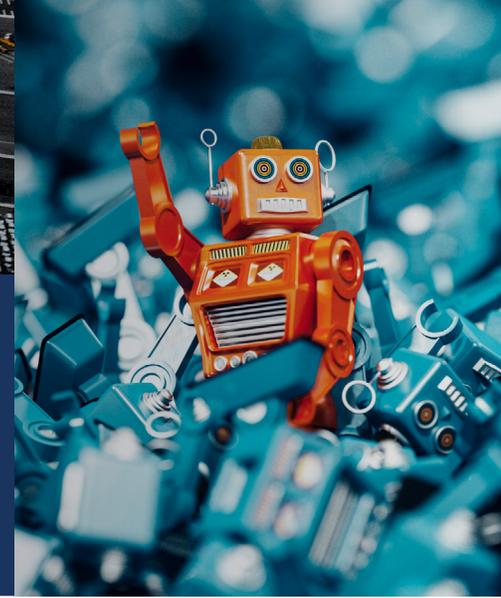


# Partner spotlight

## The evolving regulatory landscape for the toy industry



*Sedgwick's brand protection Spotlight features insight and perspective from our strategic partners across industries on safety issues that have the potential to influence a company's view on product-related crises and business operations.*

Welcome to the latest edition of Spotlight. Spotlight is our way of sharing insights and perspectives from our strategic partners – lawyers, insurers, risk managers and crisis communications experts. In this edition, we are joined by Jaime Cartwright, a partner with Charles Russell Speechlys, who shares his thoughts on the evolving regulatory landscape for toy manufacturers, distributors and sellers



**Jaime Cartwright**  
*Partner*  
*Charles Russell Speechlys*

### About Jamie Cartwright

Mr. Cartwright specialises in commercial and corporate disputes, arbitration and alternative dispute resolution, including expert determination. His practice is commercially focused and includes international car manufacturers and software companies, as well as small and medium-sized enterprises (SMEs) and high-net worth individuals. Mr. Cartwright advises his clients on issues related to contracts, duty of care and other matters including those arising from the provision of goods and services both in the UK and internationally.

He has specialist expertise in claims under the Commercial Agents (Council Directive) Regulations 1993, automotive industry disputes, technology disputes and consumer-focused disputes from a corporate perspective including sale of goods,

food labelling and food safety. Mr. Cartwright also leads the firm's debt recovery practice which focuses on high value, complex and disputed debt both in the UK and internationally. He is admitted to practise in England and Wales and recognised as a leading practitioner in the main legal directories.

### How has Brexit impacted the toy industry?

Whilst many people want to avoid talking about Brexit, it is difficult to comment on matters affecting the supply of products, including toys, in the wider European market without mentioning it.

Aside from challenges specific to importers and exporters, there are product compliance concerns for the toy industry. Following the United Kingdom's withdrawal from the European Union, there has yet to be a material divergence between the UK and the EU on product standards affecting toys.

In the UK, there has been a lot of talk of a so-called "bonfire" of EU regulations, especially under the very brief tenure of Liz Truss as prime minister. It should be noted that the new prime minister, Rishi Sunak adopted a stance similar to hers in his original campaign to be leader of the Conservatives, although already there appears to be a softening of stance in that regard. One change is that the UK is no longer publishing details of non-compliant products on the EU Safety Gate, formerly known as RAPEX. Since toys represented a material proportion of all those products reported, the absence of UK reporting to the Safety Gate immediately lessens its impact, if only by virtue of the extent of the information it contains.

However, the most significant change affecting products to be sold in the UK has been the move from the European system of CE markings to UKCA product markings. Toy manufacturers and importers will be familiar with the longstanding CE Marking self-certification scheme. The replacement UKCA markings will be mandatory on products entering the UK market but this has once again been delayed by a further two years to 31 December 2024, this time for reasons of socio-economic issues, such as the aftermath of the pandemic, global supply and energy costs and the Russian war on Ukraine. This recognises that there is a cost of compliance and that outweighs any perceived benefits from changing the system.

In practical terms, little of substance changes immediately and now not for a couple of additional years. The previous notified bodies in the UK for CE marking become UK Approved Bodies for UKCA labelling. Northern Ireland, following the theme of Brexit, will continue to use CE markings for EU-compliant products, in addition to a [UK\(NI\) marking](#) where a UK body is carrying out conformity assessments.

This change in the safety labelling requirement does not just impact manufacturers who want to market products in the UK. Many manufacturers want to, and often need to, produce products that can be sold in as many jurisdictions as possible in a single production form, simply based on the economies of scale of the manufacturing process. Typically, companies will manufacture to the standards of the largest available market for a product. If this is the European standard and those standards over time become stricter and more onerous, then the opportunity to produce to the less restrictive regulatory standards available in the UK may mean little. For UK-based manufacturers, the appeal of prospective sales to customers in the UK's closest trading block will mean that achieving a CE marking is likely to be similarly desirable.

Revisions to the EU's [Toy Safety Directive](#) (TSD) and the application of the EU's new Market Surveillance Regulation (MSR) 2019/1020 will need to be watched carefully over time as to whether a divergence between UK and EU standards develops.

### **In addition to the UKCA marking issue, what else is impacting the toy sector?**

The UKCA marking changes and the potential need for dual markings are set against the background of ongoing supply chain cost inflation arising from numerous socio-economic factors. Increased, or effectively duplicative, compliance requirements represent a further layer of costs. These costs must either be borne, passed on, or conceivably avoided altogether if the manufacturer decides not to market its products in the UK.

Changes to the internal landscape of the toy manufacturing market are happening concurrently to significant challenges in the broader manufacturing market. The sourcing of safe, durable and affordable materials has sharply become a prominent issue within the sector. One example is the sourcing of raw materials for production including High Density Polyethylene (HDPE). The cost of the material, which is commonly used in toy manufacturing, doubled in 2021. This product is lightweight, extremely strong, weather resistant and can withstand heavy impacts. Its rising cost may cause manufacturers to seek lower-cost and less capable alternatives. Should this happen, a risk arises that cheaper and less durable materials will be used. This, in turn, increases the risk of damage to the toy and concerns as to quality and safety, which themselves pose a risk of falling foul of the regulatory regimes.

This culmination of regulatory and market factors has raised important concerns about an increase in the number of toy recalls over the next few years. Since data collection began, toys have consistently been one of the most frequently recalled products in the manufacturing industry. Data from the EU's Safety Gate rapid alert system for dangerous non-food products confirm that toys were the second-most recalled product category overall. In the most recent analysis, toys represented approximately 20 percent of all products impacted by product safety recalls. As the regulatory landscape evolves, manufacturers that are not aware of the changes to the directives may fail to comply with new safety regulations and suffer recalls. They may also be hit with civil and regulatory legal claims, along with the associated reputational risks. Changes to tighten the regulatory system whilst simultaneously managing external market pressures will place stress on manufacturers to prioritise regulatory compliance with profit margins.

## How do new recycling and sustainability regulations affect toy manufacturers?

As if all else wasn't enough, there are also the extremely crucial issues of recycling, use of renewables and the reduction of packaging. Regulation in this space has been centred largely on a system of taxation, where packaging is used generally and specifically where non-renewable plastic is used in the packaging of products. This remains the simplest way to regulate and improve practices for the benefit of the environment. The effectiveness of efforts to manufacture products using recycled plastic depends on the ready availability of materials, which cannot be guaranteed. The cost-benefit analysis between the taxation costs from non-compliance and the potential costs of reformulating products and packaging to reduce plastics also factors into companies' strategies. As ever, the market is led by demand. There is and will continue to be an increased expectation from consumers for products that are seen as being more environmentally friendly.

## About Spotlight

Brand and reputation are the most valuable and vulnerable assets a business has. Brands embody and encapsulate everything a business does, and everything its customers expect. Nothing says more about a company's commitment to consumers than its efforts to uphold promises of safety, quality and service. However, too often, recall and remediation management is treated as a low priority, only to be applied – or even discussed – when a product needs to be withdrawn from the market. At Sedgwick, we seek to change that.

Sedgwick's brand protection Spotlight is one way we share perspectives from our strategic partners – lawyers, insurers, risk managers and crisis communications experts across industries – on product safety issues that have the potential to influence a company's view on in-market incidents and crisis management. In some cases, the connection is obvious, but the perspective is new. In others, we will raise questions that you may have never considered in the context of recall and remediation management. That's our intent.

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To learn more about our recall, remediation and retention solutions, visit: [www.sedgwick.com/brandprotection](http://www.sedgwick.com/brandprotection)

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