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THE GENERAL PRODUCT SAFETY REGULATIONS 2005

Guidance for businesses, consumers and enforcement authorities

Guidance Notes

AUGUST 2005

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The General Product Safety Regulations 2005

This document provides a guide to the General Product Safety Regulations 2005 (SI 2005 No 1803). Its purpose is to help users of the Regulations understand their main features and the circumstances in which they apply. Those affected by the Regulations should refer to them for a full statement of the legal requirements, and in case of doubt seek legal advice on questions of interpretation. This guide has no legal force. While every effort has been made to ensure that it is correct the Department of Trade and Industry cannot accept liability for any errors, omissions or misleading statements in it.

The Regulations can be obtained from The Stationery Office, Publications Centre, PO Box 29, Norwich NR3 1GN, or through TSO bookshops or on line at http://www.opsi.gov.uk

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1 Introduction

1.1 The General Product Safety Regulations 2005 ("the Regulations") come into force on 1 October 2005 and replace the General Product Safety Regulations 1994. The Regulations are made under section 2(2) of the European Communities Act 1972 and transpose Directive 2001/95/EC on general product safety into UK law.

Purpose

1.2 The purpose of the General Product Safety Directive is to ensure that all products intended for or likely to be used by consumers under normal or reasonably foreseeable conditions are safe.

1.3 The Directive pursues its principal objective of ensuring consumer product safety by:

- specifying that products placed on the market or supplied by producers and distributors must be safe;
- defining a safe product;
- imposing obligations on producers and distributors consistent with marketing safe products;
- laying down a framework for assessing safety;
- requiring enforcement authorities to be empowered to take the action necessary to protect consumers from unsafe products.

Responsibility

1.4 The Department of Trade and Industry has overall policy responsibility for the General Product Safety Regulations, but responsibility for the safety of some consumer products rests with other Departments. For example, the Medicines and Healthcare Products Regulatory Agency have the lead on medical devices and licensed medicines for human use, while the Vehicle Operator Services Agency (VOSA) leads on motor vehicles safety. For some products covered by specific product Regulations (e.g. machinery) the Health and Safety Executive (HSE) lead.

1.5 It is recognised that most businesses in the UK are responsible and comply with the law, and that generally speaking product safety levels in this country are high. When safety problems are identified UK businesses are usually very quick to voluntarily remove risks to the consumer. Nothing in the Regulations prevents that; *indeed voluntary action is specifically encouraged as an alternative to formal enforcement*. Nevertheless the Regulations provide powers to the enforcement authorities to take appropriate action against those businesses that fail to fulfil their responsibilities and, as a last resort, enable enforcement authorities to order the recall of dangerous products.

2 Scope

Product Coverage

2.1 The Regulations apply to the supply of all new and second-hand products, excluding products supplied for repair or reconditioning prior to being used (provided the supplier clearly informs the person to whom he supplies the product to that effect), and excluding the *sale* of antiques.

2.2 "Products" within the meaning of the Regulations can best be described as *all* goods that are (or could be) placed on the market, or supplied or made available (including in the course of providing a service) to consumers for their private use. Products covered include, *but are not restricted to*, clothing, medicines, machinery, tools and equipment, fireworks supplied to consumers, household goods, nursery goods, gym equipment, chemicals and pesticides, and motor vehicles.

Borderlines

2.3 Where a product is already subject to other existing Regulations (e.g. toys) then those Regulations will still apply to that product. The GPS Regulations will also apply where they go further than the existing Regulations in terms of the specific aspects of safety covered, the extent of the obligations on producers and distributors, and the powers available to enforcement officers. As an example, the Toys (Safety) Regulations 1995 do not (among other things) require producers or distributors to notify the enforcement authorities of problems associated with their products and the steps they have taken to remove the risk to consumers. Neither do they give the enforcement authorities the powers to order mandatory recall of the product from consumers. The GPS Regulations will therefore apply to toys in these areas. Similar considerations apply in respect of all other products covered by specific legislation made under the Consumer Protection Act (CPA) 1987.

2.4 To clarify some of these "borderline" issues the Commission has published guidance on its website[1] on the relationship between the General Product Safety Directive, which these Regulations implement, and certain product specific legislation at the Community level that our other, product specific, Regulations implement.

2.5 Where specific product legislation deals only with the safety of new products, these Regulations will apply to those products when supplied second-hand.

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

Migration

2.6 The Regulations also cover products that were originally designed and intended for professional use but which subsequently "migrate" on to the consumer market (e.g. certain power tools). In most cases aspects of the safety of professional products will be the subject of specific product legislation such as the Supply of Machinery (Safety) Regulations 1992 (as amended). Consequently, where professional products become available to consumers the GPS Regulations will extend to those aspects of safety and measures not covered by such specific legislation. Migration does not necessarily mean that the product is unsafe to a consumer, but where it is reasonably foreseeable that a professional product may find its way onto the consumer market (intended or not) suitable instructions for consumer use and warnings of any risks that are not obvious must be provided. However, where it is unlikely that the product could ever be safe for use by consumers, producers/distributors should take such steps as are reasonable and necessary to ensure the marketing and supply of the product is very strictly controlled. Labelling a product "for professional use only" (or similar) is unlikely on its own to be sufficient.

Meaning of Supply/Make Available/Place on the Market

2.7 These terms are used variously throughout the Regulations. The European Commission's guidance on New Approach Directives says that "placing on the market" means making a product available for the first time when it is transferred from the manufacturer to be distributed. Further, that this applies to each individual product and not to a type of product[2]. Hence placing on the market generally refers to what producers do, while distributors supply products. The definition of "supply" in the Regulations extends to hire and making a product available for use by consumers in the course of providing a service.

2.8 Placing a product on the market, making it available or supplying can happen in many ways, for example:

- Selling, leasing, hiring it out or lending it;
- Entering into a hire purchase or other credit agreement for it;
- Exchanging it for any consideration other than money;
- Giving it as a prize or otherwise making a gift; and
- Providing it in the course of the delivery of a service.

2.9 The extension of these Regulations to products made available to consumers in the course of the delivery of a service is a new departure. An example of such a supply would be the provision in a hotel room of a hairdryer for the guest's own use. In contrast, a hairdryer in a salon is used by the hairdresser rather than the client and not covered by this provision.

2 See section 2.3 in the Guide to the implementation of directives based on the New Approach and the Global Approach at http://europa.eu.int/comm/enterprise/newapproach/legislation/guide/index.htm

2.10 The Regulations only apply to the commercial placing on the market or supply i.e. in the course of a business or trade. They apply irrespective of the marketing methods employed and include distance and electronic selling.

2.11 Each time a product is made available for use, loaned, hired or leased etc to a consumer this will be a separate supply.

2.12 The Regulations also extend to the preparatory acts of agreeing to place a product on the market and exposing or possessing any product for placing on the market.

2.13 Possessing an unsafe product that has been returned whether as part of a recall or otherwise, or the fact of having possession of a product for further assembly or re-working in order to make the product safe, would not constitute possession with the intent to supply.

2.14 Where a construction product is incorporated into a permanent structure (e.g. a concrete lintel) it is doubtful that the product remains a distinguishable product to which the Regulations can apply. However DIY products used in buildings, such as light fittings, switches, showers etc, which are intended for or may be used by consumers are covered by the Regulations.

Products used in the workplace

2.15 The Regulations do *not* apply to products used in the workplace by workers. Products that are used in the provision of a service, even if they are used for (but not *by*) consumers are also outside the scope of the Regulations. An example is a cleaning product used as part of a car valet service that is not supplied to the consumer. The safety of such products is controlled by the Heath and Safety Executive (HSE) using specific Health and Safety at Work legislation. "Products" that consumers ride or travel on and which are operated by a service provider are also excluded. In this instance "operation" has a wide definition and includes transport vehicles and devices such as escalators and lifts whether manned or not.

Products for Export

2.16 Also, the Regulations do *not* apply to:

- Products which are not placed on the market or supplied in the UK or intended for placing on the market or intended for supply in the UK, e.g. those which are exported or are for export to a country outside the Community[3]. An exception is where there is a Commission decision which imposes an export ban on them; or
- Products used or intended *only* for display at exhibitions or trade fairs. However, such products are subject to the Regulations if they are subsequently placed on the market in the UK or made available for supply to consumers.

3 Community is used in this note to refer to the European Community and the three additional members of the European Economic Area – Iceland, Norway and Lichtenstein.

3 Meaning of a Safe Product

3.1 A "safe product" is any product which under normal or reasonably foreseeable conditions of use presents no risk or only the minimum risk compatible with the product's use and which is consistent with a high level of protection for consumers.

3.2 While the Regulations do not apply to the safety of services per se, the safety of some products (e.g. certain machinery and gas appliances etc) is dependent on how they have been installed and maintained. These services are an essential feature of the safety of the product and may form part of the contract to supply the product. As such they will be taken into account when judging whether the product is a safe product.

3.3 The safety of a product will be assessed having regard to a number of matters and, in particular:

- the product's characteristics;
- packaging;
- instructions for assembly and maintenance, use and disposal;
- the effect on other products with which it might be used;
- labelling and other information provided for the consumer; and
- the categories of consumers at risk when using the product, particularly children and the elderly.

3.4 The existence of higher levels of safety, or availability of products presenting lesser risk, will not in itself mean that a product is unsafe.

4 Assessing the Safety of Products

Specific Product Regulations

4.1 Where specific product legislation covers exactly the same ground as the GPS Regulations the specific legislation will apply.

4.2 Where the specific legislation deals only with certain aspects of safety, only those aspects of safety that fall outside the scope of the specific legislation but within the scope of the GPS Regulations will be subject to the GPS Regulations.

4.3 Where there is no relevant specific product legislation, safety will be assessed by one or other of the methods in the GPS Regulations set out in paragraphs 4.5 to 4.7 below.

National Regulations

4.4 Since the coverage is wide, some products will be subject to national safety regulations made under s11 of the CPA (e.g. The Furniture and Furnishings (Fire) (Safety) Regulations 1988) as well as these Regulations. In the absence of Community provisions governing the safety of the product in question, the product will be deemed safe if it conforms to the specific rules of national law so long as those rules cover the specific risk under consideration. In cases where specific national safety regulations apply only to new products the General Product Safety Regulations will apply when those products are supplied second-hand.

Voluntary European Standards

4.5 The Regulations introduce for the first time a presumption of conformity with the general safety requirement if a product conforms with the UK transposition of a voluntary European standard that has had its references published in the Official Journal of the European Union, but only as far as the risks are covered by that standard. A list of the standards so far published in the Official Journal may be found on the European Commission's website[4].

4.6 Where neither a specific Regulation nor national safety law applies, safety will be assessed taking each of the following into account in turn:

- voluntary European standards;
- Community technical specifications;

4 http://europa.eu.int/comm/consumers/cons_safe/prod_safe/standards/ojc20040424.htm

- national standards (i.e. British standards which are not UK versions of European standards);
- industry codes of good practice; and
- state of the art and technology, and the safety which consumers may reasonable expect.

4.7 It should be noted that compliance with one or more of the above will not necessarily mean that the product is a safe product if it does not provide an acceptable level of safety. There will be instances where, for example, a European standard exists for the product in question but does not deal with a particular aspect of safety or does so inadequately. In such cases other provisions in the list, if applicable, may be used – e.g. aspects of a national standard or reference to the state of the art and technology. In the case of Balding v Lew Ways Ltd the court found that a "Tipper Trike" toy conformed with EN71 but it was still found to be unsafe for the purposes of the Toys (Safety) Regulations 1995.

Standards of the International Standards Organisations

4.8 Standards published by the ISO (International Standards Organisation) and the IEC (International Electrotechnical Commission) are given no special status in the Regulations in assessing the safety of products unless they are embodied as European or national standards. However, they should be taken as falling within the general provisions in the last 3 bulleted points in paragraph 4.6.

Rebuttable

4.9 Conformity with the criteria designed to ensure product safety (e.g. national legislation, standards referenced in the Official Journal of the European Union etc) will not bar the enforcement authorities from taking appropriate measures where there is evidence that despite such conformity the product is dangerous.

5 Suppliers Affected

5.1 The Regulations apply to all UK suppliers of products used by consumers, whether intended for them or not, and whether the goods were intended for use in the UK or another Member State. Suppliers in the Regulations may be either "producers" or "distributors". It should be noted that both terms have particular meanings for the purpose of the General Product Safety Directive – and hence the Regulations – and do not correspond with their normal everyday usage. Thus, it should not be presumed that a wholesaler or a retailer will in every case be a "distributor" for the purpose of the Regulations, nor that "producer" refers solely to a manufacturer. We consider that a person who finances the sale of products on hire purchase, or an insurer who provides products to a consumer under an obligation in an insurance policy, is generally not a distributor under the terms of the Regulations so the person from whom the products are actually obtained (the effective supplier) or the producer will normally be responsible for the safety of those products.

5.2 A consumer who sells his surplus personal possessions at a car boot sale is outside of the scope of the Regulations unless the consumer is doing this as a commercial activity. A consumer, who as part of the sale of his permanent dwelling includes in the sale existing furnishings and fittings (including domestic appliances), is also outside the scope of the Regulations.

Producers

5.3 For practical purposes, "producer" is defined in two ways – either as the first placer of the product on the Community market or as someone whose activities may affect the safety of the product.

5.4 "Producer" in relation to a particular product means:

- the manufacturer (where he is established in the Community);
- any person who presents himself as the manufacturer by putting his name or trademark on the product (the brand owner);
- any person who repairs or reconditions the product; or
- other professionals (see Annex A) in the supply chain if their activities may affect the safety properties of a product after it has been supplied to them.

5.5 If the manufacturer is not established in the Community, the producer will be:

- either the manufacturer's representative in the Community, or;
- where there is no Community representative, the importer of the product into the Community.

5.6 In practice, the requirements of the Regulations, as they relate to producers, apply to any of the above persons who are established in the UK.

5.7 A producer is not necessarily just the person who manufactures something. It includes any professional in the supply chain whose activities affect the safety of the product. For example a person who reconditions, works, re-works or customises a product will place a different product on the market to that which he started out with and hence be responsible under the Regulations in so far as his activities may have affected the safety properties of the product. The corollary of this is that to the extent that this person's activities did not affect the safety properties of the product, the original producer will continue to be responsible for its safety.

Distributors

5.8 "Distributor", in contrast, is any professional in the supply chain whose activities do *not* affect the safety of a product. This can include wholesalers, retailers (shops), agents and auctioneers. However, auctioneers are neither producers nor distributors for the purposes of the Regulations when they are merely acting under instructions to conduct the sale (i.e. controlling the bidding and knocking down to the highest bidder) of an item for the owner, and it is the owner who is the seller. But, an auctioneer who had purchased the contents of a house on a clearance basis would be a distributor and subject to the Regulations when he subsequently auctioned the contents. Similarly, an individual who buys goods to sell on a bidding basis (whether from a temporary site or established premises) will come within the ambit of the Regulations.

5.9 A person who makes a product available for the use of a consumer in the course of delivering a service will for the most part also be considered a distributor. However, if the product carries the service supplier's own brand, or if he has in any way altered the characteristic of the product so as to affect its safety properties, he will be considered to be a producer.

6 Responsibilities of Producers and Distributors

6.1 Just as with the General Product Safety Regulations 1994, the 2005 Regulations place an obligation on producers and distributors to supply only products that are safe, and to undertake relevant activities (where appropriate) to help ensure that a product remains safe throughout its reasonably foreseeable period of use.

6.2 Producers and distributors are required to provide consumers with all relevant information and warnings, and to keep themselves informed about possible risks. However, it is accepted that the nature and extent of action necessary will vary considerably depending on the product, the risks inherent in its use, and the type of consumer at which it is aimed. In addition, the Regulations recognise that a supplier is only required to act within the limits of his activity.

Producer and Distributor Notifications

6.3 A new obligation introduced by the 2005 Regulations requires producers and distributors who discover that they have placed an unsafe product on the market, or distributed such a product, to notify the competent authorities of the fact and what action they have taken to remove the risks to consumers. The Regulations require that such notifications should also be transmitted to the enforcement authorities of all the Member States in which they believe the product has been marketed. In general in the UK, producers and distributors will make these notifications to their Local Authorities, who will then pass the information on to the Department of Trade and Industry for onward transmission to other Member States. However, the first point of contact for certain product types will be different. It will be MHRA for medical devices and medicines for humans, VOSA for motor vehicles and HSE for products used in the workplace. Separate guidance for producers and distributors on these notification obligations will be made available on the DTI website – http://www.dti.gov.uk/ccp/topics1/safety.htm#gpsr

6.4 The authorities will advise on actions aimed at removal of the risk and work with the producer or distributor on completing the notification. The authorities will then forward this to the appropriate national contact point for further action, and to the DTI where there is a serious risk requiring notification under the rapid exchange of information scheme (RAPEX). Medicinal products and medical devices have their own notification systems and are therefore excluded from the RAPEX system.

6.5 The information provided in the notification must include that required to precisely identify the product, all information relating to tracing the product, and a description of the risks the products presents and the actions taken to remove those risks from the market. The form to use when doing this will be available from local Trading Standards and from the DTI website.

6.6 In practice, we expect that distributors in the supply chain will want to make the producer (especially if located within the Community) aware of problems they perceive (as the Regulations require them to do) before making a notification in case it relates to isolated circumstances or products (in which case notification is not required). Communication within the supply chain should also help agreement to be reached on who should make the notification for the product in question. Where the producer is in the UK our general expectation is that the producer will make the notification. However, a distributor who has become aware of a problem should make a notification under regulation 9 if he understands that on one else is doing so.

Isolated Circumstances or Products

6.7 It is not necessary to make a notification where it is clear that the risk is related to a limited number of specifically identifiable products or batches, and the producer or distributor has solid evidence to conclude that the risk has been fully controlled and its cause contained and dealt with. Such problems might include the malfunctioning of a production line, errors in handling and/or packing etc.

6.8 Further guidance on notifications can be found on the European Commission website[5].

Cooperation

6.9 There is a specific requirement for producers and distributors, within the limits of their activities, to cooperate with the enforcement authorities at their request. This includes the provision of information relating to the product, the nature of the risk, the product's supply and marketing, and also in taking appropriate action to remove the risk from consumers.

Information on Risks and Safety Instructions

6.10 Producers and distributors have for many years been obliged by product safety legislation to provide information and warnings as to the risks their products posed where those risks were not obvious and, where necessary, to provide instructions adequate to consumers' needs as to the safe operation/use of the product. These Regulations maintain that requirement.

5 http://europa.eu.int/comm/consumers/cons_safe/prod_safe/gpsd/index_en.htm

Obligations on Producers

6.11 A producer has a primary duty to place on the market only safe products but he also has more specific duties:

- to provide relevant information to enable consumers 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 to the user. This should include information on the precautions to be taken to avoid those risks (for example, the need to wear protective gloves); and
- to adopt measures commensurate with the characteristics of the products which he supplies, to enable him to be informed of the risks which these products might present and to take appropriate action, including, where necessary, withdrawing the product in question from the distribution chain.

6.12 Examples of such measures include:

- marking the products, their packaging or other materials supplied with the product (e.g. instruction booklets) with the name and address of the producer (name and postcode is acceptable), product reference, and batch number where appropriate, so that they can be identified (in many cases the manufacturer's normal quality control procedures will mean that batch marking is already in place);
- sample testing of products on the market;
- investigating complaints relating to safety, and keeping a register of such complaints; and/or
- informing distributors of the monitoring work and the results.

6.13 The above are not mandatory requirements in every case and which of them will be appropriate to a particular product will be determined by the nature of the product, the group of consumers for whom it is intended and the type of activity in which the producer is engaged. In the case of producers, monitoring may, for a low risk product, consist largely of assessing complaints from consumers. More complex and higher risk products may involve a higher level of vigilance and attention from the producer involving an ongoing sampling programme. There may be advantage in seeking the advice of your local Trading Standards Department in each case and prior to the placing of a new product on the market.

Obligations on Distributors

6.14 A distributor is required to act with due care to help ensure that the products he supplies are safe. In particular, he must not supply products which as a professional he knows or should have presumed, on the basis of information in his possession, to be dangerous.

6.15 A distributor is also required to keep and provide documentation necessary to trace the origin of unsafe products. For the most part producers mark their products with a product reference (which may be its name) and/or its production batch to ease traceability, but there may be issues with very small products and products where it is impracticable for them to do so, or simply where the producer is not obvious. In these instances distributors' records can be used to trace an unsafe product back to its source and thereby allow the enforcement authorities an opportunity to resolve the problem at source. Even where a producer cannot be identified (e.g. at the end of a long supply chain), keeping records of where the product was sourced should ensure that a producer can be traced back through the supply chain (but see paragraph 3 of Annex A in respect to Charities and Voluntary Organisations).

6.16 Producers and larger distributors often maintain product files that contain all manner of information relating to the products that they sell. It would be overly burdensome to suggest that all distributors, especially the smallest, should adopt such procedures. In these circumstances the documentation that is required to support Inland Revenue and VAT requirements should be sufficient so long as they show from whom the goods were purchased and, if not for retail, to whom they were sold. We appreciate that such records have to be kept for a minimum of 6 years. For most products we believe that will be sufficient to cover the life cycle of the product in normal or reasonably foreseeable consumer use. Where there is evidence that a particular product is normally or often in consumer use for a longer period the records should be retained for that longer period (but see paragraph 2.14 in respect of construction products). These records may be electronic.

6.17 A distributor is also required, *within the limits of his activity*, to participate in monitoring the safety of products that he supplies and pass on information on the product risks. In practice this will mean:

- passing on to consumers information provided by producers about product risks;
- passing back to producers safety complaints and information and experiences on safety related matters which he obtains from customers;
- co-operating with the authorities and others in the supply chain in taking action to avoid or remove those risks.

6.18 The monitoring requirement placed on distributors should not be viewed in isolation. It clearly must be taken as part of the overall requirement for the distributor to supply safe products and, in general, it is anticipated that action by an enforcement authority would only be contemplated where the safety of a product is at issue.

7 Enforcement

7.1 Enforcement of the Regulations is the responsibility of the Vehicle Operator Services Agency (VOSA) so far as safety problems with vehicles are concerned, and in the case of medicines and medical devices the enforcement authority will be the Medicines and Healthcare Products Regulatory Agency. Otherwise the principal responsibility for day-to-day enforcement of the Regulations, including in respect of individual unsafe vehicles on dealers' forecourts, rests with Local Authorities, primarily local Trading Standards Authorities in England, Wales and Scotland, and in Northern Ireland District Council Environmental Health Officers (EHOs). EHOs also have responsibilities under the regulations in England, Wales and Scotland. This responsibility largely manifests itself in respect of products used by consumers in the course of the delivery of a service on work premises such as restaurants, hotels and in leisure facilities. In most cases EHOs will find that their existing powers under health and safety at work legislation will be sufficient to resolve the risk that has been identified. But in some circumstances EHOs may be required to enforce under these Regulations. For example:

- a kettle in a hotel room with a frayed cord would clearly be for EHOs to deal under their existing powers;
- an unsafe child's booster seat not available on general sale but in wide use by restaurants across the country is an example of a product where EHOs might need recourse to these Regulations;
- a kettle that was in a hotel bedroom but found to be inherently unsafe and on general sale would be an example of a situation where it would be more appropriate for EHOs to pass information about the product to their trading standards colleagues for wider enforcement activity.

7.2 HSE are the sole enforcers in respect of some product-specific Regulations (for example on machinery safety) where the products concerned are used by the trade in the workplace. However, where and to the extent that a particular product is a dual-use product, or where it has migrated from the professional to the consumer market, HSE will be required to coordinate and cooperate with other appropriate enforcement authorities (principally Local Authority Trading Standards Departments) to ensure that there is safety coverage for consumers as necessary at the borderlines under the provisions of these Regulations.

7.3 Enforcement should take due account of Service Delivery Plans drawn up under the National Performance Framework (particularly in England, Scotland and Wales) and should also, wherever possible, follow the principles of the Enforcement Concordat. The Government is currently consulting on the "Better Regulation Bill" and this consultation includes proposals for the future of the Concordat. One proposal is to change the Concordat to a statutory basis. The full consultation document can be found at: http://www.cabinetoffice.gov.uk/regulation/bill_for_better_regulation/index.asp

7.4 The General Product Safety Regulations highlight the importance of enforcement authorities reaching voluntary agreement with producers and distributors on action to remove risk to consumers, and this should be the principal objective for enforcement authorities as long as this is compatible with protecting consumer safety.

Cross Border Investigation, Seizure and Prosecution

7.5 Local Authorities are given the power under the Regulations to:

- enter premises (including by warrant if necessary);
- make test purchases and undertake testing; and
- seize records and products from producers and distributors in the supply chain whether they are in its own Local Authority area or another area.

7.6 For the purposes of efficient enforcement, a Local Authority in England and Wales may investigate and prosecute for an alleged contravention of the Regulations that was committed outside its Local Authority area but within England and Wales. Similar arrangements apply for district councils within Northern Ireland. In Scotland prosecutions are the responsibility of the Lord Advocate and Part 1 of the Criminal Procedure (Scotland) Act 1995 applies. Identical offences committed by the same offender across several Sheriffdoms may be prosecuted in any one of them. Similar provisions apply to the District Courts.

The Home Authority Principle

7.7 The Local Authorities Coordinators of Regulatory Services (LACORS) promotes the "Home Authority" principle, under which the Local Authority for the area where the decision-making function of a business is located (usually a business's headquarters or main place of business) accepts the primary responsibility for offering advice and preventative guidance on a regular basis on safety (and other related matters) to the business. Other Local Authorities should liaise with the relevant home authority on any safety matters arising from the products supplied by that business and before implementing any measures. Businesses are encouraged to make contact with, and seek advice on any particular matter from their home Local Authority.

7.8 The Home Authority principle is aimed at promoting uniformity of approach to regulatory services reducing duplication and assisting businesses to comply with the law. LACORS monitors the effectiveness of the principle and fulfils a role in resolving any differences of interpretation in appropriate cases. Guidance on the Home Authority principle can be found on the LACORS website – www.lacors.gov.uk – or from LACORS, 10 Albert Embankment, London SE1 7SP (tel: 020 7840 7200).

Products originating from outside the United Kingdom

7.9 As under the 1994 Regulations, enforcement authorities will continue to have the power to take action in the UK to safeguard the health and safety of UK consumers in cases where a product is first placed on the market in another Member State and is then found to be unsafe when supplied in the UK.

Measures available to enforcement authorities

7.10 Dialogue and the encouragement of voluntary action is specifically encouraged as an alternative to formal enforcement. However, enforcement authorities have access to a range of measures that can be employed in removing risk to consumer safety where producers and distributors have not fulfilled their obligations under these Regulations.

7.11 Generally, it is assumed that where the producer or distributor is already taking the action necessary to remove the risk to consumers it will not be necessary for the enforcement authorities to serve a safety notice.

7.12 Other than in the case of urgency resulting from the identification of a serious risk the parties concerned must, whenever feasible, be given an opportunity to submit their views before the adoption of a measure. In other cases they must be given the opportunity to comment following implementation of the measure.

7.13 The measure chosen must be proportionate to the seriousness of the risk:

- **Suspension Notices** – Where there may have been a breach of the Regulations, these notices temporarily ban the placing on the market or the supply of a product while tests are undertaken and the results are being waited for;
- **Requirement to Mark and Requirement to Warn** – these powers allow an enforcement authority to order the marking of a product with suitable warnings where it could pose risks in certain conditions, or require that specific warnings be given to certain persons considered to be at particular risk from a product (e.g. young children, the elderly etc);
- **Withdrawal Notices** – enforcement authorities can issue a Withdrawal Notice to permanently prevent a person from further supplying a product that is believed to be dangerous where it is already on the market (if the voluntary action taken by producers and distributors is insufficient or unsatisfactory) or from placing it on the market if it has not yet been so placed;

- **Recall Notices** – where an enforcement authority has reasonable grounds for believing that a dangerous product has already been made available to consumers and voluntary action falls short of that considered necessary and sufficient to remove the risk, a last resort (i.e. no other measure available to the authority will suffice) power to serve a Recall Notice exists. This will require the person on whom it is served to take such steps as are identified in the notice to organise the return of the product from consumers. We understand though that in the case of high volumes of small, low-value, unsafe products, disposal by consumers could well serve the purpose of a recall as an alternative to the return of the product.

  Where a disagreement exists between the authority and the producer/distributor over whether recall is necessary, business may require the authority to seek a reasoned opinion on the case for recall under a scheme operated by the Chartered Institute of Arbitrators set up by the DTI specifically for the purpose. The cost of the scheme is to be met by the business that requested its use. The total cost should be no more than around £5,500. Enforcement authorities are expected to take account of the advice received when coming to a final decision on whether or not to serve a Recall Notice. Detailed rules for the use of the Product Recall Advisory Scheme are at Annex B of this Guidance.

  Where a person on whom a Recall Notice is served fails, fully or in part, to abide by its terms of that notice the enforcement authority may undertake the recall itself and bring civil proceedings for the recovery of its costs. The authority is also required to act where no producer or distributor can be identified on whom to serve a Recall Notice. In such circumstances recall remains a measure of last resort.

  The Regulations recognise that Codes of Practice on Recall may be valuable in determining the nature and scope of a recall action. The European Guide to Corrective Actions including Recall is available from the European Commission's website[6]. The Guide, produced with DTI support, is aimed at improving the effectiveness of recalls of unsafe products from the Community market;

- **Forfeiture and Destruction** – where products are dangerous the enforcement authority may apply to the court for an order for their forfeiture and destruction. However as an alternative to destruction the court may, on condition that any order to pay the costs and expenses of the proceedings is complied with, permit the supply of the product to a person for repair or re-conditioning or for scrap.

6 http://europa.eu.int/comm/consumers/cons_safe/action_guide_en.pdf

Confidentiality of information

7.14 An enforcement authority has an obligation under these Regulations to make available to the public information about the nature of risks that specific products pose to consumer health and safety and the measures taken to remove those risks. However, to the extent that the information is professionally secret and/or the disclosure of which the authority thinks might significantly harm the legitimate business interests of the business to which it relates, or relates to the private affairs of an individual whose disclosure the authority thinks might significantly harm the individual's interests, that information shall not be disclosed while the business continues in existence or during the lifetime of the individual, other than by consent, or in connection with any criminal proceedings or the investigation of, or decision to take any criminal proceedings, or unless such disclosure is necessary to protect the health and safety of consumers. Other than as specified disclosure is an offence under s245 of Part 9 of the Enterprise Act 2002.

Precautionary Principle

7.15 Where appropriate, enforcement authorities are to be guided by the Precautionary Principle when taking measures under the Regulations to protect consumers from unsafe products.

7.16 The Precautionary Principle applies where there are threats of substantial, serious or irreversible harm to consumers but there is clear scientific uncertainty over the extent of the threats posed.

7.17 Judgements handed down by the Court of Justice (C-434/02 and C-210/03) presuppose that for the Principle to apply the risk should be plausible and realistic based on the identification of potentially negative effects on health and safety and a comprehensive assessment of the risks based on the most reliable scientific data available (including international research). Where it proves to be impossible to determine with certainty the existence or extent of the alleged risk because of the insufficiency, inconclusiveness or imprecision of the results of the scientific study into the risk, but the likelihood of real harm to public health and safety persists should the risk materialise, the Precautionary Principle justifies the adoption of measures under the Regulations.

7.18 A measure adopted under the Precautionary Principle must recognise that it is not appropriate to seek to reduce the risk to zero. It should also be proportionate to the expected risk and appropriate for attaining a high level of public health in accordance with the definition of a safe product in the Regulations. The enforcement authority taking the measure must keep it under regular review in the light of new scientific evidence.

Appeals

7.19 All safety notices served may be subject to an appeal made before the end of the period of 21 days beginning on the day the notice was served. In the case of a Recall Notice, where a person proposes to make an appeal, that person may apply to the court before the end of the period of 7 days beginning on the day the notice was served to have the notice temporarily suspended pending the making and determination of the appeal.

Commission Decisions

7.20 Where the European Commission becomes aware of a serious risk it may after consulting the Member States adopt a decision to ensure a consistent approach is adopted where the risk can only be eliminated effectively by imposing one of the above measures at the Community level for a period of one year (extendable) unless a specific product or batch of products can be identified in which case the decision will be valid without a time limit. Exports from the Community of dangerous products subject to such a decision are prohibited unless the decision provides otherwise. Any such export ban will be enforced by HM Revenue and Customs under the Customs and Excise Management Act 1979, which carries its own offences and penalties.

8 Offences and Penalties

8.1 The Regulations set out a number of offences that are punishable by imprisonment and/or fines. These offences relate to failing to meet obligations in respect of supplying only safe products, providing consumers with appropriate information, producers/distributors putting themselves in a position to identify risks, notifying and cooperating with enforcement authorities, and contravening safety notices. The following is a summary of these offences.

8.2 It is an offence under the Regulations for:

- a **producer** to place a product on the market or supply a product (or undertake any of the preparatory acts to do either) unless it is safe;
- a **distributor** to expose or possess for supply, offer or agree to supply or supply a product which he knows or should have presumed, on the basis of the information in his possession and as a professional, is a dangerous product;
- a **person** to contravene a safety notice, which includes a Requirement to Mark, Requirement to Warn, Suspension Notice, Withdrawal Notice or Recall Notice.

It is also an offence under the Regulations for:

- a **producer** to fail to provide consumers (within the limits of his activities) with the relevant information enabling them 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 to take precautions against those risks;
- a **producer** to fail to adopt (within the limits of his activities) measures commensurate with the characteristics of the products which he supplies to enable him to be informed of the risks which the products might pose, and to 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;
- a **distributor** to fail to participate (within the limits of his activities) in monitoring the safety of a product placed on the market, in particular by passing on information on the risks posed by the product, keeping and producing the documentation necessary for tracing the origin of the product, and cooperating in action taken by a producer or an enforcement authority to avoid the risks;

- A **producer** or a **distributor** to fail to notify an enforcement authority when he 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, and to notify the actions taken to prevent the risk to the consumer, and where the product is or has been marketed or otherwise supplied to consumers in other Member States;
- a **person**, without reasonable cause, to fail to comply with a notice issued by the Secretary of State requesting additional information for the purpose of deciding whether to serve a safety notice (or to vary or revoke a safety notice already served), or in purporting to comply with a requirement in the notice, to furnish information which he knows is false in a material way or recklessly furnishes information that is false in a material way;
- a **person** to intentionally obstruct an enforcement officer, intentionally fail to comply with any request made of him by an enforcement officer or, without reasonable cause, fail to give any other assistance or information that an enforcement authority may reasonably require of him.

Time limit for bringing prosecutions

8.3 The Regulations require that any prosecution for an offence must be brought within three years from the commission of the offence (i.e. breach of the general safety requirement etc), or 12 months from the discovery of the offence by the prosecutor, whichever is sooner. This is consistent with other recent consumer legislation.

Penalties

8.4 For the more serious offences of a breach of the general safety requirement or the breach of a safety notice the maximum penalty is a fine of £20,000 or 12 months imprisonment. For other offences the penalty is a maximum fine of £5,000 or 3 months imprisonment.

9 Defences

Liability of persons other than the principal offender

9.1 Where a person (the "principal offender") has committed an offence under the Regulations and this was due to the act or default of another person, proceedings may be brought against that other person *whether or not* proceedings are also brought against the principal offender.

Liability of company officers

9.2 Where it can be shown that an offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, such persons (in addition to the body corporate) may also be proceeded against.

Under specific legislation

9.3 Where the safety of a product is covered by UK national legislation and action is brought against a supplier under that legislation he will be entitled to any defences provided in that legislation.

Under the Regulations

9.4 The Regulations provide a defence of "due diligence" which allows a producer or distributor to argue in certain circumstances that he took all reasonable steps and exercised all due diligence to avoid committing the alleged offence. Where a producer or distributor argues that the commission of the alleged offence was due to the act or default of another person (or due to reliance on information given him by another person) he must notify the prosecution not less than seven days before the date of hearing the case (or the trial diet in Scotland) that he intends to rely on this defence. A breach of the Regulations does not confer any right of action in civil proceedings in respect of any consequential loss or damage suffered.

10 Changes to Existing Safety Legislation

Revocation of the General Product Safety Regulations 1994

10.1 Where, in relation to any product, a suspension notice (within the meaning of CPA) 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 not withstanding the revocation of the General Product Safety Regulations 1994 by these Regulations, and those Regulations will continue to apply accordingly.

Repeal of section 10 of the Consumer Protection Act 1987

10.2 Bringing the supply (other than for sale) of antiques within these Regulations has enabled us to cover all consumer products within one simpler and more consistent safety regime. Consequently, there is no further need for section 10 of the 1987 Act and this is repealed by the Regulations.

ANNEX A

Guidance on definitions

Activities affecting the safety properties of a product placed on the market

1. Examples of such activities may include:

   - assembly of different components, complete in themselves, received, for example, from different manufacturers;
   - damage or loss of instructions when part of the supplier's operation is repackaging of the product;
   - commercial activity.

2. Trade and business activities whether or not they are carried on for the purpose of profit are covered.

Charities and Voluntary Organisations

3. There is no special exemption for charities or voluntary organisations that sell goods on a regular basis, and are for practical purposes engaged in a business activity, from the requirements imposed by the general safety requirement. Charities could not however be expected to have documentation that would help trace the origin of products that are donated free of charge by members of the public, often anonymously. It is not unreasonable though for charities to be subject to the Regulations and expected to keep records in respect of any other product obtained through commercial channels that they may from time to time supply or make available.

4. In cases where products are given away free those supplies will generally be subject to the Regulations where the act of supply is part of a commercial activity. However voluntary organisations that exist solely to provide goods free of charge to the needy are probably not engaging in a commercial activity and are not therefore subject to the Regulations. Similar considerations apply to village fetes and jumble sales (e.g. organised by youth organisations) apart from in respect of stands taken by commercial operations where the activity is clearly commercial even though the profit, or a proportion of it, is to be donated to charity.

GPS Directive

5. Means the General Product Safety Directive (2001/95/EC), which was adopted on 3 December 2001.

Labelling/information

6. It is not expected that products will be labelled with a warning about every conceivable potential hazard. It will be for the producer to assess the risks and hazards. Whether a warning should be given must depend on a variety of factors, including:

   - the severity of the hazard;
   - the risk of that hazard being realised;
   - the degree to which the risk is obvious;
   - the type of consumer likely to be at particularly risk.

   The considerations set out under "Minimum risk compatible with the product's use" below also apply to an assessment of the labelling needs.

Antiques

7. In the absence of any guidance in the Directive as to what constitutes an antique, the Department is not able to include a definition of an antique in the Regulations. However, as a working assumption an antique may be taken to be a product which is more than 100 years old, or which is of a type that has long gone out of circulation, is recognised as a collectible item and as such is unlikely (although there are some exceptions such as furniture) to be used by a consumer for its original purpose. If there is any doubt about whether or not the product is an antique then it must be safe, as defined in the Regulations.

Products for Repair or Reconditioning

8. It should be noted that it is not sufficient for a trader to make or display a general statement that goods are supplied for repair or reconditioning. Purchasers should be clearly informed of this fact in each case unless, for example, the goods on sale are in a separate area of the sales premises or trading area and the status of the goods is made clear in a general notice of such prominence and proportions that prospective purchasers cannot overlook it.

Minimum risk compatible with the product's use which is consistent with a high level of protection for consumers

9. It must be recognised that it is not always possible to eliminate all risk from products. Certain products, by the very nature of their intended purpose, carry an inherent safety risk and consumers must accept that they have a responsibility to exercise due care in using such products. Examples are knives and scissors, which must have sharp edges to perform their function but where reasonable precautions can be taken to ensure that handles are sturdy and hands are kept away from the functional edges when such items are in use. In other cases, it could be argued that consumers should be aware of the potential risks of misuse through general knowledge, education and experience. Thus, a balanced view must be taken based on the nature of the product and the acceptability of the risk to consumers based on the characteristics of the product and its use. The range of potential hazards which may need to be drawn to consumers' attention will depend on a number of factors (referred to in the section above on "Labelling").

CE markings

10. The Directive (and hence the Regulations) imposes no CE marking requirement. CE marking a product which does not require this is likely to constitute an offence under section 1 of the Trade Descriptions Act 1968.

Professional

11. "Professional" in these Regulations is considered to refer:

    - to a person carrying on a commercial activity; or
    - the knowledge and expertise which a distributor could reasonably be expected to have available to him, either alone or with others, having regard to the nature of business activity and to other relevant factors (e.g. whether he is required to have specialist education, knowledge or training in order to enter that business).

Risk (defined in ISO/IEC Guide 51)

12. Risk – the probable rate of occurrence of a hazard causing harm and the degree of severity of the harm. (Hazard is defined as a potential source of harm).

Serious Risk

13. Serious risk means any serious risk, including those the effects of which are not immediate, requiring rapid intervention by the public authorities. The Commission has produced a methodology for determining the severity of a risk and this is attached to its non-binding Guidance on Notifications[7]. We are aware though that there are also a number of risk analysis models in normal use such as the Nomograph and others. Neither the Directive nor these Regulations prescribe the use of any one particular model; however it is possible that there may be further work in the future on developing a consistent approach at the Community level.

Normal or reasonably foreseeable conditions of use including duration

14. *Normal conditions* of use can be taken to be the general usage intended by the producer without him placing unreasonable restrictions on such use by consumers.

15. *Reasonably foreseeable* use should, it is considered, where appropriate, take account of the intended and potential types of user (i.e. the elderly, the unpredictable behaviour of children) and how a reasonable person might use a product in the absence of any indications to the contrary.

16. *Duration* means the normally expected or actual life of the product, whichever is longer.

7 http://europa.eu.int/comm/consumers/cons_safe/prod_safe/gpsd/index_en.htm

ANNEX B

Advisory Scheme for Product Recall under the General Product Safety Regulations 2005

THE CHARTERED INSTITUTE OF ARBITRATORS

2005 Edition (First Edition)

1 Introduction

1.1 The Advisory Scheme for Product Recall (the Scheme) under the General Product Safety Regulations 2005 applies where a business disputes the intention of an enforcement authority to serve a formal Recall Notice requiring the business to recall a product from consumers. In such circumstances the business (the applicant) may require the enforcement authority to seek independent written advice from an individual nominated by the Chartered Institute of Arbitrators (CIArb) on the questions of whether a product is dangerous and whether recall is appropriate and proportionate to the seriousness of the risk.

1.2 The CIArb administers the Scheme and has the exclusive right to appoint an evaluator under these rules. The CIArb will appoint an evaluator from its panel of evaluators specifically created for the Scheme. The evaluator will have a legal qualification of at least 10 years standing.

1.3 The scheme uses early neutral evaluation (ENE) as a method of producing an independent written advice on the questions referred to in paragraph 1.1 above after taking into account the representations made by the business and the enforcement authority. The ENE procedure is designed to minimise costs and encourage agreement between the parties as early as possible.

2 Making an application

2.1 An application under the Scheme must be made on the designated application form, available from:

Dispute Resolution Services
The Chartered Institute of Arbitrators
The International Arbitration & Mediation Centre
12 Bloomsbury Square
London
WC1A 2LP.

Telephone 020-7421-7444
Fax 020-7404-4023
Email drs@arbitrators.org
Web www.arbitrators.org

2.2 The application must be submitted to the relevant enforcement authority in accordance with regulation 15(4)(c) of the General Product Safety Regulations 2005 accompanied by the registration fee of £350 plus VAT payable to the Chartered Institute of Arbitrators. The enforcement authority shall forward the application and fee immediately to the CIArb.

2.3 Each party must advise the other and the CIArb of a unique contact point to receive all communications relating to the proceedings.

3 Appointment of an evaluator

3.1 The CIArb will appoint an evaluator no later than the 3rd working day following the date of receipt of a properly completed application form together with the fee and will forthwith inform the parties.

3.2 The CIArb may appoint a substitute evaluator in the event of the original evaluator becoming incapacitated, or for any reason being unable to attend competently and/or expeditiously to his or her duties.

4 Procedure

4.1 The proceedings commence on the date of the appointment of the evaluator.

4.2 The parties shall be responsible for submitting their written case statements and supporting documentation to the CIArb and the other party no later than the 3rd working day following the day the proceedings commenced.

4.3 A case statement shall be no longer than 10 pages and may include anything the party believes would further the objectives of the evaluation. The statement must also identify any legal or factual issues the early resolution of which might reduce the scope of disagreement and/or contribute significantly to any potential agreement regarding the advice to be given by the evaluator.

4.4 A party may include in its documentation the views of the Local Authority where the relevant decision-making base of the applicant is located (the Home Authority). Where the home authority has stated a view it shall be presented to the evaluator and the other party complete and unedited.

4.5 When submitting documents to the evaluator either party may request that the application proceed on the basis of written submissions and documentary evidence only (which is designed to offer a quicker and more cost-effective procedure). Where no such request is made or if the other party does not agree then there will be an oral hearing.

4.6 A party may be represented or assisted at an oral hearing by not more than three persons. A party intending to be represented or assisted by such a person shall notify the other party of his or her name and role. The evaluator may require proof of a person's authority to act for the party.

4.7 The evaluator may request a party to provide additional evidence on any relevant matter, in writing or orally, if he or she deems it necessary to do so in order to reach a view.

4.8 The evaluator will hold the hearing not later than the 9th working day after the day on which the proceedings commenced. Under normal circumstances the hearing will last for no longer than one working day (7 hours). If the evaluator and the parties agree, the hearing may extend into one further working day subject to the evaluator and the applicant agreeing a fee for the additional hours (see section 5 below).

4.9 The CIArb will consult with the parties and pick a venue for the evaluation based on the availability of appropriate facilities. If possible this will be on neutral ground. With the agreement of the applicant facilities at the CIArb may be used. The CIArb will advise on their availability and cost on request. However, if each party agrees, it may be more convenient and cost-effective to hold the evaluation at the premises of one of the parties.

4.10 The parties or their representatives must attend the hearing in person save that the evaluator will have the discretion to permit a party to participate remotely where attendance would be unduly onerous.

4.11 The following procedure will typically be followed at the hearing although the evaluator will be able to allow a great deal of flexibility in the procedure, with the agreement of the parties. The evaluator will:

(a) give each party time to present its evidence and submissions on the questions in issue. A party may make its presentation through any media it feels fit (e.g. written documentation, photographs, video evidence etc). It is the responsibility of the party concerned to ensure that any relevant equipment is available. Notice of the presentation of videos etc should be contained in the party's case statement;

(b) help the parties identify areas of agreement;

(c) assess the relative strengths and weaknesses of the parties' evidence, and explain carefully the reasoning that supports these assessments;

(d) where the evaluator identifies grounds for agreement on the questions he or she may explore the possibility with the parties. If the parties are agreeable, the evaluator may speak to the parties privately to see whether their positions are close enough to make an agreement feasible;

(e) offer an informal evaluation of the submissions and evidence.

4.12 The evaluator will provide his or her written advice to the parties no later than the 6th working day following the conclusion of the oral hearing or of any further periods allowed by these rules where further information or documents are requested or expert advice is sought.

4.13 The evaluator may if he or she requires, in order to decide what advice to give, request further information or documentation from either or both of the parties. Such further information or documentation shall be provided to the evaluator and the other party no later than the 3rd working day following the date of the request or be disregarded.

4.14 Where further information or documentation is provided by a party within the time limit in the preceding paragraph then the other party shall have a further three working days from the date of submission to make comments on that material to the evaluator.

4.15 The evaluator may also if he or she so requires obtain the advice of an independent expert(s). The evaluator shall provide a copy of any advice received from the expert to the parties who may within three working days from the date of receipt of that advice submit comments on it to the evaluator.

5 Costs

5.1 As provided by regulation 15(6) of the General Product Safety Regulations 2005, the applicant shall be responsible for payment of all fees, costs and expenses of and related to the application and shall pay these immediately on demand to the CIArb at the conclusion of the evaluation. Save that no payment will be due to any evaluator who is replaced by the CIArb for any reason.

5.2 Otherwise the parties shall bear their own costs of the application regardless of the outcome.

5.3 The evaluator's fees for all work on the case will be £200 per hour plus VAT (where applicable), subject to a maximum equivalent to 16 hours work, except where the hearing extends into a second day in which case the maximum will be raised by the number of hours taken up on the case on the second day (up to a maximum of 7 further hours giving a total maximum equivalent to 23 hours work). In addition, evaluators may charge their reasonable travel and incidental expenses at cost.

5.4 If an evaluator seeks advice from an expert then the additional amount payable by the applicant shall not exceed £100 per hour plus VAT (if applicable), subject to a maximum of 8 hours work.

5.5 Evaluators and experts shall maintain sufficient records to enable the hours worked on any particular case to be established. These records will be retained by the CIArb and supplied to any party with reasonable cause on request.

6 Confidentiality

6.1 The written advice of the evaluator may be provided to a court by either party in the event of an appeal against a Recall Notice having been served. Subject to this the proceedings should be kept confidential except as required or permitted by law.

6.2 The CIArb may gather and retain details in summary form of individual cases and the assessments made and may publish statistical and outline information in respect of such cases whilst preserving the anonymity of parties. It may make the summaries available to other evaluators as a resource in order to encourage consistency of approach in the advice provided under these rules.

7 General

7.1 All aspects of the scheme shall be subject to review after no more than 3 years from the date of entry into force and from time to time thereafter as determined by the Secretary of State for Trade and Industry. The edition of the scheme in force at the time the dispute arises shall govern any evaluation under the scheme.

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