

Annex: A

The Consultation Code of Practice Criteria

The DTI follows the Cabinet Office code of practice on consultations. We want to know when we are not meeting these standards or other ways which we could do better in our approach to consultations.

The Code of Practice requires Departments to:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what their proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor their effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address

<http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>

CONSUMER PROTECTION

The General Product Safety Regulations 2005

<i>Made</i>	2005
<i>Laid before Parliament</i>	2005
<i>Coming into force</i>	2005

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

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

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PART I

GENERAL

Citation, commencement and revocation

1.-(1) These Regulations may be cited as the General Product Safety Regulations 2005 and shall come into force on [2005].

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

Interpretation

2.-(1) In these Regulations-

“the 1987 Act” means the Consumer Protection Act 1987;

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

“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;

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

“general safety requirement” means the requirement in regulation 5(1);

“the GPS Directive” means Council Directive 2001/95/EC on general product safety;

“the Institute” means the charitable organisation with registered number 803725 and known as the Chartered Institute of Arbitrators;

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

“notice” means a notice in writing;

“officer”, in relation to an enforcement authority, means a person authorised in writing to assist the authority in carrying out its functions under or for the purposes of the enforcement of any of the provisions of or under these Regulations;

“producer” means-

- (a) the manufacturer of a product, when he is established in the Community, and any other person presenting himself as the manufacturer by affixing to the product his name, trade mark or other distinctive mark, or the person who reconditions the product;
- (b) when the manufacturer is not established in the Community-
 - (i) if he has a representative established in the Community, the representative,

- (ii) in any other case, the importer of the product into the Community; and
- (c) other professionals in the supply chain, insofar as their activities may affect the safety properties of a product;

“product” means any product, including in the context of providing a service, which is intended for consumers or likely, under reasonably foreseeable conditions, to be used by consumers even if not intended for them and which is supplied or made available, whether for consideration or not, in the course of a commercial activity and whether it is new, used or reconditioned;

“withdrawal notice” means a notice under regulation 14;

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

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

“recall notice” means a notice under regulation 15;

“requirement to mark” means a notice under regulation 11;

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

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

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

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;

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

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

“suspension notice” means a notice under regulation 13;

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

(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.

Application

3. These Regulations do not apply to second-hand products supplied as products to be repaired or reconditioned prior to being used, provided-

- (a) the supplier clearly informs the person to whom he supplies the product to that effect, and
- (b) the person supplied carries on a business of buying products of the same description as those products and repairing or reconditioning them.

4. These Regulations apply to a product in so far as there are no specific provisions with the same objective in rules of Community law governing the safety of the product, other than the GPS Directive. Where a product is subject to specific safety requirements imposed by rules of Community law, other than the GPS Directive, these Regulations shall apply only to the aspects and risks or categories of risks not covered by those requirements.

PART II

OBLIGATIONS OF PRODUCERS AND DISTRIBUTORS

General Safety Requirement

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

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

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

Presumption of conformity

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

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

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

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

(4) Conformity of a product with the criteria designed to ensure the general safety requirement is complied with, in particular the provisions mentioned in paragraphs (2) or (3), shall not bar an enforcement authority from exercising its powers under these Regulations in relation to that product.

Other obligations of producers

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

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

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

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

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

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

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

Obligations of distributors

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

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

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

Obligations of producers and distributors

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

- (a) of the same,
- (b) of the action taken to prevent risk to the consumer, and
- (c) where the product is or has been marketed or otherwise supplied to consumers outside the United Kingdom, of each Member State in which, to the best of his knowledge, it has been so marketed or supplied.

(2) Paragraph (1) shall not apply-

- (a) in the case of a second-hand product supplied as an antique or as a product to be repaired or reconditioned prior to be used, provided the supplier clearly informs the person to whom he supplies the product to that effect,
- (b) in conditions concerning isolated circumstances or products.

(3) In the event of a serious risk the notification under paragraph (1) shall include the following-

- (a) information enabling a precise identification of the product or batch of products in question;
- (b) a full description of the risks that the product presents;
- (c) all available information relating to tracing the product;
- (d) a description of the action undertaken to prevent risks to the consumer.

(4) Within the limits of his activities, a person who is a producer or a distributor shall co-operate with an enforcement authority (at the enforcement authority's request) in action taken to avoid the risks posed by a product which he supplies or has supplied. Every enforcement authority shall maintain procedures for such co-operation, including procedures for dialogue with the producers and distributors concerned on issues related to product safety.

PART III

ENFORCEMENT

Enforcement

10.-(1) It shall be the duty of every weights and measures authority in Great Britain and every district council in Northern Ireland to enforce within their area these Regulations and the safety notices.

(2) A weights and measures authority in England or Wales and a district council in Northern Ireland shall also have the power to prosecute for an alleged contravention of any provision imposed by or under these Regulations which was committed outside its area (but, in the case of weights and measures authorities, within England or Wales and, in the case of a district council, within Northern Ireland).

(3) For the purposes of these Regulations, the following shall also be enforcement authorities-

- (a) in relation to England,
 - a. a unitary authority,
 - b. a district council,
 - c. a London borough council,
 - d. the Common Council of the City of London in its capacity as a local authority,
 - e. the Council of the Isles of Scilly,
- (b) in relation to Wales, a county borough council,
- (c) in relation to Scotland, a council constituted under section 2 of the Local Government Act etc (Scotland) Act 1994.

(4) In enforcing these Regulations by way of a safety notice an enforcement authority shall act in a manner proportional to the seriousness of the risk and shall take due account of the precautionary principle. In this context, it shall encourage and promote voluntary action by producers and distributors. Notwithstanding the foregoing, an enforcement authority may take any action under these Regulations urgently and without first encouraging and promoting voluntary action in the case of products posing a serious risk.

Requirements to Mark

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

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

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

Requirements to Warn

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

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

Suspension Notices

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

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

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

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

Withdrawal notices

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

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

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

(3) Paragraph (2) shall not apply in the case of any products posing a serious risk requiring, in the view of the enforcement authority, urgent action.

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

(5) Where an enforcement authority serves a withdrawal notice, it shall also take action to alert consumers to the risks the product presents.

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

Recall notices

15.-(1) Subject to paragraph (5), where an enforcement authority has reasonable grounds for suspecting that a product is a dangerous product and that it has already been supplied or made available to consumers, the authority may serve a notice (“a recall notice”) requiring the person on whom it is served to use his reasonable endeavours to organise the return of the product from consumers to that person or to such other person as is specified in the notice.

(2) A recall notice may require-

(a) the recall to be effected in accordance with a code of practice applicable in the case of the product concerned, or

(b) the recipient of the recall notice to-

(i) contact consumers who have purchased the product in order to inform them of the recall, where and to the extent it is practicable to do so;

(ii) publish a notice in such form and such manner as is likely to bring to the attention of purchasers of the product the fact of the recall; or

(iii) make arrangements for the collection or return of the product from consumers who have purchased it,

and may include such additional requirements on the recipient of the notice as is reasonable with a view to achieving the return of the product from consumers to the person specified in the notice.

(3) Subject to paragraph (5), where an enforcement authority has reasonable grounds for suspecting that a product is a dangerous product and that it has already been supplied or made available to consumers, the authority may undertake any such action with a view to organising or co-ordinating the return of the product from consumers as is referred to in paragraphs (1) or (2).

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

(5) A recall notice may only be issued by an enforcement authority where-

(a) other action which it may require under these Regulations would not suffice to prevent the risks concerned to the health and safety of persons;

(b) the action being undertaken by the producer or the distributor concerned in fulfilment of his obligations under these Regulations is unsatisfactory or insufficient to prevent the risks concerned to the health and safety of persons, and

(c) the authority has given not less than 7 days notice to the person on whom the recall notice is to be served of its intention to serve such a notice and, where that person has before the expiry of that period by notice so required the authority, the authority has sought the advice of such person

as the Institute determine on the questions of whether the product is a dangerous product or whether the issue of a recall notice is proportional to the seriousness of the risk.

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

(7) Where a person requires an enforcement authority to seek advice as referred to in paragraph (5)(c), that person shall be responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the authority.

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

(9) Where an enforcement authority has served a recall notice on any person, it shall give reasonable assistance to that person in complying with the notice.

(10) Where-

- (a) an enforcement authority has served a recall notice on any person,
- (b) that person has failed to comply with the notice, and
- (c) the authority exercises its powers pursuant to paragraph (3) to undertake any of the action specified in the notice

the authority may, provided it complied with paragraph (5), by way of complaint (as mentioned in section 58 of the Magistrates' Courts Act 1980) recover from that person, summarily as a civil debt, any costs or expenses reasonably incurred by it in undertaking the action referred to in sub-paragraph (c).

Supplementary provisions relating to safety notices

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

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

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

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

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

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

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

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

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

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

(7) Any disputed question as to the right to or the amount of any compensation payable under this regulation shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

Appeals against safety notices

17. –(1) Any person on whom a safety notice has been served and any person having an interest in a product in respect of which any of the following have been served, namely-

- (a) a withdrawal notice,
- (b) a suspension notice,
- (c) a requirement to mark, or
- (d) a requirement to warn,

may, before the end of the period of 21 days beginning with the day on which the safety notice was served, apply for an order to set aside, or to vary the terms of, the notice.

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

- (a) in the case of a requirement to mark or a requirement to warn, the product is not a dangerous product,
- (b) in the case of a suspension notice, there has been no contravention in relation to the product of any requirement of these Regulations,
- (c) in the case of a withdrawal notice-
 - (i) the product is not a dangerous product, or
 - (ii) where applicable, regulation 14(2) has not been complied with by the enforcement authority concerned,
- (d) in the case of a recall notice-
 - (i) the product is not a dangerous product, or
 - (ii) regulation 15(5) has not been complied with,

(e) in any case, the serving of the safety notice concerned was not proportional to the seriousness of the risk.

- (3) On an application under paragraph (1) concerning the period of time specified in a suspension notice as the period for which it applies, the court or the sheriff, as the case may be, may reduce the period to such period as it considers sufficient for organising appropriate safety evaluations, checks and controls.
- (4) On an application under paragraph (1) to vary the terms of a notice, the court or the sheriff, as the case may be, may vary the requirements specified in the notice as it considers appropriate.
- (5) Any person on whom a recall notice has been served and who proposes to make an application under paragraph (1) in relation to the notice may, before the end of the period of 7 days beginning with the day on which the notice was served, apply to the court or sheriff for an order suspending the effect of the notice and the court or sheriff may, in any case where it considers it appropriate to do so, make an order suspending the effect of the notice.
- (6) If the court or sheriff makes an order suspending the effect of a recall notice under paragraph (5) in the absence of the enforcement authority, the enforcement authority may apply for the revocation of such order.
- (7) An order under paragraph (5) shall take effect from the time it is made until-
- (a) it is revoked under paragraph (6),
 - (b) where no application is made under paragraph (1) in respect of the recall notice within the time specified in that paragraph, the expiration of that time,
 - (c) where such an application is so made but is withdrawn or dismissed for want of prosecution, the dismissal or withdrawal of the application, or
 - (d) where such an application is so made and is not withdrawn or dismissed for want of prosecution, the determination of the application.
- (8) Subject to paragraph (6), in Scotland the sheriff's decision under paragraph (5) shall be final.
- (9) An application under this regulation may be made-
- (a) by way of complaint to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland-
 - (i) in respect of a contravention in relation to the product of a requirement imposed by or under these Regulations; or
 - (ii) for the forfeiture of the product under regulation 18;
 - (b) where no such proceedings have been brought, by way of complaint to any magistrates' court; or
 - (c) in Scotland, by summary application to the sheriff.
- (10) Any person aggrieved by an order made pursuant to an application under paragraph (1) by a magistrates' court in England, Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision-
- (a) in England and Wales, to the Crown Court;
 - (b) in Northern Ireland, to the county court;

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

Forfeiture: England and Wales and Northern Ireland

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

(2) An application under this regulation may be made-

- (a) where proceedings have been brought in a magistrates' court for an offence in respect of a contravention in relation to the product of a requirement imposed by or under these Regulations, to that court;
- (b) where an application with respect to the product has been made to a magistrates' court under regulation 17 or 26, to that court; and
- (c) otherwise, by way of complaint to a magistrates' court.

(3) An enforcement authority making an application under this regulation shall serve a copy of the application on any person appearing to it to be the owner of, or otherwise to have an interest in, the product to which the application relates, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the product should not be forfeited.

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

(5) The court shall not make an order under this regulation-

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

(6) On an application under this regulation the court may make an order for the forfeiture of the product only if it is satisfied that the product is a dangerous product.

(7) Any person aggrieved by an order made under this regulation by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision-

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

and an order so made shall not take effect until the latest of-

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

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

(9) On making an order under this regulation a magistrates' court may, if it considers it appropriate to do so, direct that the product to which the order relates shall (instead of being destroyed) be delivered up to such person as the court may specify, on condition that that person-

- (a) does not supply the product to any person otherwise than as mentioned in sub-paragraph (a),(b) or (c) of paragraph (10); and
- (b) if the court considers it appropriate to require the following as a condition, that he complies with any order to pay costs or expenses (including any order under regulation 28) which has been made against him in the proceedings for the order for forfeiture

(10) The supplies which may be permitted under paragraph (9) are-

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

Forfeiture: Scotland

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) If he thinks fit, the sheriff may direct that the product be released to such person as he may specify, on condition that that person does not supply those products to any other person otherwise than as mentioned in sub-paragraph (a),(b) or (c) of paragraph (10) of regulation 18.

Power to obtain information

20.-(1) If the Secretary of State considers that, for the purpose of deciding whether to-

- (a) serve a safety notice,
- (b) vary or revoke a safety notice which she has already served

she requires information which another person is likely to be able to furnish, she may serve on the other person a notice under this regulation.

(2) A notice served on any person under this regulation may require that person-

- (a) to furnish to the Secretary of State, within a period specified in the notice, such information as is specified;
- (b) to produce such records as are specified in the notice at a time and place so specified (and to produce any such records which are stored in any electronic form in a form in which they are

visible and legible) and to permit a person appointed by the Secretary of State for the purpose to take copies of the records at that time and place.

(3) A person shall be guilty of an offence if he-

- (a) fails, without reasonable cause, to comply with a notice served on him under this regulation; or
- (b) in purporting to comply with a requirement which by virtue of paragraph (2)(a) is contained in such a notice-
 - (i) furnishes information which he knows is false in a material particular, or
 - (ii) recklessly furnishes information which is false in a material particular.

(4) A person guilty of an offence under paragraph (3) shall-

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

Further offences

21-(1) Any person who contravenes regulation 5 or 8(1)(a) shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding 12 months or to a fine not exceeding £20,000 or to both, and on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

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

Test purchases

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

(2) Where-

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

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

Powers of entry and search etc

23.-(1) A duly authorised officer of an enforcement authority may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by the following provisions of this regulation.

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

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

(4) If the officer has reasonable grounds for suspecting that there has been a contravention in relation to a product of any requirement imposed by or under these Regulations, he may-

- (a) for the purpose of ascertaining whether there has been any such contravention, require any person carrying on a commercial activity, or employed in connection with a commercial activity, to supply all necessary information relating to the activity, including by the production of records;
- (b) for the purpose of ascertaining whether there has been any such contravention, require any record which is stored in any electronic form and is accessible from the premises to be produced in a form
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible;
- (c) for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain samples of the product;
- (d) take copies of, or of an entry in, any records produced by virtue of sub-paragraph (a).

(5) The officer may seize and detain any products or records which he has reasonable grounds for believing may be required as evidence in proceedings for an offence in respect of a contravention of any requirement imposed by or under these Regulations.

(6) If and to the extent that it is reasonably necessary to do so to prevent a contravention of any requirement imposed by or under these Regulations, the officer may, for the purpose of exercising his power under paragraphs (4) or (5) to seize products or records-

- (a) require any person having authority to do so to open any container or to open any vending machine; and
- (b) himself open or break open any such container or machine where a requirement made under sub-paragraph (a) in relation to the container or machine has not been complied with.

Provisions supplemental to regulation 23

24.-(1) An officer seizing any products or records under regulation 23 shall provide to the person from whom they were seized and to any person appearing to him to be the owner of, or otherwise to have an interest in, the products or records seized a notification in writing-

- (a) specifying the products (including the quantity thereof) and records seized,
- (b) stating the reasons for their seizure, and

(c) explaining the right of appeal under regulation 26.

(2) If a justice of the peace-

(a) is satisfied by any written information on oath that there are reasonable grounds for believing either-

- (i) that any products or records which any officer has power to inspect under regulation 23 are on any premises and that their inspection is likely to disclose evidence that there has been a contravention of any requirement imposed by or under these Regulations; or
- (ii) that such a contravention has taken place, is taking place or is about to take place on any premises; and

(b) is also satisfied by any such information either-

- (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this paragraph has been given to the occupier; or
- (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

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

(3) An officer entering any premises by virtue of regulation 23 or a warrant under paragraph (2) may take with him such other persons and equipment as may appear to him necessary.

(4) On leaving any premises which a person is authorised to enter by a warrant under paragraph (2), that person shall, if the premises are unoccupied or the occupier is temporarily absent-

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

(5) If any person who is not an officer of an enforcement authority purports to act as such under regulation 23 or under this regulation he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Where a product seized by an officer under regulation 23 is submitted to a test, the officer shall inform the persons mentioned in paragraph (1) of the result of the test and, if-

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

the officer shall allow any person who is a party to the proceedings or, as the case may be, has an interest in the product to which the notice relates to have the product tested.

(7) In the application of this section to Scotland, the reference in paragraph (2) to a justice of the peace shall include a reference to a sheriff and the references to written information on oath shall be construed as references to evidence on oath.

(8) In the application of this section to Northern Ireland, the reference in paragraph (2) to a justice of the peace shall include a reference to a lay magistrate and the references to any information on oath shall be construed as references to any complaint on oath.

Obstruction of an authorised officer

25.-(1) Any person who-

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

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

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

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

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

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

Appeals against detention of products and records

26.-(1) Any person referred to in regulation 24(1) may apply for an order requiring any products or records which are for the time being detained under regulation 23 by an enforcement authority or by an officer of such an authority to be released to him or to another person.

(2) An application under this section may be made-

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

(3) On an application under this regulation to a magistrates' court or to the sheriff, the court or the sheriff may make an order requiring products or records to be released only if the court or sheriff is satisfied-

- (a) that proceedings

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

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

(5) Where

- (a) more than 12 months have elapsed since products or records were seized and the enforcement authority has not commenced any proceedings for an offence in respect of a contravention in relation to the products (or, in the case of records, the products to which the records relate) of any requirement imposed by or under these Regulations or for the forfeiture of the products under regulation 18 or 19, or
- (b) an enforcement authority has brought proceedings for an offence as mentioned in sub-paragraph (a) and the proceedings were dismissed and all rights of appeal have been exercised or the time for appealing has expired,

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

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

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

(8) References in this regulation and regulation 23 to the person from whom something has been seized, in relation to a case in which the power of seizure was exercisable by reason of the product having been found on any premises, are references to the occupier of the premises at the time of the seizure.

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

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

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

Compensation for seizure and detention

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

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

(2) Any disputed question as to the right to or the amount of any compensation payable under this regulation shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

Recovery of expenses of enforcement

28.-(1) This regulation shall apply where a court-

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

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

- (a) in connection with any seizure or detention of the product by or on behalf of the authority; or
- (b) in connection with any compliance by the authority with directions given by the court for the purposes of any order for the forfeiture of the product.

Defence of due diligence

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

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

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

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

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who 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 by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances to have relied on the information, having regard in particular-

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

(5) This regulation shall apply to an offence under regulations 16(3) (except for an offence in relation to a recall notice) or 21 (so far as it relates to a contravention of regulation 5).

(6) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) if he has contravened regulations 8(1)(b) or (2), 9(3) or (4) or 25(1).

Defence in relation to antiques and products supplied for repair or reconditioning

30.-(1) This regulation shall apply in proceedings against any person for an offence under regulation 5 or 8(1)(a) in respect of the supply, offer or agreement to supply or exposure or possession for supply of second hand-products supplied as antiques or as products to be repaired or reconditioned prior to being used.

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

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

Liability of persons other than principal offender

31.-(1) Where the commission by any person of an offence to which regulation 29 applies is due to an act or default committed by some other person in the course of a commercial activity of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

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

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

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

PART IV

MISCELLANEOUS

Reports

32-(1) It shall be the duty of the Secretary of State to lay before each House of Parliament a report on the exercise during the period to which the report relates of the functions which under these Regulations are exercisable by the Secretary of State, weights and measures authorities and district councils in Northern Ireland.

(2) The first such report shall relate to the period beginning on the day on which these Regulations come into force and ending on 31 March 2008 and subsequent reports shall relate to a period of not more than five years beginning on the day after the day on which the period to which the previous report relates ends.

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

(4) Every weights and measures authority and every district council in Northern Ireland shall, whenever the Secretary of State so directs, make a report to the Secretary of State on the exercise of the functions exercisable by that authority or council under regulation 10.

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

Duty to notify the Secretary of State and the Commission

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

(2) Where an enforcement authority takes any measures which restrict the placing on the market of products, or require their withdrawal or recall, it shall give immediate notice to the Secretary of State,

specifying its reasons for taking the action. It shall also give immediate notice to the Secretary of State of any modification or lifting of such measures.

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

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

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

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

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

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

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

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

(10) In any case in which a product poses a serious risk, an enforcement authority shall immediately notify the Secretary of State of the voluntary measures referred to in article 5 of the GPS Directive taken by producers and distributors and the Secretary of State shall immediately notify the Commission of the same.

(11) In this regulation-

- (a) any reference to a product excludes a second-hand product supplied as an antique or as a product to be repaired or reconditioned prior to be used, provided the supplier clearly informs the person to whom he supplies the product to that effect,
- (b) “pharmaceutical product” means a product falling within Council Directive 75/319/EEC or Council Directive 81/851/EEC.

Supplementary provisions relating to duties under regulation 33

34.-(1) Any notice under regulation 33(4), (5), (6), (8), (9) or (10) to the Secretary of State or the Commission shall provide all available details and at least the following information-

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

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

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

Implementation of Commission decisions

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

(2) The Secretary of State shall-

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

as is necessary to comply with the decision.

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

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

(5) Any person who contravenes paragraph (4) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

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

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

Market Surveillance

36. Every enforcement authority shall undertake market surveillance of products with a view to ensuring a high level of consumer health and safety protection. In so doing, an enforcement authority shall-

- (a) undertake approaches employing appropriate means and procedures,
- (b) co-operate with other enforcement authorities.

Complaints procedures

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

Co-operation between enforcement authorities

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

- (a) enforcement authorities shall share their expertise and best practises with each other,
- (b) enforcement authorities shall undertake collaborative working where they have a shared interest.

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

Information

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

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

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

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

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

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

Amendments to the Consumer Protection Act 1987

40.-(1) The 1987 Act is amended as follows.

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

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

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

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

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

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

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

Consequential amendments to other legislation

41.-(1) Omit paragraph 15(1) of Schedule 4 to the Gas Act 1995.

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

(3) In section 66(4), insert the following after paragraph (m)-

“(n) regulation 23 of the General Product Safety Regulations 2005 (powers of entry and search etc)”.

(4) In Schedule 1, insert the following after paragraph 73D-

“General Product Safety Regulations 2005

73E. Each of the powers of seizure conferred by the provisions of regulation 23(4) and (5) of the General Product Safety Regulations 2004 (seizure for the purposes of ascertaining whether safety provisions have been contravened etc).”.

(5) In Schedule 2-

(a) insert the following after paragraph 4-

“4A Regulation 24(6) of the General Product Safety Regulations 2004 (provision about the testing of seized products) shall apply in relation to items seized under section 50 of this Act in reliance on the power of seizure conferred by regulation 24 of those Regulations as it applies in relation to items seized under regulation 23 of those Regulations.”.

(b) insert the following after paragraph 9-

“9A Regulation 27 of the General Product Safety Regulations 2005 (compensation for seizure and detention) shall apply in relation to the seizure of items under section 50 of this Act in reliance on the power of seizure conferred by regulation 23 of those Regulations, and the retention of those items, as it applies in relation to the seizure and detention of products under regulations 23 of those Regulations.”.

Service of documents etc.

42.-(1) Any document required or authorised by virtue of these Regulations to be served on a person may be so served-

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

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

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

- (b) in the case of service on a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership;
- (c) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership,

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

Extension of the time for bringing summary proceedings

43.-(1) Notwithstanding section 127 of the Magistrates' Courts Act 1980 and article 19 of the Magistrates' Courts (Northern Ireland) Order 1981, 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 these Regulations if (in the case of England and Wales) the information is laid or (in the case of Northern Ireland) the complaint is made within twelve months from the date of the offence.

(2) Notwithstanding section 136 of the Criminal Procedure (Scotland) Act 1995, in Scotland summary proceedings for an offence under these Regulations may be commenced at any time within twelve months from the date of the offence.

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

Civil proceedings

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

Privileged information

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

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

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

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

(2) No evidence relating to that statement may be adduced and no question relating to it may be asked by the prosecution in any criminal proceedings (other than proceedings in which that person is charged with an offence under regulation 21 for a contravention of regulation 9(1)), unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

Transitional provisions

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

Parliamentary Under Secretary of State
Department of Trade and Industry

Annex D:

THE GENERAL PRODUCT SAFETY REGULATIONS 2005 Partial Regulatory Impact Assessment

1. POLICY OBJECTIVE

- 1.1 The underlying objective is to keep the UK as one of the safest places in Europe for consumers¹ by ensuring that consumer products placed on the market are safe and, where they are not, that consumers are protected (including, where necessary, by providing that dangerous products can be recalled from consumers). This will be achieved by transposing the General Product Safety Directive 2001/95/EC (GPSD) into national legislation (as we are required to by the Directive itself) in an effective and proportionate manner.²
- 1.2 The Directive reaffirms that all consumer products placed on the market by producers and distributors must be safe. This ‘*general safety requirement*’ was introduced in the UK by the Consumer Protection Act 1987 (CPA), and in Europe by the 1992 Directive on product safety³. In effect the 2001 GPSD is an incremental improvement over the 1992 Directive aimed at further harmonising practices and bringing them up to the best. With guaranteed free circulation of products in an enlarged European Union, common standards of safety are an important factor for consumer confidence and competition.
- 1.3 The GPSD covers the safety of all products used by consumers, including second-hand products and products covered by vertical (sectoral) Community legislation where that legislation does not have safety provisions with the same objective as the Directive. In particular the GPSD introduces new last-resort provisions for the mandatory recall of unsafe products where the voluntary action taken by producers and distributors has not been satisfactory or sufficient and where no other measure can remove the risk to consumers.
- 1.4 In order to make the safety regime as simple to follow as possible, we have included separate enforcement provisions in the draft Regulations. In consequence the enforcement provisions of the CPA will no longer apply for general product safety purposes.
- 1.5 Bringing all product safety issues together under one set of Regulations is in line with the government’s policy on regulatory simplification and provides for a more coherent and consistent product safety regime. In view of this we are extending the Regulations to cover the safety of antiques and products supplied for reconditioning and repair that are currently covered by the CPA. This will allow us to repeal Section 10 of the CPA that will then serve no further purpose.
- 1.6 The proposed legislation will place little additional burden on businesses as products placed on the market by producers and distributors are already required to be safe and for the most part comply with this general safety requirement. Where products do not meet this requirement (ie they are not a safe product⁴), and the degree of risk to consumers merits it, business will generally take steps voluntarily to recall the products. Nevertheless, the new Regulations set out clearly the obligations

¹ A 2001 report produced by the European Consumer Safety Association (ECOSA) on Priorities for Consumer Safety in the European Union found that the UK had the lowest annual rate of home and leisure fatalities in the EU.

² Regulations made under Section 2.2 of the European Communities Act 1972

³ Directive 92/59/EEC

⁴ Safe product is defined in Article 2(b) of the GPSD and at Regulation 2 of the draft Regulations.

on producers and distributors, what they can expect if they avoid these obligations, and what steps may be taken by the competent authorities to enforce the protection of consumers.

- 1.7 The principal enforcement authorities for product safety are local authority trading standards departments in England, Scotland and Wales and District Council environmental health officers in Northern Ireland.

2. DEVOLUTION

- 2.1 The Regulations will apply to England, Wales, Scotland and Northern Ireland. However, while there is a reservation for product safety in the Scotland Act 1998, the exception to the reservation covers certain products (including fish products, seeds, animal feed stuffs, fertilisers and pesticides) that may be covered by the GPSD. Scottish Ministers are considering whether for these few products they wish to implement the Directive separately in respect of Scotland.

3. BACKGROUND

- 3.1 The revised text of the GPSD was negotiated in 2000-2001 and was adopted by the European Parliament and Council in December 2001. It builds on the previous Directive⁵ with the aim of improving the already high level of safety protection afforded consumers in respect of products placed on the market.

- 3.2 Most of the changes under the revised GPSD focus on scope and on tackling product safety problems that come to light after products are placed on the market.

- 3.3 Specifically, the implementing Regulations will introduce new provisions in the following areas:

- Extended coverage to include:

Products used by consumers in the course of a service;

Products intended for professionals but which migrate to the consumer market, and

In respect of products for which there are specific safety requirements imposed by vertical Community legislation, those aspects of safety covered by the GPSD but not covered by the vertical legislation.

- Assessment of whether a product is safe

In considering whether a product is safe, that assessment will consider the normal or reasonably foreseeable conditions of use of the product and, where applicable, take into account the putting into service or installation of a product and its maintenance needs. Since services (including installation and maintenance services) and the safety of services are not covered by the GPSD we have taken the view that to be taken into account these

⁵ The first General Product Safety Directive (GPSD) (92/59/EEC) was adopted in 1992, and was transposed in the UK through the General Product Safety Regulations 1994 (SI 1994 No. 2328) (the GPSR 1994). The GPSD introduced a framework for consumer product safety regulation in EU Member States by requiring that all consumer products placed on the market must be safe (the “general safety requirement”). It also placed certain obligations on the producers and distributors of consumer products, and provided for powers to be placed on the enforcement authorities to support and enforce the requirements. As the GPSD broadly mirrored the scope of the CPA, the GPSR 1994 simply ‘plugged’ into the enforcement provisions of the CPA.

requirements have to be essential to the safety of the product and form a part of the producer's contract to supply.

- | ▪ Voluntary European standards

The Directive introduces a new class of European standard. Products complying with such standards will be deemed to have satisfied the general safety requirement with respect to the safety aspects covered by the standard, unless there is evidence that despite such conformity the product is nevertheless dangerous.

- | ▪ Product recall

The Regulations introduce the explicit obligation for producers to act to resolve the risks to consumers that their products pose. They may take these measures voluntarily, or, if they fail to do so can be ordered to undertake a recall. Enforcement authorities will also acquire powers to coordinate or organise a product recall when necessary.

- | ▪ Retention of documentation

Distributors will be required to keep and provide documentation to help trace the origin of products in the event of a safety problem and producers will be required to keep a register of safety complaints.

- | ▪ Notification of unsafe products placed on the market

Producers and distributors will be required to notify the enforcement authorities where they discover that they have put an unsafe product on the market and also notify the action taken to counter the risk to consumers.

- | ▪ Co-operation to reduce risks to consumers

Producers and distributors will also be required to co-operate with the enforcement authorities on action to prevent risk to consumers.

- | ▪ Banning of exportation of dangerous goods

The export from the Community of dangerous products, which have been the subject of an Emergency Decision at Community level, will be banned – unless the Decision provides otherwise.

3.4 The following assessments are a general overview of the implications of the draft Regulations. The risks, costs and benefits of specific changes will be addressed within the sections dealing with those.

4. **RISKS ADDRESSED**

4.1 The prevailing view among enforcement authorities, consumer groups and business is that subjectively the UK does not have a product safety problem and, anecdotally, the European Commission regards the UK as one of the safest countries in the EU. This reputation was forged due to the initial effectiveness of the Consumer Protection Act 1987 and the UK's implementation of the 1992 GPSD, which introduced an effective framework for product safety in Europe.

However, the range of vertical European safety legislation introduced piece-meal over several years has adopted different requirements leading to differences in the level of protection that consumers might expect from product to product and variations in the available measures to enforce product safety. This has resulted in some uncertainty and a lack of clarity. The revised Directive fills these gaps creating a coherent safety regime for all consumer products.

4.2 Q1. Do you agree (A) that the UK is generally a safe place for consumers but that (B) the spread of vertical product safety legislation has led to confusion?

4.3 Since the new Directive goes further than existing UK legislation, doing nothing is not an option. Moreover, the Directive requires that its provisions are transposed into the national legislation of all member states. If we were to fail to transpose there would be a very high risk of infraction proceedings that we would inevitably lose.

4.4 A study undertaken by Nottingham University funded by the DTI showed that in 1999 product fault was involved in 2.8% of fatalities in the UK, 1.4% of serious injuries and 1.3% of non-serious injuries. However, in most cases the product fault was due to the article not having been serviced or maintained incorrectly. By comparison, behaviour was involved in 25.1% of fatalities, 35.1% of serious injuries and 44.8% of non-serious injuries. Home and Leisure Accident Surveillance System Statistics for the same period show that there were 5.9m accidents requiring a hospital visit and that 3974 people died as a result of an accident in the home.

4.5 Around 1 million producers and distributors in the UK will be affected by the Regulations (and are currently affected by the existing 1994 Regulations) of which over 90% are SMEs who employ around 35% of the total workforce for the sectors concerned .

4.6 In the period from 3 October 1994, when the 1994 Regulations came into effect and 31 March 1998⁶ there were 124 prosecutions made under the Regulations. In the period from 1 April 1998 to 31 March 2003⁷ there were 105 prosecutions. This data is known to be unreliable. In addition not all enforcement results in prosecutions and under the National performance Framework for Trading Standards Departments launched in 2002 there has been increased emphasis on education to ensure a fair and safe trading environment.

5. BENEFITS

5.1 The encouragement of voluntary action, as an alternative to formal enforcement activity, is a welcome feature of the Directive that fits with the general policy approach adopted by the National Performance Framework for Trading Standards Departments. When enforcement is considered necessary lesser Requirements to Warn or Mark will be available to the authorities alongside the power to suspend a product temporarily from the market while powers to order the permanent withdrawal of a product and, potentially its recall from consumers, where there is evidence that the product is dangerous will also be available.

6. COSTS

6.1 The costs that might accrue to businesses in taking action to comply with the general safety requirement are already mostly covered by existing law (e.g. the current General Product Safety Regulations 1994, Inland Revenue information requirements etc) and practice. The GPSD mainly

⁶ DTI Report on Consumer Safety 1 April 1994 to 31 March 1998

⁷ DTI Report on Consumer Safety 1 April 1998 to 31 March 2003

impacts where an unsafe product is placed on the market, therefore the additional cost of to business of compliance following implementation is zero or negligible, other than in relation to the extra precautions that producers of professional products might want to take where their use by ordinary consumers is foreseeable. Assuming that the producer does not hide from its responsibility these costs will largely exist whether or not enforcement action has been taken and will result from increased reporting requirements and being ordered to withdraw a product from the market or recall it from consumers. In some cases a product redesign could also be necessary in order to resolve the safety problem or regain market acceptance; inevitably an unsafe product is at risk of losing sales, generating negative publicity and damaging consumer confidence. But these are consequential commercial costs. It is against the background of limiting such damage that many producers act early and voluntarily to protect brand image. We guesstimate that the additional cost to business of compliance where unsafe products are placed on the market resulting from implementation of the Directive will be minimal and no more than 1 - 3% of the current compliance cost.

6.2 The resource implication for local authorities should be broadly neutral in overall terms. In many cases increased activity aimed at education and encouragement of voluntary action (which is already happening under the National Framework) will be offset by a consequent reduction in formal enforcement activity. Moreover recourse to the new recall power will not be an every day occurrence. In the context of the initial consultation, the Trading Standards Institute estimated that enforcement authorities collectively would incur implementation costs in respect of training and preparation for legislative change in the region of £60k.

6.3 **Q2. Throughout the transposition exercise, we have found it very difficult to quantify any additional costs the new Regulations might introduce for business. There was very little comment on this in responses to the first consultation, and none from a recent consultation of small businesses. The lack of comment might well be an endorsement of our view that the new Regulations will not introduce any significant additional burdens (cost or otherwise), but it would still be useful to have your views on any additional cost impact arising from implementation of the requirements in the Directive.**

7. OPTIONS FOR TRANSPOSING THE NEW PRODUCT RECALL PROVISION

7.1 As the revised GPSD is a maximum Harmonisation Directive (requiring complete transposition into national law) we have no option other than to implement the changes it introduces and to do so through legislation. The introduction of this power has been the most controversial part of the transposition process, with business concerned that enforcement authorities lack experience in recall and that there could be over or mis-use of the power. The Directive requires enforcement authorities to seek a resolution to the safety problem through voluntary action by the producer in the first instance. In addition, we have the possibility to consider what safeguards we can put in place to allay business concerns over the use of this new power.

7.2 Producers are obliged by the Directive to take measures enabling them to be informed of the risks posed by their products, and to take appropriate action to avoid those risks (including recalling a product from consumers). The Department fully recognises that where recall is required (and even where it isn't under the Directive) producers are generally swift to remove the product from consumers' hands.

Risks Addressed

- 7.3 Research undertaken on behalf of the DTI in 2000 found that during the period 1990 to 1996 there were an average of 42 consumer product recalls per annum in respect of unsafe products (excluding food, pharmaceutical and automotive goods). Nearly half the items concerned were electrical goods (47%) followed by non-electrical toys (17%), childcare items (7%) and clothing (7%).
- 7.4 The main cause of recalls (46%) was a potential electrical fault including overheating, fire or electric shock. Choking by children (15%) was the next largest risk category. 59% of the recalls resulted from poor design and 32% from manufacturing process problems. 66% of recalls were initiated by the manufacturer/importer and 71% by consumer complaints. 35% were triggered by accidents to consumers, half of which involved just one single accident. The average cost of the recalls studied was found to be £39k.
- 7.5 Additional research among trading standards officers and organisations such as the Royal Society for the Prevention of Accidents (RoSPA) and Institute of Trading Standards Associations (ITSA - now TSI) at the time suggested that on average each year another 35 products placed on the market were unsafe to the extent that a recall would have been appropriate. These represented 1.5million individual products that reached consumers, less than 0.1% of a total 2 to 2.5 billion similar products that were safe. The best estimate was that these unsafe products could be responsible for 94 serious fires, 7 fatal injuries and 121 serious injuries. On the basis of the figures in the study, the cost of recalling these products could result in additional costs to business of £1.4m a year spread across all consumer products and all producers and distributors. The cost incurred voluntarily by business to recall products will continue as now.
- 7.6 Since there is no suggestion that responsible producers or distributors are shirking their responsibilities to consumers the introduction of the new power will focus attention where recall should have occurred but has not. The very fact that new powers to order recall are being introduced and enforcement authorities will be encouraging voluntary action should have the effect of reducing the cases where recall doesn't happen as a matter of course. Consequently there should be few occasions where it will be necessary for an enforcement authority to actually order a recall. Nevertheless, the last resort power is important to fill in where action taken by the producer or distributor is insufficient or unsatisfactory and to ensure that action is taken where a producer or distributor is absent, is unable or remains unwilling to act. To transpose this new requirement there is no alternative other than to provide for it in the Regulations.
- 7.7 Currently, enforcement authorities are empowered to require producers to suspend or remove dangerous products from the distribution chain and prosecute for placing unsafe products on the market. However, they cannot require producers to recall dangerous products that have already been supplied to consumers. Without the power to order, coordinate or organise recall when necessary the enforcement authorities may be restricted in a small number of cases in their ability to protect consumer safety.

Options Considered Benefits and Costs

- 7.8 Our goal was to identify an option for transposing the recall requirement that left the power to recall responsive to need, that was proportionate to the risks perceived but which also addressed business concerns. The following four options were considered.

Option 1: Make no special provisions (let TSOs decide);

Option 2: Create a national decision-making body;

Option 3: Establish an advisory process;

Option 4: Make recall subject to an application to Court for an Order.

Option 1:

- 7.9 Given local authorities' statutory duty to act to protect the interests of the persons in their area, this would be the most straightforward option. The main benefit would be the speed with which a recall notice could be issued and acted upon, and consumer safety restored. It would avoid many of the delays one might face using a mechanism that involved third parties. But leaving this level of power in the hands of enforcement authorities would do nothing to allay business fears which, if well founded, would inevitably result in appeals to the courts entailing significant additional financial burden to businesses and to the enforcement authorities alike and significant delays.
- 7.10 This option would mean that the cost to the enforcement authority would be subsumed within the general costs of enforcing product safety to which Central Government makes a contribution, and place no additional burden on businesses (separate from the cost of undertaking the recall and making any appeal).

Option 2:

- 7.11 Creating a national decision-making body could provide for consistent and binding decisions and address business concerns over the possible misuse of recall powers. But setting up and maintaining what would be an executive agency established by statute with its own staff and budgets would weigh heavy on the public purse, and on this point alone would be hard to justify given the likely infrequent need for recall action even though there would be some offsetting savings in local authority enforcement budgets. Appeal would remain through the courts so would take time and be costly for both sides.
- 7.12 The option of setting up a Tribunal was also considered and rejected on policy grounds. Tribunals are principally geared to settling disputes between individuals and the state as an alternative to a formal court process. As a consequence the Department of Constitutional Affairs were unconvinced that a Tribunal was appropriate to these circumstances and advised that this option would not in any case be responsive to the needs of individual product safety cases where a relatively quick view needs to be taken whether to recall or not.

Option 3:

- 7.13 An advice-based mechanism could be more easily and cheaply developed and administered than a national decision-making body, and could also (depending on the model) be more appropriate to the perceived infrequent need for action. Such a mechanism would not generate binding decisions, but would provide a lower-cost and less formal steer on the appropriateness of recall action.
- 7.14 The option of an advisory Non-Departmental Public Body (NDPB) was considered but it was felt that infrequent use would make it difficult to convene sufficiently quickly. It was considered unlikely that appointees would be able to drop everything at a moments notice and it was perceived that the infrequent need for meetings would lead to the appointees losing interest. These issues would lead to problems establishing a quorum. Thus there would be a frequent and on-going requirement to re-populate the body in accordance with the Guidance issued by the Office of the Commissioner for Public Appointments which would give rise to concerns about the consistency

of advice offered and concerns about the administrative burden of maintaining an NDPB for this specific purpose. There would also be a small impact on the public purse in terms of the provision of secretariat and meeting facilities (estimated total cost £8k – 12k pa) and a much larger one in respect of the retainer fee for the Chairman of the body (estimated at £20k - £40k pa). The cumulative impact of these considerations led the Department to take the view that an NDPB was not an appropriate or cost-effective vehicle for taking a view on product recall cases, especially in the light of the alternative set out below.

- 7.15 Discussions with the Chartered Institute of Arbitrators (CI Arb) identified a strong case for developing a bespoke form of Early Neutral Evaluation (ENE) that would deliver a reasoned opinion by a former member of the judiciary on a recall case based on the evidence presented by the parties. The benefits were an independent if non-binding review of the facts, relative speed and simplicity (needing no more than 2-4 weeks per case) and the scheme's adaptability to ad hoc and infrequent need.
- 7.16 This approach would leave open the option of post-opinion negotiation between enforcement authority and producer and have the virtue of being available on demand rather than being a mandatory step. Overall, this approach would make for more solidly founded enforcement authority decisions, and would do more than any of the other options to encourage voluntary action, which underpins the Directive.
- 7.17 The scheme can be set up with a one-off public sector outlay of £3,500 + VAT and will be cheap to use. The cost of the whole process once instigated is estimated to be a maximum of £5,500 in each case. This cost should, we believe, fall to the party seeking use of the advisory scheme to avoid its casual use. While the advice would be non-binding it would be taken into account by the enforcement authority because the outcome would inevitably have an influence on any subsequent appeal. This goes a long way toward meeting the business concern to prevent over or misuse of recall powers.

Option 4:

- 7.18 Making recalls subject to court order would have the benefit of being a decision-making process, and would offer business re-assurance on the proper and proportionate use of these powers. However, every case would have to go to court and there would be a delay as an application worked its way through the system (six months is not unheard of), and the court's decision could still be appealed. It is not inconceivable that different courts would come to different decisions on recall so in addition the risk of inconsistent application persists with this option.
- 7.19 However, given that seeking a court order is a serious step there would be a safeguard against speculative action.
- 7.20 Application for a court order would entail a cost for the enforcement authority on every occasion, and for both parties in some cases. Further costs would accrue (for either or both parties) from any appeal.
- 7.21 **Q3. Do you agree with our analysis of the options available for recall?**

Stakeholder Impact

- 7.22 The new obligation to be in a position to recall a dangerous product may have a greater impact on small business producers than larger producers, in that the former are less likely to have significant

reserves for contingency planning. However, the European Guide to Corrective Actions Including Recall, which was part funded by the DTI, is a useful resource document especially for small businesses. A copy of the Guide can be found in the Consumer & Competition Policy section on the DTI web site⁸.

7.23 Theoretically it is possible to insure against the cost of undertaking a product recall and any loss of profits related to it, and in some cases it may already be available under an existing business catastrophe or disaster policy. However, recall insurance is a niche product as the risk is considered quite remote and relatively small in financial terms, so neither business nor the insurance industry is very interested in it. The Association of British Insurers (ABI) doubts that transposition of the GPSD will have any impact on demand for this type of insurance, or by extension on premiums for those who do take it out.

7.24 Q4. Does business agree with the ABI view on recall insurance?

7.25 The DTI is seeking to implement this obligation in a proportionate and workable way so as to prevent frivolous cases being made and to minimise unnecessary new burdens on businesses, including small business.

Enforcement

7.26 Enforcement will be conducted in the main by local authority Trading Standards Officers in England, Scotland and Wales and Environmental Health Officers in Northern Ireland.

Recommendation

7.27 Two of the four options were rejected fairly quickly. Option 1 offers the simplest solution but would not have offered business any safeguard against the issuing of inappropriate recall notices. The Option 2 national decision-making body was favoured by business, but an executive agency would be too costly to set up and maintain, particularly given that it would be called upon only very rarely.

7.28 On balance, the Department and the stakeholders consulted preferred the flexibility and lower-cost of the Option 3 ad hoc advisory scheme operated by the CI Arb over the inflexibility and anticipated higher costs of court orders in Option 4.

7.29 Q5. Based on the arguments presented, do you agree (A) with the recommendation to set up a bespoke advisory service? (B) Do you think that there are other considerations that we have failed to take into account?

8. OTHER CHANGES INTRODUCED BY THE GPSD

8.1 The other changes introduced by the GPSD (listed below) concern extension to the scope of the existing safety regime and the additional responsibilities it places upon suppliers and distributors. These changes do not lend themselves to the usual approach of assessing different ways of implementing each requirement. We have therefore sought only to highlight the risks, benefits and costs of each.

8.2 The changes analysed are:

⁸ <http://www.dti.gov.uk/ccp/topics1/safety.htm#gpsr>

- Changes to scope (section 9)
- Installation, Commissioning and Maintenance (section 10)
- Use of voluntary standards (section 11)
- Obligation on distributors to keep and provide documentation to help trace the origin of products in the event of a safety problem (section 12)
- Obligation on producers and distributors to notify dangerous products, and to co-operate with the authorities (section 13)
- Requirement to Mark and Requirement to Warn (section 14)
- Withdrawal Notices (Section 15)
- Community Decisions and the export ban (section 16)

9. CHANGES TO SCOPE

9.1 Certain changes in the revised GPSD have the effect of extending its scope over the original Directive. These are discussed below. However, where the Directive (like the 1992 Directive) excludes from its coverage antiques and second-hand products sold for repair or reconditioning, the safety of these products has continued to be covered by the CPA. This is largely because there is no clear definition of an antique so products and because this could otherwise be used as a loophole to sidestep safety legislation. And because there has been concern about second-hand products only suitable for repair and reconditioning being described as such but nevertheless being sold alongside other similar second-hand products with little discrimination over to whom they are sold. By taking these products into the draft Regulations the safety regime is simplified but there will be no additional costs beyond those that exist currently.

Link with Vertical Directives

9.2 The Directive introduces a clearer linkage with the sectoral directives to fill the gaps in the aspects of safety that they cover so that all products are broadly subject to a consistent and coherent safety regime. The so-called “borderlines” issues.

Risks Addressed

9.3 At present there are gaps in the risks covered by the GPSD that affect the safety of consumer products. This means that the level of protection afforded a consumer in respect of one product may be different to the next. Accident and prosecution data does not differentiate between products covered by the vertical directives and the GPSD.

Options

9.4 The Directive is clear that where there are gaps in the safety coverage afforded a product in a vertical Directive the terms of the GPSD (and out transposition of it) as it applies to other consumer products not covered by vertical Directives should equally apply to these products. We do not view non-implementation with the attendant risk of infraction procedures as being a viable option.

Benefits

9.5 The benefits of the change cannot be readily quantified. Generally, we believe there is already a high degree of protection for consumers from unsafe products, especially in the UK where producers tend to act voluntarily to resolve problems when they materialise and without any

involvement from the enforcement authorities. However, more clarity on the scope of the safety regime will inevitably result in more coherence, which should be to the general benefit of enforcers and consumers alike and thus result potentially in some long-term reduction in death and injury. There should also be some ongoing savings for all stakeholders arising from the clearer legal environment, and possibly some indirect benefits such as making life more difficult for rogue traders and increasing consumer confidence. Business, consumers and enforcers generally welcome the revised Directive's linkages with the sectoral directives, but have stressed the need to understand how the GPSD will interact with these. The Commission has published generic guidance on this based on an analysis of four sectoral Directives and the GPSD. This document is publicly available on the DG Sanco website⁹.

Costs

- 9.6 It is impossible to make a quantitative assessment of the costs of these changes to the scope of the legislation. However, given that most products are already safe in normal or reasonably foreseeable use the resulting compliance costs will be negligible. It is important to recognise that the Regulations will only 'bite' significantly where products placed on the market are unsafe. Even if the Regulations only result in one less serious injury or death this will have a positive impact on the emergency and National Health Services.

Stakeholder Impact

- 9.7 There may be several grey areas that will have to be resolved as they occur before the European Commission complete its guidance on the relationship between the GPSD and all the sectoral directives. This will have an impact on all concerned. Generally however the outcome should be improved consumer protection where there is no general safety requirement or where the measures available under the GPSD are more expansive than under the vertical Directive. This could well result in some additional burden on business (depending on the product and the nature of the vertical legislation) but only where safety is compromised.

Enforcement

- 9.8 Compliance with these provisions will be enforced, in the main, by local authority trading standards officers (TSOs) in England, Scotland and Wales, and Environmental Health Officers in Northern Ireland.
- 9.9 **Q6. Do you agree with our analysis of the impact and costs of the extension of the scope to "borderlines" issues?**

Product Migration

- 9.10 Under the Directive safety cover extends specifically to professional products that migrate to the general consumer market.

Risk Addressed

- 9.11 There is no data on the migration of products to the consumer market intended for the professional market. However, anecdotally, this is increasing encouraged by DIY television shows and the availability of specialised equipment through tool hire shops.

⁹ http://europa.eu.int/comm/consumers/cons_safe/prod_safe/gpsd/guidance_gpsd_en.pdf

Options

- 9.12 The GPSD requires that the consumer enjoys the same degree of safety coverage when he is supplied or has made available to him for his personal use a product that was designed solely for the use of a professional person as one that was intended for the consumer market. Migration does not necessarily make a product unsafe and the Directive does not provide for migration to be proscribed. Importantly the GPSD only applies to a product once it has migrated to the consumer market. The same product's professional use is not regulated by the GPSD. This falls to Health and safety legislation. We do not view non-implementation with the attendant risk of infraction procedures as being a viable option.

Benefits

- 9.13 The new provisions covering products migrating over from the professional market may result in better control being exercised over products intended solely for the professional market (and which would not be safe for use by ordinary consumers) by their suppliers. Increased use of labelling such as "for professional use only" and improved warnings and instructions about the safe use of such products where their use by an ordinary consumer is reasonably foreseeable are also likely. Such markings should provide an unambiguous guide for the enforcement authorities about whether a product is intended for professional use or consumer use, and whether the risks to consumers are such that it might nevertheless be regarded as meeting the general safety requirement.

Costs

- 9.14 It is impossible to make a quantitative assessment of the costs of these changes to the scope of the legislation. Business may have to bear extra costs exercising control over the products in the market place and the cost of additional warnings etc on the product and its packaging. It is important to recognise that migration does not automatically mean that a product is unsafe. The Regulations will only 'bite' where the risk that the product poses to the user is such that the enforcement authorities deem that it cannot meet the general safety requirement. Even if the Regulations only result in one less serious injury or death this will have a positive impact on the emergency and National Health Services.

Stakeholder Impact

- 9.15 Although business feels that the market does not split neatly between consumers and professionals, there is broad support on all sides for measures that have the capability to restrict (where necessary) the supply to consumers of professional products that could be dangerous in non-professional hands (e.g. top handled chain saws).

Enforcement

- 9.16 Compliance with these provisions will continue to be enforced, in the main, by local authority trading standards officers (TSOs) in England, Scotland and Wales, and Environmental Health Officers in Northern Ireland.
- 9.17 **Q7. Do you agree with our analysis of the impact and costs of the extension of the scope to migrating products?**

Products Used in the Course of a Service

9.18 The revised legislation explicitly covers products supplied for the use of consumers in the course of a service, thus extending the protection available to consumers from unsafe products that they have not purchased or hired but which are nevertheless made available to them for their personal use on a temporary basis (e.g. a hotel hair-dryer).

Risks Addressed

9.19 This provision addresses a gap in the safety afforded consumers by existing product safety legislation. However in the main we expect that the majority of products that are made available for the use of consumers in this way will also be generally available to them for sale and hence covered anyway. The additional risk is therefore likely to be marginal unless the product is specialised.

Options

9.20 The GPSD requires that the consumer is offered the same safety cover in respect of a product which is provided for his use in the course of the supply of a service as if the product was supplied in any other conventional manner eg for purchase or hire. We do not view non-implementation with the attendant risk of infraction procedures as being a viable option.

Benefits

9.21 Due to the marginal nature of the risk from products not already covered by existing legislation, the benefits of the change cannot be readily quantified. Generally, we believe there is already a high degree of protection for consumers from unsafe products in the UK, where producers tend to act voluntarily to resolve problems when they materialise and without any involvement from the enforcement authorities. However, broadening the safety regime in this way should inevitably result in more coherence, which should be to the general benefit of enforcers and consumers alike.

Costs

9.22 It is impossible to make a quantitative assessment of the costs of these marginal changes to the scope of the legislation. However, given that most products are already safe in normal or reasonably foreseeable use the resulting compliance costs will be negligible. It is important to recognise that the Regulations will only really 'bite' where products placed on the market are unsafe. Even if the Regulations only result in one less serious injury or death this will have a positive impact on the emergency and National Health Services.

Stakeholder impact

9.23 Stakeholders generally appreciate this extension to the scope of the safety legislation. The changes will impact most on producers and distributors who place unsafe products on the market and who then fail adequately to deal with the problems voluntarily.

Enforcement

9.24 Compliance with these provisions will continue to be enforced, in the main, by local authority trading standards officers (TSOs) in England, Scotland and Wales, and Environmental Health Officers in Northern Ireland. However, with regards to products made available for the use of

consumers in the course of a service, we believe a new (but we expect, quite limited) enforcement responsibility, complementary to the powers they already have under the Health and Safety at Work Act 1974, should be available to Environmental Health Officers in England, Scotland and Wales. The Chartered Institute of Environmental Health is content with this proposal.

9.25 Q8. Do you agree with our analysis of the impact and costs of the extension of the scope to products used in the course of a service?

10. INSTALLATION, COMMISSIONING AND MAINTENANCE

10.1 The definition of a 'Safe product' has been extended to include *where applicable* putting into service, installation and maintenance requirements.

Risk Addressed

10.2 Services are not covered per se by general product safety legislation, Therefore we have interpreted this provision as meaning that where a product is designed in such a way that installation, commissioning and maintenance has to be by (or under the control of) the producer and this is integral to the safety of the product and is therefore an essential part of the contract to supply, these facets should be taken into account when considering the risk to the consumer from the product in normal or reasonably foreseeable use. This is not a judgement as to the safety of the service but the safety of the product. However given that such products are consumer products and were not excluded by the previous Directive, they are already covered by safety legislation.

Options

10.4 The GPSD identifies this as part of the definition of a safe product *where applicable*. We do not view non-implementation with the attendant risk of infraction procedures as being a viable option

Benefits

10.5 The benefits, if there are any, of the introduction of this provision will only be realised through the practical application of the legislation. It seems clear that the provision can only apply to a quite limited range of consumer products the safety of which is already covered by the existing Directive. Expressly, the unsafe installation of an otherwise safe product is not covered by this change.

Costs

10.6 It is impossible to make a quantitative assessment of the costs of these changes to the scope of the legislation. However, where installation, commissioning and maintenance is judged to be an essential part of the contract to supply it may be expected that these costs are already being passed on to the consumer in the normal way. Such costs will be specific to the product and not susceptible to generalisation.

Stakeholder Impact

10.7 Business organisations have stressed that the distinction between products and services must be as clear as possible. Consumer bodies see the change as helpful.

Enforcement

10.8 Compliance with these provisions will continue to be enforced, in the main, by local authority trading standards officers (TSOs) in England, Scotland and Wales, and Environmental Health Officers in Northern Ireland.

10.9 Q9. Do you agree with our analysis of the impacts and costs of the inclusion of installation, commissioning and maintenance in the definition of safe product?

11. USE OF VOLUNTARY STANDARDS

11.1 At present, the conformity of a product with the general safety requirement established by the GPSD can be assessed by conformity with specific rules of national law of the Member State(s) in which the product is in circulation. In the absence of such national rules the safety of a product is assessed taking account of other factors, including voluntary standards. The revised GPSD extends the presumption of safety to products assessed to be in conformity with voluntary national standards that transpose a new class of European Standards introduced by the Directive, the references to which have been published in the Official Journal of the European Union and nationally.

Risks Addressed

11.2 The vaguer the criteria underpinning the presumption of conformity the more difficult it is for producers through due diligence to ensure that safety is built into a product at the design stage, and this gives rise to potential difficulties with enforcement authorities. The revised GPSD helps address this by allowing conformity with a new class of European standards (published in the Official Journal) to equate to a presumption of conformity with the general safety requirement, unless there is evidence that despite such conformity the product is nevertheless dangerous.

Benefits

11.3 Standards are already important in providing benchmarks for product safety, and are widely used by producers. Whether or not they already use standards, producers should find that this new means of assessing the safety of their products offers them a benefit in terms of greater certainty. Since the standards are voluntary, they will only be used if they offer producers some additional benefit when compared with the other means of assessing product safety. Business responses to the previous consultation indicate that they welcome this new mechanism.

11.4 If producers adopt the new mechanism on a large scale, enforcement authorities should also find that this offers some advantages in terms of resource savings, since the process of assessing the conformity of products should become generally simpler.

11.5 One side effect should be a greater incentive to use standards, which should in turn provide greater impetus for the development of new standards for a wide range of products as producer, supplier and consumer demand grows.

Costs

11.6 Testing against the new standards is voluntary. But in practice most producers ensure that their products conform (Directive or not) where standards exist. Large retailers are increasingly insisting on compliance before they will buy or sell products, and producers themselves see compliance as being worthwhile. Indeed the fact that business itself is involved in the process of

standard setting for its own sector demonstrates the value of standards, as does the fact that business is prepared to devote time, money and resources to their development. The impact of the Directive in this area should not therefore go significantly beyond what is already happening. Standards compliance is now increasingly being factored into product development costs alongside safety. As a consequence of the drift towards the setting and use of standards the net cost of compliance resulting from the Directive and the implementing Regulations should be very low.

- 11.7 Indeed, one might expect that there could be overall cost benefits associated with the use of voluntary standards since they would not be adopted by business if there was no general advantage in doing so. In respect of standards, it is expected there will be no new requirements for compliance labelling but producers and distributors ordinarily advertise the fact that their products meet a specific standard.

Stakeholder impact

- 11.8 The impact of what must be seen as additional encouragement to use voluntary standards will inevitably be greatest on those producers who do not currently do so.

Enforcement

- 11.9 Conformity with standards is voluntary so direct enforcement of their use under the Regulations is not an issue. But there should be advantages for the enforcement authorities when considering whether a product complies with the general safety requirement.
- 11.10 Q10. Do you agree with our analysis of the impacts and costs of the extended use of voluntary standards?**

12. OBLIGATION ON DISTRIBUTORS TO KEEP AND PROVIDE DOCUMENTATION TO ENABLE TRACEABILITY OF UNSAFE PRODUCTS

- 12.1 These changes are aimed at improving the traceability of products released on to the market. To ensure compliance with the terms of the Directive, the only viable option is to transpose via suitable legislative provisions to ensure that distributors clearly understand their obligations to keep and provide the documentation necessary to trace the origin of products, and to co-operate in enforcement if needed.

Risks Addressed

- 12.2 The premise behind the provision is that tracing the source of an unsafe product would be made easier if distributors were to keep records that helped to identify the source. For the most part producers mark their products (and their production batch) to ease traceability but there may be issues with very small products, lower value volume products and products where it is impracticable for them to do so or simply where the producer is not obvious. In these instances distributor's records can be used to trace an unsafe product back to its source and allow enforcement authorities to take action where appropriate against the producer.

Benefits

- 12.3 It is already acknowledged as good practice for distributors to be able to cooperate in tracing products in case a voluntary recall becomes necessary. Where, however, the keeping of records is

not systematic there will be benefits in terms of reduced levels of harm caused by unsafe consumer products remaining on the market.

Costs

12.4 There are already various requirements to maintain paper trails of transactions for VAT and Inland Revenue purposes. For the most part we expect these records, which must be kept for six years, to suffice to identify from whom the products were purchased and to whom they were sold (if not for retail). When it is not possible for a distributor to immediately identify the producer, e.g. when products are bought from a middleman, we believe that so long as records are kept throughout the supply chain there should be adequate traceability. As a result any additional costs or burdens to business should be minimised.

12.5 Q11. Do you agree that compliance with existing requirements to keep records should be sufficient to meet the new obligation to keep records?

Stakeholder impact

12.6 As indicated under costs, any additional burden on businesses (including small businesses) resulting from this obligation is expected to be minimal as in most part the obligation is already being met through current business practice and by meeting existing VAT and Inland Revenue requirements. During the negotiation of the revised GPSD, MEPs and others expressed concern that this change could have a disproportionate impact on the charity sector as charity shops would be unable to fulfil the obligation in respect of donated goods. Recital 19 to the revised GPSD makes it clear that the obligation must apply “in proportion to [distributors’] respective responsibilities”, and specifically refers to charity shops in this context. However if and when charity shops obtain goods commercially for supply to consumers there is no reason why they should not be responsible for maintaining the necessary records and producing them on demand.

Enforcement

12.7 Given that we are not seeking to introduce a requirement for businesses to keep any records other than those that they are already required to keep for normal business purposes, we are content to leave enforcement for failure to keep records to those other Departments who require those records to be kept. However, where distributors fail to produce such documentation when it relates to a dangerous or suspected dangerous product on request by the enforcement authorities it will be for those authorities to take action in respect of the failure to produce.

13.OBLIGATION ON PRODUCERS AND DISTRIBUTORS TO NOTIFY DANGEROUS PRODUCTS, AND TO CO-OPERATE WITH THE AUTHORITIES

13.1 To ensure that the notification requirements in the Directive are followed, and that their obligations here are clearly understood by producers and distributors, the only viable option is to transpose via suitable legislative provisions.

Risks Addressed

13.2 This change addresses the risk that a producer or distributor who identifies, or is otherwise alerted to the fact that a product is dangerous, may do nothing about it or may not take action that is proportionate to the risk leaving consumers exposed to the danger unless the problem is picked up

by the enforcement authorities. It also means that in future a clearer picture of the extent of product safety failures will be built up.

Benefits

- 13.3 The likely scale of benefits arising from this change is impossible to estimate. As with the change imposing an obligation to recall dangerous products, the scale of the risk, and hence of the likely benefits, depends on current observance of good practice. In the main we believe observance to be high in the UK because of the potential damaging brand impact that leaving an unsafe product on the market can have, though we accept that there may be a small number of less scrupulous traders for which this ‘brand image effect’ is not a sufficient deterrent. These same traders may be less likely to volunteer notification to the authorities of the problem and the action taken without the encouragement of penalties for failure to do so. An additional benefit is the sharing of information about risks between EC Member States where the same products are available.

Costs

- 13.4 The simple obligation to notify seems unlikely to impose any significant implementation or policy costs, even on those few producers and distributors who may be prepared to avoid their obligations to consumers. The main costs relate to having to do something about an unsafe product, which will now be harder to ignore or hide from. This is an equitable proposition. There will be some additional but unquantifiable cost on the authorities where, having been informed of a problem, they will want to make sure that the producer’s response is appropriate, and where it is not, to consider enforcement action. Of course, encouraging dialogue and voluntary action is already part of the modernisation of enforcement heralded by the National Performance Framework for Trading Standards Departments.
- 13.5 While the Directive refers to producers notifying other member states when they become aware of dangers posed by their product, this in practice will be done by the DTI acting as the central notification point for unsafe products in the UK. This new notification requirement will carry with it additional costs for the public sector (DTI), estimated at around £8 - £9k (i.e. assuming half of one admin officer’s time).

Stakeholder impact

- 13.6 As noted above, the impact of the change will fall mainly on those producers and distributors who currently fail to do anything about the dangerous products they put on the market.

Enforcement

- 13.7 Enforcement will be conducted in the main by local authority Trading Standards Departments in England, Scotland and Wales and Environmental Health Officers in Northern Ireland.

14. REQUIREMENT TO MARK AND REQUIREMENT TO WARN

- 14.1 The introduction in the Regulations of powers to serve a Requirement to Mark or a Requirement to Warn does not introduce any new policy obligation. Rather, since we are making the enforcement provisions self contained in the Regulations instead of relying on the Consumer Protection Act 1987, we have chosen to separately identify these powers where previously they were rolled up in the power to serve Suspension Notices. This provides for a more tailored transposition of the

revised GPSD, and beneficially to business provides the enforcement authorities with an opportunity to set notice requirements that fall short of product suspension.

Risks

- 14.2 These Requirements address the problem of inflexibility inherent in having to use the Suspension Notice mechanism to ensure that products are appropriately marked or that appropriate warnings are given especially to specific classes of persons who may be particularly at risk. While the new provisions do not prevent a Suspension Notice also being served they provide enforcement authorities with the freedom to exercise greater discretion on this point.

Benefits

- 14.3 Businesses should derive benefit from this change (through avoiding loss of sales) on occasions when enforcement authorities decide to use either Requirement as an alternative to serving a Suspension Notice.

Costs

- 14.4 The cost to business of continuing with the existing Suspension Notice approach to enforcement, or of introducing these new Requirements is impossible to specify as there are too many variables, none of which are themselves quantifiable. The cost impact in each case would depend on the type of product, the market, the length of suspension and whether or not suspension could be avoided in serving a Requirement to Mark or Warn instead. It is nevertheless reasonable to assume that introducing the more flexible approach would result overall in reduced costs and burdens on business.

Stakeholder impact

- 14.5 Under the existing safety legislation producers are already required to suitably mark products that could pose risks in certain conditions or otherwise warn consumers of the risks their products pose. The new Requirements are remedies to adopt where producers or distributors have failed in their obligation to consumers. As such there will be limited impact and that impact will be reduced where a Suspension Notice would otherwise have been served.

Enforcement

- 14.6 Enforcement will be conducted in the main by local authority Trading Standards Departments in England, Scotland and Wales, and Environmental Health Officers in Northern Ireland.

- 14.7 Q12. Do you agree with our analysis of the impacts and costs of the introduction of Requirements to Mark and Warn?**

15. WITHDRAWAL NOTICES

- 15.1 The Regulations introduce the power for enforcement authorities to issue a Withdrawal Notice to permanently prevent a person from supplying a product believed to be dangerous. This is not a new power in the GPSD, but it will be new to these Regulations. We had previously chosen to meet this obligation in the 1994 Regulations by utilising the Prohibition Notice power in the CPA. Introducing the power to issue Withdrawal Notices in these Regulations allows for a more accurate

transposition of the GPSD, but also provides for enforcement authorities themselves to bring product safety issues to a more satisfactory conclusion at the local level than is the case with Suspension Notices.

Risks addressed

- 15.2 The 1994 Regulations' use of CPA powers provides for permanent withdrawal of a product from the market through the serving of a Prohibition Notice by the Secretary of State. Given that we are not proposing that recall be solely in the purview of the Secretary of State it makes little sense for withdrawal (a lesser action) to continue to be affected by means of a Prohibition Notice. The involvement of the Secretary of State raises the stakes and unnecessarily and unhelpfully takes control over this stage of corrective action away from local enforcement authorities.

Benefits

- 15.3 The ability to issue Withdrawal Notices locally will allow enforcement authorities to see corrective action through to a more satisfactory conclusion than at present. Withdrawal Notices will generally be issued subsequent to a determination following the issue of a Suspension Notice and subsequent testing that a product is believed to be dangerous and there is a concern that it will continue to be placed on the market without further action to prevent the risk.

Costs

- 15.4 When a Suspension Notice is issued this generally acts as a trigger for producers and distributors to deal with a product safety issue so that no further action is required by the enforcement authorities to protect consumers. The instances where the Withdrawal Notice power will mainly be used should therefore be where the producer has been reticent in resolving the matter or is less scrupulous than the majority of traders. Consequently there should be little extra cost to business, and only then where a product it has produced or distributed is unsafe, not enough has been done to convince the authorities that the problem has been corrected and that without further action, the dangerous product will find its way back on to the market.

Stakeholder impact

- 15.5 It is expected that safety problems will in the main be dealt with without the need for recourse to a Withdrawal Notice however it will be a useful tool to keep unsafe products off the market permanently where the safety problems identified have not been addressed by the producer/distributor. It is only at this point that there should be any impact on stakeholders.

Enforcement

- 15.6 Enforcement will be conducted in the main by local authority Trading Standards Departments in England, Scotland and Wales, and Environmental Health Officers in Northern Ireland.

15.7 Q13. Do you agree with our analysis of the impacts and costs of the introduction of Withdrawal Notices?

16. COMMUNITY DECISIONS AND THE EXPORT BAN

- 16.1 Where the Commission becomes aware of a serious risk from a product that is widely available in the Community it may (as before), after consulting with member states, take a decision aimed at

ensuring consistency of enforcement activity across the Community. Under the revised GPSD such decisions are valid up to a maximum of 1 year extendable for further periods of up to 1 year at a time. The only exception being where the decision relates to one or more specific batches of products in which case the Decision will have no time limit. The revised Directive also now bans the export from the Community of products subject to such a decision unless the decision provides otherwise. The only viable means to transpose this requirement effectively is via a legislative provision.

Risks Addressed

- 16.2 The export ban prevents a producer whose product is the subject of a Commission decision from exporting the product (with its risk) to one or more third countries. The supply of unsafe products to third countries, especially where it can be shown that the producer/distributor was aware that they were unsafe, could do untold damage to the confidence of consumers in third countries towards Community products generally.

Benefits

- 16.3 The Commission has stated in its financial impact assessment of the revised GPSD that “there is no data on the type and number of dangerous products exported, or which might in future be exported to non-EU countries. The potential market lost by European producers, and the benefits deriving from the proposed prohibition of such exports, cannot be evaluated.”
- 16.4 While we do not necessarily believe the problem to be a large one, the change might be expected to produce benefits in terms of a reduction in the harm caused to consumers in third countries by Community exporting of unsafe products, and the impact of any resultant product liability claims. The change will also provide an indirect benefit to European producers who export safe products to third countries in that they will not be at risk of being undercut by unscrupulous suppliers seeking to dump unsafe products that are the subject of enforcement action in the Community.
- 16.5 It should also further encourage producers only to put safe products on the market and to act rapidly to resolve the problems once they are identified.

Costs

- 16.6 As the Commission has noted (see under “Benefits” above), it is not possible to evaluate the loss of market likely to be suffered by European producers as a result of this provision.

Stakeholder impact

- 16.7 Any additional burden arising from this provision would only have any impact where a producer or distributor, whose goods were unsafe and the subject of a Commission decision, chose to try to export the risk to a third country.

Enforcement

- 16.8 The new legislation will make it an offence to contravene a Commission decision banning the export of a dangerous product. This is enforceable by the Commissioners for Customs and Excise under their existing powers.

17. EQUITY AND FAIRNESS

- 17.1 The new provisions in the revised Regulations are in the interests of both consumers and business. They will reduce the risk faced by consumers in purchasing products that have the potential to be unsafe, while ensuring that producers who supply products that meet all safety requirements are not at a competitive disadvantage with those who choose to save costs at the expense of safety. Indeed the main impact of the Regulations falls on those who have placed unsafe products on the market.

18. SMALL FIRMS IMPACT TEST

- 18.1 We believe that overall, the changes being introduced by these revised regulations will entail only minimal additional burden and cost for small business. As has been mentioned previously, additional cost will only fall to those producers or distributors who release unsafe products on to the market, or who do not adopt accepted good practice with record keeping (which is in any case required for other statutory purposes) and product marking.
- 18.2 Although the first consultation did not specifically target SMEs, small business views would have been represented within trade association responses. No significant issues for small businesses were identified in those responses.
- 18.3 As a precursor to this consultation, over forty small businesses on the Small Business Service SME database were sent a short summary of the changes introduced by the revised GPSD and were asked to give their views on likely impact and cost. However, the response was low and in view of this we would be very interested in hearing the views and opinions of small firms.

19. COMPETITION ASSESSMENT

- 19.1 We have applied the Competition filter test to the proposed new legislation and it is our view that it is unlikely to have a significant detrimental effect on competition. There is no disproportionate impact on any one sector. The revised legislation will apply to all sectors and to all size of business. What additional costs there are will be minimal, and in most cases will only apply to those businesses that produce unsafe products or who do not already keep adequate records. Where they do apply, it is likely that smaller businesses will experience a slightly disproportionate burden, but the impact may be to raise standards and in doing so increase their competitiveness. The applicability of these provisions, and the instances where there is any additional cost will be equally applicable to both existing and new/potential businesses.
- 19.2 Overall, we anticipate these effects to enhance effective competition since the costs involved in implementing the proposed regulations will fall primarily on traders who are not meeting the required safety standards at present. Moreover, if the Regulations serve to reduce the incidence of unsafe products being placed on the market there should be an increase in consumer confidence leading to greater prosperity and competitiveness. The fact that the directive will harmonise safety requirements across Europe will make it easier for firms to sell products in other member states. This should provide strong opportunities for UK firms who already meet many of the Directive's

requirements to sell their products abroad and should increase competition across the EU providing consumers with greater choice.

20. GUIDANCE

- 20.1 National guidance covering the new legislation will be prepared to accompany its implementation. Guidance on some aspects of the Directive and its operation has been prepared by the European Commission and is available on the DG Sanco website.

21. POLICY MONITORING AND EVALUATION

- 21.1 The operation of the new legislation will be monitored over the first twelve months for reactions from producers, consumers and enforcement authorities. Face to face meetings will be held with the relevant interest groups after six months and at intervals thereafter to be decided between the parties. Amongst other things, we will be looking at how useful the ENE procedure is and will undertake to review this after three years. We will also gauge reaction to our national guidance and consider whether any further explanation/revision is required after twelve months. In addition, we will monitor the operation of the Commission's notification guidelines so that we may participate in any Brussels review of that based on experience of its operation in the UK.

Annex E:

List of Consultees

Agilent Technologies
Agriculture Engineers Association
Alliance of Electronic Business
Alliance of Independent Retailers
AMii Soaps Limited
Anglo-Scottish Fish Producers Organisation Limited
Animal Health Distributors Association (UK) Limited
Animal Health Trust
Animal Medicines Training Regulatory Authority
Animal Pharm Xpress Limited
Arcadia
Argos
Art Trade Liaison Committee
Asian Business Federation
Asian Trades Link Association
Association of Bakery Ingredient Manufacturers The
Association of British Fire Trades Limited
Association of British Health-Care Industries
Association of British Insurers The
Association of British Meat Processors
Association of British Motor Clubs
Association of British Neurologists
Association of British Pharmaceutical Industries
Association of British Travel Agents
Association of Charity Shops
Association of Chartered Certified Accountants
Association of Community Health Councils for England and Wales
Association of Consulting Engineers The
Association of Convenience Stores
Association of County Public Health Officers
Association of Directors and River Inspectors in Scotland
Association of Electricity Producers
Association of Exhibition Organisers
Association of Franchised Distributors of Electronic Components in the UK
Association of Independent Businesses
Association of Independent Tour Operators The
Association of Investment Trust The
Association of Leading Visitor Attractions
Association of Licensed Multiple Retailers The
Association of Local Authorities in Northern Ireland
Association of London Government
Association of Manufacturers of Domestic Appliances
Association of Master Upholsterers & Soft Furnishers Limited
Association of Meat Inspectors (GB) Limited
Association of Personal Injury Lawyers The
Association of Pharmaceutical Importers
Association of Port Health Authorities
Association of Public Analysts
Association of Residential Letting Agents The
Association of Road Traffic Safety & Management
Association of Scotland's Self-Caterers
Association of Scottish Shellfish Growers
Association of Unpasteurised Milk Products
Association of Veterinarians in Industry
Association of Veterinary Surgeons in Northern Ireland
Association of Welding Distributors
Association of Wholesalers to the Veterinary Profession
Automatic Vending Association
Automobile Association
Automotive Distribution Federation
Baby Products Association
Bar Entertainment & Dance Association
Beale
Bee Farmers Association
Belfast Chamber of Trade & Commerce
BHS
Bicycles Association of Great Britain The
Bio industry Association
Biotechnology and Biological Sciences Research Council
Biscuit, Cake, Chocolate & Confectionery Alliance The
Black Business Association
Bond Street Association
Boots Group PLC
Bradgate
Bragg
British Adhesives and Sealants Association
British Advertising Gift Distributors Association
British Aerosol Manufacturers Association
British Agrochemicals Association
British Antique Dealers Association
British Association for Chemical Specialties
British Association of Canned Food Importers & Distributors
British Association of Dermatologists
British Association of European Pharmaceutical Distributors The
British Association of Feed Supplement & Additive Manufacturers Ltd
British Association of Homoeopathic Manufacturers
British Association of Homoeopathic Veterinary Surgeons
British Association of Nursery and Pram Retailers
British Association of Pharmaceutical Wholesalers
British Association of Removers
British Association of Toy Retailers
British Association of Women Entrepreneurs
British Beekeepers Association
British Beer & Pub Association
British Cables Association
British Carpet Manufacturers Association
British Chambers of Commerce The
British Chemical Distributors and Traders Association
British Chemical Engineering Contractors Association
British Christmas Tree Growers Association
British Clothing Industry Association
British Coatings Federation
British Commercial Rabbit Association
British Compressed Gases Association
British Confectioners Association
British Contract Furnishings Association
British Cutlery & Silverware Association

British Deer Farmers Association
 British Deer Society
 British Dental Association
 British Domesticated Ostrich Association
 British Edible Pulse Association
 British Egg Industry Council
 British Egg Producers Association
 British Electrical & Manufacturing Company Limited
 British Equestrian Trade Association
 British Equine Veterinary Association
 British Exhibition Contractors Association The
 British Food Export Council
 British Fragrance Association
 British Free Range Egg Producers Association
 British Frozen Food Federation
 British Furniture Manufacturers Association
 British Generic Manufacturers Association
 British Glass Manufacturers Confederation
 British Goat Society
 British Hardware & Housewares Manufacturers Association Limited
 British Herbal Medicine Association
 British Holiday and Home Parks Association Limited
 British Hospitality Association
 British Importers Confederation
 British Incoming Tour Operators Association
 British Independent Fruit Growers Association
 British Industrial Truck Association
 British Institute of International Comparative Law
 British Institute of Regulatory Affairs
 British Insurance Brokers Association
 British Interior Textile Association
 British International Freight Association
 British Jewellery and Giftware Federation
 British Lubricants Federation
 British Luggage & Leather Goods Association
 British Marine Federation
 British Meat Manufacturers Association
 British Medical Association
 British Medical Association Northern Ireland
 British Medical Association Scotland
 British Medical Association Wales
 British Metals Recycling Association
 British Motorcyclists Federation
 British Non-Woven Manufacturers Association
 British Nuclear Industry Forum
 British Oat & Barley Millers Association
 British Office Systems & Stationery Federation
 British Organic Farmers Association
 British Pasta Products Association
 British Pest Control Association
 British Pig Association
 British Plastics Federation
 British Poultry Meat Federation Limited
 British Precast Concrete Federation Limited
 British Printing Industries Federation
 British Promotional Merchandise Association
 British Pyrotechnics Association
 British Rabbit Council
 British Radio & Electronic Equipment Manufacturers Association The
 British Retail Consortium
 British Rice Millers Association
 British Rubber Manufacturers Association Limited
 British Secondary Metals Association
 British Security Industry Association
 British Sheep Dairying Association
 British Shops & Stores Association
 British Small Animal Veterinary Association
 British Society for Clinical Neurophysiology
 British Soluble Coffee Manufacturers Association
 British Sports & Allied Industries Federation
 British Sports Association for the Disabled
 British Standards Institute
 British Starch Industry Association
 British Telecommunications PLC
 British Textile Machinery Association
 British Toxicology Society
 British Toy & Hobby Association The
 British Toy Importers & Distributors Association
 British Toymakers Guild
 British Trout Association
 British Union for the Abolition of Vivisection The
 British Vehicle Rental & Leasing Association
 British Veterinary Association
 British Veterinary Association Scottish
 British Veterinary Poultry Association
 British Video Association
 British Water
 British Wild Boar Association
 British Wood Preserving & Damp Proofing Association
 British Woodworking Federation
 Builders Merchants Federation
 Building Societies Association The
 Business in Sport & Leisure Association
 Butterworths Law of Food And Drugs

 Cabinet Office
 Campden & Chorleywood Food Association
 Canal Boat Builders Association
 Canine Health Centre The
 Car Phone Warehouse
 Carpet Foundation The
 Cartman Dot Org Limited
 Cartwright
 Catering Equipment Suppliers Association
 Catering Industries Liaison Council
 CBI
 CBI (Explosives Group)
 CBI Northern Ireland
 CBI Scotland
 CBI Wales
 Chamber of Shipping The
 Chartered Institute of Environmental Health
 Chartered Institute of Marketing The
 Chartered Textile Technologist & Colourist
 Chemical Industries Association Limited
 Cherry Valley Farms Limited
 Chief and Assistant Chief Fire Officers Association The
 Child Accident Prevention Trust
 Chilled Food Association
 Citizens Advice
 Citizens Advice Northern Ireland
 Citizens Advice Scotland

Cleaning & Hygiene Suppliers Association Limited
Cleaning and Support Services Association
Coach Association
Coffee Trade Federation
Cold Storage & Distribution Federation
Collins
Combine Heat & Power Association
Commercial Horticultural Association
Company Chemists Association
Compassion in World Farming
Computing Suppliers Federation
Confederation of Passenger Transport
Construction Confederation
Construction Employers Federation
Construction Equipment Association
Construction Industry Council
Construction Plant Hire Association The
Construction Products Association
Convention of Scottish Local Authorities
Cookie Man Limited The
Co-operative Group
Co-Operative Group Central Laboratories
Co-Operative Union Limited
Co-Operative Women's Guild
Cosmetic Toiletry & Perfumery Association Limited The
Council for Registered Gas Installers The
Countryside Agency
County Landowners Association
Covington and Burling
Cumbria Tourist Board
Customs & Excise HM

Dairy Industry Federation
Defence Manufacturers Association The
Defence Procurement Agency
Dental Laboratories Association
Department for Enterprise Trade & Investment
Department for Environment, Food & Rural Affairs
Department for Transport
Department of Culture, Media and Sport
Department of Health
Department of Health and Social Services Northern Ireland
Department of Transport
Dessert & Cake Mixes Association
Direct Marketing Association (UK) Limited
Direct Selling Association
Dixon Group
Domestic Appliance Service Association
Drug and Therapeutics Bulletin
Duane Morris

East of England Tourist Board
East of Scotland Water Authority
Electrical Contractors Association The
Electrical Distributors Association
Electrical Installation Equipment Manufacturers Association
Electricity Association
Engineering Council UK
English Association of Self-Catering Operators
English Tourist Council
Environmental Services Association The

Ervine
European Coalition to End Animal Experiments
European Herbal Practitioners Association
Export Group for the Constructional Industries The

Farm & Food Society
Farmers Union of Wales
Federation of Agricultural Co-operatives (UK) Limited
Federation of Bakers The
Federation of British Hand Tool Manufacturers
Federation of British Port Wholesale Fish Merchants Association
Federation of City Farms and Community Gardens
Federation of Environmental Trade Association
Federation of Fresh Meat Wholesalers
Federation of Manufacturing Opticians
Federation of Masters Builders
Federation of Oils, Seeds and Fats Association
Federation of Piling Specialists
Federation of Small Businesses
Federation of Townswomen Guilds
Federation of Wholesale Distributors
Federation of Women's Institutes of Northern Ireland
Fertiliser Manufacturers Association
Fire Protection Association
Fire Safety Development Group
Fish Producers Organization Limited The
Focus
Food & Drink Federation
Food Additives Industry Association
Food Commission
Food Law Group
Food Law Monthly Monitor Press
Food Manufacturers Federation
Food Manufacturers Industrial Group
Food Standards Agency
Food Standards Agency Northern Ireland
Food Standards Agency Scotland
Food Standards Agency Wales
Footwear Retailers Association
Footwear Association
Foreign & Commonwealth Office
Forum of Private Business
Freight Transport Association
Fresh Produce Consortium (UK)
Fruit and Vegetable Canners Association
Furniture Industry Research Association

Garage Equipment Association
Garden Industry Manufacturers Association (1999) Limited
Gardenex – The Federation of Garden & Leisure Manufacturers
GCI Europe
General Consumer Council for Northern Ireland
General Council of the Bar The
Giftware Association
Gin & Vodka Association of Great Britain The
Glass and Glazing Federation
Grain and Feed Trade Association
Guernsey Trading Standards
Guild of Healthcare Pharmacists

Gun Trade Association
 GUS Merchandise Corporation

 Hairdressing Employers Association
 Halfords
 Hammonds
 Health & Safety Executive
 Health Development Agency
 Health Food Manufacturers Association
 Health Visitors Association
 Heart of England Tourist Board
 Heating & Ventilating Contractor's Association
 Herbert Smith
 Hire Association Europe
 Historic Narrow Boat Owners Association
 Hodges
 Home Office
 Homebase
 Homegrown Cereals Authority
 Honda (UK)
 Horticultural Trades Association The
 Hotel and Catering International Management Association
 House Builders Federation
 Howells

 Incorporated Society of British Advertisers Limited The
 Independent Garage Association
 Independent Healthcare Association
 Infant & Dietetic Foods Association
 Inland Waterways Association The
 Institute of Biology
 Institute of British Bakers Limited
 Institute of Business Advisors
 Institute of Certified Bookkeepers
 Institute of Chartered Accountants in England & Wales
 Institute of Directors
 Institute of Directors Northern Ireland
 Institute of Directors Scotland
 Institute of Fisheries Management
 Institute of Food Science & Technology
 Institute of Insurance Brokers
 Institute of Leisure & Amenity Management
 Institute of Logistics and Transport The
 Institute of Marine Engineers
 Institute of Practitioners in Advertising
 Institute of Public Relations The
 Institute of Shopfitters
 Institute of Travel and Tourism
 Institution of Electrical Engineers
 Intellect
 International Boat Industry
 International Federation of Business and Professional Women UK
 International Fund for Animal Welfare
 International Marine Contractors Association The
 International Meat Trade Association
 International Powered Access Federation Limited
 International Transport Society for the United Kingdom The
 International Underwriting Association of London
 International Union of Aviation Insurers
 Isle of Man Office of Fair Trading

 Jersey Trading Standards
 John Lewis PLC
 Joint Council of Vegetable Merchants Association
 Joint Professional Forum for Health and Well Being

 Kingfisher
 Kitchen Specialists Association

 Lancashire Textile Manufacturers' Association
 Lang
 LAPADA: The Association of Art & Antique Dealers
 Law Laboratories Limited
 Law Society The
 Law Society The of Northern Ireland
 Law Society The of Scotland
 Laytons
 Leatherhead Food International
 Leisure Boat Builders Association
 Lift and Escalator Industry Association The
 Lifting Equipment Engineers Association
 Lighting Association Limited The
 Lighting Industry Federation
 Lloyd's Underwriting Agents Association
 Local Authorities Co-ordinators of Regulatory Services
 Local Government Association
 London Investment Banking Association
 London Tourist Board
 London Underwriting Centre
 Lovells
 LP Gas Association

 Macaulay Land Use Research Institute
 Machine Tool Technologies Association
 Macleod
 Mail Order Traders Association The
 Maize Growers Association
 Maltsters Association of Great Britain
 Mamas & Papas Limited
 Margarine & Shortening Manufacturers Association
 Marie Curie Cancer Care
 Marine Engine & Equipment Manufacturers Association
 Market Towers The
 Marks & Spencer
 Matamp Audio Technology
 Meat & Livestock Commission
 Meat Industry Liaison Group
 Medical Devices Agency
 Medicines Control Agency
 Metal Packaging Manufacturers Association
 Mfi
 Mid Yorkshire Chamber of Commerce & Industry Limited The
 Mining Association of the United Kingdom
 Motor Cycle Industry Association The
 Motor Schools Association of Great Britain Limited
 Motor Vehicles Repairers Association
 Motorhome Association Limited The
 Mushroom Growers Association
 Music Industries Association
 Music Publishers Association Limited

National Assembly for Wales
National Association of Boat Owners
National Association of British & Irish Millers Limited
National Association of Catering Butchers
National Association of Estate Agents
National Association of Health Stores
National Association of Master Bakers
National Association of Paper Merchants
National Association of Self-Employed of Great Britain and Northern Ireland
National Association of Shopkeepers
National Association of Specialist Computer Retailers
National Association of Specialty Food & Drink Producers
National Association of Toy & Leisure Libraries
National Association of Tripe Dressers
National Bed Federation Limited
National Beef Association
National Caravan Council
National Cattle Association (Dairy)
National Childbirth Trust
National Children's Bureau The
National Childrenswear Association
National Consumer Council
National Consumer Federation
National Consumer Protection Council
National Council of Hotels Association
National Council of voluntary Organisations
National Council of Women of Great Britain The
National Dairy Council
National Dried Fruit Trade Association UK Limited
National Edible Oil Distributors Association The
National Farmers Union
National Farmers Union Scotland
National Federation of Anglers
National Federation of Fishermen's Organization
National Federation of Fishmongers Limited
National Federation of Fruit & Potato Traders Limited
National Federation of Housing Associations
National Federation of Inland Wholesale Fish Merchants
National Federation of Meat & Food Traders The
National Federation of Retail Newsagents
National Federation of Taxicab Associations
National Federation of Wholesale Poultry Merchants
National Federation of Women's Institutes
National Federation of Young Farmers Clubs
National Food Alliance
National Game Dealers Association
National Housewives Association
National Landlords Association
National Office of Animal Health Limited
National Pharmaceutical Association The
National Play Information Centre
National Sheep Association
National Trust The
National Tyre Distributors Association
National Tyres and Autocare
Natural Medicines Manufacturers Association UK Limited
Naturewatch Trust
Newspaper Publishers Association Limited
Newspaper Society The
Next

NHS Pharmaceutical Quality Control Committee
NINF Representative
North of Ireland Veterinary Association
North of Scotland Water Authority
North Sea Fishermen's Organization Limited
North West Tourist Board
Northern Ireland Agricultural Producers Association
Northern Ireland Bankers Association
Northern Ireland Fish Producers Organization Limited
Northern Ireland Food & Drink Association
Northern Ireland Textile & Apparel Association
Northern Ireland Tourist Board
Northern Ireland Wholesale Merchants & Manufacturers Association Limited
Northumbria Tourist Board
Nuclear Stock Association

Office of Fair Trading
Office of the First Minister and Deputy First Minister The Old Square Chambers
Onions
Oughton
Outdoor Advertising Association
Outdoor Industries Association
Oxford Street Association

Paper Federation of Great Britain The
Parry
People's Dispensary for Sick Animals
Periodical Publishers Association
Personal Computer Association
Pet Care Trust
Pet Food Manufacturers Association
Pet Health Council
Pharmaceutical Journal
Pharmaceutical Quality Group
Pharmaceutical Society for Northern Ireland
Pharmag
Photo Imaging Council
Picon Limited
Pinsents
PMS International Group PLC
Potato Marketing Board
Processing & Packaging Machinery Association
Producers Alliance for Cinema & Television
Professional Lighting & Sound Association
Proprietary Association of Great Britain
Provision Trade Federation
Public Relations Consultants Association
Publishers Association

Quarry Products Association
Quoted Companies Alliance

RAC
Radio, Electrical and Television Retailers Association The
Railway Forum The
Railway Industry Association
Rare Breeds Survival Trust The
Recruitment & Employment Confederation
Regulatory Affairs Journal
Residential Boat Owners Association

Restaurants Association
Retail Enterprise Network
Retail Motor Industry Federation
Rice Association
Royal College of Veterinary Surgeons
Royal Environmental Health Institute of Scotland The
Royal Horticultural Society
Royal Institute of Public Health & Hygiene
Royal Institution of Chartered Surveyors The
Royal Pharmaceutical Society of Great Britain
Royal Pharmaceutical Society of Great Britain - Scottish
Department
Royal Pharmaceutical Society of Great Britain -Welsh
Executive
Royal Society for the Prevention of Accidents
Royal Society for the Protection of Birds The
Royal Society for the Protection of Cruelty to Animals
Royal Society of Chemistry
Royal Welsh Agricultural Society Limited
Royal Yachting Association

Safety Assessment Federation Limited
Salmon & Trout Association
Salmon Net Fishing Association of Scotland
Salt Manufacturers Association The
Satchwell Control Systems Ltd
Scotch Whisky Association The
Scott Colin
Scottish & Northern Ireland Plumbing Employers
Federation
Scottish Association of Directors of Water and Sea
Scottish Association of Directors of Water and Sewerage
Services
Scottish Chambers of Commerce – The
Scottish Consumer Council
Scottish Council Development & Industry
Scottish Dairy Association
Scottish Development International
Scottish Engineering
Scottish Environment Protection Agency
Scottish Executive
Scottish Federation of Housing Associations
Scottish Fishermen’s Federation
Scottish Fishermen’s Organization Limited
Scottish Food and Drink Federation
Scottish Landowners Federation
Scottish Motor Trade Association
Scottish Natural Heritage
Scottish Print Employers Federation
Scottish Quality Salmon Limited
Scottish Retail Consortium
Scottish Salmon Board
Scottish Salmon Growers Association
Scottish Textile Manufacturers Association
Scottish Tourist Board
Scottish Trade International
Scottish Trades Union Congress
Seafish Industry Authority
Seed Crushers and Oils Processors Association
Sellxyz PLC
SHAC Housing Association

Shellfish Association of Great Britain
Shelter
Shetland Salmon Farmers Association
Shipbuilders & Shiprepairers Association
Shop & Display Equipment Association
Skin, Hide & Leather Traders Association Limited
Small Business Council
Small Electrical Appliance Marketing Association
Smyth
Snack, Nut & Crisp Manufacturers Association Limited
Soap and Detergent Industry Association
Society of British Aerospace Companies Limited
Society of British Gas Industries
Society of Chief Officers of Trading Standards in Scotland
The
Society of Directors of Public Protectors in Wales The
Society of Directors of Trading Standards Scotland
Society of Event Organizers
Society of Food Hygiene The
Society of Local Authority Chief Executives
Society of Master Saddlers
Society of Motor Manufacturers & Traders Limited
Society of Public Teachers of Law
Society of Water Industries
Soil Association Limited
Soup & Gravy Manufacturers Association The
South East England Tourist Board
Southern Group Public Health Committee
Southern Marine Industries Association
Southern Tourist Board
Specialist Cheesemakers Association
Sport Industries Federation The
St Christopher’s Place Association
Staedtler UK Limited
Steam Boat Association of Great Britain The
Stockton Borough Council
Sugar Traders Association of the UK

Telecommunications Industry Association
Tenant Farmers Association
Textile Services Association Limited
Thames Boating Trades Association
Thermal Insulation Contractors Association
Tile Association The
Timber Trade Federation
Tourism Management Institute
Tourism Society The
Tourism South and West Wales
Trades Union Congress
Trading Standards Institute
Tubular Exchanger Manufacturers Association
Twigg-Flesner
UK Association of Fish Producers Organisations
UK Association of Frozen Food Producers
UK Association of Manufacturers of Bakers Yeast
UK Cheese Guild
UK Cleaning Products Industry Association
UK Egg Producers Association Limited
UK Inter-Professional Group The
UK Offshore Operators Association Limited
UK Petroleum Industry Association
UK Quality Ash Association

UK Steel Association/EEF Engineering Employers
Federation
UK Tea Association
UK Warehousing Association
UK Weighing Federation
Ulster Farmers Union
Union of Shop, Distributive & Allied Workers
United Kingdom Agricultural Supply and Trade
Association Limited

Veterinary Defence Society
Vinegar Brewers Federation
ViRSA/RSA

Wales and West Coast Fish Producers Organization
Limited
Wales Tourist Board
Water UK
Weatherill
Wella (UK) Limited
Welsh Agricultural Organisations Society
Welsh Beekeepers Association
Welsh Central Pharmaceutical Committee
Welsh Consumer Council
Welsh Local Government Association
Welsh Pharmaceutical Committee
West Country Tourist Board
West of England Counties Safety Liaison Group The
West of Scotland Water Authority
Which
Whittaker
Wholesale Markets Brokers Association
Wholesale Traders Association
Wickes
Willet
Wine And Spirit Association The
Women's Food and Farming Union
Women's Forum - Northern Ireland
Women's National Commission
Wood Panel Industries Federation
Wooden Boatbuilders Trade Association
Woodroffe
Woodworking Machinery Suppliers Association
Worshipful Company of Butchers The
Writing Equipment Society The

Yacht Harbour Association Limited The