

Statutory Instruments

S.I No. 199 of 2004

European Communities (General Product Safety) Regulations 2004

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I, Mary Harney, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001¹, hereby make the following regulations:

Citation.

1. These Regulations may be cited as the European Communities (General Product Safety) Regulations 2004.

Interpretation.

2. (1) In these Regulations –

“authorised officer” means a person appointed as an authorised officer under Regulation 14;

“Commission” means the Commission of the European Community;

“Community” means the European Community;

“consumer” means any natural person who, in respect of a product covered by the Directive, is acting for purposes which are outside his or her trade, business or profession;

¹ OJ No. L11, 15.1.2002, p.4

“dangerous product” means any product which is not a safe product;

“Directive” means Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety;

“Director” means the Director of Consumer Affairs;

“distributor” means any professional in the supply chain whose activity does not affect the safety properties of a product;

“producer” means -

- (a) the manufacturer of a product, when the manufacturer is established in the Community, and any other person presenting himself or herself as the manufacturer by affixing to the product his or her name, trade mark or other distinctive mark, or the person who reconditions the product,
- (b) the manufacturer's representative, when the manufacturer is not established in the Community or, if there is no representative established in the Community, the importer of the product, or
- (c) other professionals in the supply chain, in so far as their activities may affect the safety properties of the product;

“product” means any product, including in the context of providing a service, which is intended for consumers or likely, under reasonably foreseeable conditions, to be used by consumers even if not intended for them, and is supplied or made available, whether for consideration or not, in the course of a commercial activity and whether new, used or reconditioned;

“recall” means any measure aimed at achieving the return of a dangerous product that has already been supplied or made available to consumers by the producer or distributor;

“safe product” means any product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons;

“serious risk” means any serious risk, including those the effects of which are not immediate, requiring rapid interventions by the Director;

“Treaty” means the Treaty establishing the European Community;

“withdrawal” means any measure aimed at preventing the distribution, display and offer of a product dangerous to the consumer.

(2) In these Regulations -

(a) a reference to a Regulation is to a Regulation of these Regulations, unless it is indicated that reference to some other Regulations is intended;

(b) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended;

(3) A word or expression that is used in these Regulations, and is also used in the Directive, has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive;

(4) In construing a provision of these Regulations, a court shall give to it a construction that will give effect to the Directive, and for this purpose a court shall have regard to the provisions of the Directive, including its preamble.

Application.

3. (1) Subject to this Regulation, these Regulations apply to all products.

(2) These Regulations do not apply to a product subject to specific safety requirements imposed by a regulation of the Community or legislation giving effect to a directive of the Community.

(3) Where a product is subject to specific safety requirements imposed by such regulation or legislation referred to in paragraph (2), these Regulations apply only to the aspects and risks or categories of risk not covered by such regulation or legislation and, in particular -

- (a) Regulation 2(1), as it defines “dangerous product” and “safe product”, and Regulations 4 and 5 do not apply to such product insofar as concerns the risks or categories of risk covered by such regulation or legislation, and
- (b) Regulations 6 to 11, 13, 15 to 19, 21 and 22 apply except where there are specific provisions of such regulation or legislation governing the aspects covered by those Regulations with the same objective.

(4) These Regulations do not apply to second-hand products supplied as antiques or as products to be repaired or reconditioned prior to being used, provided that the supplier of such product clearly informs the person to whom he or she supplies the product that such repair or reconditioning is necessary prior to use of the product.

Prohibition on placing dangerous products on the market.

4. (1) A producer shall not place or attempt to place on the market a product unless it is a safe product.

(2) Subject to Regulation 5, in determining the safety of a product the following shall be taken into consideration:

- (a) the characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, for installation and maintenance;

- (b) the effect on other products, where it is reasonably foreseeable that it will be used with other products;
- (c) the presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other indication or information regarding the product; and
- (d) the categories of consumers at risk when using the product, in particular children and the elderly.

However, the feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk does not constitute grounds for considering a product to be dangerous.

- (3) A producer who contravenes this Regulation is guilty of an offence.

Products to be deemed safe or presumed safe in certain circumstances.

5. (1) A product shall be deemed to be a safe product if it conforms with any specific rules of the law of the State, drawn up in conformity with the Treaty and in particular Articles 28 and 30 thereof, laying down the health and safety requirements which the product must satisfy in order to be marketed.

(2) A product shall be presumed safe as far as the risk and risk categories covered by the relevant Irish Standards are concerned when it conforms to voluntary Irish Standards transposing European standards, the references of which have been published by the Commission in the Official Journal of the European Communities in accordance with Article 4 of the Directive.

(3) Where no specific rules as referred to in paragraph (1) exist, or where no voluntary Irish Standard transposing European standards as referred to in paragraph (2) has been adopted, the conformity of a product to the general safety requirement shall be assessed by taking into account the following elements in particular, where they exist:

- (a) voluntary Irish Standards transposing relevant European standards other than those referred to in paragraph (2);
- (b) other Irish Standard Specifications;
- (c) Commission recommendations setting guidelines on product safety assessment;
- (d) product safety codes of good practice in force in the sector concerned;
- (e) the state of the art and technology, and
- (f) reasonable consumer expectations concerning safety.

(4) Notwithstanding the conformity of a product with the general safety requirements, in particular paragraph (1) or (2), the Director may take appropriate measures in accordance with Regulation 9 to impose restrictions on its being placed on the market or to require its withdrawal from the market or its recall where there is evidence that, despite such conformity, the product is dangerous.

Duties of producers.

6. (1) A producer shall, in relation to any product which he or she has placed on the market, provide consumers with all relevant information relating to the product to enable them to assess the risks inherent in the 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.

(2) The presence of a warning referred to in paragraph (1) does not exempt any person from any obligations to comply with any other requirement of these Regulations or the Directive.

(3) A producer shall, in relation to any product which he or she has placed on the market, adopt measures commensurate with the characteristics of the product, to enable the producer-

(a) be informed of the risks which the product might pose, or

- (b) choose to take appropriate action, including, if necessary to avoid such risks, withdrawal of the product in question from the market, adequately and effectively warning consumers, or recall of the product from consumers. Recall shall take place as a last resort where other measures do not suffice to prevent the risks involved.
- (4) The measures referred to in paragraph (3) include, for example:
- (a) an indication, by means of the product or its packaging, of the identity and details of the producer and the product reference or, where applicable, the batch of products to which it belongs, except where not to give such indication is justified, and
 - (b) in all cases where appropriate, the carrying out of sample testing of marketed products, investigating and, if necessary, keeping a register of complaints and keeping distributors informed of such monitoring.

(5) Where the Director considers that a producer has not given relevant information to consumers as required by paragraph (1), or taken appropriate action in relation to risks referred to in paragraph (3), he or she may by a direction to the producer require the producer to give to consumers such information or to take such action concerning the product, within such period as may be specified in the direction, as is specified in the direction.

(6) A producer who fails to comply with a direction under paragraph (5) is guilty of an offence.

Duties of distributors.

7. (1) A distributor shall act with due care to ensure that any product he or she supplies is a safe product.

(2) A distributor shall not supply or attempt to supply a product which he or she knows or it is reasonable to presume, on the basis of the information in his or her possession as a professional, that he or she should know is a dangerous product.

(3) A distributor who contravenes paragraph (2) is guilty of an offence.

(4) A distributor shall, in relation to any product placed on the market which he or she supplies, monitor the product with regard to product safety, and for this purpose the distributor shall, in particular -

- (i) inform the producer of the product, the Director and consumers as to any defects in it or risks it may pose to consumers that he or she becomes aware of in relation to it,
- (ii) keep and provide to the Director the documentation necessary for tracing the origin of the product, and

- (iii) cooperate in actions taken by the producer and the Director to avoid any risk.

(5) A distributor who, without reasonable excuse, fails to comply with paragraph (4) is guilty of an offence.

Duty to inform Director of risk.

8. (1) Where a producer of a product or a distributor of a product knows or, on the basis of information in his or her possession and as a professional, ought to know, that a product which he or she has placed on the market poses a risk to the consumer that is incompatible with the safety requirements of these Regulations or of the Directive, the producer or distributor shall immediately inform the Director of the risk, in a form and under conditions (being defined and drawn up by the Commission) in accordance with Annex 1 to the Directive and published by the Director, and giving details, in particular, of action to prevent risk to the consumer. In the event of serious risks the information shall include at least the following:

- (a) information enabling a precise identification of the product or batch of products in question,
- (b) a full description of the risk that the products in question present,
- (c) all available information relevant for tracing the product, and

(d) a description of the action undertaken to prevent risks to consumers.

(2) A producer of a product or a distributor of a product shall, on request being made to him or her by the Director, provide every reasonable assistance to the Director to avoid the risks posed by any product which such producer or distributor supplies or has supplied.

(3) A producer or distributor who, without reasonable cause, fails to comply with paragraph (1) or with a request under paragraph (2) is guilty of an offence.

General functions of Director.

9. (1) For the purposes of ensuring that products placed on the market are safe and that producers and distributors of such products comply with their obligations under these Regulations and the Directive, the Director may take all reasonable measures, including such of the following as he or she decides is appropriate in each case:

(a) for any product, to:

(i) organise, even after it has been placed on the market as being safe, appropriate checks on its safety properties, on an adequate scale, up to the final stage of use or consumption,

- (ii) request all necessary information in relation to the product from any person who, in the opinion of the Director, may be in a position to provide such information, and
 - (iii) take samples of products and subject them to safety checks;
- (b) for any product that could pose risks in certain conditions, to issue a direction-
 - (i) requiring that it be marked with suitable, clearly worded and easily comprehensible warnings, in the English language, on the risks it may present,
 - (ii) requiring that, prior to placing the product on the market, such specified steps are taken as are necessary to ensure its safety;
- (c) for any product that could pose risks for certain persons, to issue a direction, requiring that persons at risk be given warning of the risk in good time and in an appropriate form, including the publication of special warnings;
- (d) for any product that could be dangerous, issue a direction prohibiting the supply, offer to supply or display of the product pending the carrying out of the safety evaluations, checks and controls necessary to establish the safety of the product;

- (e) for any dangerous product, issue a direction prohibiting the placing of the product on the market;
- (f) for any dangerous product already on the market, take all appropriate steps, including if necessary issuing a direction, to ensure -
 - (i) the immediate withdrawal of the product from the marketplace, its recall from consumers and its destruction in suitable conditions, and
 - (ii) that consumers are alerted to the risks presented by the product.

(2) In taking any measure under this Regulation, the Director shall act in accordance with the Treaty, in particular Articles 28 and 30 thereof, in such a way as to implement such measures in a manner proportional to the seriousness of the risk, and taking due account of the precautionary principle.

(3) A direction issued under this Regulation shall be addressed to such of the following as is appropriate:

- (a) the producer,
- (b) any person involved as a distributor, in particular the person responsible for the first stage of distribution on the market in the State,

(c) any other person, where necessary, with a view to cooperation in action taken to avoid risks arising from a product.

(4) In taking any measure referred to in paragraph (1) (b) to (f), particularly in the case of a product posing a serious risk, the Director shall have regard to the guidelines referred to in point 8 of Annex II to the Directive.

(5) A person who fails to comply with a direction by or a request from the Director under this Regulation is guilty of an offence.

Decisions of the Commission in relation to certain products.

10. (1) Where the Director becomes aware that the Commission has adopted a decision as provided for in Article 13 of the Directive, he or she may take such of the measures specified in Regulation 9 (1) (b) to (f) as may be required by the decision.

(2) Any measure as provided for in paragraph (1) shall, unless a different period is specified in the decision, be taken within 20 days of the receipt by the Director of the decision.

(3) Where the Director takes any measure as provided for in paragraph (1), he or she shall, within one month, give the parties concerned an opportunity to submit their views and shall inform the Commission accordingly.

(4) Where, in relation to any product, the Commission has adopted a decision as provided for in Article 13 of the Directive, a person may not export that product from the Community, unless the decision provides otherwise.

(5) A person who contravenes paragraph (4) is guilty of an offence.

Procedure in relation to directions of Director.

11. (1) Where it is feasible, the Director shall give the opportunity to any person to whom he or she is considering issuing a direction under these Regulations to submit his or her views on the proposed direction to the Director before the adoption of the measure, and if opportunity is not given because of the urgency of the measures to be taken, the opportunity shall be given by the Director in due course after the direction takes effect.

(2) A direction made or issued by the Director under these Regulations shall be in writing, shall state the appropriate reasons on which it is based, shall, as soon as possible, be published by placing a notice relating to the direction in a national newspaper and, where the Director is aware of the identity of a person to whom the direction is addressed, shall, as soon as possible, be sent or given to that person in any of the following ways-

(a) by delivering it to that person,

(b) by leaving it at the address at which that person carries on business,

- (c) by sending it by prepaid registered post to the person at the address at which he or she carries on business,
- (d) if an address for the service of directions has been furnished by the person to the Director, by leaving it at, or sending it by pre-paid registered post to, that address, or
- (e) in any case where the Director considers that the immediate giving of the direction is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the direction or the sender's facility for the reception of electronic mail generates a message confirming receipt of the electronic mail.

(3) A direction made under these Regulations may require that the measures to be taken in the direction be undertaken-

- (a) immediately, because of the urgency of the measures to be taken,
- (b) from a specified date,

(c) by a specified date, or

(d) between specified dates.

(4) A direction made or issued by the Director under these Regulations, subject to Regulation 12(2), takes effect on the date specified in the direction and shall indicate the appeal procedure under Regulation 12.

Appeals against Directions of Director.

12. (1) Any person aggrieved by a direction made by the Director under these Regulations may, within 21 days of receipt of the direction, appeal to the judge of the Circuit Court in whose Circuit the person carries on business.

(2) Where an appeal is made under paragraph (1) the appellant may make an application to the Court that the direction shall stand suspended until the appeal is determined or withdrawn.

(3) On hearing an appeal under paragraph (1) the Court may either confirm or vary the direction, or allow the appeal.

(4) A decision of the Circuit Court on an appeal under paragraph (1) shall be final, save that, by leave of the Court, an appeal from the decision shall lie to the High Court on a specified question of law.

Notification to the Commission of measures taken or proposed to be taken by Director.

13. (1) Where under these Regulations the Director takes any measure which restricts the placing on the market of a product or requires the withdrawal or recall of the product, he or she shall, subject to paragraph (3) and to the extent that such notification is not required under paragraph (4) or under any provision giving effect to Community legislation, notify the Commission of the measure taken and of the reason for taking such measure.

(2) In any case where the Director modifies or withdraws any measure referred to in paragraph (1), he or she shall notify the Commission accordingly.

(3) In relation to any measure referred to in paragraph (1), where the Director considers that the effects of the risk involved do not or cannot go beyond the territory of the State, the Director shall notify the Commission of the measure taken insofar as it involves information likely to be of interest to other Member States of the Community from the product safety standpoint, and in particular if the measure is in response to a new risk which has not been reported in other notifications.

(4) Where under these Regulations the Director decides to take, whether with the agreement of a producer or distributor or otherwise, any measure or any action which is designed to prevent, restrict, or impose specific conditions on, the placing on the market or use of a product because it poses a serious risk, he or she shall, subject to paragraphs (6) and (7), immediately notify the Commission of such decision through RAPEX.

(5) In any case where the Director modifies or withdraws any measure or action referred to in paragraph (4), he or she shall without delay notify the Commission accordingly.

(6) In relation to any measure or action referred to in paragraph (4), where the Director considers that the effects of the risk involved do not or cannot go beyond the territory of the State, the Director shall notify the Commission insofar as it involves information likely to be of interest to other Member States of the Community from the product safety standpoint, taking into account the relevant criteria set out in the guidelines referred to in point 8 of Annex II to the Directive.

(7) The Director may, before deciding to take any measure or action referred to in paragraph (4), forward to the Commission any information in the Director's possession regarding the existence of risk, provided that in the case of serious risk the Director shall notify the Commission of any voluntary measures taken by producers or distributors as referred to in Regulation 6 or 7.

(8) In this Regulation, "RAPEX" means the system for the rapid exchange of information in the event of a serious risk to the health and safety of consumers, as described in Annex II to the Directive.

Authorised officers.

14. (1) The Director may appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of ensuring compliance with these Regulations and the Directive.

(2) An authorised officer shall be furnished with a warrant of his or her appointment and, when exercising any power conferred on an authorised officer under these Regulations, shall, if requested by any person affected, produce the warrant to that person.

(3) An authorised officer may for the purpose of ensuring that these Regulations and the Directive are being complied with-

- (a) at all reasonable times enter any premises, at which there are reasonable grounds to believe that a product to which these Regulations apply is being or has been manufactured, distributed, supplied or placed on the market or that records relating to the product are kept, and search and inspect the premises and any product or records found therein,
- (b) secure for later inspection any premises or any part of a premises in which such product or records are kept or there are reasonable grounds for believing that such product or records are kept,
- (c) require any person in charge of or employed in such premises to produce to the officer such records (and in the case of such information in a non-legible form to reproduce it in a permanent legible form) or to give to the officer such information as the officer may reasonably require in relation to any entries in such records,

- (d) inspect and take copies of or extracts from any such records (including in the case of information in non-legible form a copy of or extract from such information in a permanent legible form),
- (e) remove and detain, where the officer has reasonable cause to suspect that there has been a contravention of these Regulations, the product or records for such period as may be reasonable for further examination or until the conclusion of any legal proceedings,
- (f) as regards any product or any article or substance used in the manufacture of a product the officer finds at or in a premises, require any person in charge of the premises, or any person who appears to the officer to be in possession of the product or the article or substance, to supply without payment, for test, examination or analysis sufficient samples thereof,
- (g) cause any product or any article or substance used in the manufacture of a product found at or in any premises which appears to the officer to have caused or to be likely to cause danger to safety or health, to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purposes of these Regulations) and where an authorised officer proposes to exercise this power in the case of a product or an article or substance used in the manufacture of a product found at or in any premises, the officer shall, if so requested by a person who at the time

is present at or in and has responsibilities in relation to that premises, cause anything which is to be done by virtue of that power to be done in the presence of that person,

- (h) in relation to any product or any article or substance used in the manufacture of a product found at a premises in accordance with subparagraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine or arrange for the examination of it and do to it anything which he or she has power to do under subparagraph (g),
 - (ii) to ensure that it is not tampered with before the examination of it is completed,
 - (iii) to ensure that it is available for use as evidence in any proceedings,
- (i) require any person to afford the officer such facilities and assistance within the person's control or responsibilities as are reasonably necessary to enable the officer to exercise any of the powers conferred on an authorised officer under this Regulation, and
- (j) examine any procedure connected with the manufacture of a product.

(4) Before exercising the power conferred by paragraph (3)(g) in the case of any product, article or substance, an authorised officer shall, in so far as it is reasonably practicable to do so, consult such persons as appear to him or her to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he or she proposes to do under that power.

(5) Where under the power conferred by paragraph (3)(h) an authorised officer takes possession of any product, article or substance found at or in any premises, the officer shall, if it is practicable for him or her to do so, take a sample thereof and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(6) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under paragraph (9) authorising such entry.

(7) Where an authorised officer in the exercise of the officer's powers under this Regulation is prevented from entering any premises, an application may be made to the District Court under paragraph (9) for a warrant authorising such entry.

(8) An authorised officer, where he or she considers it necessary, may be accompanied by a member of the *Gárda Síochána* when performing any powers conferred on an authorised officer under this Regulation or seizing any product under a forfeiture order made under Regulation 16.

(9) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is information required by an authorised officer under this Regulation held on any premises or any part of any premises or there is a product which an authorised officer requires to inspect for purposes of these Regulations or the Directive or that such inspection is likely to disclose evidence of a contravention of these Regulations, the judge may issue a warrant authorising an authorised officer, accompanied by either or both authorised officers and members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter, if need be by reasonable force, the premises and exercise all or any of the powers conferred on an authorised officer under this Regulation.

(10) An application under paragraph (9) shall be made to the judge of the District Court in whose district court district the premises is situated.

(11) A person who-

- (a) obstructs or interferes with an authorised officer in the exercise of the officer's powers under this Regulation,
- (b) fails to comply with a request from an authorised officer under this Regulation, or
- (c) makes a statement to such officer which the person knows is false or misleading,

is guilty of an offence.

(12) A person appointed as an authorised officer under Regulation 13 of the European Communities (General Product Safety) Regulations 1997 (S.I. No. 197 of 1997) and holding office immediately before the making of these Regulations continues to hold office as an authorised officer as if appointed under this Regulation.

Injunctions, etc.

15. Where a person fails to comply with a direction of the Director under these Regulations, the Director may, in lieu of any summary proceedings against the person in respect of an offence under Regulation 6(6), 9(5), 10(5) or 14(11) (a) or (b), institute in the High Court proceedings for an order requiring the person to comply with the terms of the direction.

Forfeiture orders.

16. (1) The Director may apply under this Regulation for an order ("forfeiture order") for the forfeiture to the Director of any product to which these Regulations apply on the grounds that the product is a dangerous product.

(2) An application under this Regulation shall be made to the judge of the District Court in whose district court district the person against whom the forfeiture order is sought resides or carries on business.

(3) Any product the subject of a forfeiture order may be seized on behalf of the Director by an authorised officer.

(4) Any person aggrieved by the making of a forfeiture order or by a decision of the District Court not to make such an order, may appeal against that order or decision to the judge of the Circuit Court in whose Circuit a forfeiture order has been made or refused.

(5) Where the District Court makes a forfeiture order, the order may contain such provision as appears to the Court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

(6) Subject to paragraph (7), where any product is forfeited under a forfeiture order it shall be destroyed in accordance with such directions as the District Court may give.

(7) On making a forfeiture order the District Court may, if it considers it appropriate to do so, direct that the product to which the order relates shall (instead of being destroyed) be released to such person and on such conditions as the Court may specify.

Orders for release of goods.

17. (1) Any person having an interest in any product which is for the time being detained under Regulation 14 may apply for an order requiring the product to be released to him or her or to another person.

(2) An application under this Regulation may be made-

- (a) to any District Court in which proceedings have been brought-
 - (i) for an offence in respect of a contravention of, or failure to comply with a direction under, these Regulations in relation to the product concerned, or
 - (ii) for the forfeiture of the product under Regulation 16,or
- (b) where no such proceedings have been brought, to the judge of the District Court in whose district court district the person resides or carries on business or where the product was seized.

(3) Any person aggrieved by an order made under this Regulation by a District Court or by a decision of such Court not to make such an order, may appeal against that order or decision to the judge of the Circuit Court in whose Circuit the order was made or refused.

(4) Where the District Court makes an order under this Regulation, the order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

Disclosure of information.

18. (1) The Director may, without prejudice to the restrictions required for monitoring and investigating activities, make available to the public information which is available to the

Director relating to risks to consumer health and safety posed by products, in particular information on product identification, the nature of the risk and the measures taken.

(2) A person who discloses information obtained for the purposes of these Regulations or the Directive which by its nature is confidential, other than information relating to the safety properties of any product which is disclosed in order to protect the safety and health of consumers, is guilty of an offence.

(3) Protection of professional secrecy shall not prevent the dissemination to the Director of information relevant for ensuring the effectiveness of market monitoring and surveillance activities. Where the Director receives information covered by professional secrecy, he or she shall ensure its protection.

Application of other legislation.

19. (1) Any decision taken by virtue of these Regulations and of the Directive and involving restrictions on the placing of a product on the market or requiring its withdrawal or its recall is without prejudice to assessment of the liability of any party concerned in the light of the criminal law applying.

(2) Nothing in these Regulations prejudices the application of the Liability for Defective Products Act 1991 (No. 28 of 1991).

Prosecution of offences.

20. An offence under these Regulations may be prosecuted summarily by the Director.

Cost of prosecutions.

21. Where a person is convicted of an offence under these Regulations the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Director the costs and expenses, measured by the court, incurred in relation to the investigation, detention and prosecution of the offence and, where appropriate, any seizure or detention of the product concerned.

Penalties.

22. A person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding € 3,000 or to imprisonment for a term not exceeding 3 months or to both.

Forfeiture of product upon conviction of certain offences.

23. (1) Where a person is convicted of an offence under Regulation 4(3), 6(6), 7(3), 7(5), 8(3), 9(5), 10(5) or 14(11), the court by or before which he or she is convicted may order any product in respect of which the offence was committed to be forfeited and either destroyed or otherwise disposed of in such manner as the court may determine.

(2) An order made under this Regulation may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

Offence by body corporate.

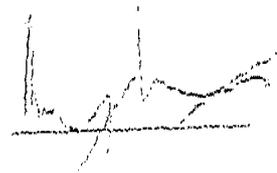
24. Where an offence under these Regulations is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been facilitated by any neglect on the part of any director, manager, secretary or any other officer of such body or a person who was purporting to act in any such capacity, such person is also guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Revocation.

25. The European Communities (General Product Safety) Regulations 1997 (S.I. No. 197 of 1997) are revoked.

GIVEN under my Official Seal.

4th May 2004.

A handwritten signature in black ink, appearing to be 'L. S.', written over a horizontal line.

Minister for Enterprise.

Trade and Employment.

L.S.

EXPLANATORY NOTE

(THIS NOTE IS NOT PART OF THE INSTRUMENT AND DOES NOT PURPORT TO BE A LEGAL INTERPRETATION)

These Regulations, which come into operation on the making thereof, replace the European Communities (General Product Safety) Regulations 1997 (S.I. No. 197 of 1997) which implemented Council Directive 92/59/EEC and give effect to Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety. The Regulations require that consumer products placed on the market are safe and obliges producers to place only safe products on the market. The Regulations specify the duties of producers and distributors and make it an offence to place dangerous products on the market. The Director of Consumer Affairs is given authority to ensure that products placed on the market are safe and that producers and distributors of such products comply with their obligations under these Regulations and the Directive.

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