

## To be used with the Obligations of Economic Operators Guidance document

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### Record of Amendments

Version	Date	Amendment	Section/page affected
1	20.11.09	First published	
2	08.03.10	New questions 8 and 9	
3	18.08.10	New questions 10, 11, 12 and 13 Minor format adjustments	
4	07.11.11	New question 14	
5	12.12.11	Modified question 5 to allow for other Operators (not just jobbers)	

### LEGAL NOTICE

This document contains guidance only.

It is intended to explain obligations and how to fulfil them. However readers are reminded that the text of the original regulation, directive or standard is the only authentic legal reference and that the information in this document does not constitute legal advice.

The British Toy and Hobby Association does not accept any liability with regard to the contents of this document.

## **1. Introduction**

The revised Toy Safety Directive (2009/48/EC) was adopted by the European Parliament on 18 December 2008 and the final text was formally adopted and published in the Official Journal of the European Union (OJ) on 30 June 2009. From this date, the overall timetable for implementation of the subject covered by this guidance document is July 2011

The revised directive now specifies the roles of manufacturers, importers and distributors, all of which now have at least some obligations. The traditional definitions and the associated responsibilities of these economic operators have fundamentally changed.

This document gives a list of frequently asked questions relating to the BTHA Obligations of Economic Operators Guidance document.

## **2. Questions**

***1. Is it considered adequate to gain assurance that documentation e.g. technical files and risk assessments are available using a signed letter declaration system? Is getting a letter from my suppliers committing to send technical documentation on request enough?***

In some cases yes, where you are dealing with a competent manufacturer who is able to demonstrate the existence and availability of this documentation.

It would not be considered adequate if you have not taken steps to assure yourself that the Manufacturer is actually correctly producing and retaining the required documentation and will actually be able to supply it. If you do not have this confidence you should consider holding the technical documentation yourself. You should be mindful of the risk of not being able to get access to the required technical documentation if a manufacturer should close.

Importers and Manufacturers will be in breach of the TSD requirements if the required documentation is not available.

Expert help may be required should you not have the in house expertise to do this yourself.

***2. What do I do if a manufacturer or factory closes or goes out of business and they are holding the technical documentation?***

Manufacturers and Importers still have the obligation to ensure that it is available. If you have any doubts it would be prudent to obtain and hold the technical documentation yourself.

***3. The guidance document states that documentation should be retained form 10 years after last placing the toy on the market but the directive states that such records should only be kept for 10 years after first placing the toy on the market. Why is there a difference?***

The BTHA consider is prudent to keep the records for 10 years after last placing the toy on the market so that they will be available in the event of a challenge. It may be the case that the toy is sold for more than 10 years an in this case if documents are only kept for the 10 years after first placing on the market, you would be marketing a toy without any technical files.

***4. There are two business models for FOB, one with the Manufacturer as an EU entity and one with the Manufacturer outside the EU. The Directive does not appear to make this distinction?***

The *Draft* Commission Guidance Document on Traceability, instructions, warnings and CE marking. (CEN/TC 52 N 1340 ) October 2009 states:

If the manufacturer is within the Community (a company located in the Community presents itself as being the manufacturer by allowing to having put on their trade mark, address,...) although the products are manufactured outside the Community, they are considered to be the manufacturer, who places the toys on the EU market - even if they do not import in reality - it can be done by another company on their behalf. In this case there is no importer in the meaning of the importer's definition and it is sufficient to put only the manufacturer's address.

#### **5. What are the obligations of Operators who change products already placed on the market**

Examples of Operators who may do this are "jobbers", retailers etc.

(a) If an Operator takes stock from within the EU for distribution in the EU and does not change the product in a way that may affect compliance then they are classed as and adopt the obligations of a Distributor.

**Note:** If they change or modify the product in anyway that may affect compliance then they are classed as, and take on the obligations of a Manufacturer.

It is not considered that obscuring a brand name and address is affecting compliance, however changing the age grade may.

(b) If an Operator takes stock from outside the EU without alteration they are considered to be the importer and adopt the obligations of importer.

(c) If the Operator takes stock from outside the EU and changes it in a way that will affect compliance (e.g changing the age grade etc) they are then considered to be the manufacturer.

Jobbers are advised that they should assess their actions on a case by case basis as there is a risk that their actions may change their operator type and therefore their obligations.

#### **6. What do I do if I don't have the expertise or capability to carry out my new obligations?**

Some Economic Operators in the supply chain (including the factory) may already have much of the required information and it is not necessary to duplicate this where it exists and is correct. It is permissible to use external expertise to help you assess and carry out your obligations however the responsibility for the obligations remain yours.

#### **7. Where an importer or distributor modifies the product what changes are considered to affect compliance (Table 1 conditional note 2)? *Also see questions 9, 10, 11***

It is advised that each situation requires review on a case by case basis. If in doubt independent expert advice should be sought. The following are examples only.

- *Change in age grading*

In most cases this will affect compliance especially in the younger age groupings. Recommended age grade changes in the older age ranges may not necessarily affect compliance, e.g a grade change from age 11 to 12 for example.

- *Packaging changes*

Could affect compliance if instructions, graphics, dimensions and prominence of warnings are changed. Protection of the product within pack must not be affected.

- *Composing assortments out of existing toys*

Could affect compliance if age ranges are not compatible. Products are likely to be packed differently therefore protection of product must not be affected

- *New colour ways*

Could affect chemical compliance.

- *Translation, modification and addition of warnings and instructions*

Could affect compliance if not done correctly.

**8. Some distributors of products add their name and address to products for customer service contacts. Does adding this detail change their obligations e.g. do they become the Importer or the Manufacturer?**

No. Where the Importer or Manufacturer is already established in the EU and where this is an additional customer service option only the obligations remain with the original Economic Operator. Formal agreement of this may be desirable.

**9. Where an EO requests changes to a product and the Manufacturer assesses the changes and confirms that compliance has not been affected (e.g safety and compliance assessments etc) does the original Manufacturer retain the Manufacturer obligations?**

Yes. Formal agreement of this may be desirable.

**10. During the process of ensuring all compliance requirements have been met, an importer may point out additional standards that may apply to the toy or that are unique in a particular market of sale. In these instances does this requirement make the importer liable for the obligations of a manufacturer?**

No, this should be considered as part of the Importer's obligation to "ensure that it is done". Companies may want to review the wording of such requests to ensure this is understood. It should be noted that this guidance only relates to the requirements of the toys safety directive based on the definitions within. Other, non-harmonised, legal instruments may have different applicability and definitions.

**11. An Importer may, through customer complaints or experience, suggest changes in the product to improve the quality, durability or appearance of a product. Would this make them liable for the obligations of a Manufacturer?**

No. In our opinion this sort of feedback should always be monitored by manufacturers and they should always consider improving their products. This should be considered as part of the obligations of Importers with regards to complaints monitoring etc. Companies may want to review the wording of such requests to ensure this is understood.

**12. If a company buys a promotional toy which carries their company logo are they liable for the obligations of a manufacturer?**

If the product and any packaging only carries the companies logo then this is considered to be own-brand product (see table 1 Row 9). This does give them the obligations of the Manufacturer.

Brand logos appearing on products do not necessarily mean that the brand owner is the Manufacturer. If the product is clearly marked with the Manufacturer name and address (different to the brand owner) then it is reasonable to assume that responsibility still stays with the Manufacturer. All obligations are required to be carried out and it would be advisable for both parties in this instance to ensure that the roles and responsibilities are clarified as the buyer may still have other obligations (i.e. as an importer).

**13. What is the difference between "Verify" and "Ensure"?**

These terms are intentional and are related to the fact that the responsibilities and obligations of Distributors and Importers are not equal. The Importer has to "place only compliant toys on the market" whereas the Distributor has to "Take due Care"

*Ensure* means to make certain that the obligation had been fulfilled.

*Verify* means to check that the correct information exists.

**14. I supply promotional items to Museums, theme parks and similar customers. The products are supplied in the customer's own packaging design and therefore they would normally take on responsibility as the manufacturer. However these companies rely on us to meet all the obligations under the Directive and have no skills to meet the obligations required of manufacturers. Can I meet the obligations of the manufacturer on their behalf?**

Yes, it would seem inappropriate for such institutions or companies to try and meet the TSD obligations. We would suggest that the packaging and/or product is marked, as required by the Directive, with your address as the manufacturer (it is suggested you use the words "Manufactured by") and that this agreement is confirmed in writing with your customer. This is in the spirit of the Directive in our opinion, there is a clear EU entity that enforcement can contact and that entity has met the obligations of a manufacturer.