

**dti**

**MARKET SURVEILLANCE  
IN THE UK**

UK policy on enforcement  
of European product safety  
regulations

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## MARKET SURVEILLANCE IN THE UNITED KINGDOM UNDER NEW AND GLOBAL APPROACH LEGISLATION

*This is a fuller and updated version of the presentation that Richard Lawson made on 17 October 2002 to the European Conference on "Safe Products by Means of Market Surveillance" Experiences and prospects in Europe and the EU accession countries in Berlin. It is based on and develops an earlier paper by Dr Les Whalley to a similar conference in Brussels in 2000.*

### Legislative Background and Enforcement Authorities

UK enforcement policy in relation to our obligations under New Approach Directives is based on the provisions of the Treaty establishing the European Union. Under Article 249 directives are binding, as to the result to be achieved, on the member States to which they are addressed, but the form and methods of implementation are left to the national authorities. Article 10 obliges member States to take all appropriate measures to ensure fulfilment of their obligations under the Treaty. The UK implements by legislation, usually secondary legislation, often as "Regulations" rather than primary legislation i.e. an Act of Parliament. After consultation with interested parties implementing regulations are made by Ministers and laid before Parliament.

2. Where possible, the UK has tried to use and adapt existing processes established in existing domestic legislation well known to manufacturers and consumers when preparing the enforcement regimes for EC directives. Thus, many enforcement powers for New Approach directives are drawn or derived from the Consumer Protection Act 1987 or the Health and Safety at Work etc. Act 1974 (or both). The day-to-day enforcement of the safety provisions of the Consumer Protection Act is the responsibility of the Trading Standards Departments of local government authorities in Great Britain (weights and measures authorities) and the Environmental Health Departments of District Councils in Northern Ireland. The Health and Safety at Work etc. Act 1974 applies only to Great Britain (but there are comparable provisions for Northern Ireland). The Health and Safety Executive (HSE) enforces it for most sectors of the economy (mainly industrial) and also for all work product safety. The Health and Safety Executive for Northern Ireland has similar responsibilities there.

### UK Market Surveillance Policy

**3 The fundamental UK policy on product safety regulation is that it should specify the goal, leaving those who are being regulated, wherever possible, some freedom to decide how to achieve this goal.** We, therefore, support this principle in the New Approach. Flexibility and co-operation between business and enforcement authorities are also emphasised in the principles of good enforcement policy, which have been stated by the Cabinet Office Regulatory Impact Unit (formerly the Better Regulation Unit). These can be found in "The Better Regulation Guide" and the Enforcement Concordat.<sup>1</sup> These documents emphasise strongly that prevention is better than cure. Enforcement authorities are encouraged to work actively with business, especially small and medium-sized businesses, to advise on compliance with regulations. Authorities should always ensure, as far as possible, that any action required of business is

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<sup>1</sup> <http://www.cabinet-office.gov.uk/regulation/index/publications.htm>

proportionate to the risks involved, so that the costs of compliance are minimised. Opportunities should be provided to discuss the circumstances of the case and, if possible, resolve points of difference before formal enforcement action is taken, unless immediate action is required in the interests of health and safety. Sanctions for non-compliance should be fair, proportionate, dissuasive and effective. The enforcement authorities do not hesitate to prosecute serious offences. This approach is consistent with the principles of proportionality, which is strongly recommended, in the Commission second edition of the "Guide to the Implementation of Directives Based on the New Approach and Global Approach".<sup>2</sup>

4 The Health and Safety Commission (which advises Ministers on health and safety at work issues) has published its own policy statement containing principles of enforcement.<sup>3</sup> This deals with the approach to be taken by HSE inspectors in enforcing health and safety law in Great Britain. Emphasis is placed on proportionality and accountability for the regulator's actions in applying the law and securing compliance, consistency of approach, targeting of enforcement action and transparency about how the regulator operates and what the regulated might expect. The emphasis on proportionality in this approach helps enforcers to target inspection on those whose activities give rise to the most serious risks or where there is potential for the hazards to be least well controlled. Where HSE has enforcement responsibility for regulations implementing "New Approach" directives the approach to enforcement is influenced by the approach described in the HSC's statement.

5 In April 2002, the DTI introduced the National Performance Framework for Trading Standards. This framework introduces performance standards and aims to help Trading Standards Departments throughout England, Scotland and Wales develop a modern high quality, consistent and responsive service. The DTI introduced performance measures for the Trading Standards service in June 2003. Local authorities have a statutory duty to enforce consumer protection legislation and, within this, have some discretion in deciding their enforcement programme, in accordance with local and national priorities. When local authorities are given the duty to enforce legislation implementing New Approach directives such enforcement is part of this process. The Local Authorities Co-ordinators of Regulatory Services (LACORS) works to ensure co-ordination and consistency of approach among local authorities. This is very valuable. Local Authority enforcement bodies share information and encourage co-operation between enforcement authorities and business by application of the "home authority principle". Under this principle, each local authority takes responsibility for surveillance of goods and services originating in its area. Businesses in each area can go to their home authority for preventative guidance and advice. Where an enforcement authority in another area has reason to believe that a product does not comply with the legislation, it can consult the home authority and make use of arrangements for monitoring and resolving disputes. Local Authority officers use this network to educate themselves and businesses in their area on the requirements of directives that apply to consumer products. Prosecution is the last resort, only used when advice and persuasion fail to secure compliance with the law

6. HSE Regional Offices have a similar system to the "home authority" principle of the Local Authority enforcement bodies. Each Regional Office takes responsibility for manufacturers and suppliers of industrial products made or supplied locally. If

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<sup>2</sup> <http://www.eotc.be/News/index.htm>

<sup>3</sup> <http://www.hse.gov.uk/pubns/hsc15.pdf>

defective products are discovered in use elsewhere the appropriate Regional Office is alerted using a computer-based system (SAPID), and field inspectors will pursue the matter with the local supplier. Information on the results of defective product investigations and other information about manufacturers, suppliers and their products is held on the national database part of the SAPID system, which is accessible to all field inspectors. Advice and assistance with contacts and information from other EU Member States surveillance authorities is available to all field inspectors from a coordinating office in Manchester.

### Independence, Impartiality and Confidentiality

7 Market surveillance in the UK is the responsibility of the public authorities, which are required to be strictly impartial and independent. The Enforcement Concordat commits central and local government to the maintenance of a fair and safe trading environment through open and helpful procedures. It sets out good enforcement policies and procedures which business and others being regulated can expect from enforcement officers. The aim is to ensure that enforcement action is proportionate to the risks, that it is carried out in a fair, equitable and consistent manner, and that there are well publicised, effective and timely complaints procedures.

8 It is recognised that the enforcement authority may not have the necessary in-house facilities to determine whether a piece of equipment complies with the requirements of the relevant directive as implemented. It is, therefore, usual practice to use the facilities and expertise of recognised test laboratories. In such cases the need for impartiality and a clear separation of these activities from those undertaken by a third party (if this was the case) before the product was placed on the market is always fully addressed. The facilities used are generally accredited to the relevant standard, or assessed to an equivalent level. The decision of whether the equipment is compliant with requirements remains the full responsibility of the enforcement authority.

9 The Health and Safety at Work etc. Act contains provisions to restrict the disclosure of information obtained by enforcement authorities. While our authorities are still in discussion or dispute with a trader over whether a product is safe, the trader is entitled to be protected from the consequences of what may turn out to be an unjustified accusation. However, if there are strong health and safety reasons, action in the public interest may take place at an early stage to alert customers, distributors etc. of concerns. Authorities in the UK can and do issue public warnings in appropriate cases and when they do so, authorities in other jurisdictions are free to make whatever use they wish of that information.

### Sanctions

10 Where the enforcement provisions in relevant Regulations are drawn or derived from the Consumer Protection Act any person committing an offence under those Regulations is liable, on summary conviction (that is to say, in a Magistrates' court) (local lower court) to a fine of up to £5,000, or a term of imprisonment of up to six months, or both. It is an offence to place on the market or put into service products that do not comply with the relevant requirements. Further, the Regulations usually provide that it is an offence to supply a product that is unsafe. Powers are usually

provided in Regulations for enforcement authorities to seize non-compliant products and related documentation and an application can be made to the court for the products to be forfeited or destroyed. A suspension or prohibition notice may be issued, prohibiting the placing on the market, supply or putting into service of non-compliant products, and it is a very serious offence to contravene such a notice.

11 On conviction, the relevant Regulations drawn or derived from the Health and Safety at Work etc. Act permit a range of fines depending on the exact breach of law. If the case is brought in a Magistrates court the fine can be up to £20,000, but if the case is sufficiently serious it may be referred to the Crown Court, where the fine on conviction is unlimited. For certain breaches, including contravention of a Notice a term of imprisonment of up to 2 years can be imposed as well as a fine. This is in addition to the powers of forfeiture, seizure, improvement, prohibition or suspension as appropriate.

12 Implementing Regulations usually provide that the mere fact of commission e.g. placing on the market a product which does not meet the essential safety requirements set out in the particular Regulations, is in principle enough to show that an offence has been committed. However, the Regulations also usually provide that in proceedings against any person for an offence 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. This is because the accused should have the opportunity to show that he took all possible steps to avoid the situation occurring. It may be, for example, that a person committed an offence because of the default of another party.

### Monitoring of Products

13 HSE has national responsibility to ensure compliance with a wide range of health and safety at work legislation, and deals with all industrial sectors, including the nuclear, mines and quarries, agriculture, railways and manufacturing industries. As a result of the powers that it has it is able to focus the attention of suppliers on the need to control risks through section 6 of the Health and Safety at Work etc. Act or the relevant transposed supply legislation. The implementation of New Approach directives has led to a more targeted approach to visiting suppliers and manufacturers, based on an assessment of the risks associated with new products. This is because legislation requires the reduction of relevant health and safety risks through good design and manufacture. Standards development is integral to this, and HSE experts make a major contribution to it so as to ensure that the standards used by designers and manufacturers include a high level of health and safety protection.

14 Within HSE, there exist several industry-oriented sectors (e.g. agriculture and food, construction, manufacturing etc.) who set health and safety priorities for their particular sectors. The sectors work closely with the industry trade associations to secure compliance with the requirements of the directives. They analyse accident data and history for products used in those industrial sectors, and target particular products and their suppliers. Examples include the manufacturing sector's work with suppliers of CNC lathes, and the agriculture and food sector's work with suppliers of forage harvesters and wood chipping machines where accident levels have been high. Information about such products and how the levels of protection can be improved, is passed on to HSE field inspectors who are then able to target their market surveillance work and enforce the law usually without recourse to legal sanctions.

15 Local specialist technical advice (e.g. mechanical or electrical engineering, noise or vibration) is available to every HSE regional office and provides technical support both to the industry-oriented sectors and to field inspectors. Where technical assistance is needed, therefore, inspectors can refer to their technical specialist colleagues, so that they can give manufacturers and suppliers the best advice possible about minimising hazards. In some instances, HSE's technical specialists work directly with UK manufacturers and suppliers

16 If an inspector finds matters of evident concern about defective new equipment in a user's premises, remedial action usually consists of a visit or contact to the manufacturer or supplier followed by written advice. If the contravention is a serious one, formal enforcement action may follow, e.g. prosecution or a notice to prohibit or restrict the supply and/or use of the product. In deciding on appropriate enforcement action, field inspectors take several factors into account, including the level of risk and advice given by the sectors and by specialist technical colleagues.

17 The Trading Standards Departments of local authorities (the enforcement bodies in England and Wales and Scotland) have the responsibility to ensure compliance with a wide range of legislation on fair trading and the protection of consumers. The service has recently agreed the National Performance Framework with DTI. This sets out key national priorities and standards for the service. The framework came into effect on 1 April 2002. Performance measures for Trading Standards service were introduced in June 2003 as part of the National Performance Framework.

18. A typical remit for such a department would cover the following areas:

- fair trading compliance - including trade descriptions, pricing, consumer credit, trade marks and copyright law;
- safety compliance - consumer products (both new and second-hand), some industrial products, licensing provisions for potentially harmful goods;
- food and agriculture compliance - labelling requirements, compositional standards, health and welfare of transported animals;
- metrology services - providing verification and calibration services, weights and measures compliance;
- business support and consumer advice - providing information to businesses and individuals on trading standards laws, receipt and referral of complaints.

19 There are 202 local authority enforcement bodies in the UK, and their responsibilities include enforcement responsibility for consumer products under the Toys, Low Voltage, Electromagnetic Compatibility, Machinery, Simple Pressure Vessels, Recreational Craft and Personal Protective Equipment directives. They also have responsibility for the enforcement of the electromagnetic compatibility legislation and the personal protective equipment legislation for the supply of products to business. They also have certain enforcement responsibilities under the legislation transposing the Radio Equipment and Telecommunications Terminal Equipment Directive. Management of all these responsibilities demands a high degree of flexibility

and co-operation, because local and national needs will require some local authorities to concentrate their activities on specific products.

20 There are two main mechanisms operating within local government to ensure that monitoring of products is directed to those that pose the highest risks. These include a network of regional co-ordinating groups who come together to discuss managerial, policy and technical issues, and a comprehensive national IT network known as TS Interlink. The latter is a closed intranet system that enables local authorities to communicate with one another and to interrogate a database on enforcement issues. This is a very effective means of communication and co-operation between local authorities. It is frequently used to transmit information about the existence of non-compliant products on the market, so that rapid enforcement action can be taken.

21. The Vehicle Certification Agency of the Department for Transport has the responsibility for the enforcement of the legislation transposing the Noise Emission in the Environment by Equipment for use Outdoors Directive. The Secretary of State has certain enforcement responsibilities under the legislation transposing the Radio Equipment and Telecommunications Terminal Equipment Directive. With effect from 29 December 2003, with the transfer of the functions and powers of the DTI's Radiocommunications Agency into the new media and communications Regulator, the Office of Communications (Ofcom), Ofcom will have enforcement responsibilities insofar as the protection and management of the radio spectrum is concerned.

22 Standards development is very important for the definition of safety requirements for consumer goods. The Consumer Policy Committee of the British Standards Institution (BSI) is responsible for ensuring that the needs of consumers are taken into account in standardisation work. It appoints and supports consumer representatives for BSI committees dealing with a product or service used by consumers. Travelling expenses for consumer representatives are paid from a fund provided by the Department of Trade and Industry. The Department also has a small number of technical advisers who participate in standardisation work in connection with directives.

### Indicators of Success

23 An indicator of a successful market surveillance regime is evidence of a low incidence of accidents caused by unsafe products on the market. Rates of fatality among workers or employees in the UK seem to be among the lowest in the European Union. The comparative figures (1998) from Eurostat show a fatal injury rate for workplaces of 1.6 compared to 3.4 for the EU average. (See "Eurostat Statistics in Focus Accidents at work in the EU 1998-1999 Didier Dupre" [www.av.se/statistik/dok/0000138.pdf](http://www.av.se/statistik/dok/0000138.pdf)). We see this performance as an outcome of the overall effectiveness of the UK's safety culture, its safety regime and its market surveillance system including the way we seek to ensure that new work equipment is designed, manufactured and supplied safely.

24. Each year some 4000 people die in the UK as a result of accidents in the home (this is more than are killed on the roads annually in the UK – although for completeness I should add that we have one of the lowest rates of fatal road accidents in the EU) and almost three million seek medical attention as a result of non-fatal home accidents. A league table publicised last year by the European Consumer Safety

Association (ECOSA) [www.ecosa.org/csi/ecosa.nsf/news](http://www.ecosa.org/csi/ecosa.nsf/news) suggested that the United Kingdom has the lowest rate of home and leisure fatalities in the EU (out of a total of some 80,000 fatalities in the EU annually). As with the figures for workplaces, we believe that this is indicative of a strong safety culture including effective market surveillance in the field of product safety.

25. We are not complacent. We embrace the principle of continuous improvement. Indeed, it is the commitment to this principle that helps to account for these figures. We are, therefore, always keen to learn of the successes of our colleagues in other EU member States and the Candidate Countries.

## **CONCLUSION**

26. We see the New Approach and Market Surveillance under it as having made a very beneficial contribution to the free circulation of goods manufactured in compliance with the provisions of directives in the Internal Market, to the maintenance of high levels of protection for safety and other necessary product characteristics, and to Better Regulation (legislative simplification). We are optimistic that the New Approach - through the principles of safety integration emphasising the prime importance of good design and through standardisation based on the State of the Art - has an important contribution to make to innovation and to driving up productivity and competitiveness, thus promoting prosperity for all.

**DTI/ STRD, November 2003**