



Unsafe Goods (Hot Water Bottles) Permanent Prohibition Notice 2016

Request for feedback on the proposed permanent prohibition on the importation and supply of hot water bottles.

September 2016

Purpose

The Ministry of Business, Innovation and Employment has a role under the Fair Trading Act 1986 (the Act) to protect New Zealand consumers from goods that will or may cause injury. The Act provides the Minister of Commerce and Consumer Affairs, Hon Paul Goldsmith, with a range of powers to control the import, sale or supply of goods that pose a risk of injury.

One provision is for an Unsafe Goods Notice under section 31 of the Act, which effectively bans specific consumer products from import, sale or supply in New Zealand. An initial Unsafe Goods Notice lasts for a period of up to 18 months and following this time period, can either lapse or be made permanent.

Prior to recommending the permanency of a Notice, the Ministry, on behalf of the Minister, is required to consult with interested parties to ensure the potential effects on business are considered throughout the process.

This paper has been issued to encourage consumers, retailers and any other interested parties to consider the issues relating to the safety of rubber and PVC hot water bottles. This will allow the Minister to receive sound advice and to take into account the views of those who could be potentially affected.

Unsafe Goods (Hot Water Bottles) Notice

The current temporary Notice in relation to hot water bottles, '*Unsafe Goods (Hot Water Bottles) Notice 2015*' was issued on 18 June 2015 and will expire in December 2016. This Notice references three versions of the British standard for hot water bottles:

- *BS: 1970 2012 Hot water bottles manufactured from rubber and PVC – Specification.*
- *BS: 1970 2006 Hot water bottles manufactured from rubber and PVC – Specification.*
- *BS: 1970 2001 Hot water bottles manufactured from rubber and PVC – Specification.*

An Unsafe Goods Notice can be made under section 31 of the Fair Trading Act 1986, with the Minister of Commerce and Consumer Affairs declaring that the goods in question are unsafe, where it appears that they will or may cause injury to any person. Following the issuance of a Notice, these goods are removed from the New Zealand market which thereby reduces and prevents the potential for injury.

Once made, a Notice stays in force for a period of 18 months and prohibits the supply of the goods to which it applies. The initial 18 month period allows the Minister to consider whether there is further need for either an indefinite ban or a product safety standard.

An Unsafe Goods Notice can reference a product standard as a way of defining the class of goods prohibited for supply under the Notice. The Ministry does not automatically adopt new versions of a mandated standard, as these do not always reflect changes in safety features, and in some circumstances, revised standards can reduce, relax safety, or remove requirements. Before a new standard is incorporated into legislation, the contents need to be considered by Ministry officials to assess their adequacy in setting the benchmark for safety. This is done through using technical experts, who provide feedback to officials on the potential affect a revised standard may have. This feedback is taken into consideration prior to any recommendations being made.

Background

In August 2004, the Ministry of Consumer Affairs issued a media alert to ascertain the magnitude of problems associated with hot water bottle use. This followed a cluster of ten complaints between May and July 2004 with rubber hot water bottles splitting at the neck, causing injury.

Following the media alert, the Ministry received a further 150 complaints in a 24 hour period, which included hospitalisations, doctors' visits and time off work. Similarly in Australia, 146 injuries were recorded by Victorian emergency departments over a four year period, including the death of an elderly person.

In the United Kingdom, 1,800 incidents were reported as resulting in hospital admittance in 2011.

Problems identified with these rubber hot water bottles included splitting at the neck, splitting of side seams or leaking stoppers.

Following the release of the 2012 British standard, the Ministry engaged a University materials expert who examined the changes seen, in particular focusing on those relating to the PVC compound referred to.

Feedback was that;

- Elongation at break can be used as an index to predict the behaviour of materials
- The change in standard reduces the 'stretchiness' of PVC
- Materials with greater 'stretchiness' are more prone to deformation. In this case, potential overfilling of a hot water bottle and therefore increases the potential for failure
- The greater the stretch deformation, the more likely the material is to degrade and result in premature failure.

Conversations with sources such as the Royal Society for Prevention of Accidents, show that the changes to British Standard 1970:2012 have not had any adverse effect in the safety of hot water bottles in the United Kingdom.

The Problem

Prior to the 2015 Unsafe Goods Notice being published, Ministry officials were notified by officials from the New Zealand Customs Service that a number of consignments of non-compliant hot water bottles had been intercepted and held by Customs. These hot water bottles were deemed to be non-compliant because they had been made and tested to the 2012 British Standard that was not recognised in the Unsafe Goods (Hot Water Bottle) Notice 2008.

The New Zealand Customs Service enforces these Notices at the border under section 33 of the Fair Trading Act, which prohibits the importation of all goods the supply of which would constitute a contravention of Part 3 of the Act (including pursuant to Unfair Goods Notices.) Unsafe Goods Notice are also enforced in the retail sphere by the Commerce Commission.

Customs has also identified other issues relating to the documentation required to support the import clearance of hot water bottle consignments. These issues include missing or excluded mandatory tests, and test reports not being issued within the laboratory's scope of accreditation. The examples brought to our attention indicate that the current accreditation

requirements are not clearly understood or applied by industry. Inadequacy of the testing being conducted indicates that the industry is not undertaking due diligence prior to importation.

Issues have also been identified with the current border declaration requirements and their applicability and enforceability. The current unsafe goods notice requires a statutory declaration to be made in accordance with the Oaths and Declarations Act 1957. This is not reflected in the current declaration template provided and imposes an undue burden on importers to have the declarations witnessed by a Justice of the Peace (or authorised alternative).

Questions have also been raised about whether the validity period of test certificates should be linked to the product being imported. At present a valid test certificate could be used as evidence of compliance for hot water bottles that are say 5 years old and have been stored under poor conditions. This can result in the importation and sale of potentially unsafe product. It has been suggested that the hot water bottles being imported must have been tested and be covered by a valid test certificate. In practice this would mean that a 5 year old stock of hot water bottles would need to be tested to show that they still comply with the safety requirements and couldn't come in under a test report prepared for a newer batch.

Options

Option 1 – Indefinitely prohibit the supply of hot water bottles that do not meet one of the required standards by issuing a permanent Unsafe Goods Notice – continuance of status quo

Maintaining the status quo would be to indefinitely prohibit the supply of those hot water bottles currently prohibited under the 2015 Unsafe Goods Notice, prior to the temporary notice expiring in December 2016.

A ban on the supply of a product is seen as a significant regulatory intervention, often used as a last resort. Where this is adopted, it must be clearly established that the product itself is the primary cause of injury and that any other mitigating circumstances have only a minor impact on the end result. As mentioned previously, there have been a significant number of injuries caused by malfunctioning hot water bottles.

At the time of the initial notice, there was a slight increase in the price of hot water bottles to cover the testing that was required to meet the requirements of the Unsafe Goods Notice. The Ministry believes that the market has become conditioned to having this cost built in, and such; there is little negative impact on the marketplace.

Option 2 - Indefinitely prohibit the supply of hot water bottles that do not meet one of the required standards by issuing a permanent Unsafe Goods Notice, but with some changes (continue protections with updates to address the issues identified).

This option would maintain controls on a product that has been linked to injuries as outlined above. It would also provide the opportunity to clarify the requirements and make them more explicit. Option 2 would make it easier for businesses to comply and enable more streamlined application at the border.

Option 3 – Allowing the temporary Unsafe Goods Notice to lapse

Allowing the temporary Unsafe Goods Notice to lapse would mean that there would be no control over what hot water bottles are being imported and sold in the New Zealand marketplace. This could be seen as the easier option for what is often seen as a simple, low risk household product. However, the market has come to assume that hot water bottles are always safe to use, with little knowledge of the associated risks.

Ministry officials believe that should the temporary Unsafe Goods Notice lapse, there is a chance that hot water bottles that would otherwise be deemed unsafe, which have not been tested to an appropriate safety standard, could be imported into the country with a potentially high risk of injury from malfunction.

As previously mentioned, there is an assumption in the marketplace that hot water bottles are safe and to remove the required testing, will remove this safety net without consumers being made aware. There would need to be an extensive education campaign as to how to identify markers on the product that deem what standard the product has been tested to, this would be one of the few ways consumers would be able to check the quality of the product they are purchasing.

This is not the preferred option as it places a significant onus on the consumer to know how to correctly identify products that are tested to the most recent standard, or indeed have been tested against a safety standard in the first place. The original issuance of the Unsafe Goods Notice was done because there were incidents of significant harm in New Zealand and overseas, including a death in Australia.

The preferred option

Option 2, to continue the protections and resolve the identified issues is the preferred course of action.

It is proposed that changes in the following areas be made to help provide clarity in the requirements and facilitate the supply of safe hot water bottles into New Zealand.

Testing and Certification Requirements

To provide clarity in the test certification requirements it is proposed that the new Unsafe Goods Notice makes it more explicit what acceptable documentation is and that test certificates must be issued under a laboratories ISO 17025 scope of accreditation.

This will remove ambiguity by providing greater clarity around the ISO 17025 accreditation requirements and reduce the potential for documentation issues at the border which could decrease delays in importing hot water bottle consignments.

In addition to clarifying the requirements, it is expected that the Ministry will provide a template document that will help suppliers source and import compliant product with the necessary compliance documentation. This will likely include examples of what certification to request, check sheets, and potentially a template for the test report itself.

Declaration requirements

As previously noted, the current declaration requirements are not functioning as intended and add an unnecessary level of burden on suppliers. It is proposed to replace the current statutory declaration requirement with a supplier “statement of conformity”.

The proposed statement of conformity would be similar to the current requirements but would make it explicit that the statement is legally binding and enforceable by the New Zealand Customs Service if found to be false. The statement would confirm the supplier had undertaken its due-diligence to ensure that all allocable tests had been conducted under the laboratory accreditation requirements and that certificate covered the hot water bottles being imported.

Linking test certificates to date of manufacture

As indicated in the problems section above, the current requirements do not link the validity of the test certificate to the manufacture date of the product. This means it is possible to use a valid test certificate to support the importation of a product that was manufactured, say, five years ago. This has given rise to questions and concerns about the impact storage may have on hot water bottles and that deterioration could adversely affect the safety of the product. If these concerns materialise it undermines the validity of the testing regime in place.

The Ministry is seeking feedback on the impact storage can have on hot water bottle safety and the implications of linking the test certificate issue date to the date of manufacture of the product being imported.

If introduced it would mean that test certificates would only apply to goods manufactured within the 36 month window of validity for the test certificate. To account for potential hold ups during manufacture and testing, a grace period of two months would also be provided at the beginning of the test report validity period. The Ministry sees the grace period as a positive step in aiding business to comply with the Unsafe Goods Notice, through allowing this flexibility.

Discussion Points

Submissions should consider the following issues that have been raised throughout the document:

- Is the current temporary Unsafe Goods (Hot Water Bottles) Notice 2015 fit for purpose?
- Is there still a need for an Unsafe Goods Notice, or is the market acting appropriately?
- Is it still necessary to have three versions of the British Standard *BS 1970* for Hot water bottles specified in the Notice?
- Does there need to be more specific guidance in the Notice to outline the testing and evidential requirements?
- Should the testing certificates be linked to the date of manufacture?
 - If so, should a grace period be included and what time period is required / acceptable?
- Any further relevant issues in regard to hot water bottle safety.

Annex One: Exposure Draft



**Ministry of Business,
Innovation & Employment**

Unsafe Goods (Hot Water Bottles) Permanent Prohibition Notice 2016

This notice is issued pursuant to section 31 of the Fair Trading Act 1986 and relates to the prohibition of supply of a certain class of rubber and PVC hot water bottles.

Issued at Wellington this day of 2016.

Hon Paul Goldsmith

Minister of Commerce and Consumer Affairs

Exposure draft only

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Notice

1 Title

This notice is the Unsafe Goods (Hot Water Bottles) Prohibition Notice 2016.

2 Commencement

- (1) This notice comes into force on the date of publication in the *New Zealand Gazette*.
- (2) This notice may be amended or revoked by notice in the *New Zealand Gazette*.

3 Application

This notice applies to rubber and polyvinyl chloride (PVC) hot water bottles supplied, or offered for supply, or advertised for supply, otherwise than in trade.

4 Certain hot water bottles declared to be unsafe goods

- (1) Rubber and PVC hot water bottles that do not comply with subclause (2) are unsafe goods.
- (2) Rubber and PVC hot water bottles must meet one of the following standards:
 - a. BS1970:2006 *Hot water bottles manufactured from rubber and PVC – specification* as amended by Schedule 1 of this Notice; or
 - b. BS1970:2012 *Hot water bottles manufactured from rubber and PVC – specification*, as amended by Schedule 1 of this Notice.

5 Acceptable documentation

For the purposes of showing compliance with this notice, acceptable documentation includes those documents described in Schedule 2.

6 Revocation

The Unsafe Goods (Hot Water Bottles) Notice 2015 is revoked.

Schedule 1

- (1) For the purposes of this notice, Schedule 1 modifies the requirements set out in BS1970:2006 *Hot water bottles manufactured from rubber and PVC – specification* accordingly:
 - a. Clause 8.1: omit "...the identification of the European manufacturer, or the UK distributor for bottles manufactured outside the European Union, and..."
- (2) For the purposes of this notice, Schedule 1 modifies the requirements set out in BS1970:2012 *Hot water bottles manufactured from rubber and PVC – specification* accordingly:
 - a. Clause 8.1: omit "...the identification of the European manufacturer, or the UK distributor for bottles manufactured outside the European Union, and..."

Schedule 2

- (1) For the purposes of showing compliance with this notice, acceptable documentation includes the following:
 - a. a certificate of compliance with BS1970:2006 *Hot water bottles manufactured from rubber and PVC - specification*, or BS 1970:2012 *Hot water bottles manufactured from rubber and PVC - specification*, issued by an ISO 17025 accredited laboratory under an ISO 17025 scope of accreditation, no more than 36 months prior to the date of import, that sets out:
 - i. the name and address of the New Zealand importer, or the manufacturer; and
 - ii. the make, model, and a photograph of the hot water bottles; and
 - iii. the date of the test; and
 - iv. the full results of the test; and

- b. a statement that the hot water bottles comply with BS1970:2006 *Hot water bottles manufactured from rubber and PVC - specification* or BS1970:2012 *Hot water bottles manufactured from rubber and PVC - specification*, no more than 36 months prior to the date of import, that sets out:
- i. the name and address of the New Zealand supplier; and
 - ii. the make, model, and a photograph of the hot water bottles; and
 - iii. the date of the statement; and
 - iv. the statement that: "The statement above is true to the best of my knowledge and belief. I am aware that a false statement may be a breach of the Fair Trading Act 1986 and could lead to a penalty of up to \$200,000.00 for an individual and \$600,000.00 for a company"; and
 - v. the signature of the supplier.

Explanatory Note

This note is not part of the notice but is for explanatory purposes only.

This notice declares rubber and PVC hot water bottles supplied otherwise than in trade, that do not comply with the standards set out in clause 4(2) to be unsafe goods under section 31 of the Fair Trading Act 1986 ("the Act"). It is an offence under the Act to supply, or offer to supply, or advertise to supply, goods which are declared to be unsafe goods.

This notice also revokes the Unsafe Goods (Hot Water Bottles) Notice 2015.

New Zealand Customs Service requirements

Section 33 of the Act prohibits the importation of goods into New Zealand that have been declared unsafe under Part 3. This section also deems unsafe goods to be prohibited from import under section 54 of the Customs and Excise Act 1996.

All persons bringing hot water bottles to which this notice applies into New Zealand must comply with the requirements of Customs.

Commerce Commission requirements

Section 31(5) of the Act prohibits the supply, or offer to supply, or advertisement to supply goods in respect of which there is in force an unsafe goods notice. All persons supplying, or offering to supply, or advertising to supply hot water bottles to which this notice applies must comply with the requirements of the Commerce Commission.