

8 March 2002

Ms Rachel Bealey
Consumer Affairs Directorate
Room 425
Department of Trade and Industry
1 Victoria Street
London, SW1H 0ET

Dear Ms Bealey

DTI Consultation on Transposing the Revised General Product Safety Directive

The Association of Personal Injury Lawyers (APIL) was formed as a membership organisation in 1990 by claimant lawyers committed to providing the victims of personal injury with a stronger voice in litigation and in the marketplace generally. We now have around 5,000 members across the UK and abroad, and membership comprises solicitors, barristers, academics and legal executives. APIL fully supports the revised GPSD and we urge the DTI to put consumer safety at the forefront when transposing the directive into legislation. Having read the above consultation paper, we would like to make some general observations, which we hope will be helpful.

- Article 2(a) of the revised GPSD widens the definition of “product”. The DTI seeks views on whether the transposing legislation should simply use the definition of “product” used in article 2(a) or should use a narrower definition, in an attempt to clarify the scope of the products covered. We believe that the definition within article 2(a) should be used, as we are concerned that any attempts to clarify the definition in legislation might change or confuse the intended definition. Any necessary clarification on definition should, in our view, be included within related guidance rather than in the legislation itself.
- The DTI seeks views on whether it would be helpful to produce an indicative, non-exhaustive list of the types of product which do and do not fall within the scope of the revised GPSD. We share the DTI’s concern that such a list may “be construed as if items that are not listed are excluded”. In addition, in view of the number of products entering the market we wonder whether producing such a list would be a fruitless exercise. We believe, therefore, that a list should be avoided, though it may be helpful to provide examples within any related guidance to the legislation.

- In discussing the scope of the obligation to recall a product, it is suggested in paragraph 6.1.3.1 that producers could be required to be demonstrably capable of carrying out a recall if it proves necessary. We fully support such a requirement as it is essential that producers do, and can be seen to have, appropriate procedures in place to recall products if necessary.
- The revised GPSD imposes a new obligation on producers in relation to recalling products from consumers. The DTI considers the point at which a failure to comply with this obligation should be an offence. To ensure that consumers are protected as far as possible, we believe that the potential for an offence to be committed should exist at the earliest possible stage, i.e. to make it an offence to fail to meet the obligation to be in a position to recall rather than to make it an offence to actually fail to recall a product. This will encourage producers to comply with their obligations from the outset.
- In paragraph 7.2, the DTI discusses the appropriate extent of the obligation to keep and provide documentation necessary for tracing the origin of products. We believe that the legislation should define the period of time for which documentation should be kept. It can take some time for the dangerous effects of products to become clear and in relation to civil claims for compensation the Consumer Protection Act 1987 contains a long-stop limitation period of ten years from the date that the product was put into circulation. We believe, therefore, that producers should be required to keep documentation for ten years at the very least.

Please do not hesitate to contact APIL if you would like clarification or further information on any of the points made above.

With kind regards.

Yours sincerely

Denise Kitchener
Chief Executive