

New UK “code of practice on consumer product safety related recalls and other corrective actions” comes into force

Introduction

On 7 March 2018 a new “code of practice on consumer product safety related recalls and other corrective actions” (the “Code”) was released, which is intended to assist companies plan for and deal with product safety issues and product recalls.

The introduction of the Code follows the creation of a new Office for Product Safety and Standards (“OPSS”) on 21 January 2018, which was the subject of a previous alert which can be found [here](#).

There is heavy emphasis placed by the Code on the need for businesses to draw up effective communication plans and to subject their product safety incident plans to regular review, and businesses should pay particular attention to these areas.

Structure and purpose of the Code

The Code is split into two sections: “Part 1” and “Part 2”.

Part 1 is aimed at businesses (i.e., manufacturers, importers and distributors) to provide guidance in respect of any product safety issue that might arise with their products. In particular, Part 1 is intended to help businesses:

- prepare to manage a possible safety related product recall or other corrective action;
- establish mechanisms to monitor the safety of consumer products;
- investigate any potential product safety issue;
- establish mechanisms to deal with any product safety issue identified;

- establish and implement a communication plan in respect of a product safety issue; and
- review corrective action programmes to ensure that product safety responsibilities continue to be met.

Part 2 is intended for regulators and enforcement authorities and sets out the guidance and advice that should be made available to enable businesses to meet their legal obligations and act in the public interest.

The Code has been developed to provide practical guidance to businesses and includes specific and helpful practical steps that a business should consider taking during the course of coordinating a product recall.

Like the OPSS, the Code applies to all sectors that are not otherwise covered by alternative specific national guidance (such as food, automotive, medicines and medicinal devices) and is intended to be used by all businesses, irrespective of size.

Planning ahead

The Code places significant emphasis on the need for businesses to create and develop a product safety incident plan (“PSIP”) to enable them to respond quickly when issues of product safety arise.

The Code provides detailed and practical guidance as to what should be included in the PSIP and a list of individuals/functions who should be involved in its drafting. The Code includes, as Appendices, useful checklists to assist businesses assess their PSIPs and on the actions that should be considered prior to launching corrective action in the event of a product safety issue.

The Code places significant emphasis on communication, and it would be prudent for businesses to take account of that when drawing up and reviewing their plans. In particular, the Code identifies communicating with the following as key to effective management of a product safety issue:

- internal and external stakeholders (such as others in the supply chain);
- relevant external experts, to help to assess the safety risk;
- the relevant authorities; and
- consumers.

The Code recommends drawing up and maintaining up to date contact lists to enable effective communication to take place, as well as periodically testing the efficacy of the PSIP through regular audit and mock recall exercises. It is clear that businesses are expected to monitor their PSIPs actively, rather than allowing them to gather dust in a draw, as a key part of protecting consumer safety.

The message is that businesses with a comprehensive, up to date, PSIP in place can simply proceed to implement it in accordance with the Code, rather than spend valuable time formulating a reactive response, causing delay that could compromise consumer safety.

Comment

As with the creation of the OPSS, the publication of the Code is a further statement of intent that the government remains committed to taking the issue of product safety seriously.

Whilst the Code is expressly stated as being a “form of guidance and recommendations”, enforcement authorities will no doubt focus on compliance (or non-compliance) with its provisions when assessing whether or not a business has acted appropriately when a product safety issue arises. Businesses should therefore take this as a prompt to review and, where necessary, update their plans and processes.

If you have any questions or comments in relation to the above, please contact the authors or your usual Mayer Brown contact.

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