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Issue 1

Nickel in jewellery

Guidance for anyone who supplies products intended to come into direct and prolonged contact with the skin and may contain nickel.

For example:

- earrings and other body piercing items
- necklaces, bracelets, chains, anklets and finger rings
- wrist watch cases, watch straps and tighteners
- rivet buttons, tighteners, rivets, zippers and metal marks obtained or intended to
- be used in garments
- belt buckles

What does the law say?

The Dangerous Substances and preparations (Nickel) (Safety) regulations 2005 state that the rate of nickel release from a post assembly must be less than 0.2 micrograms per square centimetre per week. The definition of a post assembly is the part of the item designed and manufactured for insertion into the wound, caused by piercing the human body, plus any faces that hold the piece in and against the wound.

Further, it is prohibited to supply any product that comes into direct and prolonged contact with the skin and has a rate of nickel release greater than 0.5 micrograms per square centimetre per week. Direct and prolonged contact means actually touching the skin under normal use, for continuous periods of time. A product may contain nickel in higher concentrations, but only where:

- they have a non-nickel coating, and
- the coating is sufficient to ensure that the rate of nickel released from parts in direct and prolonged contact with the skin is less than five micrograms per square centimetre per week for a minimum period of two years normal use.

Where the above regulations don't apply, for example for products sold second-hand, the General Product (Safety) Regulations 1994 apply. These require goods supplied to be safe.

What is required?

Anyone wishing to place items on the market for sale must recognise that they have a legal obligation to ensure that the items meet the requirements of the legislation. There is a defence available to the regulations known as the 'due diligence' defence. It is not unique to this area of law. To use the defence, a person must prove that he took 'all reasonable steps' and exercised 'all due diligence' to avoid an offence being committed. What would be required will depend on the particular circumstances, but sitting back and doing nothing is unlikely to be sufficient.

Taking reasonable steps is likely to involve setting up a system of control that has regard to the risks involved. Due diligence means ensuring the proper operation of the system and it should be kept under review and amended as necessary. Any defence is likely to fail where there was a reasonable step that could have been taken but was not.

The scale of your business operations will have a bearing on the systems that it will be considered reasonable for you to put in place. In some cases testing of products may be required, in others it may be sufficient to show that you purchased the items from reputable suppliers who had shown to you that the items complied with the legislation.

In all cases, it is advisable to assess the risk; identify the reasonable steps you could take to verify compliance; document the control system (to show the steps you have taken); maintain the system and to regularly review it. It is important to show that failures in the system have been acted upon to prevent similar occurrences.

Failure to comply

Failure to comply with the regulations is an offence under the Consumer Protection Act 1987.

Stock

Stock held before 20 January 2000 can be sold for an unlimited period to the consumer, provided that it does not contravene the General product safety Regulations 1994. Since 20 July 2001 only compliant products can be placed on the market.