



ST. PAULS CHAMBERS

Regulatory Breach  
Partners

**Hands**

Health & Safety Resources



**WALKER  
MORRIS**



**Bentley Jennison**

 **TCF INDEX**

 **TCF INDEX**

**Cartwright King**  
S O L I C I T O R S

Editor: Jeremy Barnett  
Email: [jvbarnett@gmail.com](mailto:jvbarnett@gmail.com)

Asst Editor: Alun Jones  
Email: [aj@stpaulschambers.com](mailto:aj@stpaulschambers.com)

Senior Clerk: Catherine Grimshaw  
Email: [cjg@stpaulschambers.com](mailto:cjg@stpaulschambers.com)

# Regulatory Breach

8th August 2007

## UPDATE...

### Corporate manslaughter

Article By Dan Stowers, Cartwright King

Following years of lobbying by the public and trade unions such as the TUC and GMB, the Government has finally passed the Corporate Manslaughter and Corporate Homicide Act 2007, creating new offences for corporate manslaughter in England, Wales and Northern Ireland, and corporate homicide in Scotland.

The new legislation goes further than any previous health and safety law in identifying a direct link between how a business is managed and the health and safety of the people for whom the business is responsible.

Under the new law, to achieve a successful prosecution against a business, all that needs to be proved is that the business had a responsibility to take reasonable care for someone's safety and that there was a gross breach by the senior management in fulfilling that responsibility, resulting in a death.

Unusually, the Act specifies certain factors that a court must take into account, when deciding if the offence has been committed. These include the extent of any failure by the business to comply with existing health and safety legislation relating to the circumstances of the fatal accident, and whether or not it was obvious that a death in the workplace could have resulted from that failure.

The court must also take into account evidence that reveals the extent to which the attitudes, policies systems or accepted practices within a business were likely to have encouraged any such failure or produced a tolerance of it. This is a bold step and one that seems to be designed to make securing a conviction more likely, sloppy practice or failure to update and apply existing health and safety policy will no longer be tolerated, and the finger is pointing squarely at the management.

In addition to a substantial fine, a court now has two new sanctions that can be used against a business and again these reveal a more modern approach to business regulation by the Government. First, the Court may make a Remedial Order, specifying immediate steps to be taken by the business to remedy failings identified in contributing to the fatality. This includes direct reference to policies, systems or practices within the business.

Second, and more dramatic is a Publicity Order. The court can order the business to publicise the fact that it has been convicted, the particulars of the offence, the amount of any fine and the terms of the Remedial Order made.

"As most of this information would be freely available as a matter of public record anyway, the emphasis of this provision is to make a business 'name and shame' itself," said Dan. "The stain on a businesses' reputation, and resulting embarrassment may well last longer than the immediate financial impact of prosecution. Rather than concentrating on the actions of an individual manager or director, the court will now apply a doctrine of collective responsibility, where ultimately it will be for the management of a business to show that its actions were not a contributing factor in someone's death."

# US clamp down on dangerous Chinese goods.

Article By Jeremy Barnett, St Pauls Chambers

In a dramatic show of strength, the US regulators have suddenly clamped down on dangerous and faulty goods and products, and created a climate of jingoism not seen since Harold Wilson's 'Im Backing Britain' campaign in the late 1960s. There has been a blaze of front page newspaper stories and accounts on network news about dangerous Chinese exports - so far 30 of 32 product recalls this year have related to toys made in China, according to the Consumer Product Safety Commission.

Much publicity has been given to the decision of Mattel last week to recall 83 products equalling 1.5 million toys made in China for the company's Fisher - Price division, causing a predicted \$30 reduction in its second quarter pre-tax operating profits. The toys were recalled because of concerns about paint containing lead, a fear which is closely monitored in all toys sold in the UK and subject to supervision known as the 'lick test'.

Chambers have been involved in numerous cases where UK toy importers have been prosecuted for breach of the regulations governing the bio availability of lead [in the Toy Safety Regulations 1995]. Explanations offered by manufacturers range from deficiencies in the factory ventilation systems, or other reasons for dirt contaminating the manufacturing procedure.

Professor John Oakland, leading authority on quality management believes that high levels of inspection do not lead to product integrity, and are no substitute for modern methods of quality management. Companies in this situation often require an assessment of total quality management practices across the whole supply chain.

Other toys in the firing line include the Easy-Bake Oven manufactured by Hasbro and distributed by Wal-Mart, Target and KB Toys, which has received numerous reports of children getting their hand or fingers caught in a small opening in the oven, including a small number of minor burns.

Calls for a stringent increase in standards have been made by Senator Bill Nelson, despite the fact that levels of lead rarely cause any accidents or injury as the amount of paint that would have to be eaten to cause injury would be huge. Mattel reported that there had been no accidents from the current batch of toys withdrawn recently.

But it's not only toys that are facing this public scrutiny. The Food and Drug Administration [FDA] has now asked importers to provide 3rd party lab reports for all catfish, basa shrimp, dace and eel from China due to concerns about drug traces. Other food products which have been in the firing line include toothpaste manufactured by Cooldent, found to contain diethylene glycol which is toxic and potentially fatal and 5,300 lines of pet food. Other recent product alerts have related to exploding remote controlled aeroplanes, faulty oscillating tower fans and lawn trimmers where pieces could fly off during use creating dangerous projectiles.

The massive growth in media attention in this subject seems unjustified, bearing mind the huge growth in the volume of products now manufactured in China and sold in the US. For example, it is estimated that between 70 - 80% of all toys sold in the US originate in China, where the annual spend on this market is \$22 billion. It is not surprising that one or two rogue products slip through sophisticated manufacturing facilities which are often far superior to their European or US counterparts.

A widely held view amongst economists is that whipping up of public hysteria about substandard Chinese products is in fact a substitute for increasing trade barriers to prevent the collapse of the American manufacturing sector. In his recent book, *The Writing on the Wall*, Will Hutton says 'A formidable institutional apparatus is being constructed [in the USA] whose interest is to oppose the growth of Chinese imports'. Whether or not it is the growth of lobby groups that is fuelling the present media interest in the issue of product safety, what is certain is that both those who import from and manufacture in China are going to face an increasingly hostile and determined reception from UK regulators when their goods land on these shores.