

dti

PRODUCT STANDARDS

Toy Safety

GUIDANCE NOTES ON THE UK TOYS
(SAFETY) REGULATIONS 1995
(S.I. 1995/204)

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This document provides a guide to the Toys (Safety) Regulations 1995. It is for guidance only and in no way replaces the Regulations. The guide has no legal force but is intended to help business, enforcement authorities and consumers understand the main features of the legislation, and the circumstances in which it applies. Those affected by the Regulations should refer to them for a full statement of the legal requirements and in case of doubt seek advice on questions of interpretation.

The Regulations are administered under the provisions of the Consumer Protection Act 1987 and those affected by the Regulations may also find it useful to familiarise themselves with aspects of that Act.

The Regulations (Statutory Instrument 1995 No 204) and the Consumer Protection Act 1987 can be obtained from: the Stationery Office Ltd, SO Publications Centre, PO Box 276, London SW8 5DT; through SO bookshops; or from official agents for SO publications.

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While every effort has been made to ensure that the information in this booklet is accurate, the Department of Trade and Industry cannot accept liability for any errors, omissions or misleading statements in that information.

Toy Safety - the law in brief

Since 1 January 1990, UK Regulations which implement the European Directive on the safety of toys have been in force.

- ❑ The main requirements are that toys must:
 - satisfy safety requirements (termed the '**essential safety requirements**');
 - bear the CE marking;
 - bear the required name and address details;
 - be accompanied by warnings where necessary.
- ❑ In addition, information must be maintained for inspection by enforcement authorities.

Second-hand toys must be safe but are not subject to the other requirements in the Regulations.

The Regulations apply to manufacturers, importers, retailers, hirers and other suppliers of new and second-hand toys - that is, anyone supplying toys in the course of **any** business. Toys distributed free of charge in the course of business are also covered.

- ❑ Supplying toys which are subject to the Regulations but do not meet their requirements would constitute an offence and could result in penalties of a fine of up to £5,000 or a term of imprisonment, or both.
- ❑ The same safety requirements apply everywhere in the Community, so safe toys complying with the UK Regulations, and any other applicable Community requirements, may be sold anywhere in the Community.
- ❑ The essential safety requirements in the Regulations are intended to provide a comprehensive framework for ensuring that toys are safe. In order to comply with the essential safety requirements it will be necessary for some toys also to comply with other legislation - e.g. toys that are cosmetics must also comply with the Cosmetic Products (Safety) Regulations 1996 (as amended).
- ❑ The Regulations do not apply to some products (e.g. toy steam engines) which might otherwise be regarded as toys but are specifically excluded from the definition of toy in the Regulations. (Note that such products are covered by the General Product Safety Regulations 1994 and may be subject to other requirements.)

Free movement of goods

Achieving the free movement of goods lies at the heart of the drive to create the single European market.

All European Community countries have laws on product safety and so on. Different laws can cause technical barriers to trade.

In May 1985, European Community Ministers agreed on a 'New Approach to Technical Harmonisation and Standards' to tackle this long-standing problem for business.

'New Approach' directives set out 'essential requirements' (for safety, for example), written in general terms, which must be met before products may be sold in the United Kingdom or anywhere else in the Community. European standards fill in the detail and are the main way for businesses to meet the 'essential requirements'. The Directives also say how manufacturers are to show that products meet the 'essential requirements'. Products meeting the requirements are to carry CE marking, which should mean that they can be sold anywhere in the Community.

The Toys Safety Directive is one such directive. The provisions of the Directive were implemented into United Kingdom law by the Toys (Safety) Regulations 1989, which came into force on 1 January 1990. These Regulations have been revoked and replaced by the Toys (Safety) Regulations 1995. The rest of this booklet describes those Regulations.

For the wider background and to find out more about what this means for your business, get your copy of *Keeping your product on the market* by telephoning DTI's Publications Orderline on 0870 1502 500.

Free circulation

Under European Community rules (as set out in the Toys Safety Directive and other New Approach directives) Community countries are required not to interfere with the supply of toys that carry CE marking **and** satisfy the required safety and other provisions. Thus, toys bearing the CE marking are to be presumed to satisfy the provisions of the Directive, and other New Approach directives as applicable, **unless there are grounds for suspecting otherwise.**

The Toys (Safety) Regulations 1995 (SI 1995 No 204)

Entry into force: 24 February 1995. The 1995 Regulations (“the Regulations”), which were made under the Consumer Protection Act 1987, contain provisions which were introduced in 1990. The following paragraphs set out the position as at 1 January 1997 following the expiry of the transitional period provided for in the Regulations. The background to the Regulations is set out in Annex H.

THE REQUIREMENTS IN DETAIL

The Regulations require that:

- (a) toys must satisfy the essential safety requirements (*regulation 4*) - see also pages 9 -10;
- (b) toys or their packaging must bear the CE marking as a positive declaration by the manufacturer or his authorised representative that:
 - (i) the toys satisfy the essential safety requirements of the Toys Safety Directive (*regulations 10(2)(a) and 10(2)(b)*) - see also pages 9 -10;
 - (ii) compliance has been verified by the use of the appropriate attestation (i.e. test/assessment) procedures **and** that these have been correctly applied by the person entitled to do so (see page 10);
 - (iii) the toys satisfy **all** the requirements of **all** New Approach directives (see section 10 of Annex A) which are applicable to the toys (*regulations 5(2) and 5(3)*) - see also pages 9 -10;
- (c) toys must be accompanied by the name and address of the person in the community who takes responsibility for the safety of the toy **and**, where appropriate, warnings and instructions for use (*regulations 10(1) and 10(8)*) - see also pages 11 -12;
- (d) information, including details supporting the declaration that the toys satisfy the essential safety requirements and the requirements of all other New Approach directives which have been applied to the toys, must be kept available for inspection by enforcement authorities (*regulations 11(1) and 11 (2)*) - see also pages 12 -13;
- (e) the style and form of the CE marking must be as specified in detail (*regulation 3(1) and Schedule 1*) see also page 10.

Sub-paragraph (b)(iii), among other things, also signifies a declaration that the appropriate information is held in the Community and is available for inspection, if necessary, by enforcement authorities.

Primary legislation: the Regulations were made under the 1987 Act and the European Communities Act 1972. The various enforcement powers, penalties, appeals, defences, compensation provisions referred to in this guide, and other relevant provisions, are those set out in various sections of Parts II and IV of the 1987 Act (see also pages 15 - 17 and Annex I).

The Regulations apply to toys, defined as:

“any product or material designed or clearly intended for use in play by children of less than 14 years of age” (*regulation 3(1)*) - see below and section 5 of Annex A.

See Annex B for products not regarded as toys for the purpose of the Regulations.

The Regulations do not apply to:

- ❑ the products listed in Annex B (such items are subject to the General Product Safety Regulations 1994 (see section 6 of Annex A) and, in some cases, legislation implementing specific EC directives and other safety requirements);
- ❑ toys which are not intended to be used in the UK or elsewhere in the Community (*regulation 2(2)*).

Second-hand toys have been subject to safety regulations since 1967 and this has been continued in all subsequent Regulations. Such toys must satisfy the safety provisions of the Regulations but are not subject to CE marking and name and address requirements, or the need for information to be maintained (*regulation 10(4)*).

SUPPLIERS AFFECTED

The Regulations apply to all those who supply toys in the UK - manufacturers, importers, wholesalers, retailers and hirers. ‘Supply’ (*regulation 3(1)*) includes offering to supply, agreeing to supply, exposing for supply and possessing for supply in the course of any business, not only a business dealing in toys.

Many charities will be subject to the Regulations because they will have the characteristics of what would be regarded as a business - money generating, a degree of continuity and regular business hours would be examples of such characteristics. Persons organising jumble sales and bazaars which are held at infrequent and irregular intervals would be unlikely to be considered as acting in the course of business - but traders who might be invited to sell toys at such a function would not be exempt from the requirements. In cases of doubt independent legal advice should be sought.

Individuals producing toys on an occasional basis to give to charities to sell would not themselves be subject to the Regulations but the charity which sold such toys might come within the scope of the Regulations.

The person who first places a toy on the market

The manufacturer or his authorised representative in the Community (for definition see Annex A, sections 8 and 1 respectively), **supplying in the UK**, must ensure that toys satisfy the requirements as set out on page 7 **and** must take responsibility for the declaration which the CE marking represents (*regulations 10(1) and 10(2)*) (see page 15 on offences).

Where neither the manufacturer nor his authorised representative is established in the Community (see section 4 of Annex A) the importer who imports toys from a country outside the Community - who then becomes the first supplier into the Community - (see section 7 of Annex A) must ensure that the above conditions are satisfied (*regulation 10(1)*) (see page 15 on offences).

Other suppliers

Other persons in the supply chain - e.g. importers who import toys from another member State, wholesalers, retailers - must supply only safe toys (*regulation 13*) which bear the CE marking and other specified details (see page 15 on offences).

THE ESSENTIAL SAFETY REQUIREMENTS

The essential safety requirements are set out in Annex C. They state that the user of toys, as well as anyone else, must be protected against risks of injury and to health when toys are used reasonably, bearing in mind the normal behaviour of children.

There are two methods by which a manufacturer or his authorised representative can ensure that toys satisfy the essential safety requirements applicable to them (*regulations 6 and 7*). These are:

- manufacture in conformity with the relevant national standards where these cover all relevant aspects of the safety of the toy (see method 1, Annex D) and self-certification that this is the case;
- manufacture in accordance with a model which has been EC type-examined (see method 2, Annex D).

Given the number and scope of relevant national standards available, method 1 will be the most commonly used procedure. Although it is open to manufacturers or their authorised representative to apply for EC type-examinations this procedure will only be **legally** required in certain cases - e.g. where some safety aspect of a toy is not addressed by the standards.

The essential safety requirements are intended to cover all aspects of the safety of toys. This can be deduced from Article 2 of the Directive and the general principles of the essential safety requirements (see Part 1 of Annex C). However, in order to satisfy the broad principles of the essential safety requirements some toys covered by the Regulations will also need to comply with other legislation

implementing European requirements such as the Dangerous Substances and Preparations (Safety) Regulations 1980 (as amended); the Food Imitations (Safety) Regulations 1989; and the Cosmetic Products (Safety) Regulations 1996 (as amended). They will also need to comply with the Euratom Directive (see page 29).

It follows that toys which come within the scope of the Regulations are not subject to the General Product Safety Regulations 1994. Therefore, where enforcement action is necessary this can only be taken on the basis of not satisfying one or more of the requirements of the toy safety Regulations.

CE MARKING

Toys must bear, or be accompanied by, the CE marking in a visible, easily legible and indelible form. It may be on the toys themselves or their packaging (*regulation 10(1)*) - but see also page 12. Affixing the CE marking represents a declaration, which only the manufacturer or his authorised representative in the Community can make, and results in a presumption - which is rebuttable - that the requirements of the Regulations (see page 7) have been complied with.

Affixing CE marking, and responsibility for the declaration which it represents, is the responsibility of the manufacturer or his authorised representative and **this responsibility cannot be devolved** to the test laboratory which may have been employed to undertake tests or otherwise assesses the safety of the toy in question.

In addition, CE marking will also constitute a declaration of conformity with other New Approach directives where they apply. In the UK this will mean complying with the relevant UK regulations implementing those directives (see page 9). An example of such regulations are the Electromagnetic Compatibility Regulations 1992 (which implement the Electromagnetic Compatibility Directive).

The Regulations formalise the style and size of the CE marking (*regulation 3(1)*). This is as shown in diagram 1 below. The marking may not be smaller than 5mm in height and the proportions shown in diagram 2 below must be maintained whatever its size.

Note: the grid does not form part of the marking and is for information only.



Diagram 1

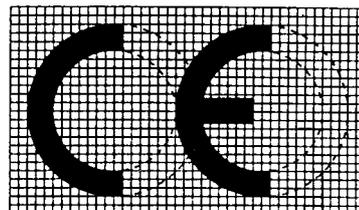


Diagram 2

The CE marking is not a European safety mark or quality symbol intended for consumers and should not be presented as such. Its purpose is to indicate to enforcement authorities that the toys bearing it are intended for sale in the European Community and signifies a declaration by the manufacturer or his authorised representative in the Community that the toys satisfy the requirements applicable to them and are entitled to access to Community markets (see page 6 on ‘free circulation’ and page 15 on ‘barriers to trade’).

RESTRICTIONS ON THE USE OF CE MARKING

It should be noted that the CE marking is specific only to a range of directives, termed ‘New Approach’ directives (see section 10 of Annex A). It can only be applied to products covered by those directives and on the basis of the conditions contained in them. Where a product is not a toy for the purpose of the Regulations (see page 5) it is not required to satisfy the essential safety requirements. In cases where such products are not subject to specific EC directives, safety will be regulated by the General Product Safety Regulations 1994 and will be assessed taking into account any appropriate safety standards. In some instances the toy safety standards may be considered a reasonable and practicable means for assessing safety. Where such non-toy products satisfy the toy safety standards they **must not** be CE marked (unless they are subject to another New Approach directive and also satisfy its requirements).

While it is not an offence under the Regulations to affix the CE marking to items which are not toys or covered by another directive requiring CE marking, such action could constitute an offence under section 1 of the Trade Descriptions Act 1968 and could result in prosecution and subsequent fine. This can apply to any person in the supply chain.

WARNINGS, NAME AND ADDRESS DETAILS AND OTHER INFORMATION WHICH MUST ACCOMPANY TOYS

Some toys must also be accompanied by warnings and information on precautions to be taken during use (*regulation 10(8)*). Details are given in Annex E. These must be in English although they may, in addition, be in other languages (*regulation 10(9)*). Other Community countries may have their own language requirements.

Whilst it is not an offence under the Regulations to market a toy with a warning in circumstances when the law does not require it (i.e. ‘not suitable for children under 36 months’ on a bath toy) such unnecessary statements should be avoided as they tend to dilute the effectiveness of warnings which the Regulations do require.

The name or trade name or mark and the address of the person who takes responsibility for the safety of the toy and compliance with other requirements of the Regulations must also accompany the toys (*regulation 10(1)*). This information **must** relate to one of the following:

- (a) **where the manufacturer is established in the Community and he has no authorised representative so established** - the details must be those of the manufacturer;
- (b) **where the manufacturer is established in the Community and he has an authorised representative also so established** - the details must be those of either the manufacturer or his authorised representative so established (see the third and fourth paragraphs of section 1 of Annex A);
- (c) **where the manufacturer is not established in the Community but he has an authorised representative so established** - the details must be those of the authorised representative;
- (d) **where the manufacturer is not established in the Community and he has no authorised representative so established** - the details must be those of the importer into the Community.

The name and address details are required to enable enforcement authorities to take follow-up action in the event that a toy is thought to be unsafe or to issue a compliance notice (see page 13).

Any abbreviation of the above details may only be made as long as the manufacturer or authorised representative or importer, as appropriate, can be identified. A company's trade name or mark may appear with the full name and address. However, the trade name or mark may only appear as an alternative to the full name provided such trade name or mark enables the manufacturer or authorised representative or importer to be identified by enforcement authorities in the UK and elsewhere in the Community (*regulation 10(1)*).

In the case of small toys or toys made of small parts, the CE marking and name and address details may appear on labels attached to the toys; on printed labels or leaflets accompanying the toys; or on the container of toys which are not individually packaged - i.e. on the retail display box (*regulation 10(3)*). However, where warnings are required to be given they must be supplied with each toy (*regulation 10(8)*).

As with the CE marking, the name and address details must be in a visible, easily legible and indelible form (*regulation 10(1)*). If these details are not on, or attached to, the toys, the final customer must be advised to keep or make a note of them (*regulation 10(5)*).

INFORMATION TO BE KEPT AVAILABLE

The information (*regulations 11(1) and 11(2)*) set out in Annex F must be kept available for inspection by enforcement authorities by:

- (a) the manufacturer if he is established in the United Kingdom; or

- (b) if the manufacturer is not established in the Community, by his authorised representative if he is established in the United Kingdom; or,
- (c) if the manufacturer is not established in the Community and he has no authorised representative so established, by the importer into the Community if he is established in the United Kingdom.

With reference to the above, the holder of the information may be different to the person whose name and address details must appear on the toys (see page 11 and section 1 of Annex A). However, in such circumstances the latter person must be able to direct enforcement authorities to the holder of the information when called upon to do so.

COMPLIANCE NOTICES

In addition to the responsibilities placed on suppliers, the Regulations also include a provision whereby an enforcement authority may issue a compliance notice in respect of a **non-safety** matter on the manufacturer or his authorised representative established in the Community (*regulation 10(11)*) - see Annex G. Formal enforcement action cannot be taken unless such a notice is first served.

The compliance notice provisions **do not apply** in the case of second-hand toys.

RELEVANT NATIONAL STANDARDS

The EN 71 series of European harmonised toy safety standards produced by CEN has been transposed into the British Standard BS EN 71. These are the 'relevant national standards' for the purpose of the Regulations (*regulations 3(1), 6 and 9(2)(c)*). This term has a particular meaning and is explained in section 11 of Annex A.

Six parts to BS EN 71 have been published. They deal with mechanical and physical properties, flammability requirements, migration of certain elements (i.e. permitted levels of lead, cadmium, etc.), experimental sets for chemistry and related activities, chemical toys other than experimental sets and a pictogram for age warning labelling. The safety of electric toys is covered by BS EN 50088:1996.

It is clearly important that manufacturers design toys keeping the published relevant national standards in mind rather than ignore them with consequent difficulties in attempting to show that the toys are safe, (see page 9 and paragraph 5 of Annex D). Details on the up-to-date position on standards may be obtained from the BSI contact point given on page 18.

It is also recommended that manufacturers and importers undertake a **hazard assessment** on toys at the prototype stage to decide whether there are any aspects of safety that are outside the scope of the standards. This will help determine whether a particular toy will require to be submitted to an approved body for EC type-examination.

APPROVED BODIES (referred to as ‘notified bodies’ in other New Approach directives)

In accordance with the provisions of the Toys Safety Directive, the Secretary of State for Trade and Industry has authorised a number of UK test laboratories for the purpose of undertaking EC type-examinations. These are test laboratories which satisfy the criteria set out in Annex III of the Toys Safety Directive. These test laboratories are authorised **solely** for the purpose of undertaking EC type-examinations for toys. Accordingly, such a body is not acting as an ‘approved body’ when testing to the relevant national standards to support a self-certification declaration by the manufacturer or his authorised representative as mentioned on page 9 and explained in paragraphs 1 and 2 of Annex D.

Each appointment is notified to the European Commission and other member States. Each body is assigned a unique identification number and details are published in the *Official Journal of the European Communities*. Manufacturers or their authorised representatives are free to make use of the services of an approved body in any member State. Lists of approved bodies in the UK and other member States are updated as necessary and copies may be obtained from the DTI contact point given on page 18.

SAFEGUARD PROCEDURE

Member States are required, within their own jurisdiction to:

- remove from the market toys which do not satisfy the requirements as set out in the Regulations; or,
- prevent non-complying toys from being placed on the market.

They must then notify the European Commission of the enforcement action when the non-compliance relates to safety and the toy bears the CE marking. Where the Commission is satisfied that the action is justified it is required to send details of the case to other member States so that they can consider taking similar action (this is the so-called ‘safeguard procedure’).

The DTI’s Consumer Safety Unit is responsible for notifying the Commission of enforcement action taken in the UK based on information received from enforcement authorities. Traders against whom enforcement action has been taken should therefore ensure that the trading standards officers concerned have the fullest information including any statements they wish to make about the case. Such information dispatched from the UK is treated as commercially confidential and clearly marked as being for enforcement purposes only.

The safeguard procedure does not apply in the case of toys which do not bear the CE marking or toys which are second-hand.

RAPEX

The Rapid Exchange of Information System (RAPEX) provides a system for notifying the Commission and thence member States about consumer products which are considered to pose a 'serious and immediate risk' to the health and safety of consumers. This system operates in addition to the safeguard clause procedure described above. The DTI's Consumer Safety Unit is the UK national contact point for both incoming and outgoing RAPEX notifications.

BARRIERS TO TRADE

Where a supplier believes that his toys satisfy all the requirements of the Regulations - and therefore the Directive - but are being denied access to the market in another member State he may seek advice and assistance from DTI's Action Single Market Unit on 020 7215 4212 or Fax 020 7215 4489.

ENFORCEMENT OF THE REGULATIONS

Responsibility for enforcement

Trading standards departments of local authorities in England, Scotland and Wales and Environmental Health Departments of District Councils in Northern Ireland, are responsible for day-to-day enforcement of toy safety Regulations. They have a statutory duty to enforce these, and other safety regulations, using the provisions of the Consumer Protection Act 1987 and are able to seize toys which are suspected of being unsafe, suspend from sale toys which do not comply with the toy safety Regulations and bring prosecutions against suppliers (see Annex I). This applies whether the toys originate in another member State or were imported direct into the UK from a third country.

Power to order tests where technical information does not exist

Where the required information (see page 12) cannot be produced, enforcement authorities have the power to require toys to be tested at the supplier's own expense (*regulation 11(3)*) for the purpose of establishing whether the essential safety requirements have been satisfied.

OFFENCES, PROCEEDINGS, DUE DILIGENCE DEFENCE AND PENALTIES

Offences: in relation to a manufacturer, authorised representative or importer in the UK.

It is an offence for a manufacturer, authorised representative or importer to supply toys:

- which do not satisfy the essential safety requirements (this includes not jeopardising the safety or health of users or third parties when used as intended or in a foreseeable way, bearing in mind the normal behaviour of children (*regulation 13*)); or

- ❑ which do not carry the CE marking representing the declaration by the manufacturer or his authorised representative or the required name and address details and certain other information (*regulations 10(1) and 10(8)*); or
- ❑ for which the relevant information (see Annex F) does not exist within the UK or elsewhere in the Community (*regulations 11(1) and 11(2)*) - see also page 12.

Offences: in relation to other suppliers in the UK

It is an offence for a supplier other than those referred to above to supply toys which:

- ❑ would jeopardise the safety or health of users or third parties when used as intended or in a foreseeable way, bearing in mind the normal behaviour of children (*regulation 13*); or,
- ❑ do not bear the CE marking or the name and address details of the person who first placed them on the Community market and certain other information (*regulations 10(1) and 10(8)*).

Time limit for bringing prosecutions

The Regulations require that any prosecution for an offence must be brought within 12 months from the commission of that offence (*regulation 15*).

It is an offence to contravene the terms of a suspension notice issued by a local authority trading standards department, or a prohibition notice issued by the Secretary of State.

Due diligence defence

In appropriate circumstances, a supplier may have access to a defence of due diligence (see Annex I).

Penalties

Offences (*regulation 13*) are subject to penalties, on summary conviction (that is, in a magistrates' court), of a fine not exceeding £5000 or a maximum prison term of six months, or both (section 12 of the 1987 Act). Where a supplier does not comply with a request to have toys tested (*regulation 11(3)*) - see also page 15 - within a reasonable time the penalties, on summary conviction, are a term of imprisonment of not more than three months or a fine not exceeding £5000.

Liability of persons other than the principal offender

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

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

THE HOME AUTHORITY PRINCIPLE

The Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS) promotes the 'home authority' principle which applies to all safety and trading standards matters. Under this, the local authority for the decision making place of an enterprise (usually a business's headquarters or main place of business) accepts the primary responsibility for offering advice and guidance on a regular basis on safety, and other related matters, to the enterprise. Other local authorities are expected to liaise with the relevant home authority on any safety matters arising from the products supplied by that business. Businesses are therefore encouraged to make contact with, and seek advice on any particular matter from, their local home trading standards authority.

The home authority principle is aimed at promoting uniformity of approach to trading standards matters, reducing duplication and assisting businesses to comply with the law. LACOTS monitors the effectiveness of the principle and fulfils a role in resolving any differences of interpretation in appropriate cases.

A booklet describing the home authority principle is available from: LACOTS, 10 Albert Embankment, London SE1 7SP (Tel: 020 7840 7200).

Further information

Availability of texts of the Regulations and the 1987 Act: the Toys (Safety) Regulations 1995 (ISBN 0 11 054870 1), other regulations mentioned in this guide, and the Consumer Protection Act 1987 (ISBN 0 10 544387 5) are available from The Stationery Office on 020 7873 9090 and its agents.

Availability of text of the Relevant National Standards: BS EN 71 and other standards can be obtained from BSI Sales at 389 Chiswick High Road, Chiswick, London W4 4AL. Tel: 020 8996 7000, Fax: 020 8996 7001.

Availability of text of the Directive: The complete text of the Toys Safety Directive (Council Directive of 3 May 1988 on the approximation of the laws of the member States concerning the safety of toys (88/378/EEC) has been published in the *Official Journal of the European Communities* (No L187 of 16.7.1988, pages 1 - 13). Copies of this text (and other editions of the Official Journal), are available from The Stationery Office Publications Centre and from the European Information Centres and European Documentation Centres located throughout the United Kingdom, who may provide them for a modest charge.

Other European legislation: Guidance booklets on other European directives mentioned in this guide may be obtained from the DTI's Publications Orderline on 0870 1502 500.

Policy matters on the toy safety Regulations and Directive: Christine Hennessy, Department of Trade and Industry, Consumer Safety Unit, Room 428, 1 Victoria Street, London SW1H 0ET. Tel: 020 7215 0360. Fax: 020 7215 0357.

Enquiries on the toy safety Standards: BSI Customer Services, 389 Chiswick High Road, Chiswick, London W4 4AL. Tel: 020 8996 9001.

Please note that the DTI Consumer Safety Unit does not supply copies of the above documents.

Definitions

1 Authorised representative

An authorised representative means **the manufacturer's representative established in the Community** who is authorised by a manufacturer for a particular purpose so as to be able to act on the manufacturer's behalf. It is clearly important that anyone claiming to hold such an appointment should be able to substantiate this by reference to written authorisation from the manufacturer. Such authorisation should specify the activities for which the person is authorised and the responsibilities placed upon him by the manufacturer.

Authorised representatives may be appointed for the purpose of:

- (a) supplying toys in the UK, arranging for the appropriate testing and consequential CE marking, and where relevant, name and address marking for such toys;
- (b) maintaining the relevant information (ie the technical file, see Annex F).

Although it is expected that the two functions will normally be the responsibility of one authorised representative, the Regulations (and the Directive) do not preclude a manufacturer appointing a representative for purpose (a) and another for (b) - an example might be where a manufacturer outside the Community did not want the representative authorised to place toys on the market to have access to confidential manufacturing information.

A manufacturer in the UK is not precluded from appointing an authorised representative in the UK or elsewhere in the Community. In practice, this will allow a UK manufacturer to appoint an 'own brand supplier' as his authorised representative so that the name and address of the own brand supplier may appear on the toy.

2 CEN

The European Committee for Standardisation responsible for preparing harmonised standards other than those dealing with electrical properties. Membership consists of the 18 European Economic Area countries and Switzerland. The British Standards Institution represents the UK and delegations to meetings of CEN technical committees are drawn from the relevant BSI technical committee.

3 CENELEC

The European Committee for Electrotechnical Standardisation responsible for preparing harmonised standards for electrical products - including the electrical safety of toys. Details of membership are as for CEN.

4 The Community

Means the European Economic Area (EEA) which comprises the 15 members of the European Community, Norway, Iceland and Liechtenstein.

5 Deciding whether a product is a 'toy'

For the purpose of the Regulations a toy is defined as:

“any product or material designed or clearly intended for use in play by children of less than 14 years of age, but excluding those products specified in Schedule 3 [to the Regulations]”.

Thus, items listed in Annex B (which reproduces Schedule 3) are not regarded as toys for the purpose of the Regulations. They do not therefore come within the scope of the Regulations but they must, like all consumer goods, be reasonably safe as required by the General Product Safety Regulations 1994 or any specific EC directives which may apply to them.

Only the courts can decide whether an item comes within the above definition of a toy but when deciding whether or not an item comes within the above definition **and** is covered by the Regulations the following should be borne in mind:

- all elements of the definition, and in particular 'use in play' - which implies some form of interaction between child and product - should be given due weight in relation to the particular item in question;
- not every item sold in a toy shop will necessarily be a toy within the meaning of the above definition;
- the packaging of an item may give an indication of the intended purpose of the item but should not on its own be taken as conclusive;
- it must not be assumed that all items intended for use by children will be toys;
- items (e.g. types of mobiles) which are intended for very young children and which the manufacturer considers could not be 'used in play' by them could be 'used in play' by their older brothers or sisters;
- the fact that a 'relevant national standard' (see section 11 below) does not cover an item - or indeed that such a standard specifically states that it does not cover an item - does not necessarily mean that the item is not a toy for the purpose of the Regulations;
- an item may be a toy as well as having another function;
- there will be some products (e.g. toy steam engines) which might be regarded as toys but are specifically excluded from the scope of the Regulations. Such items are listed at Annex B and **must not** be CE marked;

- ❑ any label or statement on, or with, an item indicating that it is not a toy, or is not intended for anyone under 14 years, would not necessarily be regarded as conclusive by enforcement authorities.

If in doubt, it is advisable to work through the above criteria so as to be able to discuss and, if necessary, defend the decision (i.e. a toy or not a toy) with enforcement authorities - or in some cases, in court.

6 General Product Safety Regulations 1994

The General Product Safety Regulations 1994 (SI 1994 No 2328) came into force on 3 October 1994 and implement the Council Directive on general product safety (92/59/EEC). A guidance booklet on these Regulations is available from:

DTI Publications Orderline
Admail 528
London SW1W 8YT

Tel: 0870 1502 500 (national rate)
Fax: 0870 1502 333
Minicom: 0870 1502 100
E-mail: dtipubs@echristian.co.uk

7 Importer

Unlike the authorised representative, the importer has no preferential relationship with the manufacturer. Therefore, if neither the manufacturer nor his authorised representative is based in the Community, the importer into the Community is responsible for placing the toys he imports on the Community market. In this capacity he must keep the relevant information available for inspection by enforcement authorities and his name and address details must appear on, or with, the toys.

8 Manufacturer

The manufacturer may be established in the Community or elsewhere. In either case, he may appoint an authorised representative (who must be established in the Community) to act on his behalf - see section 1.

9 Member State

Means a member country of the European Economic Area (EEA) - see section 4.

10 New Approach directives

A 'New Approach directive' is one produced under the provisions of Council Resolution of 7 May 1985 on a New Approach to Technical Harmonisation and Standards (85/C/136/01), published in the *Official Journal of the European Communities* (C276) on 4 June 1985. As at August 1999, 21 such directives, which include a CE marking requirement, had been adopted, covering a wide range of consumer products - including simple pressure vessels, toys, construction

products, machinery, personal protective equipment, gas appliances, telecommunications equipment, medical devices, electrical equipment operated at 50V - 1000 AC/ 75V - 1500V DC, and the electromagnetic compatibility of electrically operated products (including battery powered).

11 Relevant national standards

Only 'relevant national standards' can be used as the basis for CE marking in accordance with method 1 as set out on page 9 and Annex D. They must also be used as far as possible by approved bodies when undertaking EC type-examinations.

A relevant national standard means a standard, the reference number of which;

- (a) is published in the United Kingdom (by DTI), or in another member State, and in the *Official Journal of the European Communities*; **and**
- (b) corresponds to a harmonised standard produced by CEN or CENELEC in compliance with a mandate from the Commission and member States for the purpose of the EC Directive on toy safety.

In the case of toys, there are harmonised European standards specifically produced for use with the Toys Safety Directive by CEN or CENELEC and transposed into a national standard by any one of the member States of the Community. Only when all the following steps have been completed does a standard become a **relevant national standard** and for use as described in the body of this guide:

- following discussion by member States, a formal mandate is issued by the European Commission to CEN or CENELEC, as appropriate, requesting that they produce standards for use with the Directive and which give adequate detail to the essential safety requirements;
- the standards are drawn up, voted on and accepted by all CEN/ CENELEC members (see sections on CEN and CENELEC above) using a weighted majority voting system. If a standard receives sufficient votes it becomes a **harmonised European standard** and numbered in the appropriate series (e.g. EN 71);
- the European Commission must publish the references of the harmonised European standards in the *Official Journal of the European Communities*;
- member States must transpose the standards into their own national standards system without change except for translation (the responsibility of the British Standards Institution (BSI) in the UK), **and** formally publish the national reference (undertaken by DTI's Consumer Safety Unit in the UK).

As at August 1999 the following relevant national standards for toys have been published:

BS 5665: Part 1:1989 EN 71: Part 1:1988: Mechanical and Physical Properties (until 31 January 2001)

BS EN 71 - 1:1998: Mechanical and Physical Properties

BS EN 71 - 2:1994: Flammability

BS EN 71 - 3:1995: Specification for Migration of Certain Elements

BS EN 71 - 4:1998: Experimental Sets for Chemistry and Related Activities

BS EN 71 - 5:1993: Chemical Toys (sets) other than Experimental Sets

BS EN 71 - 6:1995: Graphical Symbol for Age Warning Labelling

BS EN 50088:1996: Safety of Electrical Toys

Products not regarded as toys

The following are not toys for the purpose of the Toys (Safety) Regulations 1995. (However, in most cases they are subject to the General Product Safety Regulations 1994 (see section 6 of Annex A) and may be subject to other European legislation.)

1. Christmas decorations.
2. Detailed scale models for adult collectors.
3. Equipment intended to be used collectively in playgrounds.
4. Sports equipment.
5. Aquatic equipment intended to be used in deep water.
6. Folk dolls and decorative dolls and other similar articles for adult collectors.
7. 'Professional' toys installed in public places (shopping centres, stations etc.).
8. Puzzles with more than 500 pieces or without picture, intended for specialists.
9. Air guns and air pistols.
10. Fireworks, including percussion caps ⁽¹⁾.
11. Slings and catapults.
12. Sets of darts with metallic points.
13. Electric ovens, irons or other functional products operated at a nominal voltage exceeding 24 volts.
14. Products containing heating elements intended for use under the supervision of an adult in a teaching context.
15. Vehicles with combustion engines.
16. Toy steam engines.
17. Bicycles designed for sport or for travel on the public highway.
18. Video toys that can be connected to a video screen, operated at a nominal voltage exceeding 24 volts.
19. Babies' dummies.
20. Faithful reproductions of real firearms.
21. Fashion jewellery for children.

⁽¹⁾ With the exception of percussion caps specifically designed for use in toys without prejudice to the provisions of the Explosives Act 1875.

Essential safety requirements for toys

I GENERAL PRINCIPLES

1. The users of toys as well as third parties must be protected against health hazards and risk of physical injury when toys are used as intended or in a foreseeable way, bearing in mind the normal behaviour of children. Such risks are those:
 - (a) which are connected with the design, construction or composition of the toy;
 - (b) which are inherent in the use of the toy and cannot be completely eliminated by modifying the toy's construction and composition without altering its function or depriving it of its essential properties.
2.
 - (a) The degree of risk present in the use of a toy must be commensurate with the ability of the users, and where appropriate their supervisors, to cope with it. This applies in particular to toys which, by virtue of their functions, dimensions and characteristics, are intended for use by children under 36 months.
 - (b) To observe this principle, a minimum age for users of toys and/or the need to ensure that they are used only under adult supervision must be specified where appropriate.
3. Labels on toys and/or their packaging and the instructions for use which accompany them must draw the attention of users or their supervisors fully and effectively to the risks involved in using them and to the ways of avoiding such risks.

II PARTICULAR RISKS

1 Physical and mechanical properties

- (a) Toys and their parts and, in the case of fixed toys, their anchorages, must have the requisite mechanical strength and, where appropriate, stability to withstand the stresses to which they are subjected during use without breaking or becoming liable to distortion at the risk of causing physical injury.
- (b) Accessible edges, protrusions, cords, cables and fastenings on toys must be so designed and constructed that the risks of physical injury from contact with them are reduced as far as possible.
- (c) Toys must be so designed and constructed as to minimise the risk of physical injury which could be caused by the movement of their parts.

- (d) Toys, and their component parts, and any detachable parts of toys which are clearly intended for use by children under 36 months must be of such dimensions as to prevent their being swallowed and/or inhaled.
- (e) Toys, and their parts and the packaging in which they are contained for retail sale must not present risk of strangulation or suffocation.
- (f) Toys intended for use in shallow water which are capable of carrying or supporting a child on the water must be designed and constructed so as to reduce as far as possible, taking into account the recommended use of the toy, any risk of loss of buoyancy of the toy and loss of support afforded to the child.
- (g) Toys which it is possible to get inside and which thereby constitute an enclosed space for occupants must have a means of exit which the latter can open easily from the inside.
- (h) Toys conferring mobility on their users must, as far as possible, incorporate a braking system which is suited to the type of toy and is commensurate with the kinetic energy developed by it. Such a system must be easy for the user to operate without risk of ejection or physical injury for the user or for third parties.
- (l) The form and composition of projectiles and the kinetic energy they may develop when fired from a toy designed for that purpose must be such that, taking into account the nature of the toy, there is no unreasonable risk of physical injury to the user or to third parties.
- (j) Toys containing heating elements must be so constructed as to ensure that:
 - (i) the maximum temperature of any accessible surfaces does not cause burns when touched;
 - (ii) liquids and gases contained within toys do not reach temperatures or pressures which are such that their escape from a toy, other than for reasons essential to the proper functioning of the toy, might cause burns, scalds or other physical injury.

2 Flammability

- (a) Toys must not constitute a dangerous flammable element in the child's environment. They must therefore be composed of materials which:
 1. do not burn if directly exposed to a flame or spark or other potential seat of fire; or
 2. are not readily flammable (the flame goes out as soon as the ignition source is removed); or

3. if they do ignite, burn slowly and present a low rate of spread of the flame; or
4. irrespective of the toy's chemical composition, are treated so as to delay the combustion process.

Such combustible materials must not constitute a risk of ignition for other materials used in the toy.

- (b) Toys which, for reasons essential to their functioning, contain dangerous substances or preparations as defined in Council Directive 67/548/EEC (implemented in United Kingdom law as the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984 and subsequent amending Regulations), in particular materials and equipment for chemistry experiments, model assembly, plastic or ceramic moulding, enamelling, photography or similar activities, must not contain, as such, substances or preparations which may become flammable due to the loss of non-flammable volatile components.
- (c) Toys must not be explosive or contain elements or substances likely to explode when used as intended or in a foreseeable way, bearing in mind the normal behaviour of children. This provision does not apply to toy percussion caps, for which reference should be made to point 10 of Annex B and the related footnote.
- (d) Toys and, in particular, chemical games and toys, must not contain, as such, substances or preparations:
 - which, when mixed, may explode:
 - i. through chemical reaction, or through heating;
 - ii. when mixed with oxidizing substances.
 - which contain volatile components which are flammable in air and liable to form flammable or explosive vapour/air mixture.

3 Chemical properties

1. Toys must be so designed and constructed that, when used as specified in Article 2(1) of the Toys Safety Directive ⁽¹⁾, they do not present health hazards or risks of physical injury by ingestion, inhalation or contact with the skin, mucous tissues or eyes.

They must in all cases comply with the relevant Community legislation relating to certain categories of products or to the prohibition, restriction of use or labelling of certain dangerous substances and preparations.

⁽¹⁾ that is 'when they are used as intended or in a foreseeable way, bearing in mind the normal behaviour of children'.

2. In particular, for the protection of children's health, bioavailability resulting from the use of toys must not, as an objective, exceed the following levels per day:

0,2 µg	for antimony;
0,1 µg	for arsenic;
25,0 µg	for barium;
0,6 µg	for cadmium;
0,3 µg	for chromium;
0,7 µg	for lead;
0,5 µg	for mercury,
5,0 µg	for selenium.

or such other values as may be laid down for these or other substances in Community legislation based on scientific evidence.

The bioavailability of these substances means the soluble extract having toxicological significance.

3. Toys must not contain dangerous substances or preparations within the meaning of Directives 67/548/EEC and 88/379/EEC in amounts which may harm the health of children using them. In all events it is strictly forbidden to include, in a toy, dangerous substances or preparations if they are intended to be used as such while the toy is being used.

However, where a limited number of substances or preparations are essential to the functioning of certain toys, in particular materials and equipment for chemistry experiments, model assembly, plastic or ceramic moulding, enamelling, photography or similar activities, they are permitted up to a maximum concentration level to be defined for each substance or preparation by mandate to the European Committee for Standardisation (CEN) according to the procedure of the committee set up by Directive 83/189/EEC, provided the permitted substances and preparations comply with the Community classification rules in respect of labelling, without prejudice to point 4 of schedule 4 to the Regulations.

4 Electrical properties

- (a) Electric toys must not be powered by electricity of a nominal voltage exceeding 24 volts and no part of the toy may exceed 24 volts.
- (b) Parts of toys which are connected to, or liable to come into contact with, a source of electricity capable of causing electric shock, together with the cables or other conductors through which electricity is conveyed to such parts, must be properly insulated and mechanically protected so as to prevent the risk of such shock.

- (c) Electric toys must be so designed and constructed as to ensure that the maximum temperatures reached by all directly accessible surfaces are not such as to cause burns when touched.

5 Hygiene

Toys must be so designed and manufactured as to meet the requirements of hygiene and cleanliness in order to avoid any risk of infection, sickness and contamination.

6 Radioactivity

Toys must not contain radioactive elements or substances in forms or proportions likely to be detrimental to a child's health. Council Directive 80/836/Euratom shall apply.

Satisfying the essential safety requirements

Method 1: self-certification that a toy has been manufactured in conformity with relevant national standards (regulation 6)

- 1 A toy manufactured in accordance with the 'relevant national standards' shall be deemed to meet the essential safety requirements if the standards cover all the elements of the essential safety requirements applicable to that particular toy. Where this method is used, CE marking is affixed as a declaration by the manufacturer, or his authorised representative, that, amongst other things, the toy bearing it **satisfies the essential safety requirements and has been manufactured in accordance with the relevant national standards.**
- 2 Although the Regulations do not specify that tests **must** be carried out to support a self-certification by the manufacturer or his authorised representative, information supporting CE marking declaration must be maintained (see page 12 and Annex F) and the conformity assessment part of the required information will, in many cases, entail using the services of an independent test laboratory.

Method 2: manufacture in accordance with a model which has been EC type-examined (regulation 7)

- 3 Although it is open to manufacturers or their authorised representatives in the Community to apply for EC type-examinations this procedure will only be **legally** required in a limited number of cases - e.g. where the relevant national standards are inadequate to establish compliance with the essential safety requirements.
- 4 This will be the case where relevant national standards do not exist for a particular area of the essential safety requirements applicable to a toy or such standards are available but are not comprehensive in that regard. The manufacturer or his authorised representative must submit a sample of the toy (the 'model'), together with other information as specified in the Regulations (regulation 9), to an approved body for EC type-examination. This can be an approved body in any member State.
- 5 The approved body will perform such tests and examinations as are necessary for it to decide whether or not the toy satisfies the essential safety requirements and, if so, the body will issue an EC type-examination certificate. When undertaking EC type-examinations an approved body **must use, as far as possible, the relevant national standards.** Where such standards do not cover all the essential safety requirements applicable to a toy, reference must be made to any harmonised European standards which are relevant for the purpose. Where these procedures are insufficient to establish whether a toy satisfies the essential safety requirements, the approved body must then use its professional judgement to devise any additional test procedures which may be required to allow it to decide whether or not the sample satisfies the applicable essential safety requirements.

- 6 Once an EC type-examination certificate has been issued in respect of a toy sample the manufacturer must ensure that his production toys comply with that sample. He, or his authorised representative, is then able to CE mark each production toy as a self-declaration that it has been **manufactured in accordance with a specimen which is the subject of an EC type-examination certificate.**
- 7 An approved body in the UK must provide a copy of that certificate on request and, on reasonable request, a copy of any design and manufacturing schedule submitted to it, together with reports on the tests and inspections it has carried out to the Secretary of State, the European Commission, another member State or another approved body.
- 8 An approved body in the UK which refuses to issue an EC type-examination certificate must inform the applicant, the Secretary of State, and the European Commission in writing, giving the reasons for the refusal.
- 9 Equivalent provisions to those in paragraphs 7 and 8 above apply to approved bodies in other member States.
- 10 Note that, as with method 1, information supporting the CE marking declaration is required to be maintained (see page 12 and Annex F).

EC type-examination certificates for toys may only be issued by a body established in the Community and notified by a member State under the terms of the Toys Safety Directive.
(See page 14.)

- 11 EC type-examination certificates must be supported by reports which give full information on tests devised and carried out, together with details of research undertaken, by the approved body to establish that a toy manufactured in accordance with the sample submitted to it will satisfy the essential safety requirements applicable to it.

Warnings, name and address details and other safety information which must accompany toys

Toys must be accompanied by appropriate, clearly legible warnings in order to reduce inherent risks in their use as described in the essential requirements, and specifically:

1 Toys not intended for children under 36 months

Toys which might be dangerous for children under 36 months of age must bear a warning, for example: 'Not suitable for children under 36 months' or 'Not suitable for children under three years' together with a brief indication, which may also appear in the instructions for use, of the specific risks calling for this restriction ⁽¹⁾.

This provision does not apply to toys which, on account of their function, dimensions, characteristics, properties or other cogent grounds, are manifestly unsuitable for children under 36 months.

2 Slides, suspended swings and rings, trapezes, ropes and similar toys attached to a crossbeam

Such toys shall be accompanied by instructions drawing attention to the need to carry out the checks and maintenance of the main parts (suspensions, fixings, anchorages etc.) at intervals, and pointing out that, if these checks are not carried out, the toy may cause a fall or overturn.

Instructions must also be given as to correct assembly of the toy, indicating those parts which can present dangers if it is incorrectly assembled.

3 Functional toys ⁽²⁾

Functional toys or their packaging shall bear the marking 'Warning: to be used under the direct supervision of an adult'.

In addition, these toys shall be accompanied by directions giving working instructions as well as the precautions to be taken by the user, with the warning that failure to take these precautions would expose the user to the hazards - to be specified - normally associated with the appliance or product of which the toy is a scale model or an imitation. It will also be indicated that the toy must be kept out of the reach of very young children.

⁽¹⁾ BS EN 71 - 6:1995 specifies requirements for the use and design of a graphical symbol for age warnings. The age warning can be given by the symbol or written text.

⁽²⁾ 'Functional toys' means toys which are used in the same way as, and are often scale models of, appliances or installations intended for adults.

4 Toys containing inherently dangerous substances or preparations; chemical toys

- (a) Without prejudice to the application of the provisions laid down in Community directives on the classification, packaging and labelling of dangerous substances or preparations, the instructions for use of toys containing inherently dangerous substances or preparations shall bear a warning of the dangerous nature of these substances or preparations and an indication of the precautions to be taken by the user in order to avoid hazards associated with them, which shall be specified concisely according to the type of toy. The first aid to be given in the event of serious accidents resulting from the use of this type of toy shall also be mentioned. It shall also be stated that the toys must be kept out of reach of very young children.
- (b) In addition to the instructions provided for in (a), chemical toys shall bear the following marking on their packaging:

‘Warning: for children over ⁽¹⁾ - years of age only. For use under adult supervision’.

In particular, the following are regarded as chemical toys: chemistry sets, plastic embedding sets, miniature workshops for ceramics enamelling or photography and similar toys.

5 Skates and skateboards for children

If these products are offered for sale as toys they shall bear the marking:

‘Warning: protective equipment should be worn’.

Moreover, the instructions for use shall contain a reminder that the toy must be used with caution, since it requires great skill, so as to avoid falls or collisions causing injury to the user and third parties. Some indication shall also be given as to recommended protective equipment (helmets, gloves, kneepads, elbow-pads etc.).

6 Toys intended for use in water

The toys intended for use in water defined in Section 11.1(f) of Annex C shall contain the warning:

‘Warning! Only to be used in water in which the child is within its depth and under supervision’.

⁽¹⁾ Age to be decided by the manufacturer.

Information to be kept available

The following information must be kept available for inspection by the enforcement authorities:

Toys manufactured to the relevant national standards:

- a description of the means (such as the use of a test report or technical file) whereby the manufacturer ensures conformity of production with the relevant national standards;
- the addresses of the places of manufacture and storage;
- information concerning the design and manufacture;
- information on which New Approach Directives have been applied.

Toys manufactured in conformity to a model in respect of which an EC type-examination certificate has been issued:

- a description of manufacture;
- a description of the means (such as the use of a test report or technical file) whereby the manufacturer ensures conformity with the approved model;
- the addresses of the places of manufacture and storage;
- copies of the documents submitted to an approved body with the application for an EC type-examination certificate;
- the EC type-examination certificate or a certified copy thereof;
- information on which New Approach Directives have been applied.

It is generally accepted that the information should be in the form of a short technical file (3 - 5 pages is the favoured length), which can be posted or sent by fax when requested by an enforcement authority in the Community wishing to verify that CE marking had been legitimately affixed to a toy on sale within the area of its responsibility. However, enforcement authorities have the right to call for additional information where the initial file proves inadequate in some way.

Compliance Notices

Where the non-compliance is **not safety** related - such as a CE marking which does not conform with regulation 3(1) - an authority may issue a compliance notice on a manufacturer or his authorised representative if they are established in the UK (regulation 10(11)). Compliance notices are intended to give the named person an opportunity to take action to correct the non-compliance. Enforcement action can only be taken in respect of the alleged non-compliance if such a notice has been issued and not acted upon within the time specified in the notice. **Where, in the opinion of an enforcement authority, the toy is likely to jeopardise the safety or health of any person, the authority can take immediate enforcement action to safeguard consumers.**

Historical Background

The Toys (Safety) Regulations 1989 (SI 1989 No 1275) applied to all toys supplied for the first time in the United Kingdom from 1 January 1990. They implemented the Toys Safety Directive (88/378/EEC), which is a New Approach directive (see section 10 of Annex A). The 1989 Regulations were replaced by the Toys (Safety) Regulations 1995 (SI 1995 No 204) which came into force on 24 February 1995. The 1995 Regulations continue the provisions of the 1989 Regulations and implement the provisions of the CE Marking Directive (93/68/EEC) as it relates to toys (the latter Directive extends the meaning of the declaration which the CE marking represents).

Regulations revoked

The Toys (Safety) Regulations 1974, the Toys (Safety) (Northern Ireland) Regulations 1975, the Toys (Safety) Regulations 1989 (SI 1989 No 1275), and the Toys (Safety) Regulations 1993 (SI 1993 No 1547), have been revoked.

Consumer Protection Act 1987 (The 1987 Act)

- 1 The 1987 Act, among other things, allows for the making of regulations dealing with the safety of consumer products, sets out penalties for their infringement and provides powers for the enforcement of such regulations.

Enforcement of consumer safety legislation - including the toys safety Regulations

- 2 Within government, overall policy responsibility for the consumer safety provisions of the Act (Part 11) rests with the Department of Trade and Industry's Consumer Safety Unit. The Consumer Safety Unit is also responsible for the majority of consumer safety regulations made under the Act (other parts of government have also made use of the Act's provisions). Day-to-day enforcement of consumer safety regulations is primarily the responsibility of local authority trading standards departments in England, Scotland and Wales and the Environmental Health Departments of District Councils in Northern Ireland, who have a statutory duty to enforce consumer safety legislation. The 1987 Act allows the authorities to exercise the following enforcement measures:

- make test purchases;
- issue suspension notices prohibiting the supply of consumer products which are considered to be unsafe;
- seek information;
- enter premises at any reasonable time;
- apply to a magistrates' court (sheriffs' court in Scotland) for an order for such products to be forfeited and destroyed; and
- bring criminal prosecutions in a magistrates' court.

- 3 Enforcement action can be taken at any point in the supply chain. The Secretary of State may also exercise powers under the 1987 Act.

- 4 In addition, Customs Officers are empowered to detain goods at the port of entry for up to three working days to allow enforcement authorities to make initial enquiries about the safety of the goods detained.

Appeals procedures

- 5 The 1987 Act also provides means for suppliers to appeal to a magistrates' court (sheriffs' court in Scotland) against a suspension notice and apply for compensation for costs in certain circumstances.
- 6 Suppliers are, of course, able to appeal against enforcement action to higher courts in appropriate circumstances.

Defences

- 7 Suppliers of consumer goods, including toys, may have access to the defence of due diligence (set out in section 39 of the 1987 Act) which allows a supplier to argue that he took all reasonable steps and exercised all due diligence to avoid committing the alleged offence.
- 8 Where a supplier 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 this defence to the prosecution not less than seven days before the date of hearing the case. It should be noted that this is not an automatic defence and will require justification to the court.
- 9 The above provisions are set out in Part 11 (sections 12 - 18) and various sections in Part IV of the 1987 Act.

The above paragraphs on the 1987 Act are intended only to provide an indication of the Act's provisions. A proper understanding of the various provisions can only be gained by studying the Act itself.