



The expanding scope of OPSS enforcement and the Product Regulation and Metrology Bill

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INTRODUCTION

1. As product and regulatory practitioners will be well aware, the Office for Product Safety and Standards (“OPSS”) has a significant and increasing role as the national regulator for all consumer products except vehicles, medicines, and food. It is also the national regulator for legal metrology. The OPSS also leads Government policy on product safety, metrology, hallmarking, and market surveillance and is responsible for product safety at the UK’s borders.
2. The OPSS recently published a list of certain enforcement actions it took in the last six months (a copy of the enforcement actions from 1 April 2024 to 30 September 2024 can be accessed [here](#)). The OPSS has periodically published enforcement actions since October 2019. This short article looks at what emerges from this record and looks ahead as to the scope of OPSS enforcement in the next 12 to 18 months.

HIGHLIGHTS

3. The published actions since 2019 demonstrate the sheer breadth of products and industries subject to enforcement action and the increasing frequency of

enforcement actions and criminal convictions. For example, enforcement actions have included:

- A prosecution resulting in a sentence of 12 months imprisonment suspended for 18 months on 21 June 2024, a director disqualification order for 2 years, a significant costs order and a deprivation order for an individual who imported lead acid batteries from Turkey and re-branded them with incorrect performance ratings and labelling to sell on eBay.
- Product recall and regulatory action arising from TV stands where the supplier was unable to establish that the timber used had been legally harvested contrary to Regulation 4(b) of the Timber and Timber Products Placing on the Market) Regulations 2013.
- Product recall and regulatory action arising from a Toy cat scatter cushions that posed a medium risk of fire contrary to Regulations 14(1) of the General Product Safety Regulations 2005.

EMERGING TRENDS

4. When the last five years are analysed in more detail, a number of trends emerge:

- 4.1. **First**, there are challenges posed by ensuring product safety in an age of online marketplaces. There is a notable prevalence of enforcement actions against electrical and other products manufactured in China that were imported and sold in the UK through online platforms based overseas. Consumer protection seems to be paramount.
- 4.2. **Second**, as new products emerge, such as e-bikes and e-scooters, the OPSS is not only willing and able to enforce but also publish consumer information to raise awareness around the safe purchasing of certain goods (the OPSS safe purchasing, use, and charging of e-bikes and e-

scooters can be found [here](#)). Again, consumer education and safety are a priority.

4.3. **Third**, the OPSS can and will seek criminal prosecutions of those who fail to comply. Prosecutions are still relatively rare but where the evidence is strong, and the public interest obvious, the OPSS has shown it will use its full toolkit of enforcement powers including prosecution.

5. The scope of OPSS enforcement is likely to widen further as a result of the Product Regulation and Metrology Bill (“the Bill”) (a copy of which can be found [here](#)), which was laid before Parliament on 4 September 2024. As an enabling Act, the Bill leaves the key details to secondary legislation, which has so far not been published. Much has already been written about the potential changes to the UK products regime that may follow the Bill coming into law and which will not be rehearsed here, save to say the plain purpose of the Bill is to provide wide powers for the Secretary of State to revise the UK’s product regulations. A full summary of the Bill by Prashant Popat KC and Noel Dilworth can be accessed [here](#).
6. In terms of enforcement, a review of Clause 3 and the explanatory notes to the Bill reveal new powers to appoint inspectors, such as powers of entry, search and seizure, market monitoring, product recall, and product enforcement notices. There is also provision for a civil undertaking and civil sanctions process, presumably as an alternative to prosecution. Finally, the Secretary of State has the power to create new offences and widen the scope of existing product-related criminal offences.
7. It follows that the Bill is likely to give the OPSS significantly greater regulatory powers to carry out enforcement actions against importers, manufacturers, and online marketplaces. As its powers and confidence grow, the OPSS may well emerge as the regulator for products similar to the Environment Agency or HSE.

Tim Green KC and Douglas Maxwell specialise in product liability and safety within civil, regulatory and criminal contexts. They have been instructed in a number of enforcement actions and appeals involving the OPSS. For more information on the OPSS, its current role, and appeals procedure, please see our earlier article, “[What’s it all about?](#)” Tim’s CV can be found [here](#), and Douglas’s CV is [here](#).

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10 October 2024