meets 3 times a year. The purpose of the Group is to act as strategic liaison between Local Authorities, regions, central government and other stakeholders on product safety, compliance, enforcement and co-ordination issues. Its functions include: providing guidance to facilitate consistency of enforcement; to encourage engagement with EU bodies and agencies; acting as a forum for discussion of enforcement issues; exchange of ideas and liaison between Local Authorities, regions and central government; and promoting Local Authority product safety and compliance work.

National Trading Standards (NTS), which consists of a group of senior and experienced local government heads of Trading Standards, representing all trading standards services across England and Wales, meets two to three times a year to discuss issues and formulate policies on consumer safety and Market Surveillance. NTS was established by the Government in 2012 to improve the enforcement of laws intended to tackle rogue traders operating both regionally and nationally who are causing harm to consumers and legitimate businesses. NTS issues grants and funds national and regional initiatives such as Scambusters, the Safety at Ports and Borders Teams, and the National Trading Standards e-Crime Team.

In the UK, responsibility for Market Surveillance is conferred on public authorities with specific competence for enforcement in a particular sector. For example, in the area of consumer safety, BEIS has policy responsibility for most product safety legislation, and designated local authority trading standards as the Market Surveillance Authority. Trading Standards are funded by their own local authorities although they may receive funding for product safety projects from BEIS in response to national priorities or as a result of joint action and cooperation with other MSAs e.g. the Health and Safety Executive.

The enforcement of legislation covering workplace goods is undertaken by the HSE's network of 'virtual' Product Safety Teams across Great Britain. These teams comprise product safety specialists who take the lead on product supply issues that arise from the initial findings of inspectors who carry out more general responsibilities working across business. Because of the migration of professional goods towards the non-professional consumer, HSE and Local Authorities co-operate closely, particularly in areas such as Personal Protective Equipment, Machinery and Gas Appliances.

To foster co-operation and to facilitate import surveillance activities on non-food products entering the UK from outside the EU, the UK established an Intelligence Hub in 2012. It acts as a Single Point of Contact (SPoC) for the liaison between all Market Surveillance Authorities, HMRC and Border Force for the border controls of unsafe and/or non-compliant products entering the United Kingdom. It has responsibility for setting, managing and evaluating risk based and intelligence led controls and is now well-established in this role.

The benefits of the SPoC include the ability to identify national emerging trends and threats, to identify high risk economic operators operating across legislative areas within the competence of different MSAs, and to ensure consistency of approach at all border points and in line with developing best practice across the EU. The SPoC has developed expertise in Customs procedures which enables it to provide strategic direction to MSAs in border controls, practice and processes. A new development is the change to HMRC processes relating to the legal paperwork which agents are required to submit on non- food products, which accompanies these products. The paper work for non-food products which are subject to MSA controls is now sent directly by the agents to the SPoC rather than previously via HMRC's National Clearance Hub (NCB), who in turn would submit it to the SPoC. This change in direction helps the agents as it is maximising efficiencies and further reducing disruption to legitimate businesses.

The SPoC recently underwent an independent review which found that the SPoC continues to deliver good value for money and has a key role in preventing the circulation of illegal and dangerous products in the UK.

### 1.3 Cooperation between National Market Surveillance Authorities and customs

In the UK, customs processes are the responsibility of Her Majesty's Revenue and Customs (HMRC) and the Border Force. These organisations are not designated as Market Surveillance Authorities. They have a significant role to play given the data and documentation they have access to relating to imports from third countries. The information contained within customs declarations and the supporting documents can be profiled in order to target products that are likely to present a risk to users etc. Co-operation between HMRC and Border Force and the UK's MSAs is an important element of the risk-based and targeted approach to border controls. Co-operation involves intelligence and knowledge sharing and access to inspection facilities by trading standards for non-food products.

Customs clearance of all non-EU commercial imports continues to be handled at a single HMRC national entry processing unit, the National Clearance Hub (NCH). The NCH also provides the single point of contact for importers and other enforcement agencies for freight clearance queries. In September 2014, the Director General of Border Force and the Chairman of National Trading Standards jointly published a commitment to working together, encouraging their staff to take positive action to facilitate close working activity at the UK border.

In addition the Single Point of Contact (SPoC) plays a significant part in preventing unsafe and non-compliant products entering the UK, and provides for the liaison between UK Market Surveillance Authorities, HMRC and UK Border Force. It also has relationships with a number of government departments and other UK Market Surveillance Authorities. SPoC is currently governed by the National Trading Standards Board.



## 1.4 Rapid Information Exchange System – RAPEX

The General Product Safety Directive 2001/95/EC (GPSD) provides the legal framework for RAPEX. Responsibility for GPSD, and therefore for RAPEX, falls to BEIS which also provides the National Contact Point service (the 'RAPEX Unit').

The RAPEX Unit plays an important role in ensuring that notifications submitted meet the criteria of RAPEX. It provides advice to Trading Standards on the type of information that is required, and the correct documentation to ensure information issued to the European Commission is consistent and meets necessary time scales. The UK submits over a 100 notifications a year to the European Commission and ensures that the statistics on notifications issued by the UK are recorded in a timely fashion.

The RAPEX Unit advises Trading Standards on the procedures they should follow when submitting reactions to 'validated' notifications issued by other EU Member States - how they should provide information on whether the notified dangerous product was found on the UK market, and what measures were taken to restrict its marketing and distribution. The unit also advises on the information required when there is a divergence in the risk assessment of a UK supplied product notified by other Member States. The RAPEX contact point is also responsible for dealing with enquires from other EU member states, UK authorities and UK companies enquiring about RAPEX procedures or to request information on products notified on the RAPEX system.

## 1.5 ICSMS information system

The Regulation for Accreditation and Market Surveillance (EC Regulation 765/2008) introduced the general obligation for the sharing of information on Market Surveillance activity by all European MSAs with each other and the European Commission. BEIS holds policy responsibility for ICSMS and HSE act as the UK administrator for the system. In 2012 the existing ICSMS database was acquired by the European Commission and made freely available to all European MSAs for this purpose.

In addition to HSE, HSENI, Environmental Health Officers in Northern Ireland, as well as other UK MSAs such as the DVSA and Regulatory Delivery, all use ICSMS. A growing number of Trading Standards officers in Great Britain are also using the system, particularly those in authorities monitoring goods at UK points of entry into the Single Market (both sea and airports).

## 1.6 General description of Market Surveillance activities and relevant procedures

The objective of Market Surveillance in the UK is to ensure the free circulation of safe and compliant products in the context of the EU Single Market. The UK has an overarching approach to regulation and enforcement that supports business and business growth, promotes consumer choice, and provides high levels of consumer protection. To that end we believe that legislation on consumer product safety should be proportionate, consistent and transparent with only the minimum regulatory burdens required to achieve this goal. All Market Surveillance Authorities (MSAs) are required to have regard to the Principles of Good Regulation and the Regulator's Code ([www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code)). The Regulator's Code provides a principles-based framework for how regulators should

engage with those they regulate, including provisions which require regulatory activities to be based on risk, transparency of risk assessments, and accessibility of information and guidance. These provisions do not apply to Ofcom because it is an economic regulator.

The prevention and reduction of non-compliance by educating and consulting with business about the applicable legislation is a key component of the UK's approach to Market Surveillance and as such a high priority is given to business communication and engagement activities by all MSAs. This can also include activities that encourage compliance by those businesses that are found to be non-compliant. For example, BEIS meets with Industry representatives on a very regular basis to discuss the application of sector-specific regulations, and through the work undertaken in its Regulatory Delivery Directorate offers clear links to businesses which require support in this area.

MSAs undertake proactive work on the basis of risk assessment. Where legislation prescribes the precautionary principle, this is taken into account however the UK's standard policy is to rely on risk-based assessment as the most efficient and effective basis for action, and that this complements the principles underpinning better and smart regulation.

A key feature of the UK's system is that MSAs are required to have a good understanding of the businesses which they regulate, and apply their powers proportionately. In addition under the Growth Duty, Regulators (excluding Local Authorities) are obliged to ensure that their regulatory actions are undertaken in a way which promotes economic growth. MSAs make their enforcement policy widely known to business including via the internet, as well as other communication channels such as twitter. This includes the types of sanctions that MSAs have available for non-compliance with legislation and an explanation of business's rights.

## 1.7 How MSAs follow up complaints

UK MSAs investigate complaints of alleged non-compliance and follow them up as appropriate taking into account the principle of proportionality. MSAs follow up complaints in a number of ways. Some examples are given below. Under the Regulators Code Regulators are required to have a complaints and appeals mechanism which is impartial, clear and timely. In addition complainants may refer decisions to the Local Government Ombudsman, which investigates and makes final decisions on complaints about Local Authority MSAs or the Parliamentary and Health Service Ombudsman, which makes final decisions on complaints that have not been resolved by government departments and other UK public organisations.

### **Driver & Vehicle Standards Agency**

The Driver and Vehicle Standards Agency (DVSA) have responsibility for regulating the automotive sector on behalf of the Department for Transport (DfT). The work covers a wide range of activities aimed at ensuring that vehicles entering the UK market comply with regulations. A robust system of automotive market surveillance is an essential element of DVSA's aim to improve road safety and environmental performance whilst safeguarding and protecting consumer interests.

### **Health and Safety Executive**

HSE has an established system of dealing with complaints/concerns relating to product supply and safety matters. Complaints and/or concerns are dealt with by HSE's national "Concerns and Advisory Team" as well as the 6 HSE 'Product Safety Teams' – 3 geographical teams, one 'national' Construction Team, one 'national' Explosives Team and one 'national' Chemicals



Regulation Team (dealing with REACH). All the Teams are tasked with reactive and proactive Market Surveillance activities, following up referrals from field staff (including inspectors visiting workplaces, e.g. when investigating injuries arising from product use) and external referrals, and information from others, including product users and other authorities. Further details can be found at: [www.hse.gov.uk/work-equipment-machinery/hse-role-market-surveillance-authority.htm](http://www.hse.gov.uk/work-equipment-machinery/hse-role-market-surveillance-authority.htm) and [www.hse.gov.uk/work-equipment-machinery/report-defective-product.htm](http://www.hse.gov.uk/work-equipment-machinery/report-defective-product.htm), [www.hse.gov.uk/explosives/market-surveillance.htm](http://www.hse.gov.uk/explosives/market-surveillance.htm).

## **The Regulatory Delivery Directorate within the Department for Business, Energy and Industrial Strategy (BEIS)**

Complaints made to Regulatory Delivery (RD) can take many forms; those arising from Market Surveillance, industry (business to business) information, NGO's, MP representations and from the public. All complaints are taken seriously and are assessed objectively.

In the event that RD Enforcement receives an allegation of non-compliance the information is critically assessed against a range of criteria, before a decision is taken to undertake an investigation or not. We will acknowledge the allegation or complaint, and may request further information from the person making the allegation. We will determine whether it is appropriate to share information with that person about our actions in response to the allegation or complaint on a case-by-case basis.

The complaint is received (via telephone/email/post/dedicated enquiry line/in person etc.). The receiving officer completes a 'complaint form' template, with recommendations made (typically initiate activity, make test purchase or retain and record with no direct action at this time). The template is based on the National Intelligence model and comprises four key elements:

- Source Evaluation
- Intelligence Evaluation
- Projected Impact
- Handling Code

The template is sent to the Officer in Charge for review. The recommendations made are either endorsed or other actions suggested. The case is allocated as appropriate to an enforcement officer to progress.

Where an offence has been committed and after considering all of the evidence available and all of the actions of the economic operator concerned, the relevant Enforcement Team in RD will consider issuing some form of sanction as well as any other preventative or remedial action as deemed appropriate. This may include requiring economic operators to pay for the costs of testing, if it is proven that their product is non-compliant.

Where appropriate and in keeping with the Regulators Code, RD may offer informal courses of enforcement action. These alternatives may include but are not limited to:

- Verbal warnings
- Written warnings

Complaints raised regarding Weights and Measures regulations are dealt with by RD on a case by case basis with the organisations or persons concerned usually in an advisory way.

## Local Authority Trading Standards

The Trading Standards services of Local Authorities in England, Scotland and Wales, and Environmental Health departments of district councils in Northern Ireland, may take enforcement action in cases of formal non-compliance such as inappropriate CE marking, or in cases where the enforcement authority has reason to believe that the product, for example a toy, presents a risk to the safety and health of persons. The Local Authority enforcement authority may issue a compliance notice in the case of formal non-compliance or where this notice is not complied with, or a safety risk exists, the operator may be required to withdraw the product from the market or undertake a recall. Where the required technical documentation cannot be produced, the enforcement authorities have the power to require, for example, toys to be tested at the supplier's own expense.

All MSAs have an extensive range of statutory powers to deal with contraventions. MSAs will always seek voluntary compliance from an economic operator when a product is found to contravene legislation. However MSAs can issue formal notices to require economic operators to bring about compliance. Where the significance of non-compliances makes it appropriate MSAs can take more rigorous action, including preventing economic operators from supplying the goods until the non-compliances have been rectified or until a judgement has been made in the courts. Prosecutions can result in monetary penalties or, in the most extreme cases, imprisonment.

The nature of the Market Surveillance action will be taken by reference to the risk assessment – the severity and frequency of the hazards identified – and to other considerations, such as any significant history of contraventions by the suppliers concerned.

## 1.8 Details of how some MSAs alert users of hazardous products

### DVSA

In the event that an issue is discovered which is sufficiently significant to be considered a particular concern or issue of public interest, DVSA will contact manufacturers and/or distributors and inform them of any next steps or actions as a matter of priority. DVSA will work with manufacturers to ensure that, where necessary, vehicles owners are notified of relevant issues.

### HSE

HSE has system of safety alerts/bulletins for dealing with products/work equipment which pose a serious risk, see: [www.hse.gov.uk/safetybulletins/](http://www.hse.gov.uk/safetybulletins/). HSE also uses ICSMS and RAPEX as a means of alerting other EU MSAs about non-compliant products.

### Regulatory Delivery

Regulatory Delivery uses four main platforms for alerting users of hazardous products:

- ICSMS input
- Data sharing with UK authorities (local and national)
- Data sharing with other Member State MSAs (the ADCO) and the European Commission, as appropriate
- Press releases published on its website with subsequent e-alerts

## 1.9 MSAs' approach to penalties

Duties and offences, and the associated measures and penalties are set out in the individual pieces of national legislation which give effect to European legislation. The level of the financial penalty imposed is a matter for the Courts. Examples of some MSAs approach to penalties are given below.

### **DVSA**

DVSA will take a risk based approach, and have regard to the severity of any failings detected, as well as the effect on the consumer and the impact that our actions are likely to have on businesses.

The form of enforcement action used will differ depending on the particular nature of the non-compliance, the harm caused and the history of the responsible person or business.

DVSA are therefore not restricted to taking the least formal enforcement action in the first instance and will consider what immediate action is needed to protect consumer interests, including where necessary, prosecution.

### **Trading Standards**

Trading Standards' approach to penalties reflects the strategic direction set by the Department for Business, Energy and Industrial Strategy i.e. support/guidance/advice to businesses to help them become compliant. For businesses that continue to operate outside relevant legislation this is supported by Enforcement Notices and, as a last resort, prosecution in court.

## 1.10 Evaluation of Market Surveillance activities

The UK works with stakeholders, including with Market Surveillance Authorities, business and consumer groups on a continuous basis to evaluate and improve its Market Surveillance activities. This is a key feature of most of our meetings with business and trade representatives and consumer groups.

Following the creation of the Department for Business, Energy and Industrial Strategy and other associated machinery of government changes, BEIS will be reviewing the way in which the UK organises its market surveillance and enforcement activity with the aim of ensuring that the coordination activities it is involved in works as effectively as possible within the current resource constraints.

### **The Working Group on Product Recalls and Safety**

The Minister for Small Business, Consumers and Corporate Responsibility, Margot James announced the creation of the Working Group on Product Recalls and Safety in October 2016. The Group brings together experts in the fire services, trading standards, consumer groups and industry to consider options for making the recall system work better for everyone. The Chair, Neil Gibbins, a former Deputy Chief Fire Officer and CEO of the Institution of Fire Engineers, has the full support of BEIS officials and meetings are supported by a BEIS secretariat.

The Working Group builds on the earlier work of the previous Recall Review Steering Group which was set up in response to the Review of Consumer Product Recall undertaken by Lynn

Faulds Wood. The Working Group has provided its initial recommendations to the Minister and is due to give its full recommendations in March.

## 1.11 Some examples of how MSAs work with businesses and consumer organisations in this area

### Regulatory Delivery

#### *Business Reference Panel*

Regulatory Delivery works in partnership with businesses to achieve high levels of compliance. Creating and maintaining sustainable relationships with trade associations that have direct access to large groups of businesses, which are often difficult to either define or identify, is key in facilitating positive industry interaction. This is achieved by:

- Identifying and contacting trade associations and businesses as appropriate
- Maintaining direct engagement through meetings, seminars and conferences
- Providing overarching and specific guidance on relevant legislative issues and obligations
- Providing access to support materials via external communication platforms
- Providing high level proactive engagement to SME's, via event attendance and regular project work, as well as reactive support via enquiry lines.

A crucial forum which helps Regulatory Delivery to better understand the views of the business community with regard to regulation is the Business Reference Panel. The Business Reference Panel is a group of over 100 organisations and trade associations; it explores issues, identifies potential solutions and gives feedback on Government's ideas and proposed work programmes to ensure issues of real importance to a broad base of the business community are addressed.

For Weights and Measures RD works closely with its enforcement partners in Local Authorities, particularly Trading Standards, who they meet and liaise with regularly. There is a six monthly meeting with the Local Government Metrology Expert Panel which consists of regional Trading Standards representatives from across the UK and the CTSI Lead Officers for Metrology.

### Local Authority Trading Standards

Local Authority trading standards teams have the opportunity to participate in a number of government-sponsored schemes which promote close working between Local Authorities and the business community. For example, Primary Authority offers a service through which businesses can form a statutory partnership with a Local Authority, which provides them with assured advice which other regulators must follow. Since it was introduced in 2009 Primary Authority has helped businesses avoid inconsistent and confusing red tape. This has been shown to increase business confidence and reduce operational costs, allowing enterprises to focus on expansion. Primary Authority provides local regulators with a highly effective tool to improve compliance and build better relationships with businesses, whilst aiding economic growth.

Further information about Primary Authority can be found at:

[www.gov.uk/government/publications/primary-authority-overview](http://www.gov.uk/government/publications/primary-authority-overview).

In addition Local Enterprise Partnerships (LEPs) are partnerships between Local Authorities and businesses which decide what the priorities should be for investment in roads, buildings and facilities in their areas, and the Better Business for All programme provides a mechanism which local regulators and businesses can come together to consider and change how local regulation is delivered and received.

## 1.12 General framework of cooperation with other Member States and non- member states

The UK has a policy of active participation in Administrative Co-ordination Committees (ADCOs), including Chairmanship of several of these. The UK is also an active member of a number of other cooperative organisations, such as Prosafe and Welmec. The UK also participates in a number of international meetings on Market Surveillance. For example, the SPoC has undertaken a number of tasks in its capacity as the UK's MSAs expert in border controls. This has included contributing to EU consultations, attending relevant EU meetings and representing BEIS at the USA, EU and China tripartite meeting on RAPEX alerts. Details of specific MSAs international activities are given below.

## 1.13 MSAs international activities

The UK plays an active role in the Administrative Cooperation (ADCO) Groups, which facilitate the sharing of best practice, the identification of barriers to enforcement and the resolution of legislative grey areas.

The UK provides the chair and secretariat for the RoHS, Energy Labelling and Ecodesign ADCO groups. They have set the strategic direction of these groups by working closely with the European Commission on the future of Market Surveillance, by inviting appropriate industry bodies for multilateral discussions, and by initiating ADCO group projects (both internally and externally funded and visible). This approach has allowed the ADCOs to mature, has improved the accessibility and increased attendance. In doing so RD has ensured that UK industry is supported through its ability to shape and define consistent approaches to Market Surveillance. The Market Surveillance programme is based on risk taking feedback from Trading Standards and businesses. RD also participate in the ADCO Chairpersons group and contribute to European Commission initiated projects and initiatives.

RD are also active members of WELMEC WG5/ADCO Measuring Instruments which is the European working group for market supervision of weighing and measuring instruments. RD takes a leading role sharing the results of UK projects at the 6 monthly meetings.

On behalf of the UK, HSE is contributing to the further development by the European Commission of the ICSMS system to enhance its usefulness in supporting coordinated and targeted Market Surveillance activity.

## 1.14 Participation in coordinated EU projects

RD is also a key project partner of the Eepliant project, funded under the Intelligent Energy Europe programme. Aligning 11 project partners, from 10 Member States, Eepliant aims to develop and validate a range of best practices to improve the collaboration between EU MSAs, through monitoring, verification and enforcement exercises. The objective of Eepliant is to help deliver the intended economic and environmental benefits of the Energy Labelling and

Ecodesign Directives by strengthening market surveillance and so increasing compliance with the Directive. Working closely with other Member State MSAs, enables RD to be far more effective when operating across borders.

In relation to Trading Standards, there is also engagement with organisations within the EU to facilitate partnership working, particularly with PROSAFE. A representative from the Trading Standards Institute (TSI) attends these meetings and reports back through to the National Product Safety Focus Group. The UK is also one of the ten Member States in the core group of the Joint Action China project. This is an on-going project to identify and implement methodologies that would enable EU Member States to have confidence in Chinese inspection/export processes. The aim would be that if this confidence can be achieved, then it would be possible to identify those consignments which would not need to be checked at the EU border.

RD also participates in pan European projects within WELMEC/WG5/AdCo.

HSE is coordinating the UK's contribution to the Machinery ADCO Joint Action market surveillance project on chainsaws and vehicle lifts (JAMach14). These products are used throughout Europe by both private consumers and those at work. Both are high hazard machines and have resulted in many serious, including fatal, incidents. Significant non-compliance has been found in the past, and this project involving HSE and Trading Standards working together with other European MSAs who lead on the Machinery Directive, will enable more effective action against unsafe products following significant (and expensive) product testing secured through Commission funding of the joint action.

## 1.15 Evaluation of Market Surveillance actions and reporting

As previously reported, the UK evaluates its Market Surveillance activities through the BEIS co-ordination mechanisms, i.e. the MSCC, MSCC sub-group and the National Product Safety Focus Group.

## 1.16 Horizontal activities planned for the relevant period

BEIS has in recent years provided targeted funding for specific Market Surveillance projects. These projects are typically valued at between £5K-£20K.

BEIS encourages authorities to look at ambitious strategic projects and projects which involve authorities working in partnership to deliver the outputs. Project proposals should be for products which have been placed on the market i.e. not products intercepted at ports as there is separate funding for testing products at ports via National Trading Standards (NTS).

The main output of each project is a report covering the testing activities and an analysis and conclusions based on the outcomes. BEIS requires the outputs from projects to be made available for all UK Trading Standards Departments via the NTS Information Hub.

This year the projects will cover work on Laser pointers, thermos flasks, horse riding helmets, second-hand nursery products, prop feeding devices, lithium batteries, chemicals in leather goods, chemicals in jewellery, eye wear for IPL lasers and Chinese steel products. All projects will be completed by end of March with reports following shortly afterwards.



## 2. Market Surveillance in specific sectors

### 2.1 Product Sectors and contact details

#### Medical Devices

The Medicines and Healthcare Products Regulatory Agency (MHRA) is the UK competent authority for medical devices. MHRA has responsibility for setting UK policy on medical devices as well as carrying out Market Surveillance activities as an executive function.

Contact Details:-

Compliance Unit  
Medical Devices  
Medicines and Healthcare Products Regulatory Agency  
151 Buckingham Palace Road  
London  
SW1W 9SZ.

Email: [Devices.compliance@mhra.gsi.gov.uk](mailto:Devices.compliance@mhra.gsi.gov.uk)

Sector-specific legislation on medical devices is set at EU level in the form of the EEC medical devices directives. These directives have been implemented into UK law in the form of the Medical Devices Regulations (2002). MHRA has a duty to enforce these Regulations on behalf of the Secretary of State for Health and has the delegated responsibility for England, Wales, Scotland and Northern Ireland.

As well as the Medical Devices Regulations, medical devices that are also consumer products are required to meet certain aspects of the General Product Safety Regulations 2005. As such, the MHRA take an active role in working with trading standards in order to ensure that these regulations are appropriately enforced in relation to medical devices.

In order to fulfil our duty as the UK competent authority for medical devices, the MHRA have approximately 9 full time experts working on medical device compliance/Market Surveillance issues. The primary goal of these experts is to work with economic operators in order to bring them into compliance with the requirements of the medical devices legislation. These experts are supported by the MHRA's Intelligence Unit who use their specialist skill set to help develop a detailed understanding of the practices relating to high profile or common non-compliant market practices.

In cases where a non-compliant / counterfeit device has a high chance of exposing an individual/individuals to harm, it may be seen as necessary to undertake a criminal investigation. Such cases are referred to the MHRA's Enforcement Operations Unit. This unit will work with the medical device compliance/Market Surveillance experts to ensure a satisfactory conclusion is reached, appropriate sanctions are imposed and that public health is appropriately safeguarded.

MHRA meets its obligation to ensure that only compliant devices are allowed onto the UK market in four basic ways:

- Considering any allegations of non-compliance or counterfeiting of medical devices that are drawn to our attention;
- Looking at areas that are presenting a problem in terms of non-compliance / counterfeiting and proactively targeting the devices identified;
- Monitoring the activity of notified bodies designated by the MHRA to assess the compliance of manufacturers of, in the main, higher risk devices;
- Undertaking proactive investigations as a result of intelligence indicating a potential problem either with an individual device or range of devices.

The MHRA carries out a risk-based analysis to prioritise and carry out investigations. The investigations detailed in points 1, 2 and 4 above will normally be initiated and resolved in writing by requesting technical and other information for documentary review. Inspection visits will generally only be undertaken where the documentation available indicates it is merited to confirm compliance, or where technical documentation can only be properly reviewed on site, as for custom-made devices. Where a breach of the Regulations is identified, manufacturers will normally be given the opportunity to come into compliance voluntarily. Immediate enforcement action will only be taken where necessary to protect public health.

MHRA adopts the statutory principles of the Regulators' Code in carrying out its regulatory functions. Effective and proportionate enforcement is recognised as being critical to the MHRA and is a major contributor to the achievement of the MHRA's responsibilities for safeguarding public health. An Agency Enforcement Strategy is published which covers medicines and medical devices; this states that in all cases where enforcement action is deemed to be the appropriate course, the MHRA will ensure it is intelligence-led and applied in a fair, consistent, transparent and proportionate manner.

The Regulation on Accreditation and Market Surveillance (RAMS) also applies to medical devices and so the principle of cooperation with other Member States is well established. MHRA is an influential member of the EU Compliance and Enforcement Working Group (COEN) which serves to promote collaboration, consistency and information-sharing across EU Member States on the Market Surveillance of medical devices. As part of this group, MHRA has been involved in a number of proactive projects, such as a review of instructions for use (IFUs) for resterilisable devices and associated education activity for manufacturers in this sector.

Education is a key aspect of MHRA's role and a significant amount of resource is allocated to communicating key messages to members of the public, manufacturers and healthcare professionals about medical device compliance. An example of such activity is the education of the dangers of counterfeit dental equipment. This has involved MHRA enforcement and regulatory experts attending dental trade fairs and association events to exchange information with industry experts and healthcare professionals to enable a collaborative strategy in tackling this growing problem. MHRA has also fostered excellent relationships with major online auction and retail sites and we are able to work in cooperation with them when issues arise, such as the selling of counterfeit devices via these outlets.

**Cosmetics, Toys, Construction Products, Aerosol Dispensers, EMC, RTTE, RCD; Personal Protective Equipment (both for use at work and for private consumers); Appliances Burning Gaseous Fuels; LVD; Machinery; Pressure Equipment (including Simple Pressure Vessels) where for consumer use**

Trading Standards have enforcement responsibility for these Directives and Regulations, but in some cases only when the products are made available to consumers. Trading Standards are part of Local Authorities, of which there are over 200 in the UK. It is therefore not possible to list individual contact details. Each Local Authority acts independently setting its own priorities. The Primary Authority Scheme (PA) operates among local authorities. PA help Local Authorities work together effectively and avoid duplication of effort when regulating businesses who trade across local council boundaries, and support them by providing contact points for advice and guidance in order to maintain high standards of public protection and develop a consistent approach to enforcement. Further details of Trading Standards Market Surveillance activities have been described in this document on pages 5 – 8.

**Machinery, Lifts, Cableways, LVD, Pressure Equipment (including Simple Pressure Vessels), Transportable Pressure Equipment, Pyrotechnics, Explosives for Civil Use, Appliances Burning Gaseous Fuels and Equipment and Protective Systems Intended for Use in Potentially Explosives Atmospheres (ATEX)**

HSE have enforcement responsibility for products in scope of these Directives when for use at work. As above, Trading Standards have enforcement responsibility when it is a consumer product. HSE does not enforce the PPE Directive but provides technical support and guidance to other MSAs as required.

HSE also has responsibility for civil use explosives and certain pyrotechnics regardless of their use – i.e. not only work-related use.

On the whole, HSE's planned market surveillance activities are not based on industries or sectors. Instead they follow a risk-based approach identifying machinery/equipment where there is a known or suspected problem (e.g. the European joint action JAMach14 mentioned earlier, see 1.14), or based on information received about particular products (e.g. laser products, lifting machinery, PPE used at work).

HSE does carry out planned Market Surveillance activities in the Chemicals and Explosives sectors, as well as reactive work responding to complaints or incidents.

Contact Details:-

[Safety.Unit@hse.gov.uk](mailto:Safety.Unit@hse.gov.uk)

[Surveillance.explosives@hse.gov.uk](mailto:Surveillance.explosives@hse.gov.uk)

***The Health and Safety Executive for Northern Ireland (HSENI)***

HSENI has a small dedicated 'Product Safety Team' which is tasked with reactive and proactive Market Surveillance activities. Reactive surveillance activity is mainly generated from inspectors visiting workplaces, e.g. when investigating injuries arising from product use and from external referrals from product users and other authorities.

HSENI have an "In House" UKAS Accredited Laboratory which provides technical advice and guidance to the product safety team on request.

HSENI Contact Details:-

The Health and Safety Executive for Northern Ireland (HSENI)  
83 Ladas Drive  
Belfast  
BT6 9FJ

Telephone: 0800 0320 121

Email: [mail@hse.gov.uk](mailto:mail@hse.gov.uk)

**Ecodesign, Energy Labelling, RoHS, Heat Networks (Energy Efficiency Directive), Timber Regulations, ABS, FLEGT, WEEE (take back provisions), End of Life Vehicles, Batteries and Accumulators (Placing on the market), Batteries (automotive and portable reporting), Noise Emissions for Outdoor Equipment, Measuring Instruments and Non-automatic Weighing Instruments**

RD has responsibility for the enforcement of these Directives. RD has a broader role in business regulation, bringing together policy expertise and practical experience to ensure that regulation is effectively delivered in ways that reduce burdens on business, save public money and properly protect citizens and communities. In addition to enforcement, RD is responsible for product safety, weights and measures and hallmarking policy; operation of Primary Authority, which allows businesses to have a single Local Authority as their point of contact for regulation; as well as technical services, training and certification capability.

RD teams operate throughout the UK with over 60 full time experts working on market surveillance. The experts are situated across various sites (Birmingham and Teddington in South West London; Teddington is a purpose built facility).

RD's approach to enforcement follows the principles of the Regulators Code with resources divided between engagement with businesses through education, awareness and assured advice, the detection of noncompliance through projects, complaints and case work and a programme of product testing which encompasses screen testing, and internal and external accredited testing.

The RD teams focus their activities on businesses and organisations that need support or advice in meeting their regulatory obligations, in particular reviewing new products, and identifying companies that have expanded into new areas. Resources and the types of support and engagement are always based on market intelligence and the risk of non-compliance.

RD provides a detailed website covering all of the legislative areas and their activities hosted on the government website [www.gov.uk/regulatorydelivery](http://www.gov.uk/regulatorydelivery).

Contact Details:-

Regulatory Delivery  
Lower Ground Floor  
Victoria Square House  
Victoria Square  
Birmingham  
B2 4AJ

Email: [rd.enquiries@bis.gsi.gov.uk](mailto:rd.enquiries@bis.gsi.gov.uk)

Switchboard: +44 (0)121 345 1200

## **Automotive Vehicles and Aftermarket Components**

The Driver and Vehicle Standards Agency (DVSA) is the UK Competent Authority for automotive and aftermarket component parts.

DVSA's Market Surveillance Unit ensures that products in free circulation comply with relevant safety and environmental legislative requirements.

The Unit manages a programme of in-service market testing assessments checking that vehicles meet (in service) type approval requirements and aftermarket components are manufactured to the correct standards.

Priorities for this year include a focus on ensuring that new vehicles and components entering the UK market comply with exhaust emissions and emissions related legislation with priorities expanding to include a wider selection of vehicle types (motorcycles and tractors) and components such as tyres, bulbs and catalysts over future years.

Enforcement activity is carried out through reacting to complaints, testing of products at approved test facilities, monitoring of information and products at point of sale, and monitoring of advertisements.

Contact details:-

Market Surveillance Unit  
Driver and Vehicle Standards Agency  
Berkeley House  
Croydon Street  
Bristol  
BS5 0DA  
+44 (0) 117 954 3300

## **Non-road mobile machinery (NRMM) Gaseous Emissions, Passenger Car (Fuel Consumption and CO2 Emissions Information)**

The Driver and Vehicle Standards Agency (DVSA) has responsibility for enforcement of vehicle regulations including carrying out market surveillance across Great Britain.

Enforcement priorities are determined by risks to consumers, the environment and industry. Information is shared with other member states using approved intelligence networks.

Enforcement activity is carried out through reacting to complaints, testing of products at approved test facilities, monitoring of information and products at point of sale, and monitoring of advertisements.

The Point of Contact (POC) details for work on NRMM gaseous emissions, Passenger Car (Fuel Consumption and CO2 Emissions Information) is:-

Market Surveillance Unit  
Driver and Vehicle Standards Agency  
Berkeley House  
Croydon Street  
Bristol  
BS5 0DA  
+44 (0) 117 954 3300

## Electrical Equipment under EMC, Radio and Telecommunications Equipment under RTTE

Ofcom is the Communications Regulator in the UK and regulates the TV and radio sectors, fixed line telecoms, mobiles, postal services, plus the airwaves over which wireless devices operate. They have enforcement responsibility for these Directives. Ofcom operates under a number of Acts of Parliament, including in particular the Communications Act 2003. The Communications Act says that Ofcom's principal duty is to further the interests of citizens and of consumers, where appropriate by promoting competition. Ofcom must act within the powers and duties set for it by Parliament in legislation. Ofcom's operating budget for the period 2016/17 is £114.3m and currently has approximately 780 employees. Ofcom has internal UKAS accredited test laboratories where products under the R&TTE and EMC Directive are tested.

Ofcom conducts investigations in response to complaints of interference to the radio spectrum from both radio and non-radio electrical devices. Once a complaint is made, spectrum assurance engineers will use investigative techniques to source the cause of interference. Once located, Ofcom may contact the owner and the manufacturer of the product to make them aware of the issue and if possible, test the product against the harmonised standards listed in the declaration of conformity.

On an annual basis, Ofcom works in collaboration with other EU member states on R&TTE and EMC market surveillance campaigns and actively participates in choosing the target product, creating the codes of practice, and drafting the final report. A pro-active approach is adopted by Ofcom and online sites, such as eBay and Amazon, are checked on a daily basis for non-compliant products as part of on-going market surveillance activities. A joint approach by Ofcom and the online store allows this item to be removed from the site.

Contact Details: -

The Office of Communications (Ofcom)  
Riverside House  
2a Southwark Bridge Road  
London  
SE1 9HA

Tel: 0300 123 3333

[www.ofcom.org.uk](http://www.ofcom.org.uk)

Andy Cutting ([andrew.cutting@ofcom.org.uk](mailto:andrew.cutting@ofcom.org.uk))

## 2.2 Market Surveillance Procedures and Activities

As mentioned in this document under part 1, Market Surveillance Authorities in the UK are often (but not always) designated by the implementing legislation. They are all public authorities and tend to be independent of the Competent Authority (except in sectors such as medical devices where the Competent Authority is also the Market Surveillance Authority). As enforcement of legislation falls within their competence, they cannot be directed by the Competent Authority but they often co-operate closely on how the legislation is implemented. All will have a strategic work plan which will relate to local and/or national priorities. Priority areas will include a speedy response to credible complaints on the basis of risk assessment.

There are organised programmes of work by those MSAs which are established on a national basis. In the case of the Local Authorities with responsibility for Consumer Safety, BEIS has a



budget which can be used to supplement existing resources to finance projects to address national and European priorities - especially those that emerge from sector ADCOs and the RAPEX network - and emergency requests. For example following concerns with regard to flammability of children's fancy dress BEIS funded a project lead by The City of Newcastle Trading Standards on behalf of The North East Trading Standards Association, and involving a large number of Trading Standards services across the UK, to determine whether the fancy dress costumes being made available were compliant with the currently accepted standard. Some 300 samples of fancy dress were assessed and reassuringly the number of samples that failed to meet current flammability was considered to demonstrate a high level of compliance. The project was also able to provide feedback to the British Standards Institute (BSI) on issues relating to the use of the standard along with some suggestions for improvement.

Structured enforcement is used when addressing border controls (notably at the UK's principal container port at Felixstowe) to good effect. There is a chronological structure for products enforcement ahead of the peak periods of demand e.g. fireworks, Christmas, Easter etc. The market surveillance officers investigate complaints of alleged non-compliance and follow them up as appropriate taking into account the principle of proportionality. Enforcement officers undertake proactive work on the basis of risk assessment having regard to the seriousness of potential contraventions and their frequency. Details of other specific sector activities have been described in this document under part 2.1.

## 2.3 Report from activities carried out under the previous planning period

The report above describes the UK's generic Market Surveillance activities for 2017 as it is not possible to forecast future funding allocations or to predict emerging priorities until the start of the financial year, which in the UK begins in April. However we will provide more detail on the ad hoc activities which we will carry out in this calendar year at the end of March 2018.



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