

30 March 2005

Mr Steve Ringer
Department of Trade and Industry
Consumer and Competition Policy Directorate
1 Victoria Street
London
SW1H 0ET

Dear Mr Ringer

The Department of Trade and Industry (DTI) – The General Product Safety Regulations: Consultation on proposals to implement Directive 2001/95/EC on general product safety (GPSD)

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

APIL believes that consumer safety should be at the forefront of Government legislation and is therefore fully supportive of the revised general product safety directive (GPSD) as it introduces *“an even higher level of protection from dangerous products than already exists”*¹. Indeed it is encouraging to note that *“[o]ver the last six months, since the new Directive has been in force in some Member States, the rate at which dangerous products are notified to the Commission has already more than doubled, and is continuing to increase”*².

In respect of the current consultation, APIL would like to make the following general observations, which we hope will be helpful.

- APIL believes that a new Product Liability agency, working under the auspices of the Department for Trade and Industry (DTI), should be set up in order to effectively implement, monitor and police the new General Product Safety Directive (GPSD) regulations. APIL is concerned that enforcement authorities, such as local authority trading

¹ Consultation document – Introduction – Page 3

² Liability, Risk and Insurance – February 2005 – Issue 174 – page 19

standard departments (which will have primary responsibility for enforcing the new GPSD laws) will not have “sufficient resources to deal with their new responsibility under these laws”³. As such they may be tempted to adopt an “unreasonably cautious approach to dealing with the issue, to the detriment of consumers and producers alike”⁴. In addition, as with any local authority service, trading standards departments would not have dedicated resources and may have to battle other departments for funding. By establishing a separate Government agency, however, funding would be ring-fenced and resources could be dedicated to the effective implementation of the GPSD regulations.

- APIL also feels that by removing the monitoring of the GPSD regulations from local authority control there is less likely to be conflicts of interests in relation to the authority’s competing business interests and responsibilities. For example, if a large local employer had a recall notice issued against them, and the local authority had to enforce this recall, possibly threatening jobs and investment in the area, this would represent a conflict of interest. It should be noted that the Foods Standards Agency (FSA) was initially set-up so as to remove itself from such a conflict of interest with the Department for the Environment, Food and Rural Affairs (DEFRA).
- APIL suggests that this Product Liability agency would hold the database for all products recalls and information relating to the implementation of the GPSD regulation as well as enforcing any recalls. Under the proposed revised regulations, it will in most cases be an offence for a producer or importer not to investigate, and keep a register of, consumer complaints relating to their products⁵. APIL feels that this register should be kept with a central body – the Product liability agency – so that possible patterns of faulty products can be appropriately identified and recalled if necessary. In addition, the public should be able to gain access to this central database without it being prohibitively expensive.
- The Product Liability agency would be solely responsible for alerting the general public and businesses about any potential product liability issues, including dangerous products on the market and product recalls. For example, the chemical industry would not release its own product recalls, but go through the Product Liability agency.
- APIL would like the situation clarified in relation to products which are manufactured outside the EU but distributed within it. For example, Mike Ellwood of Johnson and Johnson Consumer said: “*With our type of consumer products we are in many ways a distributor more than a manufacturer, as we have worldwide manufacturing facilities. We are looking at products where about 90 per cent are made in the EU, but*

³ Liability, Risk and Insurance (February 2005) Issue 174, page 20

⁴ Ibid

⁵ The General Product Safety Regulations 2005 – Part II – Section 7 (4) (b) (ii)

there's a good ten per cent that are produced outside the EU.⁶ APIL feels it is the applicability of the GPSD in this type of situation which needs to be made more explicit prior to its implementation.

- APIL would also like further clarification in relation to *“products supplied as antiques and second-hand products that are supplied for reconditioning or repair prior to being used”⁷*. While we are supportive of this new duty we are concerned that it may inadvertently mean that items sold at charity jumble sales or school fetes will be included under the GPSD. In order to avoid these types of organisations being ‘caught’ within the provisions, APIL proposes that the new regulations should specify that they only apply to consumer products which are sold for ‘profit’. Otherwise *“[i]magine the obligations charities, which are selling second-hand goods, are going to have tracing them – it could almost put them out of business.”⁸*

For further information on APIL’s views on the GPSD, please find attached a copy of APIL’s previous response to the DTI consultation on *‘Transposing the Revised General Product Safety Directive’* (March 2002).

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

Yours sincerely

Miles Burger
Policy Research Officer

⁶ Post Magazine (10.03.05) page 32

⁷ Consultation Document – Executive Summary – paragraph 2.3 – page 5

⁸ Post Magazine (10.03.05) page 32

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