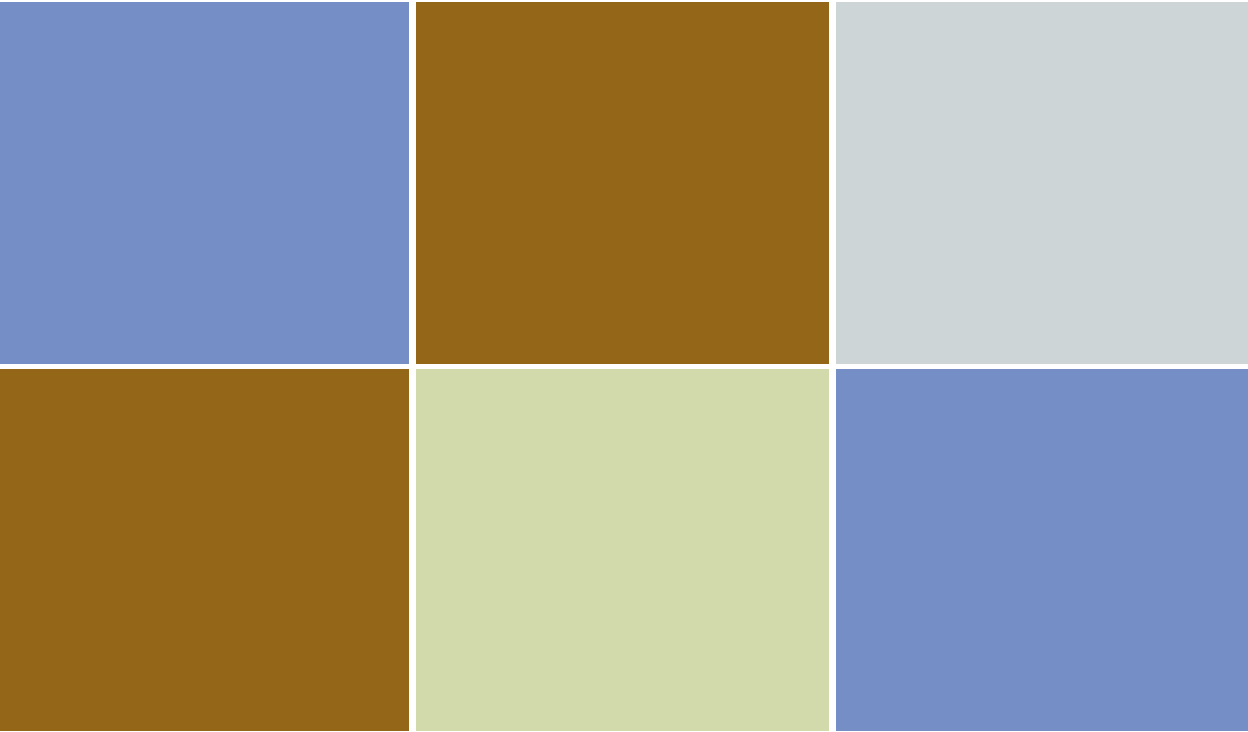


Product Safety Act



Unofficial translation from Swedish into English of
Produktsäkerhetslag (2004:451)



REGERINGSKANSLIET

Government Offices
Sweden

Swedish Code of Statutes No: 2004:451

Responsible Ministry: Ministry of Agriculture, Food and Consumer Affairs

Promulgated: 27 May 2004

Date of entry into force: 1 July 2004

Article number: Jo 05.011

For further copies, please visit www.sweden.gov.se/agriculture

Objective and scope of the Act

Section 1

The objective of this Act is to ensure that goods and services that are provided to consumers do not cause personal injury.

Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety¹ is implemented through this Act.

Section 2

This Act applies to goods and services that are provided commercially and as regards goods that are supplied through public activities. It is a precondition that the goods or services are intended for consumers or likely to be used by consumers.

The provisions of this Act concerning tradesmen and manufacturers also apply to a person who through public activities supplies such goods as referred to in the first paragraph.

Section 3

This Act does not apply to

1. second-hand goods supplied as antiques, and
2. goods to be repaired or reconditioned before they can be put into use, provided the tradesman clearly informs the consumer that it is such goods that are involved.

Section 4

The provisions contained in Sections 7 to 9, 11 and 12 shall not be applied to goods as regards risks that are subject to specific safety requirements contained in any other enactment or in an EC regulation.

The provisions contained in Sections 13 to 18 and 20 to 45 shall not be applied to goods to the extent that some other enactment implementing an EC directive or in an EC regulation contains provisions governing the same matter and which have the same objective.

Provisions contained in any other enactment than as referred to in the second paragraph shall be applied to goods instead of Sections 13 to 18 or 20 to 45, to the extent that the provisions govern the same matter and have the same objective and also satisfy the corresponding requirements under this Act.

Section 5

The provisions contained in Sections 7, 8, 10 and 12 shall not be applied to services as regards risks that are covered by specific safety requirements in any other enactment.

¹Official Journal L 001, 15/1/2002, p.4-17 (Celex32001L0095).

The provisions contained in Sections 13, 14, 19, 22 to 27, 30 to 35 and 37 to 45 shall not be applied to services to the extent that some other enactment contains provisions governing the same matter and which have the same objective.

Definitions

Section 6

In this Act

1. *consumer*: means a natural person who primarily acts for purposes falling outside business operations,
2. *tradesman*: means a natural or legal person who acts for purposes relating to their own business operation,
3. *manufacturer*:
 - a) means a tradesman who manufactures goods and is established within the European Economic Area (EEA),
 - b) a tradesman who, by affixing to the goods his name, trademark or other distinctive mark, represents himself to be the party who has manufactured the goods,
 - c) a tradesman who reconditions goods,
 - d) the representative of such a tradesman as referred to in a to c, provided the tradesman is not established within the EEA,
 - e) a tradesman who imports goods to the EEA, provided that such a representative as referred to in d is not located within the Area,
 - f) other tradesmen who are active within the distribution chain, provided their activities may affect the safety of goods,
4. *distributor*: means a tradesman who is active within the distribution chain and whose activities do not affect the safety of goods,
5. *supply goods*: means to transfer or offer goods, or grant the right to use goods.

General safety requirement

Safe goods and services

Section 7

Goods and services that are provided by tradesmen shall be safe.

Section 8

Goods or a service are safe if, upon normal or reasonably foreseeable use and length of life, they do not entail any risk to personal health or safety or only a

low risk. However, this risk must be acceptable considering how the goods or services are used and shall be consistent with a high level of protection for the health and safety of persons.

Goods or a service are dangerous if they do not meet the requirements for safe goods or services contained in the first paragraph.

Section 9

When assessing whether a risk entailed by goods should be deemed to be acceptable and consistent with a high level of protection, particular regard shall be taken to

1. the characteristics of goods, such as their composition and packaging and so instructions for assembly, installation and maintenance,
2. other information that is provided about the goods through labelling, warnings, user instructions, instructions for their disposal or in any other way,
3. the goods' effect on other goods, if it may be assumed that they will be used together with such,
4. risks that the goods may present for certain categories of consumers, in particular children and the elderly.

Section 10

When assessing whether a risk entailed by a service should be deemed to be acceptable and consistent with a high level of protection, particular regard shall be taken to

1. how the service is performed,
2. safety information provided by the tradesman,
3. the effect of the service on goods, provided it can be assumed that the safety of goods will be affected by how the service is performed, and
4. risks that the service may present for certain categories of consumers, in particular children and the elderly.

Presumption that goods are safe

Section 11

Goods that satisfy a Swedish standard that transform a European standard shall be deemed safe as regards such risks as are covered by the standard, provided the Commission of the European Communities in accordance with Article 4 of Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety has published a reference to the standard in the Official Journal of the European Union.

The authority appointed by the Government shall make public announcements referring to such standards.

Other criteria for assessing the safety of goods and services

Section 12

When assessing whether goods or services are safe, in other cases than as referred to in Section 11, particular regard shall be taken to

1. other Swedish standards than those referred to in Section 11,
2. recommendations by the Commission of the European Communities with guidelines for assessing safety of goods or services,
3. good practice for product safety in the sector concerned,
4. the current level of scientific and technical knowledge, and
5. the level of protection that the consumer may reasonably expect.

Other obligations of tradesmen

Safety information

Section 13

A manufacturer who supplies goods or a tradesman who provides a service shall provide such safety information as is necessary for a consumer to be able to assess the risks of the goods or service and protect himself against these risks.

Safety information need not be provided if the risks are manifest.

The Government or the authority appointed by the Government may issue regulations concerning how the safety information shall be provided.

Warning information

Section 14

A manufacturer who has supplied dangerous goods or a tradesman who has provided a dangerous service shall without delay provide information about the risk of injury and regarding how it can be avoided, if it is necessary to prevent the occurrence of an accident. The information shall be provided to the persons possessing the goods or for whom the service has been performed or who possess the property to which the service refers.

The information shall be provided in such a way that it may be assumed to come to the knowledge of the relevant persons, through direct notifications, advertisements or other presentations that the tradesman uses in his marketing. The information shall be provided to the extent that is reasonable having regard to the need to prevent the occurrence of an accident.

Recall

Section 15

A manufacturer who has supplied dangerous goods shall without delay recall the goods from those distributors who possess them, if it is necessary to prevent the occurrence of an accident. If this measure is insufficient to prevent the occurrence of an accident, the manufacturer shall without delay recall the goods from those consumers who possess them.

The recall shall take place to the extent that is reasonable having regard to the need to prevent the occurrence of an accident.

Section 16

A recall shall be made through the manufacturer offering on certain conditions to

1. remedy the fault to which the risk of injury is referable (rectification),
2. accept return of the goods and supply other fault-free goods of the same or corresponding kind (exchange), or
3. accept return of the goods and pay compensation for them (return).

A manufacturer who recalls goods shall at the same time give notice of the offer and conditions for the offer and also provide information about the risk of injury. Section 14, second paragraph concerning warning information shall apply to the notification.

Section 17

The conditions for the recall shall be determined so that the offer may be expected to be acceptable to the persons in possession. The conditions shall mean that the offer shall be performed within reasonable time and without material cost or inconvenience for the persons who utilise it.

In the case of return, compensation for the goods returned shall correspond to the cost for reacquisition of new goods of the same or corresponding kind. If there are special reasons for this, a reduction may be made from the compensation for return regarding the benefit that the person possessing the goods has had.

Section 18

If the goods are particularly dangerous, a manufacturer shall without delay arrange the destruction or in another way render harmless goods that have been accepted in return in conjunction with exchange or return.

Section 19

A tradesman who has performed a service that is dangerous shall without delay recall the service from those for whom the service has been performed, if other

measures are not sufficient to prevent the occurrence of an accident. The same applies in regard to the persons who possess property to which the service was referable.

The recall shall take place to the extent that it is reasonable having regard to the need to prevent the occurrence of an accident and shall mean that the tradesman offers on certain conditions to

1. himself rectify the fault to which the risk of injury is referable, or
2. pay compensation so that the fault may be rectified through someone else.

Compensation shall also cover the cost of reinstating the property to which the service is referable to its original condition.

In the case of recall in accordance with the first paragraph, Section 16, second paragraph and Section 17, first paragraph shall apply.

Measures and cooperation to prevent injury

Section 20

Manufacturers shall conduct preventive product safety work with the aim of learning about the risks of injury with the goods that they supply or have supplied.

Manufacturers shall with this purpose

1. label goods or their packaging with the manufacturer's name and address and with a reference to the goods or the consignment of goods to which they belong, unless such labelling is manifestly unnecessary, and
2. examine and keep records of complaints received relating to risks of injury.

Section 21

Distributors shall, as regard goods that they supply or have supplied, contribute to manufacturers being able to satisfy their obligations under this Act.

Distributors shall

1. without delay pass on information about the risks of injury from the goods to the manufacturer, unless it is manifestly unnecessary, and
2. preserve such documentation as is necessary to trace the origin of the goods.

Section 22

Tradesmen are liable to provide information and cooperate with each other and with the supervisory authority to eliminate such risks as are related to goods or a service that they provide or have provided.

The Government or the authority appointed by the Government may issue regulations concerning the procedure for cooperation between tradesmen and the supervisory authority.

Notification obligation

Section 23

A tradesman who becomes aware that goods or a service that they provide or have provided are dangerous shall immediately notify the supervisory authority about this and about the measures that have been implemented to prevent the occurrence of an accident. However, the supervisory authority does not need to be notified if it is manifestly clear that this would be of no importance.

The Government or the authority appointed by the Government may issue regulations concerning exemptions from the first paragraph, first sentence, for those cases where a notification would be of no significance for the supervisory authority's injury prevention work.

Supervision

Supervisory authorities

Section 24

The supervision shall be exercised by the authority or authorities appointed by the Government.

Section 25

The supervisory authorities shall exercise efficient supervision and thereby ensure compliance with this Act and the regulations that have been made in accordance with the Act.

Powers in conjunction with supervision

Section 26

The supervisory authority may order a tradesman who provides or has provided goods or services to

1. express views and provide the information necessary in a matter concerning compliance with this Act, and
2. provide the documents, samples of goods and the like that may be of importance for the investigation.

For the supervision, the supervisory authority is entitled to obtain access to areas, premises and other spaces where goods are dealt with, though not dwellings.

The police authority shall provide the assistance necessary for the supervision.

Orders and prohibitions

Section 27

The supervisory authority may issue the orders and prohibitions required in an individual case to ensure compliance with this Act and regulations that have been made in accordance with the Act.

An order or prohibition may be issued even if goods are deemed to be safe in accordance with Section 11 or goods or a service satisfy such criteria as referred to in Section 12, if it transpires that the goods or the service are nonetheless dangerous.

Special provisions concerning powers for the supervisory authorities to intervene in relation to dangerous goods that are imported from third countries are contained in Council Regulation (EEC) No 339/93 of 8 February 1993 on checks for conformity with the rules on product safety in the case of products imported from third countries².

Section 28

The supervisory authority may decide that goods may not be supplied or displayed until further notice, if it may be assumed that the goods are dangerous. The decision may not apply for a longer period than is necessary to conduct the checks and made the assessments necessary.

Section 29

The supervisory authority may prohibit a tradesman from exporting goods to another country within the European Economic Area or to export the goods, if they are particularly dangerous.

Section 30

An order or prohibition in accordance with Sections 27 to 29 may be issued to every tradesman who provides, has provided, deals with or has dealt with dangerous goods or services.

If the preconditions apply for the issue of an order against several tradesmen, the supervisory authority may direct the order against one or more of them. When so doing, particular regard shall be taken to

1. who has the greatest capacity to satisfy the purpose with the order,
2. who it was that first introduced the goods or service onto the Swedish market, and
3. what effect the order will have for the tradesman.

²Official Journal L 040, 17/2/1993p. 1-4 (Celex 31993R0339).

Default fine

Section 31

An order or prohibition in accordance with Sections 26 to 29 shall be made subject to a default fine, unless it is for special reasons unnecessary.

Voluntary measures

Section 32

If measures must be implemented to counteract the goods or a service causing personal injury, the supervisory authority shall initiate negotiations with the tradesman with the aim that the tradesman will voluntarily assume responsibility for implementing the necessary measures. However, this does not apply if the matter is urgent or the circumstances otherwise speak against the initiation of negotiations.

Warning information by the supervisory authority

Section 33

If an order concerning warning information or recall cannot be issued to someone who can implement the measure, the supervisory authority shall provide warning information to the extent necessary to prevent personal injury.

Compensation

Section 34

A tradesman is entitled to compensation from the supervisory authority for samples of goods and the like that are provided in accordance with the Act, if there are special reasons for compensation.

The Government or the authority appointed by the Government may issue regulations concerning the obligation of a tradesman who shall provide samples of goods and the like to compensate the supervisory authority for costs of taking samples and examination of samples when the goods, following such examination, transpire to be dangerous.

Duty of confidentiality

Section 35

A person who has dealt with a matter relating to supervision in accordance with this Act may not without authorisation disclose or utilise that which such a party has learned about anyone's business or operational situation.

In public operations, the provisions contained in the Secrecy Act (1980:100) shall apply instead.

Regulations concerning prohibition

Section 36

The Government may make regulations concerning prohibition against supplying and exporting a certain type of goods, if the goods entail a serious risk for the health and safety of consumers.

Sanction charges

Preconditions for a charge

Section 37

A tradesman shall be ordered to pay a sanction charge if the tradesman or someone who acts on behalf of the tradesman intentionally or by neglect has breached Section 7, Sections 13 to 19, Section 20, second paragraph, Section 21, second paragraph or Section 23, or regulations that have been made in accordance with Section 36.

The charge belongs to the State.

Section 38

A sanction charge may not be imposed on anyone for an infringement of a prohibition or a failure to comply with an order that has been issued subject to a default fine in accordance with this Act.

Where and by whom an application may be made

Section 39

Questions concerning the imposition of a sanction charge in accordance with Section 37 shall be considered by a county administrative court following an application by the supervisory authority. The application shall be made at the county administrative court within whose court district the supervisory authority is located.

Amount of the charge

Section 40

The sanction charge shall be determined to be at least five thousand kronor and at most five million kronor.

The charge may not exceed ten per cent of the tradesman's annual turnover. 'Annual turnover' means the turnover for the immediately preceding financial year. If the infringement has occurred during the tradesman's first year of operation or if information regarding annual turnover is otherwise unavailable, may be assumed to be misleading or is insufficient, the annual turnover may be estimated.

If the application is directed against several tradesmen, the charge shall be determined separately for each one of them.

Section 41

When a sanction charge is determined, special regard shall be taken to how serious the infringement is and the importance of the provision to which the infringement refers.

In petty cases, no charge shall be imposed.

The charge may be waived, provided there are extraordinary reasons to do so.

Time limitation

Section 42

A sanction charge may only be imposed if the application has been served on the party against whom the claim is directed within five years from when the infringement ceased.

A sanction charge lapses if it has not been possible to enforce the judgment within five years from when it entered into final legal force.

Payment of sanction charges

Section 43

Sanction charges shall be paid within thirty days after when the judgment has entered into final legal force or such longer time as prescribed by the judgment.

Sanction charges shall be paid to the authority appointed by the Government. If a charge is not paid within the time referred to in the first paragraph, the authority shall submit the unpaid charge for collection. The Collection of State Debts, etc., Act (1993:891) contains provisions concerning collection.

Appeals etc.

Section 44

A decision by the supervisory authority in accordance with Sections 26 to 29, Section 34, first paragraph, and in accordance with any regulations made in

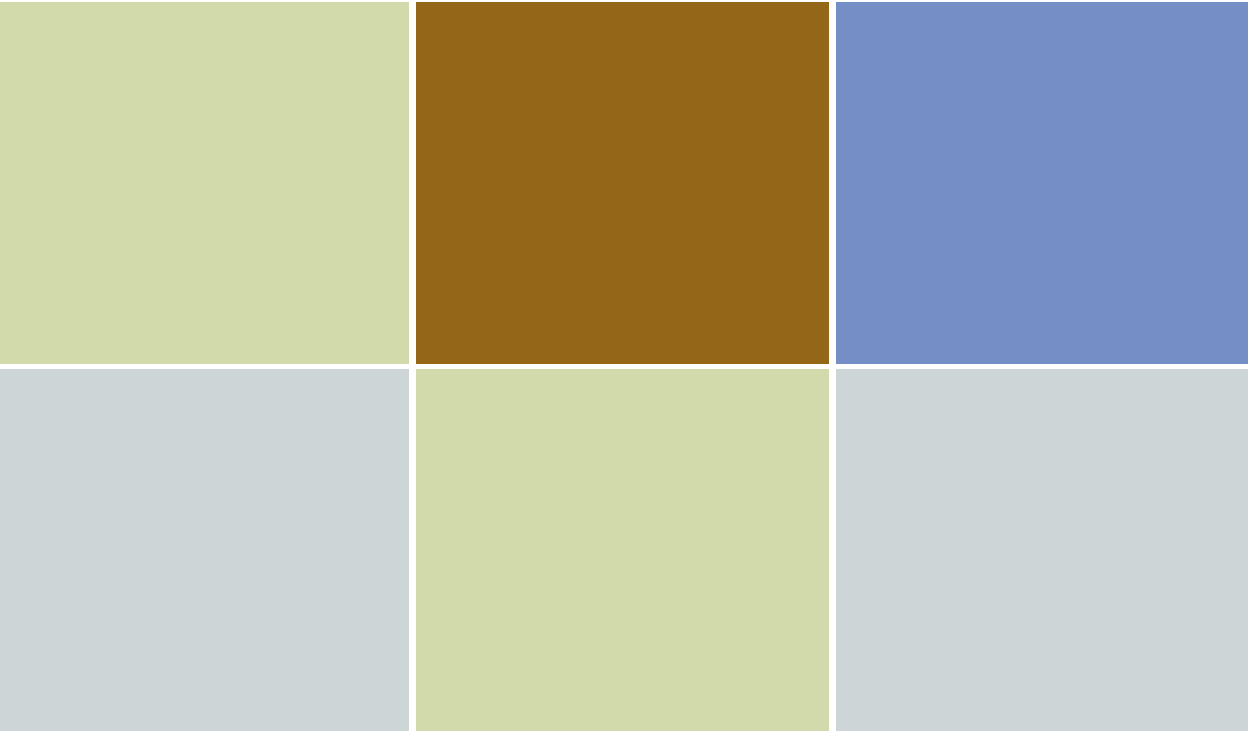
accordance with Section 34, second paragraph, may be appealed against to a general administrative court. Other decisions by a supervisory authority may not be appealed against.

Leave to appeal is required in connection with appeals against a decision by a county administrative court to the Administrative Court of Appeal in accordance with the first paragraph.

Section 45

A supervisory authority may determine that its decision in accordance with Sections 26 to 29 shall apply immediately.

-
1. This Act enters into force on 1 July 2004, when the Product Safety Act (1988:1604) ceases to apply.
 2. Older provisions still apply in matters concerning goods and services that have been provided prior to entry into force.
 3. Prohibitions and injunctions together with orders for information, prohibition and recall that have been issued in accordance with the older provisions shall still apply.
 4. If an order for information, prohibition or recall in accordance with Section 22 of the Product Safety Act (1988:1604) was issued prior to entry into force and if the time limit prescribed by the order for approval has not expired, an approval may be given within the prescribed time limit.
 5. Older provisions shall still apply for actions for the judicial confirmation of default fines that have been imposed by the Consumer Ombudsman or the Market Court.
 6. Cases that were pending at court at the time of entry into force shall be considered in accordance with older provisions.



REGERINGSKANSLIET

**Ministry of Agriculture,
Food and Consumer Affairs
Sweden**