

# BEING ENVIRONMENTALLY SAVVY



The potential consequences of ignoring environmental regulation have never been bigger, but a surprising number of companies don't fully understand the regulatory framework in which they operate. What can be done to improve the situation, and what steps should retail and consumer ("R&C") businesses be taking to ensure they are fully compliant?

Environmental offences can no longer be dismissed as minor inconveniences for businesses in the R&C market. Manufacturers, distributors, importers and retailers – often grouped together as 'producers' in environmental regulation - need to ensure they are fully aware of the obligations they face as an ignorance of such can lead to lost profits, criminal convictions and ever-increasing fines that could significantly impact a company's financial performance and reputation.

Given the amount of new legislation in the environmental sphere over the past decade and, not to mention the distractions of the recession and more recently Brexit, it's not hard to see why many businesses may have lost track of their responsibilities under the current regulatory framework. But with recent changes to the severity of fines that can be imposed for non-compliance, the situation is now reaching a critical point: businesses must comply, or risk substantial damage to their finances and their reputation. For R&C businesses, who often have complex and/or far reaching supply chains, this should be an area of increased focus.

## What are 'producer responsibilities'?

Some of the key areas of environmental regulation that R&C businesses need to be aware of, include:

### UK regulations

- ▶ WEEE (waste electrical and electronic equipment) Regulations – these impose obligations on manufacturers, importers, distributors and retailers of electrical and electronic equipment. Your specific obligations depend on your place in the supply chain but include: financing the collection, treatment, recovery and disposal of WEEE; ensuring products are correctly labelled; and, providing appropriate information to customers.
- ▶ Batteries Regulations – the Regulations impose similar obligations to those outlined in the WEEE Regulations, but the type of battery involved will affect the producer's obligations.
- ▶ Packaging Regulations – companies meeting the thresholds (annually handling 50 tonnes or more of packaging and a turnover of £2m or more) must recover and recycle specific percentages of packaging they 'handle' – this includes a variety of packaging such as that around products sold by retailers and packaging imported into the UK. Compliance is usually achieved via membership of a compliance scheme.

### EU regulations

- ▶ CLP (Classification, Labelling and Packaging of substances and mixtures) Regulation – this requires the vast majority of chemical substances and mixtures to be classified and then labelled appropriately, identifying the hazards associated with

them. Information must also be provided as to how to avoid those hazards and packaging must be compliant, including the use of child-resistant closures and tactile warnings. Obligations fall throughout the supply chain and apply to both hazardous and seemingly harmless substances. A wide range of products are caught by CLP from cleaning products to printer cartridges and scented items (including some toys).

- ▶ REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) Regulation – the aim of this Regulation is to provide a high level of protection for both the environment and human health. Manufacturers and importers have significant obligations in respect of the assessment of risks posed and the registration of substances (if there is no registration, substances must be removed from the market). However, REACH also provides for Restriction on the use of certain substances (e.g. nickel and lead) and others must be specifically authorised for a particular use in order to be lawfully used.

### What impact do these regulations have?

Each of these regulations imposes obligations throughout the supply chain. It is often assumed that the manufacturer of a product is the one who must ensure the environmental obligations are met. However, this is not the case: every actor in the supply chain, including importers, distributors and retailers, has some level of obligation.

Where a company, say, is importing a product into the UK from China, while the manufacturer has to comply with local regulations, the importer must check that product complies with REACH and CLP. The importer cannot just rely on the Chinese manufacturer's word and should verify test reports provided by the manufacturer (which may include the importer carrying out its own testing). A subsequent retailer of that product must also carry out its own due diligence to ensure compliance before placing that product on the EU market.

### What are the consequences for those falling foul of the regulations?

Failure to comply with the majority of environmental regulations constitutes a criminal offence – which can then result in a criminal conviction, a criminal sanction, and a damaging PR issue to manage. Furthermore, the penalties for environmental offences have significantly increased in recent years.

Previously, there were generally limits on the upper level of fines the courts could impose. However, those limits were removed for most environmental offences committed from March 2015 onwards. Alongside this, the Sentencing Council issued a Definitive Guideline which now applies to all defendants sentenced after 1 July 2014. The Courts are required to take into account factors including culpability, the level of harm caused and the financial position of the defendant when deciding on the level of fine to impose, as well as any aggravating or mitigating features of the offence.

The court must step back and check that the sentence to be imposed meets, in a fair way, the objectives of punishment and deterrence and also whether it ensures removal of any gain derived through the commission of the offence. It has been made very clear that the level of fines to be imposed must be “... *sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to improve regulatory compliance.*”

In a recent case, the Judge confirmed that, in some situations, fines will be sufficiently severe to have a significant impact on the defendant company's finances. While, 10 years ago, a company may have been given a nominal fine (e.g. £2,000) now the financial and reputational consequences are considerably higher with the Courts recently handing down a fine of over £1m.

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