

Reporting
requirements in the
UK pre and post
revised GPSD

Mark Dewar

**Consumer Products and
Retail Group**

Reporting requirements in the UK pre and post revised GPSD : the current position

- The current position : GPSD 1994, CPA 1987
- Definition of 'product' : product intended for or likely to be used by consumers, whether or not in course of commercial activity
 - includes new, used, reconditioned
- Definition of 'safe product' : same as Directive but putting into service, installation and maintenance not included.

Reporting requirements in the UK pre and post revised GPSD : the current position

- Product recall : producer's obligation
 - no obligation to recall
 - information to assess risks of product, adopt measures commensurate
 - take appropriate action if necessary including withdrawal of product

- Product recall: authority's power
 - no right of recall
 - but: Consumer Protection Act 1987
 - prohibition notice, notice to warn, suspension notice, forfeiture

Reporting requirements in the UK pre and post revised GPSD : the current position

- Producer has no obligation to notify authority of unsafe product
- Due diligence defence : is it wise to bury the hatchet?
- Tracing :
 - producers' obligations are limited to measures commensurate with product, take appropriate action, marking, testing and possible recall *but* no obligation to recall or report. (Reg 8 (2))
 - distributors' obligations to participate in monitoring safety of product
- Sanctions
 - £5,000 fine, 3 months jail

Reporting requirements in the UK pre and post revised GPSD : the changes

- The plan is for implementation in the summer 2005 (election permitting)
- Will track GPSD but note.....
- Products : will include antiques, products for repair *D*
- Producers and distributors : emphasis on traceability and voluntary action : Reg 9(3) but
 - unfair for distributor to shoulder entire burden: just nominate source and where sold
 - notification to local TSA

Reporting requirements in the UK pre and post revised GPSD : the changes

■ Traceability

- producers:
 - batch marking or product reference
 - register of safety complaints
- distributors:
 - keep documentation necessary to track products
 - '*within limits of activities*' keep records to trace origin
- both:
 - co-op with authority on action to avoid risk
 - notify safety problems and voluntary actions taken to reduce risk

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■ Sanctions

- £20,000 per offence or 12 months custodial sentence

■ Due diligence defence (Reg 29)

- took all reasonable steps and exercised all due diligence to avoid commission of an offence
- offence due to act, default or information of another
- does not apply to offences re recall notice, notification obligation re serious risk and co-op with or obstruction of authority.

Reporting requirements in the UK pre and post revised GPSD : the changes

- Enforcement : now in body of the Regs (used to be diffuse)
 - requirement to warn, mark, suspension notice (limited budget, political pressure, due diligence defence), withdrawal notice, recall notice (new)
- Notification : to local TSA who notify Dti who (can) notify EU
 - criminal offence not to notify
 - what about pre Reg products that are out there?
 - Art 5 not transposed : do producers have a duty to notify distributors? **D**
 - big change in dynamics of system : closer to US but imprecise
 - where is the threshold?
 - reliance in EU on conformity with standards
 - confidentiality until sued but TSA under obligation to publicise info, impact of Freedom of Information Act 2005?

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- Recall : last resort compulsory recall
 - other action would not suffice, action by producer, distributor insufficient
 - 7 days notice, CI Arb appointee determines if product is dangerous + proportionality of recall Reg 15(5)
- Unilateral action by authority for serious risks (require rapid intervention) Reg 2 : no notice, no CI Arb but must act proportionate to risk and ref precautionary principle (TSAs may have concern)
- Appeals within 21 days of notice Reg 17(1)
 - authority can appeal suspension of recall within 7 days
- Authority could prosecute o/s area contrary to *Woolworths v Brighton* Reg 10 : Scotland and N.Ireland under discussion

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- Compensation....if Reg 16
 - person subject to recall suffers loss or damage and
 - product not dangerous
 - not attributable to neglect or default
- Determined by arbitration : will it only be UK damage?
- Will producers risk the compensation route : what about single product companies?
- Will threat of compensation, challenge or lack of resource diminish likelihood of recall notice / unilateral action in cases of urgency?
- Will deviations from Directive give rise to challenge?

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