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CONFIDENTIAL FILING

Consumer Safety

TRADE

FEBRUARY 1984

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
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PREM 19/2883

Dd 8398366 2M 11/83 JET

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
E(A)(84)14	13 March 1984
E(A)(84) 9th Meeting, item 2	20 March 1984

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed _____ Date 13 AUG 2016

PREM Records Team

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

Cmnd 9302
The Safety of Goods
Presented to Parliament by the Secretary of State for Trade and Industry by Command of Her Majesty July 1984
Published by HMSO ISBN 010 193020 8

Signed _____ Date 13 AUG 2016

PREM Records Team

FCS/89/107

CHANCELLOR OF THE DUCHY OF LANCASTER
AND MINISTER OF STATE FOR TRADE AND INDUSTRY

Proposed Presidency Resolution for the Relaunch of Consumer Policy

1. Thank you for your letter of 25 May about the line to be taken at the Council of Consumer Ministers on 1 June.

2. Since a Resolution is a political declaration of intent it requires the positive assent of all 12 Member States for adoption. This obviously gives Eric Forth a strong hand in arguing for a revised text that we could support. But if other Member States refuse to agree the changes we want, then I agree that we should be ready to block the proposal. But I hope Eric will make clear in the Council, and if necessary subsequently to the press, exactly what we could accept.

3. I am copying this minute to Nigel Lawson, John MacGregor, Norman Fowler, Sir Patrick Mayhew, the Lord Chancellor, the Prime Minister, Sir Robin Butler, Eric Forth and Francis Maude.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
31 May 1989

TRADE : Jammu Tapby Feb 14

PA

CAP

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister

CAP
375

The Rt Hon Tony Newton Esq, OBE MP
Minister for Trade and Industry
Department of Trade and Industry
1-18 Victoria Street
London
SW1H ONQ

29 May 1989

Dear Tony,

PROPOSED PRESIDENCY RESOLUTION FOR THE RELAUNCH OF CONSUMER POLICY

Thank you for copying to me your letter of 25 May to Sir Geoffrey Howe file with CAP seeking agreement to the line you propose to take on the above resolution at the Consumer Affairs Council on 1 June.

I fully support the line you propose. Our officials have been in close touch on the proposals and we are, as you may know, particularly concerned at general references to the "protection" of the quality of products. So far as the food sector is concerned, this would run contrary to the agreed Single Market food law harmonisation programme with its emphasis on informative labelling backed by essential safety, hygiene and fair trading measures. In its present form, the resolution in effect seeks to change the direction of Community food law policy through the back door. It could give considerable negotiating capital to those Member States, notably France and Spain, who wish to see the introduction of restrictive measures, such as compositional standards, "appelations d'origine" schemes and discrimination against "substitute" products.

These ideas were discussed at an informal meeting of the Agriculture Council on 16 May and I had considerable difficulty on the subject as France and Spain, with the backing of Commission elements, are trying to push the protectionist line and reverse the currently agreed broad approach to harmonisation. It was clear that, under the guise of protecting consumers from sub-standard or substitute products, the real motive of those advocating such measures was to protect producers and improve their incomes. It will be important not to allow the Spanish Presidency to claim that a policy on these lines was agreed by the informal Agriculture Council. I and the Netherlands Minister clearly registered our disagreement.

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister

The Rt Hon Tony Newton Esq, OBE MP

The amendments to the resolution circulated at COREPER, allegedly designed to enable reserves to be lifted, make it worse from our point of view. They reintroduce a specific reference to food, in conjunction with references to avoiding deceitful claims and unfair competition. This is obviously intended to underline the supposed commitment to a restrictive "quality protection" policy.

Much work remains to be done to complete a single market for food-stuffs by 1993. Our objective must be to ensure that the existing approach, enshrined in the 1985 White Paper, continues to be followed. Ideas for modifying it will, at best, hinder progress and at worst will be a sharp step backwards from the consumer's point of view. Since abstention cannot prevent adoption by unanimity, I agree that, if it is impossible to get the resolution altered into something acceptable, it will be necessary to vote against.

I am copying this letter to Geoffrey Howe and to the other recipients of your letter.

Yours ever,

JM

JOHN MACGREGOR

TRADE: Consumer Policy Feb 84

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the department for Enterprise

The Rt. Hon. Tony Newton OBE, MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

CDT.

25/5

Department of
Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Enquiries
01-215 5000

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign and
Commonwealth Affairs
Foreign and Commonwealth Office
Downing Street
LONDON SW1

Direct line
Our ref
Your ref
Date 215 5147

25 May 1989

Dear Geoffrey,

PROPOSED PRESIDENCY RESOLUTION FOR THE RELAUNCH OF CONSUMER POLICY

Eric Forth will be representing the UK at the Council of Consumer Ministers on 1 June, and I am writing to draw your attention to the attached Presidency Resolution (Annex 1) which will be considered for adoption at this meeting. The proposal was discussed at COREPER yesterday and revisions to articles 3 and 4 were tabled during the discussion (Annex 2).

Although the text has been modified at working group and COREPER discussions it still contains a number of objectionable features which would have to be removed before we could support it. Other Member States such as Germany, Denmark and the Netherlands have shared some of our concerns.

The priorities covered by the proposal include the improved representation and integration of the consumer view in Community policy, the safety and quality of products, including foodstuffs, legal redress and a number of other measures affecting consumers. Some parts of the Resolution we could support, including proposals for improved integration and representation of the consumer view. However, I have

serious concerns that elements of this proposal could be an attempt to introduce, through the back door of consumer protection, a regulatory approach which is substantially out of step with agreed Community policy on the Single Market and to prepare the way for measures in areas where Community competence is in question.

I am also concerned that some aspects of the proposals on quality and safety are not consistent with agreed Community policy as set out in the 1985 White Paper on the Completion of the Internal Market and the 1985 Resolution on the New Approach to Technical Harmonisation and Standards. Agreed Community policy aims to protect consumers and break down barriers to trade in a way which is flexible and which liberalises markets. The present proposals could undermine the approach and open the way to harmonisation for its own sake, in particular the areas of quality labelling, food law and control systems.

The proposals on legal redress as a whole and legal actions by consumer organisations in particular raise serious questions of Community competence. The way forward is arguably through cooperation between Member States, in the context of Article 220 of the Treaty of Rome, and through implementing the international convention on reciprocal enforcement of judgements. In view of the questions about Community competence I am of the view that it would be dangerous to accept any new proposal for a Community initiative in this area even if it were just for a study. The note from COREPER suggests that a text which would satisfy ourselves and the Danes and Irish would not satisfy a number of other Member States.

Article 5 sets out an unrealistically ambitious programme for other possible measures. The rationale for these measures has not been objectively established, nor has a satisfactory case been made for action at Community level. UK support for this Article would need to be conditional and to make absolutely clear that we do not concede the principle of the need for Community measures on unfair contract terms or on the other areas suggested. The suggestion for a Community initiative on consumer education might also raise questions of competence.

I propose that Eric Forth should indicate at Council that there are parts of the proposals which we welcome and others which might be developed into proposals which we could accept. But there are other aspects of this proposal which are either outside Community competence or which we cannot therefore accept. If other Member States continue to insist on their

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the department for Enterprise

inclusion, we must I think block the Resolution. I understand that there is some doubt about the legal effect of an abstention. In these circumstances, I propose that, for the avoidance of doubt, Eric should vote against. Inevitably this will be controversial in domestic political terms.

A vote against the Resolution may not of itself achieve our objective of preventing the Commission from taking action in an area such as judicial systems where it does not have competence. The Commission can set its own agenda. However if we do not stand our ground on this point now it will be much more difficult to do so if the Commission resurrects the matter at some future date.

I am copying this letter to Nigel Lawson, John MacGregor, Norman Fowler, Sir Patrick Mayhew and the Lord Chancellor in view of their interests in issues covered by this Resolution, to Number 10 and Sir Robin Butler, and to Eric Forth and Francis Maude here. I would be grateful if you and the copy recipients could indicate by mid-day on Tuesday 30 May whether you are content with the line I propose that Eric should adopt. I apologise for the tight deadline.

ever.

Tony

TONY NEWTON

dti

the department for Enterprise

Apologies

This should have been attached to the letter from Tony Newton to Sir Geoffrey Howe dated 23 May.

the Enterprise initiative

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

EUROPEAN COMMUNITIES
THE COUNCIL

Brussels, 11 May 1989 (23.05)
(OR. f)

6499/89

RESTREINT

CONSOM 17

ANNEX 1

INTRODUCTORY NOTE

from : General Secretariat

to : Permanent Representatives Committee

No. prev. doc.: 5983/89 CONSOM 14

Subject: PREPARATION OF THE CONSUMER AFFAIRS COUNCIL MEETING ON 1 JUNE 1989

- Future priorities for relaunching the policy for the protection and promotion of consumer interests

= Draft Council Resolution

1. Further to the ideas concerning consumer protection policy elaborated by the Spanish and French Governments at a meeting in Madrid on 10 January 1989, the Presidency formulated an action programme covering four areas regarded as priorities for consumer interests (1):

- integration of consumer protection policy into the other common policies;

- guarantees of safety and quality of consumer products;

(1) See 4808/89 CONSOM 5.

- legal protection of the consumer;

- fresh impetus for directives and current work.

The Presidency proposes to submit to the Council a draft Resolution based on this action programme.

2. The Working Party on Consumer Protection and Information has on several occasions examined the text proposed by the Presidency (1).

3. The text of the draft Resolution as it stands following the Working Party's discussions is annexed hereto.

The reservations and comments still upheld by the delegations, without prejudice to a more detailed examination of the text, are given in the footnotes.

4. The Permanent Representatives Committee is invited to discuss the text so that it can be adopted by the Consumer Affairs Council on 1 June 1989.

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(1) See 5027/89 CONSOM 7.

ANNEX

DRAFT COUNCIL RESOLUTION ON FUTURE PRIORITIES FOR RELAUNCHING CONSUMER PROTECTION POLICY (x)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, as amended by the Single Act,

Whereas the improvement of the quality of life is one of the objectives of the Community and as such implies, inter alia, protecting the health, safety and economic interests of consumers and informing and educating them;

Whereas fulfilment of this task requires a consumer protection and information policy to be implemented at Community level,

Whereas in response to this need two Community action programmes for consumers were adopted in 1975 (1) and 1981 (2);

(x) D: scrutiny reservation.
(1) OJ No C 92, 25.1.1975, p. 2.
(2) OJ No C 133, 3.6.1981, p. 1.

Whereas, in the light of the results obtained in implementing these programmes, it was necessary to give fresh impetus to this Community policy and to redefine its objectives and priorities through the adoption by the Council of the Resolution of 23 June 1986 (1) concerning the future orientation of the policy of the EEC for the protection and promotion of consumer interests;

Whereas the content of such objectives must be expressed in the effective protection of consumers' individual and collective interests;

Whereas such effective protection requires in particular harmonization measures to prevent the creation of obstacles to the proper functioning of the internal market;

Whereas Article 100a of the Treaty provides for the adoption of measures which have as their object the establishment and functioning of the internal market and requires that the Commission, in its proposals, provided for in paragraph 1 of this Article, concerning consumer protection, take as a base a high level of protection, to ensure consumer confidence in the functioning of the market;

Whereas this linking of consumer protection policy to the effective completion of the internal market presupposes a review and update of the objectives of that policy, with the emphasis being placed on measures which should produce tangible results in the short term;

(1) OJ No C 167, 5.7.1986, p. 1.

Whereas proceedings concerning the internal market should also move towards liberalization of world trade and increased competition for the benefit of the consumer (x); whereas the measures taken by the Community to protect consumers must be consistent with the Council Resolution of 7 June 1988 (1);

Whereas the conclusions of the European Council of December 1985 underline the importance of promoting alternative approaches to the introduction of rules when such approaches afford real possibilities of making significant progress;

Whereas the Council Resolution of 23 June 1986 notes that the Commission intends to carry out wide consultation of appropriate interests, particularly at the preparatory stage of its proposals;

Whereas greater attention must be paid to consumer interests in other Community policies which requires, inter alia, detailed knowledge of the implications of the internal market for the consumer;

Whereas the representation of consumers at Community level should be improved to ensure a balance between the interests of producers and consumers;

Whereas, as the Council stated in its Resolution of 25 June 1987 on consumer safety (2), it is important to promote safety and better information on the quality of products and services;

(x) Cion: reservation.
B/I/L: scrutiny reservation.
(1) OJ No C 197, 27.7.1988.
(2) OJ No C 176, 4.7.1987, p. 3.

Whereas the Commission therefore proposed that the Council adopt a Directive implementing the general principle of the obligation to provide goods which are safe, without prejudice to the continuation of work connected with the "new approach" to technical harmonization and standards approved by the Council Resolution of 7 May 1985 (1);

Whereas the possibility should be considered of coupling the declaration of rights for consumers and the completion of an internal market in which trade between Member States will be intensified with certain judicial and non-judicial measures (x);

CALLS UPON THE COMMISSION when carrying out its work to give priority to the areas referred to in the Annex to this Resolution which are considered to be particularly sensitive for consumers, and, having regard to those priorities, to present before 31 December 1989 a five-year plan concerning the Community's objectives in its policy for the protection and promotion of consumer interests.

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(1) OJ No C 136, 4.6.1985, p. 1.
(x) UK: reservation on the Community's jurisdiction.

PRIORITIES FOR RELAUNCHING THE POLICY FOR THE PROTECTION AND PROMOTION OF CONSUMER INTERESTS

1. Integrating the policy for the protection and promotion of consumer interest into the other common policies through (x):

   - an overall study of the implications of the internal market for the consumer, showing which specific sectors most affect consumer interests;

   - preparation of an adequate impact assessment for those proposals which are particularly sensitive for consumers.

2. Improving consumer representation at Community level, by studying various possible ways of promoting:

   . participation by organizations in the various Member States in the system of consumer representation;

   . the exchange of ideas with representatives of economic sectors and of employers;

(x) NL: proposed deleting the first paragraph.

optimum implementation of the Council Resolution of 4 November 1988 [1] on the improvement of consumer involvement in standardization,

since such an improvement will contribute, inter alia, to the achievement of the aims of this Resolution and in particular those set out in point 1.

3. Promoting the general safety of goods and services and better information on the quality of goods and services by:

- looking into the possible implementation at Community level of the general principle of the obligation to provide services which are safe;

- ensuring optimum operation of:

  . the existing safety-information system (EHLASS);

  the existing system for the rapid exchange of information on dangers arising out of the use of consumer products;

- encouraging campaigns which lead to greater safety of products, in particular of products which may be used by children or which may affect them;

(1) OJ No C 293, 17.11.1988, p. 1.

- harmonizing the different Member States' control systems with regard to foodstuffs and looking into the possibility of harmonizing control systems for other products (x);

- seeking common criteria and, where appropriate, common standards for the assessment and protection of the quality of products and services and of their safety, with particular reference to (xx):

. comparative testing of goods and services and dissemination of the results of such tests;

. use of distinctive marks and labelling to enable the consumer to assess the safety and quality of products;

- agreeing essential requirements for the protection of safety and the reciprocal recognition of measures for certification in accordance with the new approach in the 1985 White Paper on the completion of the internal market.

4. Facilitating access to legal redress by (xxx):

- launching a study on group or collective action by consumer organizations;

(x) UK: reservation.
(xx) UK/Cion: reservations on the consistency of this indent with the Community policy conducted in this sphere.
(xxx) IRL/UK: reservations on the Community's jurisdiction.

- encouraging Member States to seek judicial and non-judicial systems to ensure that minor disputes between consumers and suppliers of goods and services are speedily and effectively resolved;

- studying, together with the Member States, the feasibility of a system for the exchange of information to promote access to the legal system of another Member State in minor disputes involving more than one country.

5. Speeding up, in consultation with national experts and in accordance with the criteria set by the Council Resolution of 23 June 1986:

- the work already begun at the Commission, including a proposal for a Directive concerning unfair terms in contracts and the report on general consumer information policy;

- the study, as part of the five-year plan and taking account of the 1992 target, of other possible initiatives, particularly in the areas of consumer education, teleshopping, guarantees and after-sales service and unfair advertising.

11 tax / time 10 ① FTR 222-9280 ANNEX 2

Mrs. Morris MAFF Mr Lambert EISD

Mr Gilbertson IEP Mr Roe EISD

Mr Burke CA4 CIRCULATED AT COREPER ON 24 MAY

TEXTE ALTERNATIF PROPOSE PAR LA PRESIDENCE A LA PAGE 9 DU DOCUMENT 6499/89. (DRAFT COUNCIL RESOLUTION ON CONSUMERS)

Mr White LCD

Documents de référence nos. 6499/89, page 9 et document de travail CONSOM/89/14, page 3.

KREP tetex of COREPER discussion to follow: EIS ahe 2415.

- en harmonisant les mécanismes de contrôle des différents Etats membres en ce qui concerne les denrées alimentaires et en étudiant la possibilité d'harmoniser le cas échéant les mécanismes de contrôle pour les autres produits (x) ;

- en recherchant des critères communs et le cas échéant des normes communes pour l'évaluation et l'information relative à la qualité des produits et services ainsi que de leur sécurité, notamment en ce qui concerne (xx) l'étiquetage et instruments d'accompagnement, y compris l'utilisation des signes distinctifs notamment dans le domaine alimentaire, nécessaires pour assurer le choix informé des consommateurs et éviter les allégations trompeuses et une concurrence déloyale .

- en étudiant les conditions communes à considérer pour la réalisation des essais et analyses comparatives des produits et des services et la diffusion de leurs résultats."

- en convenant d'une approche globale pour établir un cadre commun dans le domaine des essais et de la certification (évaluation de la conformité) pour assurer le principe de la reconnaissance réciproque, conformément à la "nouvelle approche en matière d'harmonisation technique et de la normalisation " du Libre Blanc de 1985 pour l'achèvement du marché intérieur.

4. Faciliter l'accès à la justice et pour ce faire (xxx) :

- Lancer une étude sur les actions intentées par les associations de consommateurs en défense de l'intérêt de la catégorie qu'elles représentent et de chaque consommateur.

NOTE: Les textes soulignés indiquent des modifications de la Présidence avec intention de résoudre les réserves suivantes , concernant les documents plus haut mentionnés.

(x) : U.K. réserve.
F. réserve d'examen [lifted]

(xx) U.K./Com. réserve
F. réserve d'examen

(xxx) IRL. réserve liée aux dispositions constitutionnelles irlandaises.
U.K. réserve sur la compétence communautaire et demande la suppression de ce paragraphe

(xxx) DK. Demande la suppression de ce paragraphe pour le considérer superflu.

B/E/F/GR/I/P : contre cette suppression.

Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL
Telephone: Direct Line 01-276 6810
Switchboard 01-276 3000
Fax 01-276 6834

The Rt Hon Kenneth Clarke QC MP
Department of Trade and Industry
1 Victoria Street
LONDON SW1H OET

12 July 1988

Dear Kenneth

LAW COMMISSIONS' REPORT ON SALE AND SUPPLY OF GOODS

In your letter of 27 June to John Wakeham (copied to me) you have asked me, before you decide the policy to be implemented in the matter, to let you have my views on the minor divergence between the recommendations of the two Law Commissions on the buyer's right to reject the whole of a quantity of goods where the wrong quantity is delivered but the excess or shortfall is slight.

As the Minister responsible for the Scottish Law Commission, I know that they attach considerable importance to the line which they have adopted on the matter. The reasons for the Commission recommending a different approach from the English Commission go beyond the consideration that it seems to them unreasonable to give the consumer an unqualified right to reject the whole of the goods because of a trifling excess or shortfall. The Scottish Law Commission recommended that it would be more satisfactory to relate breaches of the statutory implied terms to existing concepts of Scottish common law - under which an innocent party to a contract suffering breach by the other party is entitled to terminate the contract only if the breach is "material". They have suggested that this should be achieved, with respect both to consumer and non-consumer buyers, by deeming breaches of implied terms as to quality, fitness for purpose, description, and conformity with sample, to be "material". The advantages of this approach are, as noted by the Commission, that it enables the law to be stated for Scotland without having recourse to "conditions" and "warranties"; that it is consistent with the underlying common law; and that it avoids the introduction of an additional test which, when set against the common law "materiality" test, would be confusing and needlessly complicated. I agree with this approach and, setting these considerations against the fact that, as the English Law Commission acknowledge, consumers will not often incur the problem in practice, I should prefer to retain the Scottish Law Commission's approach for consumer buyers in Scotland. As you say, there should be no difficulty about enacting different provisions for the two jurisdictions in this minor matter.

I am copying this letter to John Wakeham, members of H Committee and to the Attorney General and Sir Robin Butler.

Yours ever
Kenny

CAMERON OF LOCHBROOM

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cc: PU

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the department for Enterprise

The Rt. Hon. Kenneth Clarke QC MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

Ms Alison Smith
Private Secretary to
Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5147
Our ref
Your ref
Date 30 June 1988

Mr Newton
Mr Palmer CA3
Mr Kerse Sols A
Miss O'Flynn Sols A
Mr Bailey Sols A
Mr Peace CA3A

Dear Alison.

LAW COMMISSIONS' REPORT ON THE SALE AND SUPPLY OF GOODS

The Chancellor's letter of 27 June contained two errors on page three and I attach a corrected version. I apologise for any inconvenience these errors may have caused.

I am copying this letter to the Private Secretaries to the recipients of the Chancellor's letter.

Yours

David Styles.

DAVID STYLES
ASSISTANT PRIVATE SECRETARY

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dti

the department for Enterprise

The Rt. Hon. Kenneth Clarke QC MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5147
Our ref
Your ref
Date 30 June 1988

Dear Mr Wakeham

LAW COMMISSIONS' REPORT ON THE SALE AND SUPPLY OF GOODS

I am writing to seek policy approval for a Bill to implement recent proposals by the Law Commissions to amend the Sale of Goods Act 1979. These were published in May 1987 as Cm 137. Space for the proposals has not been found in a programme Bill for 1988/89, but QL has suggested, and I agree, that, subject to policy approval, they should be offered as a Private Members' handout Bill at the start of the 88/89 session.

The Law At Present

The law on the sale of goods was consolidated in the Sale of Goods Act 1979. Among other provisions:

(i) it states that there is an implied promise on the part of the seller that the goods in a sale transaction are of "merchantable quality";

(ii) it allows the buyer, if he acts within a reasonable time, to reject goods that are not of merchantable quality, and to receive back the purchase price;

JE1ACL

(iii) but it does not allow the buyer a long-term right of rejection: the buyer is allowed a "reasonable opportunity" of examining the goods but once a "reasonable time" has expired he is deemed to have "accepted" them. In other words he cannot reject the goods (and get his money back) if a latent defect comes to light after they have been in use for some time. His remedy in these circumstances is limited to damages.

The Law Commissions' Proposals

The Law Commissions have recommended

(i) that the old term "merchantable quality" should be replaced by a clearer, more up-to-date definition, and that the amended Act should state explicitly that relevant aspects in determining quality should include fitness for all the purposes for which goods of the kind in question are commonly supplied, the appearance and finish of the goods, their freedom from minor defects, their safety, and their durability;

(ii) that a number of other (minor) changes to the 1979 Act should be made (listed at Annex A); but

(iii) that the rules governing acceptance and the loss of the right of rejection should not be changed.

The proposals are accompanied by a draft Bill comprising 8 clauses and 3 schedules. The Department has consulted outside interests widely.

The Main Policy Issues Raised By The Proposals

(a) Should there be a long-term right to reject?

The main policy question is whether there should be a long-term right to reject. The consumer movement has argued on consultation that a consumer should not lose the right to reject goods until all the facts are known to him - ie until he knows whether there is anything wrong with the goods. He should be entitled to his money back so long as he rejects the goods within a reasonable time of discovering that they are faulty. Weight has been lent to the consumer movement's representations by a recent court case in which the judge found that the purchaser of a new car which broke down badly 140 miles and 3 weeks after delivery could not reject it because (although the car was clearly not of merchantable quality) he had had an adequate opportunity of trying it out before it broke down and had

therefore "accepted" it. He was therefore entitled to damages, but not to rescind the contract. The consumer movement argues that this case illustrates just how little time the present law allows a consumer to exercise his right of rejection.

The Law Commissions however are strongly opposed to a long-term right to reject. They argue that such a right would be extremely unfair to sellers. Consumers who bought a defective product would in effect be entitled to free use of it until the defect emerged: the seller would then be obliged to take back a used product and refund the full purchase price. Such a regime would simply be too biased in the consumer's favour. It would be possible to make a long-term right of rejection less unfavourable to sellers by allowing the seller to deduct an element from the purchase price for use of goods before rejection, and to allow him, before making a refund, to replace the goods or to attempt to repair them. However changes on these lines would greatly complicate the law and would reduce the attraction of the rejection remedy from the consumer's point of view.

The Law Commissions take pains to emphasise that the absence of a long-term right to reject does <u>not</u> mean that a consumer who buys a defective product is without a remedy if the defect takes some while to appear. The consumer still retains the right to damages.

On this question, I very much agree with the Law Commissions' conclusion that the law should not be changed.

(b) <u>Proposed redefinition of "merchantable quality" and other changes to the 1979 Act</u>

The changes which the Law Commissions have recommended <u>should</u> be made (paragraph 3 above) are much less contentious. On consultation they have generally been welcomed by the consumer movement, although sellers have expressed mixed views.

I believe there is a good case for enacting the proposals. Difficulties with the present Act cannot be described as severe, but this is a fundamental area of law and it is sensible that the provisions should be kept under review and updated when necessary. The new provisions on merchantable quality will make the law more easily understandable to consumers, traders, the courts and

of examining" the goods: in most situations there is likely to be no distinction, but consumer bodies are concerned that under the proposals as at present drafted, a buyer could be held by a court to have accepted goods because, looked at objectively, a "reasonable time" had elapsed, even though he personally had not had a reasonable opportunity to examine the goods. An amendment is proposed to make clear that a reasonable opportunity to examine is material to the question of whether a reasonable time has elapsed.

The second point concerns the precise working of the redefinition of "merchantable quality": the new definition includes the words "acceptable quality" and some have argued that it is inconsistent that a buyer might be held (by the provisions on acceptance) to have "accepted" goods, which, if they suffer from latent defects, will by definition not be of "acceptable quality" once the defects have come to light.

It is possible that clarification of the drafting on these points will allay some of the concerns that were expressed on consultation. Any changes to the draft clauses which the English Commission propose will be cleared with the Scottish Commission.

Another matter which could usefully be tidied up in the final Bill is the extension of the "slight breach regime" (point iv at Annex A), in the case of England and Wales, to express as well as implied contract terms - this was not covered in the Law Commissions' report as it was outside the English Commission's terms of reference.

Likely Points Of Controversy

The Bill is unlikely to be controversial in party political terms. The most likely source of challenge is the consumer movement which may seek to secure amendments to provide for a long-term right to reject.

Conclusion

The Law Commissions' proposals should improve the legal framework for buying and selling goods. I invite colleagues to give their policy approval for a Bill to enact them.

I am copying this letter to members of H Committee, and to the Attorney General, the Lord Advocate, and Sir Robin Butler.

Yours Sincerely

KENNETH CLARKE

JE1ACL

ccBG

MINISTER OF STATE TREASURY

CONFIDENTIAL

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Leon Brittan
Secretary of State for Trade and Industry
Department of Trade and Industry
1-19 Victoria Street
LONDON SW1H 0ET

3rd January 1986

Dear Leon.

CONAL GREGORY'S PRIVATE MEMBER'S BILL ON CONSUMER SAFETY

I refer to your letter of 17 December to Willie Whitelaw concerning the above Bill.

On the understanding that this Bill will confine itself to imposing on HM Customs & Excise no more obligations than to provide enforcement authorities with information and to detain goods for a limited period, we have no objection to the Bill. The imposition of any further duties on the Customs would have staffing implications and would impose burdens which could not be contained within current resources.

I am copying this letter to recipients of your letter.

Yours ever

Peter

PETER BROOKE

TRADE

CONSUMER SAFETY

FEB 84

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

3 January 1986

Dear Leon,

MR CONAL GREGORY'S PRIVATE MEMBER'S BILL ON CONSUMER SAFETY

You wrote to Willie Whitelaw on 17 December 1985 seeking the agreement of L Committee to the provision of drafting assistance with this measure. I am replying as the Chairman of Legislation Committee.

I fully understand your desire to help Conal Gregory with this measure. I fear, however, that I must reject your proposal that drafting assistance is given to him since Parliamentary Counsel currently has no spare capacity. Several Government Bills are behind schedule and yet another new Bill has just been added to the Programme: I must therefore resist all but essential claims on Counsel's time. Mr Gregory's Bill has very little chance of success and I do not think it falls into this category. I take your point that if it did fail, the drafting time would not have been wasted if your bid for a Government Bill, which would incorporate these clauses, was successful. But we would have brought forward the time of drafting to a particularly busy time for the draftsman and for the reasons I have given above this is simply not possible.

I am copying this letter to members of L Committee, members of E(A), to the Minister of State, Treasury and to Sir Robert Armstrong.

Yours
John Biffen

JOHN BIFFEN

Rt Hon Leon Brittan QC MP
Secretary of State for Trade and Industry

003

CC BB

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Leon Brittan
Secretary of State for Trade & Industry
Department of Trade & Industry
1 Victoria Street
LONDON
SW1H OET

MEN

2.1.86

Dear Leon,

CONAL GREGORY'S PRIVATE MEMBER'S BILL ON CONSUMER SAFETY

Nigel Lawson has asked me to respond to your letter of 17 December 1985 to Willie Whitelaw about the opportunity that has arisen to utilise Conal Gregory's Bill on consumer safety.

We have no objection to your proposal, on the understanding that no additional public expenditure is involved.

I am copying this letter to the members of L Committee and E(A) Committee; to Patrick Mayhew and to Peter Brooke here.

Yours ever

Ian

IAN STEWART

TRADE
CONSUMER
SAFETY
2/84

CONFIDENTIAL

CC DC

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

- 2 JAN 1986

Dear Leon,

I have seen a copy of your letter of 17 December to Willie Whitelaw asking for consent to use the services of Parliamentary Counsel in drafting Conal Gregory's Private Member's Bill on Consumer Safety, and generally indicating support for the Bill.

When we were notified in 1984 of the wider-ranging legislation proposed by DTI following the White Paper on 'Safety of Goods' we understood that there would be no extra financial or manpower resources required by local government and could see no problems from the construction industry point of view. On the assumption that the same considerations are likely to apply to this Private Member's Bill I have no objection in principle to the Government supporting it.

I am copying this to Willie Whitelaw, members of L and E(A) Committees, Patrick Mayhew, Peter Brooke and Sir Robert Armstrong.

Yours ever,

KENNETH BAKER

The Rt Hon Leon Brittan QC MP

TRADE 2/84,

CONSUMER SAFETY,

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

17 December 1985

CONFIDENTIAL

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

Dear Willie,

CONAL GREGORY'S PRIVATE MEMBER'S BILL ON CONSUMER SAFETY

Conal Gregory has been successful in this year's ballot for Private Member's Bills, and has decided to put forward a bill on consumer safety, taking up some of the recommendations in our White Paper of July last year on the Safety of Goods. I understand that he wishes to introduce powers for local authority enforcement officers to suspend or to seize goods suspected to contravene safety requirements, and for Customs and Excise to provide enforcement authorities with information on potentially unsafe imports and with general co-operation for the purposes of enforcing the Consumer Safety Act against unsafe imports (paras 25-26 and 32 of our White Paper).

2 As you may remember, a Bill to introduce these and other measures relating to consumer safety and to amend the law relating to misleading prices (the Consumer Goods and Services Bill) narrowly missed securing a place in the current Parliamentary session for Government Bills, and you assured Norman Tebbit in your letter of 3 July that preferential treatment would be given to the Bill when consideration of the 1986/87 programme takes place. We shall of course be submitting a bid for this long delayed piece of legislation in the very near future, but in the meantime I think that it is right that we should do everything that we can to support Conal Gregory's attempt to introduce a small but important part of these legislative proposals this year. In particular, I think that it would be extremely valuable to us if the assistance of Parliamentary Counsel could be offered to Conal Gregory in drafting his Bill.

3 I realise that this is a rather unorthodox request, coming at such a late stage, but I believe there are special circumstances in this case. Policy clearance was obtained on these measures back in

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November 1984; Instructions to Counsel have already been prepared, and were in fact delivered to Parliamentary Counsel last April, at a time when our Bill did have a provisional place in the 1985/6 programme. So much of the preparatory work has already been done. The measures in question should not need more than a few clauses, and I doubt that they will take up much drafting time. The time spent by Parliamentary Counsel in drafting Mr Gregory's Bill - even if it did not prove successful at the end of the day through lack of Parliamentary time - would not be wasted, as we would in any event need to have these measures drafted for inclusion in our Consumer Goods and Services Bill for 1986/87.

4 These measures, particularly on unsafe imports, are important, long overdue, and popular across the range of consumer and industry opinion. They have already narrowly missed inclusion in the Parliamentary programme for two successive years. We could not oppose them, as they are already part of Government policy to which we are committed; and I believe we would be foolish not to ensure that they were as well considered and as well drafted as possible. I therefore hope that you will give favourable consideration to this urgent request. The urgency is, I am afraid, dictated by the fact that this (comparatively short) Bill has to be tabled by 27 January, in time for Second Reading on 7 February.

5 I am copying this letter to members of L Committee, and to members of E(A), which approved the policy on these matters, to Peter Brooke and to the Solicitor General.

Yours ever, Leon

LEON BRITTAN

JF1APN

M4.43

CONFIDENTIAL

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

30 April 1985

The Rt Hon Tom King MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
LONDON SW1

SAFETY OF GOODS FOR USE AT WORK

Your letter of 19 March sought agreement to the inclusion of various amendments to the Health and Safety at Work Act 1974 in the Consumer Goods and Services Bill. I have also seen John Biffen's letter of 25 March and Norman Tebbit's letter of 12 April.

The amendments you propose are complementary to the measures on the safety of goods generally which have already been approved by E(A), and I am content with them, subject to the points made by Norman Tebbit on the treatment of suppliers to industry and the repair of machinery. In the absence of further comment from other E(A) colleagues, you may take it that you have policy approval.

I am copying this letter to the Prime Minister, other E(A) colleagues and Sir Robert Armstrong.

Yours ever
Nigel

NIGEL LAWSON

Trade : Consumer Safety 2/Rev

MC

CCN

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

NBPM. PW cert not 30/4

The Rt Hon Norman Tebbit MP
Secretary of State
Department of Trade and Industry
1 Victoria Street
LONDON SW1

29th April 1985

Dear Norman,

Thank you for your letter of 12 April. As I fully share the Health and Safety Commission's view of the importance of Section 6 of the HSW Act, both as a spur to improved standards of industrial design and manufacture and an integral element in preventing accidents and health problems at work, I was pleased to hear that you also believe that the proposed amendments to Section 6 are necessary and, in general, acceptable.

You identified two areas which were causing you some concern:-

(i) possible inconsistency between the levels of duty to be placed on the supplier of consumer goods and on the suppliers of articles and substances for use at work, which would be highlighted by being included in the same Bill;

(ii) the proposed extension of the term 'use at work' to include the repair of plant and machinery.

I appreciate your concern that there should be appropriate consistency between the levels of liability to be imposed on the suppliers of consumer goods and on those supplying articles for use at work, although Cmmd 9302 acknowledged (para 51) that the levels of liability might well be somewhat different because of the greater likelihood that industrial products are specificially adapted to meet particular user requirements. Nevertheless, the HSE has certainly accepted the principle of due consistency when preparing the draft instructions to Counsel.

As you say Dr Cullen's letter makes it clear that the Commission is not proposing that the law should be changed to require suppliers of goods for use at work to take account of reckless behaviour or wilful disregard for safety. What is required is that in manufacturing etc these goods, account is taken, as far as is reasonably practicable, of misuse arising out of commonplace inattention and human error which is reasonably foreseeable. I understand that, having met to consider the two sets of proposals, our officials now believe that a mutually acceptable form of words, building on the instructions your Department has already sent to Counsel, will be reached in the very near future. This formulation will leave no doubt that the policy intention is to establish a level of liability which extends to inattention and a degree of misuse, but no further.

As regards the inclusion of repair in Section 6(1) of the HSW Act, in fact the Commission itself has already reconsidered this aspect in the light of a fresh assessment by the CBI of its possible impact on industry. Consequently, the Commission is no longer proposing that the Instructions to Counsel should refer to repair when dealing with the revised definition of 'use at work'.

I am copying this letter to the Prime Minister, the Lord President, other members of E(A), to Sir Robert Armstrong and Sir George Engle.

TRADE: Consumer Safety: Feb 1984

Mark, Yes. AT is dealing. Did you complete this action?

Mark 23/4

10 DOWNING STREET

CF

PL ref follow on which

"Safety of goods for me at work correspondence is fixed, on 18/4. I shall then ring DEmg to see if they intend to take DTI's point, clearly then to No 10's interest.

MEA 16/4

NBPM
AT 18/4 CCM

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

12 April 1985

CF
PW to circulate.
Meanwhile, p.c.
MEA 15/4

The Rt Hon Tom King MP
Secretary of State for
Employment
Caxton House
Tothill Street
London SW1

Dear Tom,

PROPOSED CHANGES TO S.6 OF THE HEALTH AND SAFETY AT WORK ACT (HSW ACT)

Your letter of 19 March to Nigel Lawson sought agreement to securing, via the Consumer Goods and Services Bill, the amendments to Section 6 of the HSW Act which the Health and Safety Commission outlined in their letter to you of 26 February.

2 I am writing to let you, and others, know that while I have a couple of important reservations on the detailed proposals I am generally content with the policy intentions expressed in the Commission's letter. I am also content for the Consumer Goods and Services Bill to be the vehicle by which they should be secured, as agreed by Q(L) and subsequently by Cabinet on 28 February. John Biffen suggests, in his letter to you of 25 March, that the Bill was approved by Cabinet on the understanding that its contents would be limited to the proposals made by me. In fact I made very clear in my bid on which Cabinet approval was based, that the proposed Bill would include amendments to the HSW Act in the light of changes to consumer safety legislation and of experience gained in the operation of the HSW Act.

3 The use of the Consumer Goods and Services Bill as the legislative instrument highlights a point about which I should anyway have been concerned. For reasons both of substance and of Parliamentary presentation, I believe it is important to avoid inconsistency within a single piece of legislation in the levels of duty that will apply to suppliers of goods for sale to final consumers on the one hand, and to those supplying goods for use at work on the other, unless we can show that there are convincing reasons to explain the inconsistency. Otherwise we may face some difficult questions during the passage of the Bill. In this context, you will, I am sure, be aware of concern in industry that the legislation should not result in suppliers of goods for use in

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the workplace becoming liable for reckless or irrational use. I was pleased to note from their letter to you that this is not the Commission's intention, since any such requirement would have serious repercussions for equipment costs to industry, and potentially for the competitiveness of British manufacturers of such goods. I understand that this aim may not however be easy to translate into a precise and predictable legal formulation and officials of interested Departments are already in touch to discuss how the Instructions to Counsel might be drafted to exclude any possibility of penalising suppliers in this way.

4 There is one further point on which I would like to register my concern. I notice that paragraph 2 of Dr Cullen's letter proposes that the term "use at work" in Section 6(1) (a) of the Act should include setting, cleaning, maintenance and repair of plant and machinery. I can quite understand and accept the case for including setting, cleaning and maintenance of machinery, and this intention was indeed expressed in the Commission's Consultative Document. However it seems to me that it would be considerably more burdensome for suppliers of machines for use at work to be required to ensure that their machines are safe when being repaired. This does not appear to be a practicable requirement given that the supplier will invariably not be able to exercise effective control over mechanics when repairing machines - especially when complicated machines have to be substantially dismantled. Furthermore I was surprised to see the Commission proposing a requirement on which they had not sought views from industry during the formal consultation period. In the circumstances I do not think we should proceed with this particular aspect of the Commission's proposals, at least without giving industry a full opportunity to comment on the proposal. I am copying this letter to the Prime Minister, the Lord President, other members of E(A), to Sir Robert Armstrong and to Sir George Engle.

Yours

NORMAN TEBBIT

JH1CFE

Trade feb '84
Consumer Safety

From: THE PRIVATE SECRETARY

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

D J Normington Esq
PS/Secretary of State
for Employment
Caxton House
Tothill Street
LONDON
SW1H 9NF

11th April 1985

Dear David,

SAFETY OF GOODS FOR USE AT WORK

Mr Hurd has seen Mr King's letter of 19 March 1985 to the Chancellor of the Exchequer seeking agreement for amendments to Section 6 of the Health and Safety at Work Act be carried out in the Consumer Goods and Services Bill.

The Secretary of State has no strong views on the vehicle to be used to carry these amendments but it does seem appropriate to carry them in legislative proposals with similar aims to these amendments. The comparable Northern Ireland legislation, Article 7 of the Health and Safety at Work (Northern Ireland) Order 1978, will require similar amendment to ensure parity with Great Britain and we are presently considering the means whereby this might be done.

I am copying this letter to the Private Secretaries to the Prime Minister, Members of E(A) and to Sir Robert Armstrong.

Yours Sincerely,

Neil Ward.

N D WARD

ssd

TRADE
Consumer Safety
2184

6.100

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

10 April 1985

The Rt. Hon. Tom King MP
Secretary of State for Employment

SAFETY OF GOODS FOR USE AT WORK

Amendment of S.6 of the Health and Safety at Work Act

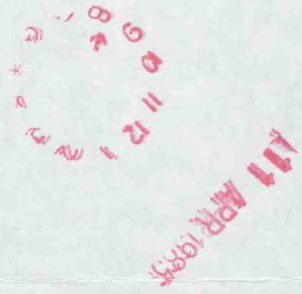
Thank you for your letter of 19 March which seeks approval of the Health and Safety Commission's proposals to amend Section 6 of the Health and Safety at Work Act.

On the understanding that you are satisfied that the Commission has given proper consideration to the compliance cost for industry and that these changes are unlikely to place any unreasonable burden on businesses, I see no objection to the proposed amendments.

I am copying this letter to the Prime Minister, members of E(A) and to Sir Robert Armstrong.

NIGEL LAWSON

TRADE: Consumer Safety
Feb 87



cc NO

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

25 March 1985

Dear Tom,

SAFETY OF GOODS FOR USE AT WORK

I have seen your letter of 19 March to Nigel Lawson which asks for agreement to amendments to Section 6 of the Health and Safety at Work Act being included in the Consumer Goods and Services Bill next Session.

I have no comment on the substance of what you propose, except to say that, on the surface, the proposals appear sensible. However, I must point out that agreement on policy is not the same as agreement to the inclusion of such a provision in the Consumer Goods and Services Bill. That Bill was approved by Cabinet on the understanding that its content would be limited to the proposals made by the Secretary of State for Trade and Industry. Any addition needs to be approved by QL, and for that purpose, we will need to know rather more about the length and controversiality of the amendments and the timescale for their preparation than is contained in your letter to the Chancellor. Could I suggest, therefore, that if your policy proposals are approved by E(A), you write to the Lord President with a detailed proposal for inclusion in the Consumer Goods and Services Bill.

I am copying this letter to the Prime Minister, the Lord President, other members of E(A) and to Sir Robert Armstrong and to Sir George Engle.

Yours

John Biffen

JOHN BIFFEN

BF

Peter Warry will look out & discuss with DTI, to see if they can be encouraged to intervene

MBH 26/3

The Rt Hon Tom King MP
Secretary of State for Employment

Trade Feb84

Consumer Safety

E.R.

CF appts pt.

MR ADDISON

22 March 1985

SAFETY OF GOODS FOR USE AT WORK

The intentions of this note are laudable - to make the work place safer - but once safety legislation is on the statute book it is politically difficult to remove. It is therefore essential that these good intentions are translated into workable law that does not increase costs for industry.

Inter alia the proposals require that machinery should be designed not only to be safe in use but also when being repaired, and that equipment should be safe (unless used recklessly) even when put to uses specificially excluded by the manufacturer. Neither of these proposals were in the consultative document. Such requirements may be reasonable for consumer products but harshly interpreted could place a significant burden on their industrial use.

Part of the motivation is to place tougher standards on European machinery imports in order to protect our domestic industry. But even if successful, this could be self-defeating as it may raise total manufacturing costs above those of our European partners and therefore eliminate the demand for just those manufacturers it was intended to help.

Although the CBI (the friend of big business) support the proposals, others do not. **We recommend the Prime Minister writes asking that final approval be deferred until revised legislation has been drafted and all industry consulted on the specific proposals.**

Peter Warry

PETER WARRY

CONFIDENTIAL

MEA

PW to comment 21/3

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213..... 6400

Switchboard 01-213 3000

BH/PL B/F on 27/3

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Great George Street
LONDON
SW1

19th March 1985

Dear Nigel,

SAFETY OF GOODS FOR USE AT WORK

Amendment of S.6 of the Health and Safety at Work Act

When we considered proposals for ensuring the safety of consumer goods last November (E(A) 27th Meeting), it was noted that consultations were in train on possible parallel changes in the law relating to safety of goods for use at work. I have now received the detailed advice of the Health and Safety Commission and am enclosing a letter from the Chairman setting out the changes to the Health and Safety at Work, etc Act 1974 which the Commission recommends.

I believe these proposals should be accepted and the changes can be secured in the Consumer Goods and Services Bill next Session. They represent an agreed view of a body on which industry is represented and do not in my opinion place an unreasonable burden on manufacturers, particularly as the Commission stresses that the "reasonably practicable" test should be applied to changes in the duties laid on suppliers. The changes proposed would moreover enable a firmer control over imported goods than now seems possible. They would also go some way to meet particular public concerns - and here the proposals on fairground machinery, micro-organisms and information about safe disposal are relevant. An approach to safety at work which relies as much as possible on the articles used being integrally safe reflects the policy in the 1984 White Paper 'The Safety of Goods'.

The Commission's proposals have been developed from consultations which included Government Departments. As the Consumer Goods and Services Bill is already being drafted for introduction at the start of the next Session, I would welcome colleagues agreement to the changes being secured in that measure.

I am copying this letter to the Prime Minister, members of E(A) and to Sir Robert Armstrong.

SoS
To see
IAM 26/2

Health and Safety Commission

Regina House
259 Old Marylebone Road
London NW1 5RR

Telephone 01-723 1262
Telex 25683

cc PS/Mr B Hanley
PS/Secretary
Mr Ehrman
Mr Robinson
Miss Green
Mr Jones
IAM 26/2

From the Chairman

26th February 1985

Rt Hon Tom King MP
Secretary of State for Employment
Department of Employment
Caxton House
21 Tothill Street
LONDON SW1

Dear Tom King,

PROPOSED CHANGES TO SECTION 6 OF THE HEALTH AND SAFETY AT WORK ETC ACT 1974

1. The White Paper "Standards, Quality and International Competitiveness (Cmnd 8621), inter alia, identified certain shortcomings in Section 6 of the Health and Safety at Work Act and the Commission accepted the Government's invitation to consider recommending changes to it. Following the publication of the White Paper "The Safety of Goods" package (Cmnd 9302) in the summer of 1984, the Commission issued a Consultative Document setting out proposals intended to amend Section 6 in the light of the Health and Safety Executive's practical experience in enforcing those provisions, particularly in relation to imports, against the background of the increasing attention being given to the encouragement of higher standards of quality and safety in goods entering commerce and the proposed changes to the Consumer Safety Act. I am now writing to convey the Commission's formal recommendations, drawn up in the light of the responses to the Consultative Document. Our recommendations are necessarily couched in terms of the broad effect to be achieved rather than as detailed amendments to the existing wording of Section 6 as what is in question is changes to the main statute rather than to regulations. The Commission hope very much that these changes could be included in the proposed Bill to give effect to the improvements to the Consumer Safety law which were outlined in Cmnd 9302.

RECOMMENDED CHANGES TO SECTION 6(1)(a) (ARTICLES FOR USE AT WORK)

'Use at Work'

2. The Commission recommended that this sub-section should be clarified to ensure that "use at work" includes setting, cleaning, maintenance and repair of plant and machinery. Many accidents

occur during these activities, all of which are necessary to the use of articles at work. The risk of such accidents would be reduced if designers and manufacturers were required, so far as is reasonably practicable, to take these considerations into account. There is no definition of 'use at work' in the HSW Act. It might be helpful for the amendment to clarify the meaning of maintenance, possibly along the lines of the definition contained in BS 3811:1984.

'When Properly Used'

3. The Courts have tended to interpret 'when properly used' in Section 6(1)a in ways that lay emphasis on the manner in which articles are used rather than upon the question of safety (or lack of safety) of design or of the way in which it was manufactured. If, as is implied in the Government's approach to standards, greater emphasis is to be laid on the initial integrity of articles it is necessary to strengthen S.6(1)a so as to reduce the extent to which it turns upon actual circumstances of use and somewhat to reinforce the initial role of supplier, or designer. Such a strengthening would be in line with what we had always assumed to have been the intention of the Act. The way this and other parts of S.6 have been interpreted has incidentally had the effect of increasing our difficulty in proceeding against imports. We are also recommending changes (see paras 15 and 16 below) which would ensure that unsafe imports are treated no differently from articles and substances domestically produced.

4. The revision we propose to S.6(1)a would require manufacturers and designers to take account as far as is reasonably practicable, of the kind of human error and commonplace inattention that can reasonably be expected when articles are put to their intended use. The intention would be to ensure that the revised criminal law provisions were not too far removed from the existing duty of care in the law of negligence, without making manufacturers and designers responsible for introducing safeguards to deal with reckless behaviour or wilful disregard of safety at work. Section 6(1)a should be amended to require manufacturers and designers to take account of the use to which the product is likely to be put, ie not only what they might choose to specify (perhaps very narrowly indeed) as the intended use. This would not extend to, and should indeed specifically exclude, liability in respect of reckless or irrational behaviour, so manufacturers and designers would not incur liability if they could show that at the time of manufacture or design, they had taken into account the likely (but not reckless) range of use of their products in ordinary working conditions.

The Safety of Fairground Machinery

5. Though not perhaps of the same significance to health and safety at work as the other recommendations which we are making, the hazardous nature of certain fairground equipment is an issue of considerable public concern in an area where the Health and Safety Executive are already active. Hence the proposal that Section 6(1)a should be revised to ensure that all fairground equipment comes within the scope. For these reasons and the factors

set out in paragraph 7 below, The Commission consider that fair-ground machinery can be distinguished from other machinery supplied for use by or entertainment of the public which comes within the scope of Section 3 or 4 of the HSW Act and not within the Consumer Safety Act.

6. In the same way as the safety of employees can be jeopardised if equipment used at work lacks initial integrity and is not designed and manufactured to avoid unsafe features, so can the safety of consumers be jeopardised if the equipment that provides the services they are purchasing lacks initial integrity. Even though accidents to consumers at fairgrounds might give rise to prosecutions under Section 3 or 4 of the HSW Act, Section 6 could not as it stands be used to try to prevent such accidents by improving the mechanical integrity of the equipment used.

7. The case for contemplating an amendment to S.6 to cover these situations (which often involve highly complex and sophisticated mechanical equipment), rather than contemplating an amendment to the consumer safety legislation, is to an extent bound up with the choice of enforcing authority to advise on the underlying technical problems. If the legislative vehicle were to be the consumer safety legislation, then enforcement and advice would fall to Trading Standards Officers, who are generally less used to dealing with problems associated with mechanical indeed electronic systems which are becoming such a feature of fairground equipment, and which nowdays mirror developments in industry. The work involved is complex, and closely associated with that which is currently undertaken by HSE in connection with those parts of fairground machinery which are already subject to S.6. The Commission has recently suggested in connection with the proposed further revision of enforcement responsibilities between HSE and the local authorities, that the responsibility for all S.6 work should in future lie with HSE.

RECOMMENDED CHANGES TO SECTION 6(4)a (SUBSTANCES FOR USE AT WORK)

'For Use at Work'

8. We recommend that this sub-section should be amended to ensure that it covers storage, conveyance and processing, all of which are work activities which can give rise to risks to health and safety eg, the fire and explosions at the warehouse in Salford in 1982. The Executive's experience of enforcing S.6 has highlighted the need to ensure that this section covers all substances as they occur at work - ie those for use at work and those which are being stored and conveyed in the course of work but which may well not be intended for work.

9. We recognise that because many substances are inherently dangerous and indeed are intended for inherently dangerous uses, the basic requirement in S.6(4) to make the substances themselves safe and without risk to health is of limited effect in isolation; more significant provisions are to be found elsewhere in S.6, such as the duties to carry out testing and examination and research, the minimisation if not elimination of any risk to which the substance may give rise, and the duty in respect of information which I discuss below. We consider that a basic requirement on the lines of S.6(4)a remains necessary, but it should turn on the dangers

that may reasonably be foreseen from the inherent properties of the substance rather than imposing or implying an obligation to foresee the whole of the range of uses to which the substance might be put.

10. The Commission therefore propose that manufacturers, importers and suppliers of any substance should be required to take such action as is reasonably practicable to limit the inherent hazards of the substance (eg, to remove dangerous impurities, or to stabilise an unstable substance) and to ensure that effective arrangements can be made to achieve safety and freedom from risks to health in connection with the use, processing, handling storage or conveyance of the substance or in any other situation to which the HSW Act applies. Such a requirement should continue the limited effect of the existing provision but should also require adequate steps to contain hazards arising from the inherent properties of the substance, taking into account circumstances which have occurred and which may reasonably be expected to occur when the substance is in a situation to which the HSW Act applies. Thus the fundamental principle would be preserved that all those involved in the supply chain for substances would be expected to make an appropriate contribution (but not more than would be reasonably practicable and within their control) to the safety of the substance in the work situation.

Micro-organisms

11. We recommend that S.6(4) should be clarified to ensure that it covers micro-organisms and their derivatives, which are being used increasingly in work processes. HSE officials are consulting urgently with members of the Advisory Committees on Dangerous Pathogens and Genetic Manipulation about the possible definition of micro-organisms for this purpose.

RECOMMENDED CHANGES TO THE DUTIES GOVERNING THE PROVISION OF INFORMATION

12. The changes which we propose below to S.6(1)c and 6(4)c are, in the Commission's view, of particular importance to improving safety.

13. We propose that the duty on designers and manufacturers to make available information about articles and substances for use at work at the time of supply should be changed to require the provision of information. The intention would be to increase the likelihood that information relevant to safe use at work of articles and substances would actually reach those who need it, which does not necessarily happen at present in all cases - particularly with imports. We would not envisage that the revised duty on manufacturers, suppliers etc should be absolute in the sense of requiring that the relevant documentation accompanied each and every item in all stages in the distribution chain. We also propose that the duty to provide as far as is reasonably practicable adequate information should cover cleaning, setting, maintenance and scrapping in the case of articles and storage, processing conveyance and disposal of substances. As in other aspects of our proposals, S.6(7) should limit the extent of the duty on the manufacturer.

14. We propose that manufacturers etc should be required to provide revised information if new information comes to light about the safe use of an article or substance, but only in cases where new development or knowledge reveal hitherto unknown significant risks to life or limb - eg defective braking systems on hoists, carcinogenic or highly toxic properties in a substance. They should also be required, so far as is reasonably practicable, to provide such revised information as any person to whom the original information had been provided. As this requirement should be qualified by "so far as is reasonably practicable" and S.6(7), we think it would be right and proper for the supplier to consider such factors as the degree of risk, the difficulties and cost of tracing previous customers, and the most suitable mechanism for conveying the information. Advice on how to comply with this duty could be provided in the guidance material which HSE would prepare and distribute in time for manufacturers and designers etc to be fully aware of the significance of the changes to the law.

UNSAFE IMPORTS

15. The Commission wish to be in a position to ensure that unsafe imports are treated under S.6 no differently from domestically produced articles and substances which, we believe, was Parliament's original expectation. Unfortunately, S.6(7), which provides that the duties imposed under other sub-sections of S.6 are limited to matters under a manufacturers' control, inhibits this even handed approach. We therefore propose that S.6 should be amended to ensure that an importer has the same duties as those placed by the Section on the domestic manufacturer - ie matters within the control of the foreign manufacturers should be deemed to be within the control of the Importer.

Information on Imports

16. We also propose that, in line with changes that we understand are contemplated in connection with new consumer safety legislation, the HSW Act should be amended to enable Customs and Excise to transmit information on a confidential basis to the HSE about incoming consignments of imports. This facility would enable HSE to have warning of the arrival of goods and, if appropriate, to investigate their safety with the importer. It would benefit greatly the even handed enforcement of S.6 as between importers and domestic suppliers.

ENFORCEMENT

17. The Commission propose that the HSW Act should be amended to allow Inspectors to act at the points of first supply, or anywhere else along the distribution chain, by permitting Prohibition Notices to be issued where there was thought to be a potential hazard sufficiently serious to warrant preventing the sale or distribution of a particular article or substance, in order to avoid risks to health and safety at work. Issue of a Notice would prevent the sale or distribution of the product until the contravention of S.6 has been remedied. Any such power would naturally have to be subject to the same right of appeal as exists already in regard to Prohibition Notices.

CONCLUSION

18. In conclusion, I would wish to emphasise to you that, when framing these recommendations in the light of the HSE's experience of enforcing S.6, the Commission has been mindful of the Government's policy, as expressed in last year's White Paper 'The Safety of Goods' (Cmnd 9302), to encourage reliance upon and reference to sound initial standards of design and manufacture.

E J CULLEN (DR)

010

NRPM AT 3/1

HOUSE OF LORDS,
SW1A 0PW

2 January 1985

My dear Michael.

REVIEW OF LEGISLATION ON FALSE AND MISLEADING PRICE INFORMATION

will request if required

Thank you for your letter of 3rd December 1984 which I have read with that from Leon Brittan to Willie Whitelaw dated 4th December 1984.

I am glad that you support the idea of further work on the wider issues concerning the ultimate enforcement of consumer law by civil remedies. My officials will help in any way they can.

I am also glad to read Leon Brittan's suggestion in his letter that some hard detailed work should be put into defining the criminal offences' part of the exercise. I am sure that this is needed and I think that my officials may have something to contribute there too.

Copies of this letter go to all members of H Committee and to Michael Jopling, Kenny Cameron, David Young, Alex Fletcher, Grey Gowrie and John Gummer and to Sir Robert Armstrong.

Yrs.

Lord Lucas of Chilworth,
Parliamentary Under Secretary
of State for Trade and Industry,
Department of Trade and Industry,
1 Victoria Street, SW1H OET.

NRPM
BT 26/4 CC/50

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

Telephone (Direct dialling) 01-215) 5662
GTN 215)
(Switchboard) 215 7877

From the Parliamentary Under Secretary of State for Corporate and Consumer Affairs

Rt Hon The Lord Hailsham of
St Marylebone Pc CH FRS DL
Lord Chancellor
House of Lords
LONDON
SW1A OPW

26 November 1984

Dear Quintin,

I have seen your letter of 9 November to Michael Lucas, in which you make a number of general points about the principles underlying consumer protection legislation.

I read with interest your views on the need for a new and more effective way of dealing with major and persistent offenders against consumer protection legislation. I agree with Michael Lucas (who is writing to you separately) that this point does deserve very serious consideration, but that this will take some time to think through and should not deter us from pressing ahead as a matter of urgency with the misleading prices and consumer safety legislation. The sort of procedure you suggest might be of less relevance to consumer safety legislation - where the problem of the persistent offender is not particularly common - than to other aspects of consumer legislation. The problem of straining the resources of the Crown Court is not relevant to consumer safety, as offenders under this legislation are not triable either way. The Crown Court would therefore only hear such cases if they were appealed, and the number of such appeals is negligible (only one or two a year). There is no doubt in my mind that suppliers of unsafe goods should be liable under the criminal law, and that the loopholes in our existing safety legislation should be closed as soon as possible so that sanctions are available against such suppliers.

This brings me on to the question of the duty to supply safe goods which we shall be discussing in E(A). I agree entirely with your view that offences couched in vague terms, which leave people in doubt as to whether or not their activities are in breach of the law, are undesirable. I remain convinced, however, that our proposal to introduce a duty on all suppliers to ensure that the goods they supply are safe in accordance with sound modern standards of safety will not have this effect.

Where goods fall within the scope of relevant published standards, couched in precise terms, it is very clear what a supplier must do in order to comply with the duty. The introduction of this duty should therefore act as an important stimulus to the formulation and wider use of safety standards for consumer goods, thus furthering our policy as set out in our White Paper on Standards, Quality and International Competitiveness. A result of the proposed duty, therefore, will be that over a period of time the range of consumer goods not covered by appropriate Standards will diminish. However I recognise that Standards can never be comprehensive, particularly as new variants of products inevitably arrive on the market

faster than the Standards bodies can cope with them, but there must be some mechanism for ensuring that such products are reasonably safe. It is no comfort to the injured customer to say that a defective product was not supplied in breach of the law because it happened to fall outside the scope of existing regulations and standards. In these cases the point of comparison would be the safety standards generally achieved by similar products marketed in this country, embodying established and proven technology, recognised by expert opinion in the field and already available at reasonable cost.

This information may sound a little imprecise, but in practice manufacturers have no difficulty in recognising these standards: they know what technology is available, and what is provided by their competitors, and they have access to expert opinion in the appropriate field. If they have any doubt about the safety of their product, they can consult the relevant experts; having received a favourable opinion, it is unlikely that they would be prosecuted for breach of the duty, but even if they are they could rely on the defence of due diligence. So the effect of the duty will be to make manufacturers think twice about safety before releasing a product which does not comply with an established standard. This is precisely the effect we want. It should not lead to prosecutions of suppliers who genuinely believe, and have taken reasonable steps to check, that the goods they supply are safe in accordance with sound modern standards.

The responses to the White Paper have confirmed this argument. Manufacturing industry, who may be considered to be most at risk from application of the duty, have welcomed the proposal and have not considered that it would lead to any problems for them in practice. To quote some examples, the CBI "endorses the notion that traders should be under a duty to supply goods which conform to sound modern standards of safety .... and believes the White Paper's proposals would speed up the process of formulation and revision of British Standards"; the British Toy and Hobby Manufacturers Association believe that "no difficulty should be experienced by the toy industry in regard to the proposed general duty"; the Glass and Glazing Federation "welcome wholeheartedly its emphasis on safety and the implication that the relevant British Standards, where these are appropriate, will be deemed to set the level of safety required"; the Soap & Detergent Industry Association "regard the proposal to bring in a general duty of safety as quite reasonable. It is indeed consistent with our own industry's longstanding concern for ensuring the safety of our members' products". Similar views have been expressed by a wide range of manufacturers' trade associations, and by other trader groups such as the Toy and Giftware Importers' Association and the Drapers' Chamber of Trade.

Many respondents have also pointed out that the operation of the general duty in section 6 of the Health & Safety at Work Act has not led in practice to any problems of vague application, so the introduction of a parallel duty in relation to consumer goods should not be expected to cause such problems.

When we published the White Paper we made very clear that we would pay close attention to comments received in relation to the general duty. It is now clear from the responses that this proposal has been welcomed not only by the consumer and enforcement bodies, but also by the organisations representing suppliers to whom the duty would apply, and by the magistrates who will be responsible for applying it in the Courts. In view of the strength and breadth of welcome for our proposals, I therefore hope that you will now feel able to support the case for urgent implementation.

A copy of this letter goes to members of E(A), to the Attorney General, and to the Lord Advocate.

Yours ever

Alex.

ALEX FLETCHER

Trade Feb 84

Consumer Safety

LORD CHANCELLOR

HOUSE OF LORDS,
SW1A 0PW

9 November 1984

Dear Michael. Attached.

Review of Legislation on False and Misleading Price Information

Thank you for copying to me your letter to Willie Whitelaw of 19th October.

Your letter deals expressly only with suggested amendments to the legislation on false and misleading price information. I have however delayed replying until now because it seems to me that your letter throws up fundamental issues of principle which cannot be considered in isolation from other aspects of consumer safety and consumer protection. Whatever we agree in the context of false and misleading price information must have a bearing on amendments to other aspects of consumer law, a term which I use hereafter in this letter to include both the physical protection of the consumer and his protection from companies, firms and individuals who attempt to take financial advantage of him.

I mention one point only to dispose of it. The recommendations in your letter are based on the results of consultations on the Report of the inter-Departmental working party which examined legislation on false and misleading price information. You will remember that I was opposed to the circulation of this Report, and agreed to it only reluctantly, particularly in view of the fact that officials from my Department on the working party were by no means in agreement with all of the conclusions and recommendations. Since the Report is looking at only a very limited aspect of consumer law, what I have to say is unaffected by the replies to consultations on that Report.

/I

The Lord Lucas of Chilworth
Parliamentary Under Secretary of
State for Trade & Industry
Department of Trade & Industry
1 Victoria Street
London SW 1

I take it as axiomatic that the primary object of all consumer law must be the protection of the consumer, whether from physical injury or from financial loss. If the law fails to achieve that protection, its secondary objective must be to compensate the consumer for the injury or loss he has suffered. A third objective must be to ensure that there shall be no repetition of the action which caused such loss or injury, and it is only if this cannot be done in reliance on the civil law that the criminal law must be prayed in aid.

Protection of the consumer would to my mind best be achieved if those companies which pay insufficient attention to the safety of the goods they market, or deliberately indulge in activities designed to cause the consumer financial loss, are made aware that one remedy available against them will be that they may be prevented, possibly for a number of years, from indulging in any similar business activities. In appropriate cases, where the fault is directly attributable to a director or employee of the company, it may be appropriate to provide for the penalty to be imposed on the culpable individual. I consider below the way in which this might best be achieved.

I mentioned that the second priority should be the compensation of a consumer for the damage he has suffered. In the case of personal injury there is nothing to inhibit the consumer from taking appropriate legal action, and every reason why he should do so, since the damages awarded are likely to be considerable. I recognise however that in the case of financial loss, of which false and misleading advertising is a prime example, a large number of individual consumers are likely to have suffered a comparatively small loss in respect of which they will be unwilling to bring legal proceedings, notwithstanding that the benefit which has accrued to the company involved may be very large. It is of course for this reason that the Trade Descriptions Act 1968 and the Prices Act 1974 allow criminal proceedings to be brought against such a company, and one of the reasons those offences are at present triable either way is so that the Crown Court can in appropriate cases impose an unlimited fine.

/I

I have explained in the past why I am opposed to the continuation of such offences being triable either way, but it may be appropriate for me to explain those reasons in more detail. One of the more offensive aspects of any system of administration of justice is the fact that, inevitably, a proportion of those prisoners who are remanded in custody to await trial are ultimately acquitted, so that they will have spent some tine in prison notwithstanding the fact that they are guilty of no criminal offence. It is therefore of the greatest importance that everything should be done to reduce the period which such persons spend in prison awaiting trial. At present, as you know, pressure on the Crown Court is increasing, and the average period spend in prison awaiting trial is in most parts of the country also increasing. The Home Secretary has announced that he will be introducing this Session the Prosecution of Offences Bill, which among other things will give him power to prescribe statutory time limits for criminal proceedings. This makes it all the more important to contain the workload of the Crown Court.

It follows that everything must be done to reduce pressure on the Crown Court, and this includes the removal from its jurisdiction of anything which can adequately be tried summarily. Criminal offences against consumer law clearly fall into the latter category. The maximum fine which a magistrates' court can now impose is £2,000, which is adequate to deal with all but the most exceptional offences. I should add that this sum can, and perhaps more often should, include a sum payable to the injured consumer by way of compensation. One reason such offences are now triable either way is to enable the Crown Court, where the magistrates think this appropriate, to impose a higher fine. What happens in practice, however, is that a large company which deliberately indulges in a scheme of false or misleading advertising will choose to be tried on indictment, thereby taking up many days of the Crown Court's valuable time, and if convicted will ultimately have imposed upon it a fine

/which

which, though it may amount to several thousand pounds, or even tens of thousands of pounds, will be trivial compared to the profit that company is likely to have made from its scheme.

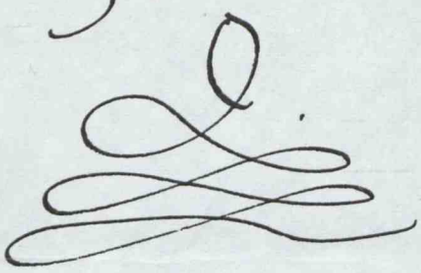
I suggest therefore that a much more effective way of dealing with major and persistent offenders would be to give the Attorney General power in a relator action, possibly at the instigation of the Director-General of Fair Trading, to bring civil proceedings for an injunction preventing the company from continuing with such activities. If then it did continue, it would of course be in contempt of court, and at the present time I need hardly remind you of the Draconian powers which the High Court has to deal with companies which are in contempt, and of how effective this would be to prevent any recurrence of their activities. Indeed, as I have earlier suggested, the mere presence on the Statute Book of such a power would be likely to prevent companies from indulging in false or misleading advertising. The same remedy would apply, mutatis mutandis, where the blame was attributable to a director or employee of the company, rather than to the company itself.

Since I am suggesting that, in connection with all consumer law, the time has perhaps come for a radical re-appraisal of the principles on which it is based and the way in which the consumer would best be protected, it is hardly appropriate for me to comment in detail on the proposal in your letter that, in relation to false and misleading price information, new legislation should be based on an offence framed in general terms, but supported by a statutory code of practice. I should however make it clear that I remain opposed to offences framed in vague general terms, whether or not they are supported by a code of practice. The criminal law must be clear, so that an individual or a company knows whether any activity in which he proposes to indulge is or is not in breach of the law. If however, as I suggest, it is the civil law which should be strengthened to protect consumers, the same principle would apply to the new provisions of civil law.

/I

I am sending copies of this letter to the members of H Committee, Michael Jopling, Kenny Cameron, David Young and also, in view of my reference to relator actions, to Michael Havers.

yrs :



Mr Caines
Mrs Blow CA
M Brown CA3
M Gatland CA-of

WBB Mr.

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215) 4041
GTN 215)
(Switchboard) 215 7877

From the Parliamentary Under Secretary of State for Trade and Industry

The Rt Hon Viscount Whitelaw PC CHMC
Lord President of the Council
Privy Council Office
Whitehall
London
SW1A 2AT

19 October 1984

Dear Willie

REVIEW OF LEGISLATION ON FALSE AND MISLEADING PRICE INFORMATION

This letter seeks agreement to the next steps on this review following Alex Fletcher's statement of 3 May and completion of consultations with interested parties on lines agreed last April with you and colleagues.

A summary of the response to our consultation is attached. This makes clear the strong pressure to change the existing law. Accordingly, I hope that you and colleagues can agree that I should press the Review through to legislation and that, as preferred by a clear majority of respondents, this should have as its main objective the prohibition of false or misleading price information. A small minority, including Sainsbury's and the Retail Consortium, would prefer a prohibition confined to "false price claims made knowingly or recklessly" but I consider that this would be unjustifiably weak and would permit a variety of statements which, while true, deliberately set out to mislead.

The earlier discussion centred on whether such a general prohibition should be backed up by a statutory code of practice (admissible in evidence but not in itself mandatory) or by detailed provisions set out in the legislation itself. Consultation has shown a majority in favour of the former approach and for such a statutory code being subject to Parliamentary approval. This represents the most practical way of dealing with necessary detailed guidance in this area and of avoiding a repeat of the criticism that has been

levelled at existing legislation; we must be careful not to give the impression (- which I fear long and detailed legislation would) that we are increasing the burdens on traders when we are in fact aiming to do the opposite. Given the extent of support, the statutory code approach is also likely to be the most successful and widely acceptable method.

I recognise however that there would need to be agreement on the actual content of such a code and some points of detail do require further discussion with interested parties to achieve this. There would be advantage in proceeding with discussions before deciding finally on the shape of legislation; our decision would then be taken in full knowledge of the extent to which a code could be agreed and its likely content. I propose that we should take a provisional decision in favour of the code of practice approach subject to successful negotiation with interested parties of an agreed draft code.

The consultation documents also sought views on extending the scope of the legislation into new fields such as services and bureaux de change. On most of these there is a clear majority in favour of the changes proposed and I see no reason not to take these on board, while making sure that we do not overlap with existing legislation. However, Quintin Hailsham's reservations about the proposals on land and buildings were borne out by the comments received and I propose that we take up a suggestion by the Building Societies Association which would confine the new controls to price indications for new property offered by builders (whether direct or through estate agents) to private individuals (as opposed to other businesses). This would cover the main area of concern about marketing techniques including "bargains" being offered on "free" fixtures and fittings, but would exclude those areas where Quintin and a number of those consulted foresaw difficulties in applying such controls.

There was also strong support for the "due diligence" defence only and I would propose to go along with this. Equally in the light of the response, it seems reasonable to maintain the present enforcement arrangements rather than providing for an additional role for the Director General of Fair Trading, who would have preferred that. On Quintin Hailsham's point about summary trial a strong cross section of opinion amongst retailers, consumer bodies and enforcement authorities favoured retaining the present options for trial on indictment and in these circumstances, especially as it affects the rights of those directly involved, I would propose we follow the majority view.

I should welcome colleagues' agreement to our proceeding on the above lines: if you are content with this course I would propose to ask my officials to start discussions as I have suggested.

As to timing, I would hope that we can think in terms of a slot in the 1985/6 legislative programme, given that a place could not be found in the coming session. As consultation has confirmed, there is considerable pressure from the parties concerned for new legislation in this area where we have made promises repeatedly in the past to take suitable action.

Clearly final decisions on legislative timing will need to be taken in the context of next year's programme as a whole but I would welcome colleagues' agreement to moving ahead with that target in mind. All this suggests that it will be appropriate to make an announcement in the House about the results of consultation soon after the recess. If colleagues agree in principle I will circulate a draft for comment.

Copies of this letter and enclosure go to all members of "H" Committee and to Michael Jopling, Kenny Cameron and David Young.

LORD LUCAS OF CHILWORTH

RBS

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215) 5662
GTN 215)
(Switchboard) 215 7877

R25/7

From the Parliamentary Under Secretary of State
for Corporate and Consumer Affairs

The Prime Minister
10 Downing Street
LONDON
SW1

23 July 1984

Dud 25/7

Dear Prime Minister,

with DB??

You should be aware that, since I wrote to you on 19 July about scented erasers, the Scented Erasers (Safety) Order 1984 has been the subject of an unsuccessful challenge in the Court.

The Applicant had based this case on two main submissions:

(i) that the Secretary of State was in error in deciding that this was a case in which he could by-pass the consultation procedure; and

(ii) that the effect of the Order is so uncertain that it should not be upheld.

The Judge found in favour of the Secretary of State on both counts and dismissed the Application with costs. The effect of the ruling is to confirm that the Order was properly made and is valid.

Yours

Alex.

ALEX FLETCHER

Press Notice

Department of Trade and Industry

1 Victoria Street, SW1H 0ET Press Office: 01-215 3919/5678
Out of hours: 01-215 7877

Ref: 405

July 12, 1984

MAJOR CHANGES TO IMPROVE CONSUMER SAFETY
NEW GOVERNMENT PROPOSALS

Major changes in the law on consumer safety to stop unsafe products getting into the shops and into the home, are proposed in a White Paper* published today (Thursday).

"The present system of controls to protect the consumer from unsafe products has worked well in some respects, but it has some serious gaps, particularly in the ability of the enforcement authorities to stop the supply of unsafe products at source - whether the importer or manufacturer; and the difficulty in stopping goods being sold even after they have been found to be unsafe," Mr Alex Fletcher, Minister responsible for Corporate and Consumer Affairs, said today. "This White Paper is designed to fill those gaps."

To deal with this problem, the White Paper proposes:

- the introduction of a general safety duty requiring all suppliers to ensure that the goods they supply are safe and making it an offence to fail to carry out this duty;

- new powers to enable enforcement officers to check that safety standards are met at the point of first supply, whether it be manufacturer or importer, rather than when the goods have reached the shops. These will be backed up by new arrangements to monitor the safety of imports;

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* The Safety of Goods (Cmnd 9302)(ISBN 0 10 193020),available from HM Stationery Office,Price £2.25.

- new powers for enforcement officers to suspend the distribution of suspect goods rapidly, and for up to six months, pending a decision on their safety, if necessary by a court.

The proposals cover virtually all products used in or about the home apart from food, medicines and drugs, (which are covered by other legislation). The products covered are as diverse as toys and chainsaws, babies' dummies and lawn mowers, blowlamps and upholstered furniture, nightdresses and bicycles.

"Safety policy must reflect a judgement on the degree to which the community as a whole is prepared to pay for additional safety," the White Paper states. "The Government has not pursued suggestions which would involve major interference with the normal processes of manufacture and trade and so put up unduly the prices which consumers have to pay for their products."

General Safety Duty

The White Paper proposes introducing a general duty, which will be legal requirement, to supply goods which are safe. Under the present system only those goods which are listed in Regulations, orders or notices made under the Consumer Safety Act 1978, are covered in this way. These cover only a limited range of consumer goods.

A general duty would require products to reach a reasonable degree of safety even if there were no specific regulations. It would no longer be possible for unscrupulous suppliers to cut corners on safety on the grounds that there was no specific prohibition.

A general duty would bring the law on consumer goods more closely into line with the existing position for goods for use at work under Section 6 of the Health and Safety at Work Act. It would also follow a pattern already successfully operated in a number of other countries, notably the Federal Republic of

MORE/....

Germany. The proposal is consistent with the Government's commitment to support the wider use of standards, both in the United Kingdom and on an international basis (see the White Paper "Standards, Quality and International Competitiveness" Cmnd 8621).

Enforcement at the Point of First Supply

More effective enforcement at the point of first supply would reduce the need for the large-scale effort involved in tracking down unsafe products once they have reached the shops. Under the present arrangements, coping with the problems of just one narrow product area - imported electrical hair dryers for example - can tie down officers in a busy local authority trading standards department for many months.

The Government is proposing:

- amendment of the 1978 Act so that first suppliers seeking to defend themselves against charges of supplying unsafe goods may not argue that they relied on information supplied by another person, unless they can show they have taken reasonable steps to verify that information. This will often mean that they will have to show that representative samples have been properly tested.

- stronger investigative powers for enforcement officers at the point of first supply. They will have the right to test samples and inspect documents.

- arrangements for Customs and Excise to pass swiftly to the enforcement authorities details of imports in problem areas. Where identified, unsafe imports could be halted at the point of entry.

MORE/.....

Suspension of Supply

The main difficulty at present is that once an officer identifies unsafe goods on sale all he can do is prosecute. Cases can take many months to be heard during which time unscrupulous traders can and do offload their stocks to the general public.

The government is proposing:

- new powers for authorities to freeze, or, if necessary, to seize suspect stocks subject to an obligation to compensate the trader if the goods turn out to meet safety requirements after all.

Legislation

Implementation of the proposals will require amendment of the Consumer Safety Act.

Consultation

Interested parties are invited to submit comments on the proposals by 15 October 1984, to the Assistant Secretary, Consumer Safety Unit, Department of Trade and Industry, Room 2707, Millbank Tower, Millbank, London SW1P 4QU.

10 DOWNING STREET

Andrew -

re. SS/DTI minute of 25/6 on the White Paper on Safety of Goods.

Sue has told you that no further departmental replies have been received. Is any further action required on the letter?

CST
5/7/84.

No further action

AT 5/7

NDPM
AS 2/7

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

29 June 1984

Dear Norman,

Thank you for sending me a copy of your minute of 25 June to the Prime Minister and of your draft White Paper on Safety of Goods.

While recognising the importance of making progress in this field, both the Lord Chancellor and I have had considerable reservations about the proposal developed in paragraphs 33-48 of the draft White Paper for a general safety duty to be placed on suppliers, buttressed by criminal sanctions; we have taken the view that it will not be sufficiently clear to the supplier what actions or inactions will render him liable to prosecution, and that it is undesirable for a criminal offence to be framed in such wide terms.

E(A) nevertheless decided on balance that it would be right for the White Paper to propose the creation of such a duty, on the basis that the difficulties of defining it should be recognised and that the Government should be ready, if necessary, to modify its proposals in the light of consultation.

On that basis I am content with the draft.

Yours,

Leon

The Rt Hon Norman Tebbit, MP

TRADE: Consumer Safety Feb 84

file ECL.

bc Nick Owen.

10 DOWNING STREET

From the Private Secretary

29 June 1984

WHITE PAPER ON SAFETY OF GOODS

The Prime Minister has seen your Secretary of State's minute of 25 June and is content for him to proceed with publication of the White Paper.

I am sending a copy of this letter to David Peretz (Treasury) and to Richard Stoate (Lord Chancellor's Office).

Andrew Turnbull

Callum McCarthy, Esq.,
Department of Trade and Industry.

10 DOWNING STREET

Prime Minister

The Tebbit proposals involve:

(i) a general duty to supply safe consumer goods in accordance with "sound modern standards"

(ii) stronger enforcement powers at the point of first supply

(iii) streamlined procedures for suspending the supply of suspect goods.

(iv) arrangements to monitor safety of imports.

In addition there will be a civil liability for breach of the general duty

Agree the Tebbit proposals?

AT

28/6

MR TURNBULL 28 June 1984

WHITE PAPER ON SAFETY OF GOODS

We recommend that the Prime Minister approves Norman Tebbit's White Paper.

In policy terms, its proposals are less paradoxical than they first appear. It is true that a new regulatory burden will be placed on industry, counter to our general policy of reducing these burdens. Yet in other ways, the proposals will assist industry by:

1) Providing an effective way of dealing with shoddy imports.

2) Encouraging both the use of British standards and the drafting of better and more relevant ones.

3) Establishing that compliance with British standards will serve as a defence against a claim that goods are unsafe. The status of British standards will in time improve. This will assist our export performance in the more safety-conscious and lucrative markets.

The Lord Chancellor has had difficulty with these proposals. It may be that he has overestimated the difficulties in establishing non-compliance with the duty in the Courts. German experience suggests that the established rules of technology, as embodied in standards, provide a sound basis for determining compliance.

NICHOLAS OWEN

DAUABJ

PRIME MINISTER

WHITE PAPER ON SAFETY OF GOODS

1. The revised text of this White Paper takes account of the points mentioned by the Chancellor of the Exchequer in his summing up of the discussion at E(A) on 20th March 1984. As the revised White Paper is a consultation document which recognises the difficulties of defining a general safety duty in criminal and in civil law and as it does not commit us to any firm proposals at this stage, I am prepared to agree to its publication.

2. The accompanying paper on the law and practice on Consumer Product Safety in the Federal Republic of Germany does not support the approach proposed in the White Paper as the offence there is committed by breach of a prohibition notice rather than by breach of the general safety duty.

3. As I remain concerned both about the fairness and reasonableness of the proposed scheme and about its practical application, I think that we should consider the matter further when consultations on the White Paper are complete.

4. I am sending copies of this minute to the Secretary of State for Trade and Industry and to the other members of the Cabinet.

H. of St. M.

H. of St. M.
28 June 1984

The Lord Chancellor

BF will
Departmental response.

AT
25/6

PRIME MINISTER

WHITE PAPER ON SAFETY OF GOODS

E(A) on 20 March 1984 agreed to publish a White Paper on consumer product safety on the lines of a draft which was attached to my memorandum E(A)(84)14. As requested, I am now circulating to the Cabinet for approval a revised text which takes account of the points mentioned by the Chancellor of the Exchequer in his summing up.

2 On the proposed general safety duty the draft now acknowledges in paragraph 36 the difficulties of defining such a duty, and makes it clear that the Government will be ready to modify its proposals in the light of consultation. Paragraphs 43 and 48 make it clear that if there is to be a general duty it will be accompanied by a corresponding right of civil action. Although it is provisionally proposed that the form of civil liability should be the same as in Section 6 of the present Consumer Safety Act, the wording again leaves scope for the Government to make different

provisions if responses to the White Paper suggest that this would be desirable.

3 The Chief Secretary, in his letter of 12 June, has confirmed that he is now content that the various proposals would not involve undue risk of an increase in public service manpower. Paragraph 56 of course leaves no room for ambiguity on the Government's intention in this area.

4 As requested I also attach a note on law and practice in the FRG. MISC 14's positive assessment of the German system (MISC 14(2nd Meeting)1981) was of course the starting point for our current investigation of the case for a general safety duty in the UK. The note reflects more recent detailed discussions by my officials with representatives of German central and local government, industry, retailers, consumer organisations and non-governmental standards experts. There is an overwhelming consensus in Germany in favour of the present system. The benefits both to industry and consumers of high product safety standards do not appear to have entailed any significant continuing difficulties.

JH2AOV

5 I do not see a case for making further adjustments to our White Paper proposals in the light of this recent study, although we shall wish to continue to bear in mind German experience in the consultations on the White Paper. In some respects - enforcement at retail level, for example - I think our own version avoids weaknesses in German framework. I think the clearer status we are proposing for approved standards also has advantages over the German model. At an earlier stage in the review we did consider the case for a Government approved Safety Mark but concluded that this would raise a number of difficulties. The recently introduced GS Mark is not an essential feature of the German system and appears to have both supporters and detractors. I do not think that this is something we should pursue at this stage separately from the longer term and wider-reaching work towards a national accreditation mark mentioned in the White Paper on "Standards, Quality and International Competitiveness" (Cmd 8621).

6 The note refers to current Franco-German negotiations over mutual recognition of standards. It is worth noting that we would not at present be able to implement large scale recognition of another country's standards for the purposes of the Consumer Safety Act without a great deal of

subordinate legislation subject to public consultation and affirmative resolution in Parliament. The proposed framework of a general duty with approved standards would make it a great deal easier for the Government to reach bilateral agreements in the interest of UK exporters to markets such as Germany with high national product safety standards.

7 I hope that colleagues will now be content for me to proceed with publication. Unless I hear to the contrary by 28 June, I propose to send the White Paper to the printers on that date with a view to publication as soon as possible.

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25 June 1984

Department of Trade and Industry

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CONSUMER PRODUCT SAFETY IN THE FEDERAL REPUBLIC OF GERMANY

SUMMARY OF EQUIPMENT SAFETY LAW

The safety of most consumer durables in the FRG is regulated by the 1968 Equipment Safety Law which also applies to articles used at work.

GENERAL SAFETY DUTY

The Law places a general duty on manufacturers and importers to supply or display only goods which are safe in accordance with the "generally recognised rules of technology", that is to say standards of safety, whether written or not, which are generally recognised by experts in the particular field concerned and which have proved themselves in practice. Where relevant goods must also comply with work safety and accident prevention regulations, including those of the statutory professional bodies responsible for accident insurance. These relate almost exclusively to products for use at work. Deviation from these "rules" or regulations is permitted insofar as the same safety level is otherwise ensured; however, most manufacturers and importers find it easier to comply.

APPROVAL OF STANDARDS

The Federal Government is empowered to issue lists of standards which it regards as embodying the "rules of technology". The effect is to create a rebuttable presumption that they indeed do so. [The proposal in the draft White Paper offers greater certainty by providing that compliance with standards approved by the Secretary of State will be conclusive evidence of meeting "sound modern standards of safety"]. The list now contains more than 900 standards. The first edition, published 2 years after the Law entered into force, contained only 200.

It is specified in administrative regulations that the Federal Government may include in the list foreign standards which meet the criteria of the general safety duty. They have so far found reasons not to do so although there are current negotiations with France, at French request, for mutual recognition of standards. There are some fears in the FRG that such a deal could undermine safety levels; there is as yet no clear view on the likely effects on the Franco-German balance of trade.

ENFORCEMENT

The Law is enforced by Industrial Inspectorates based in most larger towns and reporting to the Land Governments. The Inspectorates have the power to issue orders prohibiting manufacturers and importers from supplying or displaying goods which do not comply with the requirements of the general safety duty; although breach of the general safety duty is not in itself a criminal offence there are heavy fines for failing to comply with such an order. In practice most problems are resolved without recourse to the formal powers; only some 2000 orders have

been made in the 15 years since the Law came into force. Prohibition orders may be overturned by the administrative courts.

Following an amendment in 1979 enforcement authorities have also been empowered to serve prohibition orders on other suppliers such as wholesalers and retailers, although this is subject to a precondition that an order must already be in force in respect of the first supplier of the goods. This can lead to enforcement delays and is criticised by the German Consumers' Association as a continuing weakness in the Law.

TEST CERTIFICATES/SAFETY MARK

It is not obligatory for consumer goods to be tested before being put on the market. Regulations do, however, provide that if goods have been approved by one of some 80 government authorised official and private test houses the authorities will accept that they comply with Law and will not investigate their safety further unless they have particular grounds for believing that they are unsafe. Authorised test houses are also entitled to award the GS (Tested Safety) Mark to goods and the 1979 amendment to the Law provides penalties for suppliers who misapply the mark. Opinion is devided as to whether the new mark has been of positive benefit to consumers.

CIVIL LIABILITY

The Equipment Safety Law does not make specific provision for civil liability. This is dealt with in the Civil Code. However, the duty of care is in practice interpreted by reference to the same "rules of technology".

ASSESSMENT

The main principles of the Law clearly command the support of all relevant sectors of German society. The only reservations currently expressed concern details (eg the GS mark and the limited retail enforcement powers). The main effect has been to stimulate the production and recognition of a large number of new or revised standards for product safety and to ensure that these have not been undermined by competition from goods of a lower standard. This has helped to consolidate a relatively high quality home market for German industry with corresponding benefits for German exports (a positive effect which MISC 14 had in mind when it endorsed CPRS recommendations in favour of adopting the German approach to standards and supporting legislation in the UK).

The effect on accident prevention is impossible to measure since factors other than improved product safety play a role. However, it is worth noting that deaths in home and leisure accidents in the FRG have fallen from some 11000 in 1968 to around 8000 in 1980. (cf. a reduction from C.8800 to 7000 in the UK over the same period). Although there is no mandatory testing requirement, far more goods appear to be sent by suppliers for independent testing before being marketed than in the UK.

There appear to be few difficulties over interpreting the generally expressed safety requirement. The Confederation of German Industry, for example, do not regard this as a problem. Only a limited number of decisions by the authorities lead to difficult court cases. The list of approved standards, which has more than quadrupled in the lifetime of the Law, now provides fairly comprehensive coverage, and where there are still no relevant standards the authorities usually have little difficulty in arguing by analogy or on the basis of industrial practice.

DEPARTMENT OF TRADE AND INDUSTRY

May 1984

DEEABO

DRAFT WHITE PAPER ON SAFETY OF GOODS

INTRODUCTION

1 The Government has been reviewing the effectiveness of the present consumer product safety legislation*. The purpose of this White Paper is to present the Government's conclusions and its proposals for strengthening the legislation. These proposals will require amendment of the Consumer Safety Act. The Government will introduce a Bill to make the necessary amendments when legislative time is available.

2 Any comments on these proposals should be sent by 15 September 1984 to:

The Assistant Secretary
Consumer Safety Unit
Department of Trade and Industry
Room 2707
Millbank Tower
Millbank
London SW1P 4QU

* Consumer Protection Acts 1961 and 1971
Consumer Protection Act (Northern Ireland) 1965
Consumer Safety Act 1978

THE PRESENT SYSTEM

3 The Consumer Safety Act 1978 ("the 1978 Act") refashioned and extended the powers in the Consumer Protection Acts for controlling the safety of consumer goods. It widened the range of requirements which could be laid down in safety regulations, gave new powers to the Secretary of State to prohibit the supply of goods and to require suppliers to issue warnings, and made certain changes to the powers of enforcement authorities.

4 Under the present system, after consultation and Parliamentary approval, the Secretary of State makes safety regulations (such as those, for example, on domestic electrical equipment or toys). These regulations impose safety requirements which all commercial suppliers have to meet. Local authorities monitor compliance and, where necessary, prosecute suppliers whose goods fail to meet the requirements*. Where new hazards are discovered the Secretary of State can make orders or serve notices prohibiting temporarily the supply of particular types of unsafe goods; these too are enforced by prosecution of offenders.

5 These powers have helped to prevent the sale of many unsafe products. Nevertheless, experience has revealed weaknesses. For example, in 1981, over 100 types of electrical hair curling brushes were imported in large numbers, mostly from the Far East. Only after they reached the shops did it emerge that many failed to meet the requirements of regulations on matters such as insulation. Users of such appliances risked being electrocuted.

* In Scotland prosecutions are undertaken by the Procurators Fiscal.

In the event no deaths were reported but there were some narrow escapes. Tracking down the unsafe appliances and securing their removal from sale was an expensive, time-consuming exercise. There were often long delays between identification of suspect goods and their disappearance from the market.

SCOPE OF PROPOSED CHANGES

6 In the light of such difficulties the Government has been reviewing the effectiveness of existing enforcement and now proposes further changes to the framework, (paragraphs 13-32).

7 The review has also provided an opportunity to reconsider the case for introducing a general duty to supply safe consumer goods (paragraphs 33-48). This was discussed in the February 1976 consultative document "Consumer Safety"* but was not taken up in the 1978 Act. The Government now invites views on a proposal to introduce a general safety duty. Implications for the Health and Safety at Work etc Act 1974, which already contains a general safety duty, are discussed in paragraphs 49-53.

8 Finally, the Government proposes to make available the enforcement powers created by the 1978 Act to enforce regulations made under the Consumer Protection Acts (paragraphs 54-56).

* Cmnd 6398

SAFETY IN PERSPECTIVE

9 Each year some 7000 people in Great Britain die in home accidents (somewhat more than on the roads). It is estimated that 3 million more sustain injuries requiring medical treatment. This is a large toll in terms of human suffering and cost to the community. The proportion of these accidents caused directly by dangerous products is believed to be relatively small. However, safety legislation can help to prevent accidents by setting new standards for reducing risks. For example, over 100 people a year die in fires caused by cigarettes setting fire to upholstered furniture. The victims are often not the careless smokers themselves. Since the end of 1982 regulations under the 1978 Act have prohibited the supply of furniture which does not meet standards for resistance to ignition by smouldering cigarettes. This measure alone should save many lives.

10 In safety, as in other fields, there does, however, come a point where additional benefits begin to become disproportionately expensive. Safety policy must reflect a judgement on the degree to which the community as a whole is prepared to pay for additional safety. The Government has not pursued suggestions which would involve major interference with the normal processes of manufacture and trade and so put up unduly the prices which consumers have to pay for their products.

11 The Government has also excluded options which could be implemented only by directing large additional resources to

enforcement. Again consumers - as tax and rate payers - would have to meet much of the cost. The Government's intention is to encourage more efficient use of existing resources by facilitating better identification of unsafe goods before they are distributed and streamlining the procedures for halting their supply.

12 Some of the proposals involve wider powers for enforcement authorities; these are balanced by appropriate safeguards for traders. However, the Government expects that the majority of safety problems will continue to be resolved without the need for recourse to formal powers. Suppliers are often willing to withdraw unsafe goods once their attention has been drawn to the danger.

MORE EFFECTIVE ENFORCEMENT

13 Cases such as that of the unsafe curling brushes highlighted two areas of weakness:

(a) the absence of preventive procedures for identifying and halting the supply of unsafe goods before they reached the shops;

(b) difficulties in suspending supply even after suspect models had been identified.

Both areas of weakness need to be tackled.

PREVENTIVE PROCEDURES

FIRST SUPPLIER RESPONSIBILITIES

14 Enforcement difficulties would be greatly reduced if manufacturers and importers could be relied upon to carry out adequate checks before distributing goods. The courts have usually expected greater evidence of diligence from such first suppliers than from other categories of supplier when considering defences against charges of contravening safety requirements*. However, liability to prosecution under the present framework has not always proved a sufficient incentive to a better standard of care.

15 The Government has considered a number of suggestions, including a statutory duty on first suppliers to carry out checks, and greater use of the existing powers under Section 1(2)(b) of

* In this White Paper the term safety "requirements" refers to the requirements of safety regulations, prohibition orders and prohibition notices in the case of the present legislation together with the requirements of the proposed general duty in the case of references to proposed changes to the legislation.

the 1978 Act to introduce compulsory type approval or certification schemes. These options would not be applicable in relation to a number of important categories of consumer goods (including domestic electrical equipment and cosmetics) where safety requirements and procedures are already harmonised within the European Community. For this reason a new statutory duty would not be appropriate. The area of consumer goods subject to harmonised requirements is likely to continue to expand. In accordance with its aim to help create a true common market the Government will participate positively in European Community work to formulate harmonised regimes which remove unnecessary barriers to trade while ensuring that high standards of safety are maintained.

16 In other product areas the Government is, and will continue to be, prepared to consider the case for compulsory type approval or certification, where there is a strong justification on safety grounds for this, and the costs are proportionate to the nature of the possible dangers to consumers from the products concerned.

17 As a general rule, however, the Government considers that first suppliers should be allowed to retain flexibility in choosing how to set about ensuring that their goods meet safety requirements. The counterpart of that flexibility is responsibility. There is a case for greater stringency in both the penalties for infringements and the criteria for defences to criminal charges, in the case of first suppliers. First suppliers whose method of doing business leads them to rely for the

specification of products, or materials for finished products, on other suppliers will need to take this into account in deciding the degree of confidence they wish to place in their sources of supply.

18 Under the Criminal Justice Act 1982 it is possible to bring about by Order general increases in maximum summary fines to take account of inflation. The first such Order increased maximum fines for offences under the 1978 Act from £1,000 to £2,000 with effect from 1 May 1984. This - and any future general increases - will provide greater scope for the courts to impose appropriately severe penalties on those who bear the heaviest responsibilities for introducing unsafe goods.

19 The proposal in the following paragraph will close a loophole which has sometimes been successfully exploited by first suppliers to disclaim responsibility. Although the courts will, as at present, have regard to all the circumstances, first suppliers wishing to raise a defence of due diligence can often expect to have to prove that, before supplying the goods, they had either obtained satisfactory evidence that representative samples had been properly examined or tested by a competent person, or had arranged for examination or testing themselves.

20 THE GOVERNMENT PROPOSES TO AMEND THE ACT TO PROVIDE THAT FIRST SUPPLIERS MAY NOT, AS PART OF A DEFENCE UNDER SECTIONS 2(6) OR 3(3) OF THE ACT, RELY ON INFORMATION SUPPLIED BY ANOTHER PERSON UNLESS THEY HAVE TAKEN REASONABLE STEPS TO VERIFY THAT

INFORMATION. THIS WILL ALSO APPLY TO A DEFENCE AGAINST A CHARGE OF BREACHING THE PROPOSED GENERAL DUTY.

POWERS AT THE POINT OF FIRST SUPPLY

21 Greater enforcement effort at the point of first supply would be more cost effective than the present concentration at the retail stage. It is better to catch unsafe goods before they are distributed to the shops. However, the present powers in Schedule 2 of the Act do not lend themselves easily to preventive enforcement at the point of first supply. The powers to require production of documents or to seize and detain goods for testing are available only where the enforcement officer has reasonable cause to suspect or believe that regulations, orders or notices are being contravened. Unless the defects are obvious from superficial examination the officer will be able to use the powers only if he has prior information. This will rarely be available for new products. In order to form a better view of whether the goods comply the officer may need to test a sample; alternatively it may be sufficient for him to assess any evidence that the supplier can make available of checks already carried out or, in the case of a manufacturer, to examine the production and quality control procedures relevant to the safety of the end product. The Government proposes to make available the necessary powers for him to do this.

22 THE GOVERNMENT PROPOSES TO INTRODUCE POWERS FOR ENFORCEMENT OFFICERS TO TAKE FROM FIRST SUPPLIERS SAMPLES OF CONSUMER GOODS OR COMPONENTS FOR THE PURPOSES OF ASCERTAINING WHETHER SAFETY REQUIREMENTS ARE BEING MET, TO EXAMINE PROCEDURES CONNECTED WITH THE PRODUCTION OF GOODS, AND TO REQUIRE PRODUCTION OF DOCUMENTS RELATING TO THE GOODS.

SUSPENSION OF SUPPLY

23 The enforcement powers in Schedule 2 of the 1978 Act are similar to those in the Trade Descriptions Act 1968 and the Fair Trading Act 1973. They are geared to assisting authorities in identifying non-complying goods and in prosecuting those who supply them. Powers of seizure are limited to the taking of samples for the purposes of testing or for use as evidence. They do not permit authorities to halt directly the sale of goods even where there are the strongest reasons for believing the general public is at risk. Unscrupulous traders can take advantage of this to continue selling their stocks despite being warned that a prosecution is likely. In some cases the potential profits may outweigh the potential costs of an eventual conviction. There may often be an interval of several months between an inspector identifying unsafe goods and the case being decided.

24 Bearing in mind that potential damage to life and limb can be permanent, there is a strong case for authorities to have wider powers to halt the sale of consumer goods where there are grounds for believing them to be dangerous. In the event that the initial

suspicions cannot subsequently be confirmed it would be fair that the trader concerned should receive compensation for loss from the authorities. Wider discretion to authorities to protect the general public should not, therefore, involve penalising accidentally suppliers whose goods are safe.

25 THE GOVERNMENT PROPOSES TO AMEND THE ACT TO EMPOWER ENFORCEMENT AUTHORITIES EITHER TO REQUIRE SUPPLIERS TO RETAIN IN THEIR POSSESSION GOODS WHICH THE AUTHORITIES HAVE REASONABLE GROUNDS TO BELIEVE CONTRAVENE SAFETY REQUIREMENTS OR, IF NECESSARY, TO SEIZE SUCH GOODS. ANY SUCH REQUIREMENT OR SEIZURE WILL BE VALID FOR 6 MONTHS UNLESS BEFORE THE 6 MONTHS HAVE EXPIRED A COURT EITHER RULES AGAINST THE AUTHORITY OR ORDERS THE GOODS TO BE FORFEIT TO THE AUTHORITY, OR THE AUTHORITY AND THE TRADER HAVE REACHED WRITTEN AGREEMENT ABOUT THE DISPOSAL OF THE GOODS. BOTH THE AUTHORITY AND THE TRADER WILL BE ENTITLED TO BRING THE MATTER BEFORE THE COURT DURING THE 6 MONTH PERIOD. IN THE ABSENCE AFTER 6 MONTHS OF AN ORDER FOR FORFEITURE OR AN AGREEMENT BETWEEN THE AUTHORITY AND THE TRADER, OR WHERE THE AUTHORITY ITSELF WITHDRAWS THE REQUIREMENT OR RETURNS THE GOODS OR A COURT RULES AGAINST THE AUTHORITY, THE AUTHORITY WILL BE LIABLE TO COMPENSATE THE TRADER FOR LOSS. THE ARRANGEMENTS FOR COMPENSATION WILL BE ON THE LINES OF THOSE IN SCHEDULE 2 OF THE PRESENT ACT.

26 THE COURT WILL BE EMPOWERED TO ORDER FORFEITURE WHERE IT IS SATISFIED FROM EVIDENCE PRESENTED THAT THE GOODS CONTRAVENE SAFETY REQUIREMENTS, OR, WHERE SOME GOODS CONTRAVENE SAFETY REQUIREMENTS, THAT CONTRAVENING AND NON CONTRAVENING ITEMS CANNOT

BE READILY DISTINGUISHED. WHERE THE COURT ORDERS GOODS TO BE FORFEIT IT WILL ALSO BE ABLE TO ORDER THE SUPPLIER TO MEET ANY COSTS INCURRED BY THE AUTHORITY IN STORING OR DISPOSING OF THE GOODS SAFELY.

UNSAFE IMPORTS

27 Many consumer goods found to contravene safety requirements are imports. Foreign exporters, and sometimes British importers, are not always familiar with UK safety requirements, and some countries have lower safety standards than the United Kingdom.

28 It is at present an offence for importers to supply, or to possess for supply, goods which do not meet safety requirements. However, there are no powers under the Consumer Safety Act to control the safety of consumer goods as they enter the country.

29 It sometimes suggested that the solution is for goods to be systematically checked at the ports for compliance with safety requirements. Such a system would be very costly to operate and would lead to unacceptably long delays in customs clearance. The Government will, however, introduce two measures for more effective control of the safety of imported goods without impeding the efficient despatch of normal customs clearance.

30 The first of these is designed to assist local enforcement authorities in identifying flows of imported goods. These authorities are usually aware of manufacturing activity in their

locality but often have difficulty in identifying importers. The Government proposes that Customs and Excise should assist them by transmitting, as routine and in confidence, information about incoming consignments in relevant categories. This information will be extracted from that already collected by Customs and Excise for entry purposes and will involve no additional procedures for importers. The use of modern information systems will enable authorities to have warning of the arrival of goods and, if appropriate, to investigate their safety further with the importer. These arrangements are not possible at present because Customs and Excise do not have the authority to transmit information of this kind. The Bill will provide the necesary authority together with a duty on enforcement authorities to respect the confidentiality of information so received.

31 The second new measure will be to empower enforcement authorities to halt the circulation of unsafe goods at the ports. Although routine physical controls are not possible this power could be used in emergencies, or where it was known that dangerous goods were about to arrive. The proposed new seizure powers (paras 25-26 above) will be drafted in such a way as to be available for use at the ports. The Bill will also make provision for Customs and Excise to afford to local enforcement authorities such cooperation as may be necessary.

32 THE GOVERNMENT PROPOSES TO AMEND THE ACT TO ENABLE CUSTOMS AND EXCISE TO TRANSMIT INFORMATION ON A CONFIDENTIAL BASIS TO ENFORCEMENT AUTHORITIES, TO ENABLE THESE AUTHORITIES TO SEIZE

UNSAFE GOODS AT THE PORTS, AND TO MAKE PROVISION FOR CUSTOMS AND EXCISE TO AFFORD COOPERATION TO THEM FOR THE PURPOSES OF ENFORCING THE CONSUMER SAFETY ACT.

A GENERAL SAFETY DUTY

33 The 1978 Act has effect only where specific requirements have been set in regulations, orders or notices. These cover only a limited number of categories and aspects of consumer goods. But dangers to safety and health can occur in almost any category of consumer product. There is no general statutory duty on suppliers to supply safe consumer goods as there is, for example, for articles and substances for use at work under Section 6 of the Health and Safety at Work etc Act 1974. The Consumers' Association has for many years advocated the introduction of such a duty.

34 The Government accepts that there is a case for widening the scope of the Act to place a general obligation on the suppliers of consumer goods to achieve an acceptable standard of safety where it is reasonable to expect them to anticipate and reduce risks arising from those goods. This would induce a greater sense of responsibility on the part of those suppliers who currently regard themselves as unaffected by the legislation (and who may not be adequately deterred by the common law duty of care). At the same time it would provide wider scope for swift remedial action by enforcement authorities in the case of newly identified dangerous products.

35 Local authority departments already deal informally with complaints about the safety of unregulated goods. They often seek to persuade suppliers to withdraw or modify such goods or draw cases to the attention of the Secretary of State for consideration of possible use of prohibition powers. The introduction of a general duty would enable them to take action on the basis of a legal obligation on suppliers.

36 Any generally expressed duty carries with it the potential risk of difficulties of interpretation. The outline proposals which follow are intended to minimise such risks but the Government will be pleased to consider suggestions for alternative formulations which might reduce still further potential areas of uncertainty. It is worth noting that in nearly ten years of experience there do not appear to have been serious problems of interpretation of the level of safety required by the general duty for industrial goods in Section 6 of the Health and Safety at Work Act; the Government therefore sees no reason to expect major problems in the case of a general duty for consumer goods. International, European and British Standards could often provide an appropriate reference point. Conversely a general safety duty would be likely to stimulate the formulation and wider use of safety standards for consumer goods and thus contribute to the development of a more effective standards system, an objective to which the Government is already committed*. The scope for use of

* "Standards, Quality and International Competitiveness", (Cmnd 8621) published in July 1982

standards is wider in the consumer goods field than in the case of industrial goods since a greater proportion of consumer goods are mass produced.

37 It is proposed to link the duty with a broadly defined reference to standards such as "sound modern standards of safety". The purpose of this linkage would be to ensure that the level of safety which can legitimately be expected is interpreted by reference to identifiable and accepted points of comparison rather than simply left to more subjective assessments of safety. Such points of comparison would have to embody established and proven technology, recognised by expert opinion in the field and already available at reasonable cost. For the purposes of the general duty no account would be taken of use for purposes which are unreasonable having regard to the type of product concerned .

38 Where a published standard could be accepted as the benchmark for safety for the product in question it would not be obligatory for suppliers to follow its specifications to the letter. Achievement of the same level of safety by compliance with equivalent standards, or by other means, would be equally acceptable. At least in the initial stages, not all published standards would necessarily provide a definitive interpretation. Some might have been overtaken by technological developments well recognised by expert opinion or identification of new hazards. Others might be only partially relevant because they include specifications not

directly bearing on safety or addressing circumstances other than those falling within the scope of the general duty.

39 The Secretary of State would have a power formally to approve published standards as embodying "sound modern standards of safety" where he is satisfied that the standards are suitable for this purpose. The effect would be that those who comply with the standards, or can prove that their products afford an equivalent level of safety, could be sure of having met the general duty. This would provide an incentive to suppliers to develop suitable standards where none may exist at present.

40 As a matter of marketing practice, those who produce and distribute goods already have regard to the products of their competitors. They can reasonably be expected to be aware of safety standards for the type of goods concerned. This will not always be the case for retailers. It could be excessively harsh to expose retailers to criminal liability without their attention having first been drawn by an enforcement officer to the likelihood of a breach. The Bill would provide appropriate procedures for this. In the case of other suppliers enforcement authorities would of course retain discretion to caution offenders rather than prosecute. There would be no right of private prosecution.

41 It is possible, where there is a sound case for this, to exempt from the scope of safety regulations under the 1978 Act second-hand goods and goods intended for export. This was done

for example in the Upholstered Furniture (Safety) Regulations 1980*. In the case of the general duty it would not be possible to treat each case on its merits and the Government has concluded that it would be preferable, on balance, for the general duty not to apply to these categories. Where appropriate, second-hand sales can be restricted by regulations. In the case of exports it would often be preferable to allow manufacturers flexibility to meet the safety requirements of the overseas market concerned (which may be different from those in the United Kingdom). Abuses of this flexibility could, if necessary, be dealt with by the use of existing powers.

42 There will continue to be a need to stipulate precise requirements for certain classes of goods in regulations or, in cases of emergency, by prohibition orders or notices. This will be so where the safety of consumers is likely to be best served by requiring mandatory compliance with a given standard, where it is necessary to give effect in the United Kingdom to a European Community Directive, or where particular types of goods are intrinsically too dangerous to be allowed for sale to the general public (eg tear gas capsules). The Government does not at present intend to repeal existing regulations (except, where necessary, for the purposes of updating them).

43 The Government considers that those injured as a result of a supplier's failure to comply with a general duty should be entitled to redress. This is already the position under Section 6

* SI 725

of the 1978 Act with regard to breaches of regulations, orders and notices. Liability in this case is strict ie the supplier cannot escape his liability by raising a defence of due diligence. Injured parties are entitled to sue any supplier in the chain of supply. It is proposed that civil liability for breach of a general duty should be on a similar basis. The Government will, however, welcome views on whether there is a case for making provisions different to those in Section 6 of the present Act. The Government will also take into account any developments in the current discussions on product liability in the European Community.

44 THE GOVERNMENT INVITES VIEWS ON A PROPOSAL TO AMEND THE ACT TO INTRODUCE A GENERAL DUTY ON ALL SUPPLIERS TO ENSURE THAT THE GOODS THEY SUPPLY ARE SAFE IN ACCORDANCE WITH SOUND MODERN STANDARDS OF SAFETY. THE DUTY WOULD APPLY TO ALL CONSUMER GOODS AND COMPONENTS FOR SUCH GOODS, APART FROM THOSE ALREADY EXCLUDED FROM THE CONSUMER SAFETY ACT (FOOD, MEDICINES, DRUGS, FERTILISERS AND FEEDING STUFFS) TOGETHER WITH CERTAIN OTHER POSSIBLE EXCLUSIONS FOR GOODS WHERE SAFETY IS ALREADY ADEQUATELY COVERED BY OTHER STATUTES (EG MOTOR VEHICLES, AIRCRAFT) OR WHERE APPLICATION OF A GENERAL DUTY COULD RAISE PARTICULAR PROBLEMS (EG TOBACCO). THE DUTY WOULD NOT, HOWEVER, APPLY TO SECONDHAND GOODS OR GOODS FOR EXPORT.

45 "SOUND MODERN STANDARDS OF SAFETY" WOULD BE DEFINED IN TERMS OF THE STANDARD OF REASONABLE SAFETY A PERSON IS ENTITLED TO EXPECT, BEARING IN MIND CONSIDERATIONS SUCH AS COST, AND THE

EXTENT TO WHICH SAFE PROVEN AND RECOGNISED TECHNOLOGY IS AVAILABLE. NO ACCOUNT WOULD BE TAKEN OF USE FOR PURPOSES WHICH ARE UNREASONABLE HAVING REGARD TO THE TYPE OF PRODUCT CONCERNED.

46 IT WOULD BE AN OFFENCE TO FAIL TO CARRY OUT THE DUTY, SUBJECT TO A DEFENCE OF DUE DILIGENCE, AS IN THE PRESENT ACT. THE SECRETARY OF STATE WOULD BE EMPOWERED FORMALLY TO APPROVE PARTICULAR PUBLISHED STANDARDS AS EMBODYING "SOUND MODERN STANDARDS OF SAFETY" AND IT WOULD BE A DEFENCE TO PROVE THAT THE PRODUCT IN QUESTION COMPLIES WITH THE REQUIREMENTS OF SUCH A STANDARD OR THAT IT AFFORDS AN EQUIVALENT LEVEL OF SAFETY. IT WOULD ALSO BE A DEFENCE TO PROVE THAT THE PRODUCT COMPLIES WITH STANDARDS OF SAFETY (INCLUDING LABELLING REQUIREMENTS) REQUIRED BY REGULATIONS UNDER THE CONSUMER SAFETY AND OTHER ACTS AND RELATING TO THE HAZARD IN QUESTION. THERE WOULD BE NO RIGHT OF PRIVATE PROSECUTION.

47 IN THE CASE OF RETAILERS A BREACH OF THE GENERAL DUTY WOULD GIVE RISE TO CRIMINAL LIABILITY ONLY IN RELATION TO ACTIONS COMMITTED AFTER THE RETAILER HAS BEEN NOTIFIED IN WRITING BY AN ENFORCEMENT OFFICER OF THE REASONS FOR BELIEVING THERE TO BE A BREACH. THIS WOULD APPLY ONLY TO THE GENERAL DUTY, NOT TO OFFENCES AGAINST REGULATIONS, ORDERS AND NOTICES.

48 BREACH OF THE DUTY WOULD GIVE RISE TO CIVIL LIABILITY ON THE SAME BASIS AS PROVIDED IN SECTION 6 OF THE PRESENT ACT FOR BREACHES OF REGULATIONS, ORDERS AND NOTICES.

HEALTH AND SAFETY AT WORK ETC. ACT 1974*

49 For the purposes of the general duty "consumer goods" would be defined in terms which restricted application of the duty to goods of a type ordinarily bought for private use or consumption (cf the definition of "Consumer Sale" which appeared in Section 55(7) of the Sale of Goods Act 1893, as substituted by the Supply of Goods (Implied Terms) Act 1973, and now repealed). The duty would not therefore apply to products normally used only in the work place, such as industrial machinery. The safety of these products is governed by Section 6 of the Health and Safety at Work etc Act 1974.

50 There are, however, goods which are used both at home and at work and these would potentially be subject to both Acts. It would be desirable to minimise the risk of such goods being subject to two different safety requirements, while bearing in mind that the considerations which apply in the case of safety at work can be different from those in respect of consumer goods. It is proposed to make provision for the Secretary of State to consult, where relevant, the Health and Safety Commission, before approving standards for the purposes of the general duty. The Government would also ensure that any potential problems of overlap were taken into account in coordinated contributions by government departments to the standard-making process.

* This Act does not apply to Northern Ireland. The equivalent legislation for Northern Ireland is the Health and Safety at Work (Northern Ireland) Order 1978.

51 Unlike most consumer goods, industrial products are often specially adapted before or after manufacture to meet particular user requirements. Their safety may depend to a far greater extent on the circumstances of their maintenance and use, and greater sophistication and training can usually be expected from the industrial user than the ordinary consumer. With due allowance for these differences the Government is keen to ensure, as with consumer goods, that the general duty in the Health and Safety at Work Act is effectively enforced - notably in relation to first suppliers - and that it encourages reliance upon and reference to sound initial standards of design and manufacture.

52 The Health and Safety Commission have informed the Government of their intention to undertake public consultation on the advisability of a revision of Section 6 of the Health and Safety at Work Act taking into account the present proposals for consumer goods and their own experience with the administration of the 1974 Act; and to consider whether their powers of enforcement are sufficient.

53 THE GOVERNMENT WILL CONSIDER INCORPORATING IN THE LEGISLATION GIVING EFFECT TO THE PROPOSALS IN THIS WHITE PAPER CHANGES TO THE HEALTH AND SAFETY AT WORK ACT AND THE CORRESPONDING ORDER FOR NORTHERN IRELAND WHICH THE HEALTH AND SAFETY COMMISSION MAY RECOMMEND. WHERE RELEVANT, THE SECRETARY OF STATE WOULD CONSULT THE COMMISSION BEFORE APPROVING STANDARDS FOR THE PURPOSES OF THE GENERAL DUTY.

CONSUMER PROTECTION ACTS

1961 AND 1971, CONSUMER PROTECTION ACT (NORTHERN IRELAND) 1965

54 The 1978 Act introduced certain improvements to the powers of enforcement authorities. These new powers are not available for use in relation to regulations made under the Consumer Protection Acts. The expectation was that these regulations, some twenty in all, would reasonably quickly be remade under the new Act. However, this process is proving much slower than originally anticipated.

55 THE GOVERNMENT PROPOSES TO AMEND THE ACT TO PROVIDE THAT THE ENFORCEMENT POWERS AVAILABLE IN RELATION TO REGULATIONS MADE UNDER THE CONSUMER PROTECTION ACTS ARE THE SAME AS IF THEY HAD BEEN MADE UNDER THE CONSUMER SAFETY ACT. THIS WILL INCLUDE THE PROPOSED CHANGES TO ENFORCEMENT POWERS.

MANPOWER AND FINANCIAL IMPLICATIONS

56 The intention of these proposals is to enable enforcement authorities to achieve better results, in terms of protecting the general public, with the same resources. Implementation will not require any increase in aggregate central or local government expenditure.

TRANS: Consumer Safety

FS 84

CC NO

NBPM PT 13/6

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Norman Tebbit MP
Secretary of State for Trade and Industry
1 Victoria Street
LONDON
SW1H OET

12 June 1984

Dear Secretary of State,

CONSUMER SAFETY

You will recall that when we discussed your memorandum on Consumer Safety (E(A)(84) 9th Meeting, 20 March) I expressed concern at the possible risk that your White Paper proposals might lead to an increase in public service manpower.

2. Our officials have been in touch about this and I am reassured by much of the information I now have. I note however that local authority associations have not been consulted but that you have agreed to consider points of substance they may put forward in reaction to your White Paper, and before drafting legislation. I am sure that is right. There is no doubt that the new arrangements should lead to more effective and efficient enforcement but it is difficult to be sure that they will not also lead to pressures for more enforcement, and therefore pressure for more resources. I would therefore ask you to keep this particularly in mind with the Departments concerned, as your consideration of the White Paper goes forward.

3. I am sending copies of this letter to members of E(A) Committee, to Quintin Hailsham, and to Barney Hayhoe here.

Yours sincerely,

Paul Rees

P REES

P (approved by the Chief Secretary and signed in his absence)

NBPM AT 2013

SOLICITOR GENERAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

The Rt. Hon. Norman Tebbit, MP,
Secretary of State for Trade and Industry,
Department of Trade and Industry,
1, Victoria Street,
LONDON, SW1H OET.

19 March 1984

Mr Turnbull
To see.

CONSUMER SAFETY

I have seen your letter of 12 March 1984 to Quintin Hailsham and the attached corresondence.

Because of standing committee commitments I shall not be able to attend E(A) but there is one matter upon which it may be useful to you to know my views. This is the point raised at paragraph 9 of your paper, namely the right of civil action. On this, I share the views of Quintin Hailsham and James Mackay that if we create the general duty we should also create the right to civil remedies. I think we should be hard put to it to defend the omission of a right of action for damages.

I hope that this point can be considered further. I am sending copies of this letter to members of E(A), to Quintin Hailsham, Leon Brittan, James Mackay, John Gummer, David Mellor; and to Sir Robert Armstrong.

J

CONFIDENTIAL

CC PE

Foreign and Commonwealth Office

London SW1A 2AH

From The Minister of State

19 March 1984

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON SW1P 3AG

Mr Turnbull
19/3

Dear Nigel,

CONSUMER SAFETY

In Geoffrey Howe's absence, I would like to comment on the proposals contained in Norman Tebbit's memorandum E(A) (84) 14 of 13 March, which is to be discussed at tomorrow's meeting.

Our prime preoccupation is that the Government's proposals should not be open to challenge as a protectionist move, particularly within the European Community, where we continue to make a determined effort to open up the Internal Market for unhindered trade in goods and services. The draft White Paper has been the subject of inder-departmental discussion: I am content that it is consistent with our Community negotiating priorities.

I understand that the prime target for any tightening of the Consumer Safety Act will be imports from non-Community countries. This is clearly right, given that most (if not all) Community Member States impose safety standards for their exports of manufactured goods to a level comparable to our own. But we need to counter any accusation from the Community that our intention is to featherbed the domestic manufacturer at the expense of Community producers. One legitimate way to do so would be to make more of the references to our Community obligations in the text. The references to the Community in paragraph 15 of the White Paper are helpful, but might usefully be expanded, e.g. by making clear, as is implied later in the White Paper (para 39) that those whose goods comply with harmonised EC standards will, by definition, have met the general duty imposed on them by the proposed amendments to the legislation. We could also mention the principle of equivalence of standards within the Community. For example, under the terms of the Low Voltage Directive, we are already committed to accept 'white' goods - refrigerators,

/washing machines

CONFIDENTIAL

washing machines, etc - manufactured in another Member State and certified by it as conforming to the Directive's safety guidelines. It would be helpful if the White Paper could spell out in more detail the fact that our commitment to standards harmonisation in the Community, to the benefit of our exporters, carries with it the requirement to give due weight to the testing/standards procedures of other Member States.

I hope that Norman Tebbit can agree to send a copy of the White Paper to the Commission upon publication. We need not court comment - but since we have a fairly good story to tell, there is everything to be said for keeping the Commission informed of our intentions while our plans are still at this formative stage.

I am copying this letter to the Secretary of State for Trade and Industry, other members of E(A) Committee, Sir Robert Armstrong and the Secretary of E(A) Committee.

Yours ever,

Malcolm

Malcolm Rifkind

Trade Feb 84

Consumer Safety

NBPM AF 1D CC/D

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215 5422
GTN 215
(Switchboard) 215 7877

JH 56

Secretary of State for Trade and Industry

12 March 1984

The Rt Hon Lord Hailsham of
St Marylebone CH FRS DCL
Lord Chancellor
House of Lords
London SW1A OPW

D Quentin.

CONSUMER SAFETY

Thank you for your further letter of 1 March commenting on James Mackay's letter of 21 February to Alex Fletcher. I am grateful for the interest which you and James are taking in these proposals. You, but so far not most other recipients, will have seen Alex Fletcher's letter of 5 March with his detailed comments on the points raised by James Mackay.

2 Much clearly turns on how easy one thinks a general duty would be to interpret. In my paper for E(A) I have explained why I believe that in practice interpretation should not give rise to the difficulties which you fear. I hope that in further discussion we shall be able to satisfy you on this.

3 I also continue to think that to be effective a general duty must retain a truly general character. A duty confined in application to areas where formal standards have already been approved is not, in my opinion, an option worth pursuing - and in your letter of 26 January you took the same view. It would be no more than a reformulation of the present framework, and one which would be very difficult to justify to Parliament. It would not achieve our objective of closing the present gaps.

4 I am sending a copy of this letter, together with copies of the exchange of correspondence between James Mackay and Alex Fletcher, to Members of E(A), to Leon Brittan, Michael Havers, James Mackay, John Gummer, David Mellor; and to Sir Robert Armstrong.

Yours ever
Norman

NORMAN TEBBIT

Quintin Hailsham
George Younger
Michael Havers
David Mellor
PS/Secretary of State
PS/Sir Anthony Rawlinson
Mr Caines
Mr Beckett
Mr Eagers
Mrs Dunstan Sols
Mr Willis CCS4 - on file

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE (DIRECT LINE) 01-215 5662
GTN 215
(SWITCHBOARD) 215 3000

From the
Parliamentary Under Secretary of State
for Corporate and Consumer Affairs

The Rt Hon The Lord Mackay of
Clashfern QC
Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL

5 March 1984

Dear James,

REVIEW OF CONSUMER SAFETY ACT

Thank you for your letter of 21 February.

I note that while you are concerned about a number of practical points you consider that the introduction of a generalised offence could be justified.

In practice, I do not think there will be a heavy burden of litigation on small traders. Behind every small trader in the supply chain there is usually a larger one and the framework of the "due diligence" defence encourages enforcement authorities to prosecute only those close to the source of the offence. This is already the case in connection with the specific obligations imposed by safety regulations and would be likely to be still more so in connection with a generally expressed duty. We did consider exempting retailers altogether from the general duty but this would have left a situation in which unscrupulous retailers could have continued to market dangerous goods with impunity even when the defects had been well established. Instead we are now proposing a special regime for retailers whereby criminal liability will not arise except in relation to actions committed after a notification in writing by an enforcement officer of his reasons for believing the general duty is being breached. In such circumstances the main suppliers are likely also to be or become involved in litigation and the retailer who wishes to persist in supplying the goods despite a notification will have the opportunity, if he is prosecuted, of seeking from them such technical evidence as may be available to refute a charge.

A possible need to plead due diligence will arise only after the retailer has been told by an enforcement officer why, in his opinion, the goods do not comply with the duty. Only after

this could the retailer incur liability. In these circumstances he will be able to establish due diligence, or allege the act or defualt of another person, only if ne possesses or obtains information which he would be reasonably entitled to regard as refuting specific points mentioned by the enforcement officer. An affirmative answer to your more general hypothetical question "Is it safe?" will not be sufficient.

In the case of suppliers other than retailers there will normally be a presumption of greater ability to be aware of safety standards, and we are not proposing a notification stage before proceedings may be brought. In their case the more appropriate question would be "On what grounds can you assure me that this meets the general safety duty?"

I accept that the sheriffs' courts, like the magistrates' courts in England and Wales, could be overburdened if the general duty were to give rise to a heavy caseload. However, I do not think the consequences will be anything like so drastic. In 1982-83 a total of 255 persons were convicted throughout the United Kingdom for breach of the various consumer safety regulations. These were spread among nearly 100 separate Local Authorities. A sensible approach by the trading standards profession, reinforced in Scotland by the high standards of the Procurators Fiscal, means that only a small proportion of cases brought are lost. Although a general duty would add somewhat to the total number of prosecutions, I would expect authorities to prosecute only where they were satisfied that there was a strong clear cut case. It is also worth bearing in mind that the specific product safety legislation of the past twenty years has now made provision for the main product areas in which safety problems arise (eg electrical equipment, cosmetics, furniture flammability, toys). The general duty will pick up problems arising in the gaps. I do not therefore believe that a general duty would add to the volume of cases on a scale which need give rise to concern.

As regards the difficulty and duration of such cases I see no grounds for expecting any greater problems than have arisen with Section 6 of the Health and Safety at Work Act, about which there appear to have been no significant complaints on this score. Incidentially, I understand that in the United Kingdom as a whole prosecutions have been brought rather more frequently under this provision than you imply in the fifth paragraph of your letter.

You point out that where goods were "frozen" local authorities could incur a heavy liability for compensation. We see this as one of the main safeguards for suppliers; it will encourage authorities to make use of the power only where they have a high degree of certainty about the eventual outcome. The intention of the framework, which includes provisions for agreement between the authority and the supplier, is that disputed questions should be settled so far as possible without recourse to the courts. Both the authority and supplier will have an interest in reaching a settlement if evidence subsequently comes their way to suggest that they would lose if the issue were to reach the court.

I should explain that the main purpose of the seizure and forfeiture provisions is to assist with the enforcement of safety regulations. In the case of offences against the proposed general duty I would expect authorities often to be reluctant to "freeze" large quantities of goods until there had been a successful prosecution.

We did, at an earlier stage, consider whether there was a case for creating special tribunals to deal with these matters. You will have seen from Quintin Hailsham's letter of 26 January that he did not think that this would be justified. We share this view.

I note, finally, your preference for civil liability. Our view, on balance, remains that it would be preferable not to have two bites at the legislative cherry, by anticipating the outcome of negotiations on the EC Directive. However, this is obviously a point E(A) will have to take a view upon.

Yours

Alex.

ALEX FLETCHER

PS: I am sending copies of this letter to Quintin Hailsham, George Younger, Michael Havers and David Mellor.

Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL

Telephone: Direct Line 01-212 0515
Switchboard 01-212 7676

21 February 1984

TO MR. HOPE
FOR ADVICE AND DRAFT REPLY IF APPROPRIATE
PLEASE BY:
28/2

Copies to
PS/SofS
Sir A.R.
Mr. Carnies
Mr. Bennett
Mr. Eagers
Mrs. Dunstan
Mr. Willis

Alex Fletcher Esq MP
Parliamentary Under Secretary of State
for Corporate and Consumer Affairs
Department of Trade & Industry
1-19 Victoria Street
LONDON
SW1H 0ET

Dear Alex,

REVIEW OF CONSUMER SAFETY ACT

Thank you for sending me copies of your recent correspondence on this subject starting with your letter of 9 November 1983 to David Mellor.

The subject is of special interest to me because, as you know, in Scotland although the local authority officials investigate alleged offences, it is the Procurator Fiscal who prosecutes.

The most difficult question arising from the correspondence is whether there should be a general duty on suppliers to ensure that goods supplied by them are safe in accordance with sound modern standards of safety in forseeable reasonable use, and if so, whether it should be fenced with a criminal sanction in the event of breach of the duty, or should sound in damages at civil law.

There appears to be no disagreement that where particular published standards are available, breach of these standards should be an offence, and should also probably be ground for civil action for damages. The intention of the proposed legislation would be to extend considerably the range of such published standards until most manufactured goods were covered by them. It is in relation to the area where particular standards have not yet been formulated or would be difficult to formulate that the general safety duty is relevant.

In the absence of a general duty, I share your concern that the proposed legislation may be much less effective than it should be. The problem is that, particularly if the duty is to be subject to criminal sanctions, any offence ought to be defined with sufficient precision to enable a potential accused to know whether or not he will be liable to prosecution. However, as is pointed out in the correspondence, a similar general duty, in relation to items supplied for the use of persons at their place of work, already exists under Section 6 of the Health and Safety at Work etc Act 1974, and prosecutions are brought occasionally under this provision. Similar broadly stated duties in the same field have been subject to criminal prosecution for many years: eg, safety of premises, access, plant and system of work.

THE LORD ADVOCATE

21 February 1984

Alex Fletcher Esq MP
Parliamentary Under Secretary of State
for Corporate and Consumer Affairs

If therefore, as appears to be the case, the safety of goods cannot be effectively achieved by the imposition of duties related to precise standards - particularly in relation to goods newly invented or introduced - then I believe that if you consider as a matter of policy that the danger requires to be remedied, a generalised offence could be justified.

Problems will however be created. While I foresee little difficulty in taking proceedings against British manufacturers of goods or importers of foreign goods, as they will generally be firms of substance, who can afford the expensive litigation involved, I am worried about the position of the small trader, who is the ultimate contact with the public. Often such a person cannot afford the cost of litigation. The due diligence defence is a reasonably clear-cut issue, when there is a prescribed standard but it becomes much more difficult when there is only a general duty to supply safe goods. If an accused is claiming reliance on information given by the person supplying to him, is a positive answer to the question "Is it safe?" sufficient to exonerate him?. Furthermore, in Scotland we have had difficulty with the defence that the offence was due to the default of another person.

As you know, the criminal courts in Scotland are over-loaded and we have been trying for some considerable time to reduce the load. I do not look forward to long drawn-outs trials with experts on both sides giving conflicting evidence in relation to some allegation founded on a general duty as opposed to specific standards. If the accused were, for example, a motor car manufacturer, a conviction could have an enormous effect on the business and nothing would be spared in an effort to set up a defence. The summary procedure which we have is geared towards short trials and is not really suitable for this type of issue.

Furthermore, because of the volume of work, a case such as is envisaged would not reach the trial stage for several months.

This leads me on to the seizure and forfeiture question. If goods are "frozen" for several months, the expense involved could be huge and compensation in the event of acquittal a very heavy blow to a local authority. In this connection some form of specially constituted tribunal appears to be more suitable. If it were able to deal almost immediately with any articles which have been "frozen", that could be the real remedy, with forfeiture or compensation being the outcome.

THE LORD ADVOCATE

21 February 1984

Alex Fletcher Esq MP
Parliamentary Under Secretary of State
for Corporate and Consumer Affairs

- 3 -

As regards the conferring of civil law remedies founded on the general duty to supply safe goods, the criteria, though wide, are no wider than those applied in relation to the general duties of care under the law of damages, and the general duties imposed under the Sale of Goods Act. Norman Tebbit has suggested that it would be better not to impose any new civil liabilities in this field pending agreement on the Community Directive on product liability. As the Lord Chancellor points out, however, progress on this has been very slow, and there seems no good reason why new civil remedies should not be provided meanwhile in this field, both for the breach of the general duty and for the breach of the particular duties based on prescribed standards.

I am copying this to the Lord Chancellor and David Mellor, and also to George Younger and Michael Havers.

Yours ever,

James.

Trade : Consumer Safety. Feb. 84.

NBPM

AT 2(3

HOUSE OF LORDS,
SW1A 0PW

1 March 1984

My dear Norman:-

Consumer Safety

I have seen a copy of James Mackay's letter of 21 February to Alex Fletcher, which I regard as an important contribution to the discussion.

As you know, I remain in favour of a general duty if it can be made precise enough to enable a potential accused to know whether or not he will be liable to prosecution. James Mackay mentions some of the problems which will be created by a general duty; it is precisely problems of this sort that would be drastically exacerbated if the duty were not drawn with sufficient clarity. In particular, I agree with his points on the due diligence defence and the likelihood of long drawn out trials with conflicting expert evidence. He also reinforces me in my view that we should not create the general duty without civil remedies.

On the proposed powers of seizure and forfeiture, I agree that they could lead to very large sums having to be paid out in compensation. This underlines the importance of precision, since it is proposed that these powers will be available for reasonably suspected breach of the general duty. For the reasons set out in my letter of 26 January, however, a new tribunal

/...2

The Right Honourable
Norman Tebbit MP
Secretary of State for
Trade and Industry
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET

would not, in my view, provide a satisfactory solution.

I have also seen a copy of Arthur Cockfield's letter to you of 20 February, and, as you know, John Gummer has written to me on this subject on 17 February.

These letters helpfully set out their views on matters about which I have said as much as I can before the meeting of E(A).

I am copying this letter to members of E(A), James Mackay, Michael Havers, John Gummer, Alex Fletcher, David Mellor, Leon Brittan and Sir Robert Armstrong.

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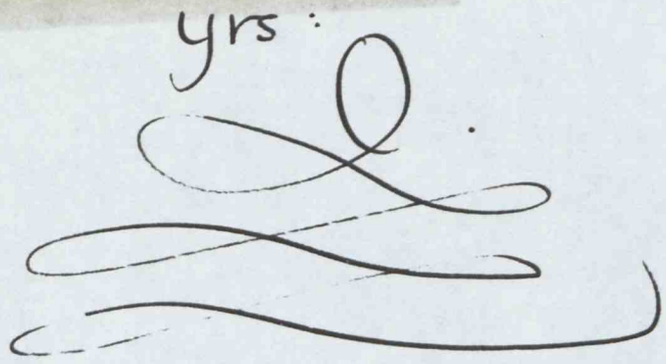
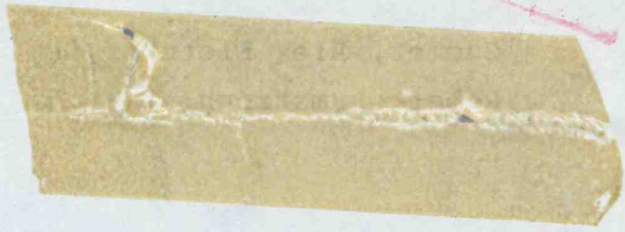


From: THE RT. HON. LORD HAILSHAM
OF ST. MARYLEBONE, CH, FRS, DCL.

Trade : Consumer Safety Feb. 84



NSPM

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29/2

21 February 1984

Alex Fletcher Esq MP
Parliamentary Under Secretary of State
for Corporate and Consumer Affairs
Department of Trade & Industry
1-19 Victoria Street
LONDON
SW1H 0ET

REVIEW OF CONSUMER SAFETY ACT

Thank you for sending me copies of your recent correspondence on this subject starting with your letter of 9 November 1983 to David Mellor.

The subject is of special interest to me because, as you know, in Scotland although the local authority officials investigate alleged offences, it is the Procurator Fiscal who prosecutes.

The most difficult question arising from the correspondence is whether there should be a general duty on suppliers to ensure that goods supplied by them are safe in accordance with sound modern standards of safety in forseeable reasonable use, and if so, whether it should be fenced with a criminal sanction in the event of breach of the duty, or should sound in damages at civil law.

There appears to be no disagreement that where particular published standards are available, breach of these standards should be an offence, and should also probably be ground for civil action for damages. The intention of the proposed legislation would be to extend considerably the range of such published standards until most manufactured goods were covered by them. It is in relation to the area where particular standards have not yet been formulated or would be difficult to formulate that the general safety duty is relevant.

In the absence of a general duty, I share your concern that the proposed legislation may be much less effective than it should be. The problem is that, particularly if the duty is to be subject to criminal sanctions, any offence ought to be defined with sufficient precision to enable a potential accused to know whether or not he will be liable to prosecution. However, as is pointed out in the correspondence, a similar general duty, in relation to items supplied for the use of persons at their place of work, already exists under Section 6 of the Health and Safety at Work etc Act 1974, and prosecutions are brought occasionally under this provision. Similar broadly stated duties in the same field have been subject to criminal prosecution for many years: eg, safety of premises, access, plant and system of work.

21 February 1984

Alex Fletcher Esq MP
Parliamentary Under Secretary of State
for Corporate and Consumer Affairs

If therefore, as appears to be the case, the safety of goods cannot be effectively achieved by the imposition of duties related to precise standards - particularly in relation to goods newly invented or introduced - then I believe that if you consider as a matter of policy that the danger requires to be remedied, a generalised offence could be justified.

Problems will however be created. While I foresee little difficulty in taking proceedings against British manufacturers of goods or importers of foreign goods, as they will generally be firms of substance, who can afford the expensive litigation involved, I am worried about the position of the small trader, who is the ultimate contact with the public. Often such a person cannot afford the cost of litigation. The due diligence defence is a reasonably clear-cut issue, when there is a prescribed standard but it becomes much more difficult when there is only a general duty to supply safe goods. If an accused is claiming reliance on information given by the person supplying to him, is a positive answer to the question "Is it safe?" sufficient to exonerate him?. Furthermore, in Scotland we have had difficulty with the defence that the offence was due to the default of another person.

As you know, the criminal courts in Scotland are over-loaded and we have been trying for some considerable time to reduce the load. I do not look forward to long drawn-outs trials with experts on both sides giving conflicting evidence in relation to some allegation founded on a general duty as opposed to specific standards. If the accused were, for example, a motor car manufacturer, a conviction could have an enormous effect on the business and nothing would be spared in an effort to set up a defence. The summary procedure which we have is geared towards short trials and is not really suitable for this type of issue.

Furthermore, because of the volume of work, a case such as is envisaged would not reach the trial stage for several months.

This leads me on to the seizure and forfeiture question. If goods are "frozen" for several months, the expense involved could be huge and compensation in the event of acquittal a very heavy blow to a local authority. In this connection some form of specially constituted tribunal appears to be more suitable. If it were able to deal almost immediately with any articles which have been "frozen", that could be the real remedy, with forfeiture or compensation being the outcome.

21 February 1984

Alex Fletcher Esq MP
Parliamentary Under Secretary of State
for Corporate and Consumer Affairs

As regards the conferring of civil law remedies founded on the general duty to supply safe goods, the criteria, though wide, are no wider than those applied in relation to the general duties of care under the law of damages, and the general duties imposed under the Sale of Goods Act. Norman Tebbit has suggested that it would be better not to impose any new civil liabilities in this field pending agreement on the Community Directive on product liability. As the Lord Chancellor points out, however, progress on this has been very slow, and there seems no good reason why new civil remedies should not be provided meanwhile in this field, both for the breach of the general duty and for the breach of the particular duties based on prescribed standards.

I am copying this to the Lord Chancellor and David Mellor, and also to George Younger and Michael Havers.

Lord Advocate

Trade Feb 84
Consumer Safety

NBPM AT 20/2

CABINET OFFICE,
WHITEHALL, LONDON SW1A 2AS

Chancellor of the Duchy of Lancaster

20 February 1984

Dear Norman,

CONSUMER SAFETY

I have read with interest the correspondence on this subject culminating with Quintin's letter of 13 February.

I would have thought the offence of selling dangerous goods not dissimilar from that of dangerous driving or, in less serious cases, that of driving without due care and attention.

While magistrates have some difficulty in dealing with these ill-defined but fairly obvious offences, their difficulty seems to be no greater than in other areas.

Most of the dangerous goods concerned are imported: and our reluctance to deal with irresponsible importers and the traders they supply exposes us to no little criticism. It is alleged that other Governments show no such reluctance in keeping such goods out of their home markets.

I am copying this letter to members of E(A), Quintin Hailsham, Leon Brittan, David Mellor and Sir Robert Armstrong.

Yours, Arthur

COCKFIELD

The Rt Hon Norman Tebbit MP
Secretary of State for Trade and Industry
Department of Trade and Industry
1 Victoria Street
London SW1H OET

Trade: Consumer Safety

2/84

NBRM
AT 14/2

CF: please see if you can trace x, and if not get another copy.

DWS
14/2

LORD CHANCELLOR

HOUSE OF LORDS,
SW1A 0PW

13 February 1984

NW Trumbull

10pm I should think, since a paper will be coming to E(A).

DWS
14/2

My dear Norman:

Consumer Safety

attached.

Thank you for your letter of 6 February 1984.

As the issues are to be discussed in Cabinet Committee, I shall confine myself here to a brief reference to the main issues of principle on the proposed general duty of safety.

First, I am in favour of a general duty with criminal sanctions and civil remedies if the criminal offences can be defined with sufficient precision to allow a potential defendant to know whether or not he is within the law.

Secondly, I agree with the Home Office that the necessary precision has not yet been achieved in relation to goods not affected by Regulations or Approved Standards. If this cannot be done, my view is that the only alternative short of dropping the general duty is to attach criminal sanctions only where there has been a breach of a Regulation or Approved Standard.

Thirdly, I remain convinced that if there is to be a general duty with criminal sanctions, breach of the duty should also give rise to civil remedies. It would be politically unwise and wrong in principle to abandon what you admit to be the logic of this step in order to await the outcome of protracted negotiations on the draft Community Directive on product liability, which

/...2

The Right Honourable
Norman Tebbit MP
Secretary of State for
Trade and Industry
Department of Trade
and Industry
1-19 Victoria Street
London SW1H 0ET

remain fraught with difficulties.

I am copying this letter to members of E(A), Leon Brittan, David Mellor and Sir Robert Armstrong.

yrs:

DEPARTMENT OF TRADE & INDUSTRY
1-19 Victoria Street
London SW1H OET

Telephone (Direct dialling) 01 215)
GTN 215) 5422
(Sitchboard) 215 7877

Duty Clerk 14.2.1984

As Requested

With the Compliments of the

Private Secretary to the
Secretary of State for Trade
and Industry

Ron Beesley

CS 248

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215) 5422
GTN 215)
(Switchboard) 215 7877

JU598

Secretary of State for Trade and Industry

6 February 1984

The Rt Hon The Lord Hailsham of
St Marylebone CH
Lord Chancellor
House of Lords
SW1

D Quintin,

CONSUMER SAFETY

Thank you for your letter of 26 January

I understand but do not share your reservations about proposals for a general safety duty. I remain of the view that in practice these would not cause undue difficulties either for trade and industry or for the courts. I also see a strong case for a comprehensive duty rather than the more piecemeal approach which has been suggested and on which I note you yourself also have reservations.

In the eyes of the public, our White Paper is already overdue. I think the issues of principle which have been raised would best now be resolved in Committee. I shall be putting a paper to E(A) in the near future.

I am sending copies of this letter to Nigel Lawson, Leon Brittan and Tom King; and to Sir Robert Armstrong.

Yours Norman

NORMAN TEBBIT

PS/ AF
PS/ Sir Anthony
Mr Caines
Mr Beckett Solo
Mr Dougherty CA
Mr Solomon OE
Dr Howe IP
Mr Gatland CA
Mrs Dunstan Solo
Mr Hayter MEE
Mr Alfress OE
Mr Eagers CCS
Mr Willis CCS4
(on file)


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