For use only if the UK has left the EU without a deal

General Product Safety Regulations 2005 as amended by the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019

Guidance

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## Contents

1. Introduction ............................................. 3  
2. Legislative Background ..................................... 3  
3. Scope .................................................................. 3  
4. Presumption of Conformity ...................................... 3  
5. Obligations of producers ......................................... 3  
6. Obligations of distributors ....................................... 4  
7. Obligations of producers and distributors ......................... 4  
8. Enforcement .......................................................... 5  
10. Glossary .............................................................. 7
1. Introduction

The General Product Safety Regulations 2005 provide the basis for ensuring the safety of consumer goods by imposing certain controls. This guidance is designed to help you understand the General Product Safety Regulations 2005, now that the UK has left the EU, as amended by the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (“2005 Regulations as amended”).

2. Legislative Background

The General Product Safety Regulations 2005 implemented Directive 2001/95/EC on general product safety. The EU Withdrawal Act 2018 preserves the Regulations and enables them to be amended so as to continue to function effectively now the UK has left the EU. Accordingly, the 2019 Amendment Regulations fix any deficiencies that arose from the UK leaving the EU (such as references to EU institutions) and make specific provision for the UK market. The main aim of the Regulations is to ensure that only safe products are supplied on the UK market.

3. Scope

The Regulations as amended apply to products intended for or likely, under reasonably foreseeable conditions, to be used by consumers. Where a product is already subject to other specific provisions in any relevant retained EU law (for example, certain toys) then those regulations will apply to that product; the Regulations as amended do not apply to the safety of a product where there are specific provisions of relevant retained EU law. As such, they operate as a kind of 'safety-net' set of regulations.

However, the Regulations as amended apply where they go further than the existing regulations in terms of the specific aspects of safety covered and the extent of the obligations on manufacturers and distributors. The Regulations as amended apply to all products intended for or likely to be used by consumers (even if not intended for them) that are supplied (including made available). This includes products supplied or made available to consumers for their own use in the course of a service - for example, gym equipment for use in a gym, high chairs provided for use by diners in a restaurant and trolleys for use by shoppers.

4. Presumption of Conformity

The 2005 Regulations as amended state that when a product conforms to a voluntary national standard of the United Kingdom, as determined and published by the Secretary of State, the product shall be presumed to be a safe product so far as concerns the risks and categories of risk covered by the standard.

5. Obligations of producers

The obligations of producers include:

1. Before placing a product on the market, or agreeing to place a product on the market, a producer must ensure that it is a safe product.
2. Producers must provide consumers with the relevant information to enable them to assess the risk inherent in a product throughout the normal or reasonably foreseeable period of its use (where such risks are not immediately obvious) and to take precautions against those risks.

3. Producers must also allow for traceability by indicating on the product or its packaging:
   a) the name and address of the producer
   b) the product reference or, where applicable, the batch of products to which it belongs.

4. Producers must adopt measures to enable them to be informed of risks the product might present, including (to the extent that it is reasonable):
   a) sample test marketed products;
   b) investigate and, if necessary, keep a register of complaints concerning the safety of the product; and
   c) keep distributors informed of the results of such monitoring where a product presents a risk or may present a risk.

6. Obligations of distributors

The obligations of distributors include:

1. Distributors must act with due care to help ensure only safe products are supplied and must not supply products that, as a professional, they know or ought to know to be dangerous. For example, if a product has been subject to a recall, distributors must not supply any they may still have in stock.

2. Distributors should be able to show traceability of the products they supply, documentation should be retained that shows from whom the goods were purchased.

3. Distributors must cooperate with the enforcement authorities at their request. This includes the provision of information relating to the product, the nature of the risk, the product's supply and marketing, and also in taking appropriate action to remove the risk from consumers.

7. Obligations of producers and distributors

Where a producer or distributor discovers (perhaps as a result of a consumer complaint) that a product they have supplied poses risks to the consumer, and is unsafe, they must immediately notify the relevant enforcement authority. In Great Britain this will normally be the local trading standards service and district councils in Northern Ireland.

Producers and distributors must cooperate with the enforcement authorities at their request. This includes the provision of information relating to the product, and also taking appropriate action to remove the risk from consumers. In cases where it is identified the product poses a serious risk, information enabling precise identification, a full description of the risk, all available information relevant for tracing the product and a description of the action undertaken to prevent risks to the consumer must be included in the notification.
A planned course of corrective action is critical in order to provide a timely and effective response. This government-backed Code of Practice is intended to help businesses deal with product recalls. It was developed by BSI, the UK’s National Standards Body, with extensive input from Trading Standards, fire and rescue authorities, consumer interest groups and industry bodies. More information about that document is available here: https://www.gov.uk/government/publications/supporting-better-product-recalls

The enforcement authorities will advise on actions aimed at removal of the risk and work with businesses on completing the notification.

8. Enforcement

In Great Britain local trading standards authorities, and in Northern Ireland district councils, are responsible for enforcing the Regulations in relation to consumer goods. The Regulations as amended also provide powers to the Secretary of State to enforce the Regulations.

The Regulations as amended provide power to enforcement authorities to take action against producers or distributors with respect to products where they have reasonable grounds to believe that the Regulations have been contravened and/or that the product is dangerous. All parties concerned must, whenever feasible, be given an opportunity to submit their views before the adoption of a measure. Where, due to the urgency of the situation it is not feasible to submit views before action is taken, an opportunity will be given to submit views afterwards.

The measure chosen will be proportionate to the risk.

The Secretary of State will operate a database with information on market surveillance and product safety. An enforcement authority receiving a notification of risk will notify the Secretary of State through the database, and this notification will include measures adopted.

Suspension Notices

Where the enforcement authority has reasonable grounds to suspect that there may have been a contravention of the Regulations, these notices temporarily ban the placing on the market or the supply of a product while tests are undertaken, and the results are awaited.

Requirement to Mark / Requirement to Warn

These powers allow an enforcement authority to require the marking of a product with suitable warnings where it could pose risks in certain conditions, or require that specific warnings be given to certain persons considered to be at risk from a product - for example, young children, the elderly, etc.

Withdrawal Notices

Enforcement authorities can serve a withdrawal notice to prevent a person from supplying a product that is believed to be dangerous.
Recall Notices

Enforcement authorities can serve a recall notice in cases where they have reasonable grounds to believe a product is dangerous and it has already been made available to consumers. This recall notice may require the recall to comply with the applicable code of practice. A recall notice can only be served where other corrective actions, including those already taken by the producer or distributor, are insufficient in preventing the risks to consumers.

Regulators’ Code

Enforcement authorities must continue to have regard to the Regulators’ Code when developing the policies and operational procedures that guide their regulatory activities in this area. They should carry out their activities in a way that supports those they regulate to comply and grow, including choosing proportionate approaches that reflect risk.

In responding to non-compliance that they identify, enforcement authorities should clearly explain what the non-compliant item or activity is, the advice being given, actions required, or decisions taken, and the reasons for these. Unless immediate action is needed to prevent a serious breach, regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent. The Secretary of State takes account of the provisions of both the Regulators’ Code and the Growth Duty in exercising his regulatory functions.

A link to the Regulators’ Code can be found here:

Penalties

A person committing an offence under the Regulations as amended may be liable to a penalty. Penalties can include a fine of up to £20,000 or a prison sentence of up to 12 months or both for the most serious offences. The court may also forfeit any or all unsafe goods.

It is a matter for the enforcement authority to decide what enforcement action is appropriate in each case, taking into account the circumstances of the case and the enforcement authorities’ own policies, operational procedures and practices in line with the Regulators’ Code.

9. Where to find guidance about Directive 2001/95/EC

You can find further and more detailed guidance on Directive 2001/95/EC here:

The European Commission’s ‘Blue Guide’ aims to give a better understanding of EU product safety rules and to their application across different sectors and throughout the EU single market. You can view that here:
http://ec.europa.eu/DocsRoom/documents/18027/
10. Glossary

- **Distributor** – Any professional in the supply chain, whose activity does not affect the safety properties of a product.

- **Enforcement Authority** – The Secretary of State, any other Minister of the Crown in charge of a government department. In addition, Regulation 10 lists enforcement bodies.

- **Producer** –

  (a) the manufacturer of a product, when he is established in the UK and any other person presenting himself as the manufacturer by affixing to the product his name, trademark or other distinctive mark, or the person who reconditions the product;

  (b) when the manufacturer is not established in the UK:
   
   (i) if he has a representative established in the UK, the representative;
   
   (ii) in any other case, the person established in the United Kingdom that places a product from a country outside the United Kingdom on the market; and

  (c) other professionals in the supply chain, insofar as their activities may affect the safety properties of a product.