Managing Risk in Prison Enterprises

(RISK MANAGEMENT GUIDELINES FOR PRISON ENTERPRISES)

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Replaces previous version issued 16 June 2005

PSI Amendments should be read in conjunction with PSO

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EXECUTIVE SUMMARY

STATEMENT OF PURPOSE

This Prison Service Order (PSO) is being issued as a replacement to the previous version of PSO 4101 (issued 16 June 2005) which is now cancelled. Financial procedures relating to prison enterprises can be found in the Finance Order PSO 7500, chapter 4.

DESIRED OUTCOME

This PSO is underpinned by the Industries standard. It outlines the responsibilities and obligations and some of the risks that may arise in the production of goods and supply of services by prison enterprises and provides some examples and guidance on possible solutions. It is absolutely essential that staff involved in work with third parties are diligent regarding legal obligations. They must understand clearly what the responsibilities are and how the risks can be minimised - to protect themselves, prisoners, the Prison Service more widely and Ministers against litigation.

MANDATORY ACTIONS

Governors ensure that any staff engaged in the production, sale or supply of goods or services are familiar with the PSO guidance, and that any staff that may become so engaged are made aware of them.

RESOURCE IMPLICATIONS

The PSO guidance is intended to reduce the risk of litigation. Because the PSO guidelines describe current legislation, for which allowance should already have been made, there are no significant resource implications.

IMPLEMENTATION DATE: 1 July 2008

Ian Poree
Director of Commissioning & Operational Policy

Further advice or information on this PSO or the systems contained within it can be sought from: the Contract and Sales Team, Offender Employment, Skills and Services Group, Room 216 Abell House, John Islip Street, London SW1P 4LH Telephone: 020 7217 1730.
INTRODUCTION

1. Background

Prison enterprises external work can bring valuable income as well as providing prisoners with purposeful activity and enhancing skills and experience in preparation for their release. But the production of goods and provision of services also carries risks, responsibilities and obligations – for example, through legislation on product liability, product safety or health and safety at work; and particularly where the goods and services are destined for the open market.

Ensuring that the Prison Service’s standard terms and conditions on the sale of goods and services are incorporated into commercial contracts can minimise many of these risks. The standard conditions and related documents have been drafted specifically for use within prison enterprises and are designed principally to protect the Prison Service, to limit potential liabilities and to provide some degree of security for the recovery of the debt which commercial customers may owe following the supply of goods and services. However, it is important to note that liabilities apply not only when goods or services are provided as part of a commercial contract, but also when they are provided without a contract or are donated or provided without charge.

Governors and staff involved in prison enterprises need to be aware that, in addition to the risks covered in these guidelines, particular considerations may apply to certain types of work. For example, printing/publication material that may be seen by members of the public, especially children, can provide opportunities for prisoners to insert inappropriate material.

Some commercially sourced work provides little training, qualifications or resettlement activities for prisoners. In some cases, such outputs may neither be appropriate or achievable depending on the type of prisoner or activity provided. However, Governors must – whenever seeking working with customers – explore what training, qualifications or resettlement activities may form part of the contract.

2. Output

The PSO outlines the responsibilities and obligations and some of the risks that may arise in the production of goods and services by prison enterprises and provides some examples and guidance on possible solutions. However, there are important points about the advice that should be noted:

- The guidance provided is general; specialised legal or other advice must be taken in relation to specific circumstances as they arise.

- The guidance should be read in conjunction with the latest version of the “Guidelines for Commercial Risk Management for Prison Enterprises” and the “Standard Conditions of Sale of Goods and Services” and related contract documentation. The Standard Terms and Conditions are available from Branston Store – vocabulary number: MP005 F2272 – while the Standard Contracts and Guidelines can be found on the Prison Service’s Intranet via Organisation/National/Regime Services Group/ or via the Regime Services Group intranet website.

- The guidance describes fundamental requirements of law that apply irrespective of anything in the Prison Service Standard Terms and Conditions of Sale of Goods and Services or in any specific terms and conditions of sale in individual contracts.

- The guidance should be read in conjunction with the Finance Order PSO 7500.
3. **Audit and Monitoring**

Compliance with this PSO will be monitored through line management and internal audit procedures (Performance Standard 12 – Prison Industries).
MANAGING RISK IN PRISON ENTERPRISES

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CHAPTER 1: COMMERCIAL STRATEGY

1.1 Guidance

1.1.1 This chapter provides guidance on sales contracts and strategy to effectively manage the commercial activities in prison enterprises. For further help and more detailed guidance this chapter should be read in conjunction with the Finance Order PSO 7500, particularly chapter 4.

1.1.2 In selecting commercial customers, attention must be paid to their financial status and viability. Care must also be taken to avoid ventures into the commercial market that may jeopardize private sector employment in the UK or be perceived as unfair competition.

1.1.3 Before entering into any commercial venture, establishments must undertake a business case and risk assessment. Immediately contracts entered into realised a revenue threshold of £10,000, the business plan, risk assessment and contract must be submitted for approval to the Head of Offender Employment, Skills and Services (OESS) Group (previously Regime Services Group). Heads of Finance must monitor and inform ESS when a contract exceeds the £10,000 threshold to ensure Head of OESS Group approval is sought.

1.1.4 It is important that the costing and pricing for goods and services supplied by prison enterprises is in accordance with the “Costing and Pricing Guidelines for Prison Industries”. This is to ensure compliance with Government Accounting and to aid prison enterprises to operate as efficiently and effectively as possible. The guidelines can be found on the Prison Service’s Intranet via Organisation/National/Regime Services Group/Enterprise and Supply Services/Business Systems/Contracts & Sales/Sales Contract Documents or by clicking here.

1.1.5 Levels of delegated authority for entering into contracts are set out in PSO 7500 chapter 7, Annex A. Authority may be sub-delegated within establishments and HQ groups/units as appropriate. All delegations of authority must be recorded in writing to named individuals. Whilst individuals may delegate authority, they retain responsibility.

1.1.6 Risk assessment is a process that will result in the identification of events (or non events) that impact on the ability of the enterprise to meet its objectives. As each risk is identified, it should be ranked in terms of likelihood and impact. Documentation should be kept detailing the risks identified, and the associated rank allocated to each of them. The risk assessment is intended to identify risks specific to the sale of goods or services and to allow an opportunity to set up the relevant controls.

1.1.7 The business case for the contract should address the following:

- Customer name, registration number and registered address;
- Customer contact name and telephone number;
- Dun & Bradstreet report on customer financial status;
- Value of sales per month;
- Value of sales per annum;
- Expected prisoner employment resulting from contract;
- Costing/pricing justification;
- Method of payment;
- Credit application;
- Identification of risks.
1.2 Separation of Duties

1.2.1 The key requirement in demonstrating control and propriety is the need to keep certain functions separate. Wherever possible, certain functions should be performed by different people in order to ensure that no one individual is responsible for all aspects of the system, so minimizing the risk of intentional manipulation or error. Some combinations of function are not permissible in any circumstances. Combining other functions may be acceptable in some cases.

1.2.2 *Where there is difficulty in separation of duties, the Governor/Head of Group must assess the risks and initiate additional recorded management checks as appropriate.*

1.3 Standard Conditions

1.3.1 The “Standard Terms and Conditions of Sale of Goods and Services” are available from the central Branston store – vocabulary number: MP005 F2272 and on the RSG intranet website – click here. The conditions are intended to form the basis of the contract for the sale of goods or services and shall govern the contract between the parties to the exclusion of any other terms and conditions. The objective is to prevent the customer imposing his or her own terms on the transaction. Firm emphasis is placed upon the requirements for written quotations and acknowledgements or written confirmation specifically in relation to any additions to, or variations of, the agreement before those additions can be enforceable.

1.3.2 The standard conditions and the details contained form part of the contract between the customer and the Prison Service. The conditions have been drafted specifically for prison enterprises use with commercial customers and to ensure that contracts between the Service and its customers are uniform in respect of contract conditions.

1.3.3 The “Guidelines for Commercial Risk Management in Prison Enterprises” are designed to provide guidance and explain the kind of responsibilities and obligations and some of the risks that may arise in the production of goods and services by the Prison Service.

1.4 Standard Form Contracts

1.4.1 *A formal contract must be set up between the Governor/Head of OESS Group and customer and the terms and conditions of the contract must be agreed prior to commencing the sale of goods or services.*

1.4.2 The standard conditions are the terms that shall apply for all contracts. There are standard forms for quotation and order acknowledgements and these should specify precise details regarding the goods/service details, for example goods description/quantities and service levels. No variation can be made to the standard conditions, save where provided for in the guidelines, without approval of OESS Group.

1.4.3 *Entering into a contract based on a customer’s terms and conditions must be an exceptional occurrence.* Variances from the Standard Conditions may transfer risk or incur additional costs to the Service. For any variance to the Standard Conditions (for example a customer refusing to accept the terms and conditions) advice must be sought from OESS Group.

1.4.4 *Standard Long and Short Form Contracts based on the Standard Conditions must be used unless otherwise approved.* The standard form contracts are:

- Contract for the Provision of a Service;
- Contract for the Long Term Provision of a Service.
1.4.5 Long-term contracts should be used where relationships with the customer are likely to continue for more than six months and provision is built-in for repeat orders and quantity/service level variations. Likewise, templates are available from the Prison Service’s Intranet by clicking here.

1.4.6 Once contracts have been agreed and signed by both parties, Governors/Heads of Groups must send a copy of the contract to OESS Group for management information and monitoring purposes.

1.4.7 A register of all local, formal contracts must be maintained by the Governor/Head of Groups.

1.4.8 The register of contract should include:

- Prison or HQ Group;
- Type of contract;
- Industry/workshop;
- Contract contact person;
- Estimated value;
- Customer’s name;
- Contract start and expiry date.

1.5 Other Ventures

1.5.1 Joint Venture Agreements and Public Private Partnership (PPP) contracts provide ideal opportunities to form long-term relationships with commercial businesses. These ventures offer the following benefits:

- Diversity into new fields and markets;
- Additional revenue for the establishment;
- Prisoners develop new learning skills;
- Commercial working methods;
- Prisoners are accustomed to regular working practices.

1.5.2 But there are risks involved with such ventures. One of the principal concerns should be to minimize the impact of the risks involved in the event that things do not go as planned. The “Guidelines for Commercial Risk Management for Prison Enterprises” are designed to help recognize the key points at which an element of risk arises. By including contractual provisions that deal with the relevant issues, the extent of liabilities likely to be incurred can be limited.

1.5.3 The same method can be applied to other external risks and liabilities which may not at first sight appear to be directly concerned with the principal activity, but will certainly have an impact upon the venture. The following are examples of issues that must be taken into account if potential liabilities involved are to be kept to an absolute minimum:

- Product liability;
- Health and safety at work;
- Environmental health;
- Security and occupiers liability issues;
- Patents and trademarks.
1.5.4 Before entering into any venture of this nature, the Governor/Head of Group must undertake a comprehensive business case and risk assessment and submit to OESS Group for approval.

1.6.6 Responsibilities

1.6.1 All contracts will need to be managed. The degree of management necessary will vary according to value, risk and complexity. Contract management ensures that all parties to a contract fully understand their respective obligations, enabling these to be fulfilled as effectively as possible.

1.6.2 An ESS account manager will be appointed for each customer and will be responsible for undertaking the role of customer relationship liaison. This liaison will ensure that the customer and the establishment is fully briefed on key issues, well prepared for the contract being undertaken in a prison environment, arbitrate and bring to a successful conclusion any issues or disputes arising during the term of the contract and undertake regular contract reviews. All major issues and disputes relating to the contract must be raised through the ESS account manager. ESS is in the process of developing a relationship management strategy outlining the duties of account managers to maintain regular contact with the customer and the establishment.

1.6.3 The day to day management of the process should be managed between the establishment and the customer, however if the issue has the capacity to escalate and affect the working relationship between the establishment and the customer or threaten the continuance of the contract, the account manager must be informed immediately.
CHAPTER 2: PRODUCT LIABILITY

2.1 The basic obligation.

2.1.1 A person who manufactures and sells a product has an obligation to take reasonable care in its design and manufacture. This is a duty owed to the ultimate consumer and also to anyone who may be affected by the product. The obligation is to avoid causing any injury to the consumer or their property. This is covered by the Consumer Protection Act 1987 (as amended), under which the concept of strict product liability was introduced. Consequently, if loss is caused wholly or partly by a defect in a product the producer will be liable for damages.

2.1.2 This duty arises only if the product left the manufacturer in a defective condition or if it is reasonably likely that an intermediate examination of the product would have indicated danger. The duty arises only if the product is used for the purpose the manufacturer intended. There is no liability if the user had prior knowledge of the defect. The standard of care applicable is that expected of the reasonable person, rather than that of an expert or a specialist in a particular field.

2.1.3 However if the product is aimed for use by a child a higher degree of care is required. As specifically mentioned later the duties involved are more onerous where the manufacturing of toys is involved.

2.1.4 If goods are dangerous and the seller knew or ought to have known that they are, the seller is liable if he or she sells them without a warning and the buyer is subsequently injured. If a contractual relationship exists between the parties, liability may be limited by an express term. The Unfair Contract Terms Act 1977 precludes the exclusion of liability for death and personal injury resulting from negligence or fraudulent misrepresentation.

2.2 Restrictions on liability

2.2.1 Liability may be restricted as to specification and description of the goods. In some contracts the customer may have contributed to the design of the product and it is therefore produced under instruction from the customer. In these cases liability can be excluded as to defects in the goods (Clause 3.5 and 10.2.1. of the Standard Conditions of Sale of Goods and Services refers).

2.2.2 Liability can also be excluded if the defect is due to the inclusion of a part, material or piece of equipment that has not been manufactured by the supplier (Clause 10.2.4. of the Standard Conditions of Sale of Goods and Services refers). Therefore, if it can be proved that a defect is caused by a component not manufactured by the supplier then liability may be avoided.

2.2.3 While liability cannot be excluded for personal injury or death resulting from negligence or fraudulent misrepresentation, then it may be excluded for other reasons, for example:

- if the customer has given instructions as to the design or specification of the product;
- if the product has a defect due to wear and tear, wilful damage or negligence;
- if the defect is due to misuse or failure to follow the instructions provided with the goods;
- if the defect is due to a part, material or component not manufactured by the Prison Service;
- Consequential losses.

2.3 The Regulations

2.3.1 The General Product Safety Regulations 2005 specify the legal requirements relevant to the safety of products that are put on the market (this is covered in greater detail in Chapter 3: Conformance With Standards). Safety requirements and regulations in relation to specific
products were consolidated under the **Consumer Protection Act 1987** (as amended). In addition, and operating in conjunction with the Act, further regulations have been implemented with respect to specific classes of goods, one of which concerns toys - the **Toys (Safety) Regulations 1995** (revoking to the extent not already revoked all previous regulations in the area), implementing Council Directive 88/378/EEC (as amended by the Council Directive 93/68/EEC). Contravention of these provisions is a criminal offence, the penalties for which are usually fines or imprisonment.

2.3.2 The nature of the contracts that prison enterprises mainly undertake (coupled with the way that establishments generally operate) means that liability and obligations can lie with more than one person. So, for example, prisoners who actually construct the goods or provide the services have an obligation to follow and adhere to instructions as closely as possible. Prison staff have an obligation to manage, supervise and instruct prisoners whilst they are performing their tasks. Similarly the prison Governor has an obligation to supervise and guide the prison staff as to how to oversee the activities of prisoners. The Secretary of State has the responsibility of controlling all prisons, Governors, prison staff as well as prisoners.

2.3.3 If an obligation is not fulfilled and a product is defective, any of the above can be held liable. So the claimant who received the defective product can, in effect, go up the chain of manufacture and take action against any, or all, of those involved in the production of the goods.

2.3.4 **It must be emphasised that these regulations, like many others mentioned in these guidelines, are not dependent on any financial transaction being involved.** They apply even if the finished goods are donated by the establishment to some cause. And it is no defence that the raw materials being used, or the products being manufactured or worked on, may have been provided to the prison without charge.
CHAPTER 3: CONFORMANCE WITH STANDARDS

3.1 General product safety

3.1.1 The Regulations

3.1.1.1 The *General Product Safety Regulations 2005* apply to all producers and distributors of products including those manufactured and sold by the Prison Service. It is important to ensure that provisions relating to the standard of specific products are rigorously adhered to. These regulations do not apply to services, but they do apply to a wide range of goods; and unlike the majority of safety regulations, they apply to new and second hand products.

3.1.1.2 The regulations define ‘products’ as goods that are supplied to consumers for their private use. Examples of ‘products’ are clothing, food and drink, medicines, household goods and motor vehicles but this is not an exhaustive list. However, only goods supplied in the course of a commercial activity are covered; and the regulations do not apply to products used solely in the workplace, which are covered by *Health and Safety at Work* legislation (please refer to PSO 3801).

3.1.1.3 Nor do the regulations apply to products which are subject to Community Legislation. So if one of the Prison Service’s products has to comply with an E.C. Directive the *General Product Safety Regulations* do not apply. However, if Community Legislation only covers certain aspects of a product then the *General Product Safety Regulations* will apply to the other aspects of that product.

3.1.1.4 The penalties for failing to comply with these regulations can be quite severe. They are summary offences (answerable in a Magistrates’ Court); a fine (not exceeding £20,000) and/or imprisonment (not exceeding twelve months) may be imposed. The severity of these penalties shows how seriously the law takes breaches of the regulations. These guidelines are designed to enable such breaches to be avoided and it is imperative that they are followed.

3.1.2 Who is a Producer?

- Either the first person to place the product on the market, or someone who affects the safety of the product.
- A manufacturer or someone who presents himself or herself as a manufacturer or repairer.

3.1.3 Who is a Distributor?

- A professional involved in the supply of a product, but who does not affect the safety of the product.
- An agent, distributor, wholesaler or retailer will therefore come within the definition.

3.1.4 What are the responsibilities of a producer and a distributor?

3.1.4.1 *Both have a duty to supply only products that are safe and must perform certain activities, such as quality assurance, to ensure that a product remains safe throughout its reasonably foreseeable period of use.* The regulations require producers and distributors to:

- Supply safe products;
- Provide consumers with relevant information and warnings;
- Keep them informed about the relevant risks.

3.1.4.2 However, these activities will vary depending on the product and the regulations accept that a producer or distributor can only act within the limits of their activity.
3.1.5 What are the duties of a producer?

3.1.5.1 Producers have a duty to place on the market only products that are safe for use. More specific duties include:

- providing relevant information so that a consumer has knowledge of potential risks - for example, the need to use protective gloves or goggles whilst using a product;
- conducting activities that will enable the producer to be aware of the potential risks and to take necessary action to reduce those risks, such as:
  a) sample testing on the product;
  b) investigating complaints relating to safety;
  c) informing distributors of the monitoring results

3.1.6 What is a ‘safe’ product?

3.1.6.1 A safe product is a product that under normal or reasonably foreseeable conditions of use presents little or no risk to the consumer. Product safety is assessed with regard to a number of factors:

- the product’s characteristics;
- packaging - for example if it involves a plastic bag that could suffocate a child;
- instructions for assembly, maintenance, use and disposal – for example, if it should not be used or assembled without ventilation or protective goggles;
- its effect on other products;
- labelling and other information – for example, if it is unsuitable for children under 10 years of age;
- the categories of consumers who may be at risk, particularly children

3.1.7 What are the offences?

3.1.7.1 It is a criminal offence for:

- a producer to place a product on the market unless it is ‘safe’, or to offer to place a dangerous product on the market;
- a distributor to supply a product unless it is ‘safe’ or to offer to supply a dangerous product

3.1.8 Are there any defences?

3.1.8.1 There is a defence of ‘due diligence’, where the producer or distributor argues that he or she has taken all reasonable steps and exercised all due diligence to attempt to avoid the commission of an offence. This could include the proposition that the producer used ‘state of the art’ technology and up to date work methods that nevertheless, with the benefit of hindsight, proved to be unsafe.

3.1.9 Who will be liable?

3.1.9.1 As in all areas of risk management there is a chain of people who have obligations. Criminal proceedings can therefore be taken against anyone who played a part in the production of the goods. This could be the particular prisoners who performed the task or the prison staff or Governor who should have been supervising or were supervising when the goods were produced.

3.1.10 What are the penalties?

- A fine not exceeding £20,000; and/or
Imprisonment not exceeding 12 months

3.2 Toy safety

3.2.1 The Regulations

3.2.1.1 If toys are being manufactured they must comply with the Toy Safety Regulations 1995.

3.2.2 Who do the Regulations apply to?

3.2.2.1 The regulations apply to manufacturers, importers, retailers, hirers and other suppliers of new and second-hand toys. For the regulations to apply, toys must be supplied in the course of a business even if the toys are donated free of charge or sold at a discount.

3.2.3 What is a toy?

3.2.3.1 For the purpose of the regulations a toy is defined as “any product or material designed or clearly intended for use in play by children of less than 14 years of age.” Whether a product fits this definition is a matter of fact that would be decided by the court.

3.2.4 The main requirements

3.2.4.1 New toys must:

- satisfy safety requirements;
- bear the Communauté Européenne Standard (CE) marking;
- bear the required name and address details;
- be accompanied by warnings where necessary

3.2.5 The essential safety requirements

3.2.5.1 Users of the toys must be protected against any risk of injury when the toys are used reasonably - bearing in mind the normal behaviour of children. There are two ways that a manufacturer can ensure that toys satisfy this requirement:

- manufacture in conformity with the relevant national standards;
- manufacture in accordance with a model that has been EU type-examined

3.2.6 CE marking

3.2.6.1 All toys manufactured in the European Union (EU) since January 1990 must carry a CE mark. It must be easily legible and indelible either on the toy or the packaging. The CE mark is a declaration by the manufacturer that the requirements of the regulations have been complied with. The actual CE mark cannot be less than 5mm in height. The mark is not a EU safety mark or quality mark; it is for the use of the consumer only.

3.2.7 Warnings

3.2.7.1 Only necessary warnings should be displayed. Although it is not an offence to market a toy with a warning that is not required by law, this should be avoided because it dilutes the effectiveness of those that are required.

3.2.8 Name and address of manufacturer

3.2.8.1 The name and address details are required so that authorities can take follow up actions if a toy is thought to be unsafe.
3.2.9 Enforcement

3.2.9.1 The Trading Standards Departments of local authorities have a statutory duty to enforce the regulations. They have the authority to seize toys that are viewed as unsafe, suspend toys from sale if they do not comply with the regulations and take proceedings against suppliers.

3.2.9.2 In addition information must be maintained for inspection by enforcement authorities:

- description of the means (such as the use of a test report or technical file) of how the manufacturer ensures conformity to national standards;
- the addresses of places of manufacture and storage;
- information concerning the design and manufacture

3.2.10 What are the offences?

3.2.10.1 It is an offence for a manufacturer to supply toys

- which do not meet the essential safety requirements;
- which do not bear the CE marking;
- which do not bear the name and address of the person who first placed the toy on the market;
- that would jeopardise the safety and health of users or third parties when used as intended or in a foreseeable way, having regard to the normal behaviour of children

3.2.11 What are the penalties?

3.2.11.1 The penalties are:

- a fine not exceeding £20,000; and/or
- imprisonment not exceeding 12 months.

3.2.11.2 As with the General Product Safety Regulations, criminal proceedings potentially could be taken against any person involved in the production of the toys. These regulations are in force throughout the EU and toys which comply with the regulations can be sold anywhere in the EU.
CHAPTER 4: TRADING STANDARDS AND TRADE DESCRIPTIONS

4.1 Sources

4.1.1 This very complex area of law is constantly changing and developing. Under the relevant legislation many duties and obligations are imposed on manufacturers, producers and those they supply who later sell on to consumers. The Prison Service, for example, as a manufacturer of goods must try to avoid the commercial embarrassment, which might be caused by rendering customers, and themselves, liable for criminal sanctions as a result of selling faulty goods.

4.1.2 The law takes a strong line with those who breach trading standards or fail to meet consumer protection regulations. Most of the relevant statutes in these areas create indictable offences - in other words serious offences answerable in the Crown Court. It is therefore vital that the Prison Service does its utmost to meet the relevant standards and regulations.

4.1.3 There is considerable overlap between the various trading laws that might apply. The Consumer Protection Act 1987 (as amended), the Trade Descriptions Act 1968, the Food Safety Act 1990 and other regulations often complement or support each other.

4.1.4 The Trade Descriptions Act 1968 is designed to protect the consumer and to maintain the balance of fair-trading. This Act is primarily concerned with the application of false trade descriptions to goods, or with the supply of goods to which a false trade description has previously been applied. This applies to factors such as quantity, size, composition, fitness for purpose, place of manufacture and identity of manufacturer.

4.2 Legislation

4.2.1 The legislation applies regardless of whether the maker of the false statement is a party to the contract of supply, the type of business involved or whether any profit was made by virtue of the transaction.

4.2.2 The principle of strict liability applies so the manufacturer is absolutely liable rather then being just negligently liable. In other words, if a complaint is proved there is virtually no defence available to the manufacturer, and the usual defences, such as lack of knowledge or sufficient care being taken, will simply be accepted in mitigation.

4.2.3 The Trade Descriptions Act empowers Parliament to create Statutory Instruments and Orders giving rise to a great many further obligations and criminal offences. The Trade Descriptions Act also makes it an offence knowingly or recklessly to give false or misleading statements as to services rendered.

4.3 Liability

4.3.1 As with the other obligations within risk management, more than one person can be liable. So, for example, an action could be taken against the Secretary of State, Governor or the Prison Service manager who authorised the specific action.

4.4 Other Potential Liabilities.

4.4.1 The Trade Descriptions Act is supplemented by the Trade Marks Act 1994 which makes it an offence for a sign or logo which is identical to, or likely to be mistaken for, a registered trade mark to be used on goods if the trademark is used without the consent of the proprietor.

4.4.2 There are number of regulations applying to food production created under EU law and UK law. The main statutory provisions can be found in the Food Safety Act 1990. The Act provides a flexible framework for our food law, but does not go into detail about the chemical
or microbiological safety of food, food quality or food labelling. It gives attention to the fundamental principles and leaves the detail to subsidiary regulations. **Particular attention must be paid to the Food Hygiene (England) 2006 regulation.** Various obligations are placed upon the proprietors of food businesses requiring processes to be done in a ‘hygienic’ way and identifying steps that are essential to ensuring food safety. **A system of adequate safety procedures must also be identified and implemented.**

4.4.3 The **Food Labelling Regulations 1996** and supplemented by the **Food Labelling (Amendment) Regulation 1998 and 1999** require all food to be marked or labelled with its name, list of ingredients, durability, storage conditions required and instructions for use. **Food must also be marked with the name and address of the manufacturer, packer, seller and place of origin.**

4.4.4 Due to the complexity of this area specific advice should be sought whenever there is doubt.

4.4.5 IT has become an integral part of some of the work the Prison Service is involved in with the private sector – for example doing data capture work. **Staff should be aware that the use of computers must comply with the law.** The main Acts applying to computer security are:

- **The Data Protection Act 1998** – this Act replaces the Data Protection Act 1984 and protects the rights of individuals whose personal data is held on and processed by computer;
- **The Computer Misuse Act 1990** – this Act makes unauthorised access to a computer and its data an offence;
- **The Copyright, Design and Patents Act 1988** – this Act protects the software author’s exclusive rights of reproduction, publication and alteration. The use of unlicensed software on a computer is an offence.

4.4.7 Failure to comply with the Copyright, Designs and Patents Act 1988 could result in legal proceedings being taken against Directors, Heads of Groups or Units, Governors or members of staff. The maximum sentence resulting from conviction under this Act is 2 years imprisonment.

4.4.8 **Staff using computer equipment must familiarise themselves with the content of PSO 9010 – IT Security.**
CHAPTER 5: HEALTH AND SAFETY

5.1 Introduction

5.1.1 The Prison Service has a statutory duty under the Health & Safety at Work Act 1974, to provide a safe place of work. In respect to this statutory duty please refer to PSO 3801 which sets out the Prison Service’s systems and procedures for managing health & safety. This applies to all prison areas and activities across the Service including the production of goods and the provision of services through prison industries. The PSO is supported by a number of guidance notes which give further advice to Governors and managers on managing health & safety.
CHAPTER 6: OCCUPIER’S LIABILITY

6.1 What is it?

6.1.1 Occupier’s liability is another potential risk. A situation may arise where someone enters an establishment to, for example, train prisoners on equipment, collect manufactured products or deliver materials. If so, duties and responsibilities are owed to these third parties. If this obligation is ignored and a visitor is injured the visitor can recover compensation for any personal injury or damage to property incurred.

6.2 Who is Liable?

6.2.1 These situations are covered by the Occupiers’ Liability Act 1957 by which claims would be made against the occupier. Under this Act an ‘Occupier’ is any person who is in control of premises or an activity carried out within the premises. In the case of Wheat v. Lacon 1966 the Licensor (the official granting the license) of a pub (the brewery, which was not in occupation) was held responsible for injury to a visitor. The court ruled that the Licensor had sufficient control over the premises to be deemed as an occupier. An implication of this case is, for example, that the Secretary of State who has control over HM Prisons but only a small amount of physical contact may be classed as an ‘Occupier’. So an injured visitor could claim against anyone from the prisoner who caused the situation up to and including the Secretary of State.

6.3 What is the Obligation?

6.3.1 The Act states that third parties visiting the premises with the owner’s consent are owed a duty of care. This duty relates to dangers arising due to the state of the property or to things done or neglected on the property. This duty is to take reasonable care to ensure that the visitor is reasonably safe whilst on the premises. The standard of care that should be given to the visitor depends on whom the visitor is; for example, an adult would not require the same level of care as a child.

6.4 What is Reasonable Care?

6.4.1 ‘Reasonable care’ has been defined by case law. In Bell v. DHSS, coffee was continually being spilt on the factory floor. It was reasonable for the employer to provide trays and saucers, but not reasonable for coffee to be prohibited. However, in some circumstances, it may be expected that a visitor will appreciate and guard against any special risks that the visitor may be exposed to. So if a person enters the premises to train prisoners on machinery, it is expected that person will protect themselves against any dangers arising out of the use of the machinery. This is because it is expected that the visitor will have specialist knowledge about using the machinery.

6.5 Can liability be reduced?

Warning Signs

6.5.1 If the ‘Occupier’ has warned a visitor of danger and the visitor is injured, the warning does not eliminate liability unless it is thought that, in the circumstances, the warning was enough to make the visitor reasonably safe or aware of the risk. For example, if there is a spillage or the floor is wet, a “Caution: Wet floor” sign will give adequate warning of the danger involved. The visitor’s attention has been brought to the risk and this may eliminate liability if the person is subsequently injured. In most cases clear signals are the best way to warn of danger. The warning will not absolve the Occupier from liability unless it is enough to make the visitor reasonably safe. The notice must be clear, legible and possibly with illustration. The notice will not be deemed effective unless it pinpoints the danger.
Contractual Conditions

6.5.2 Occupier’s liability can be excluded or limited by the attachment of conditions to an agreement for entry. However, clauses such as these are severely restricted by the Unfair Contract Terms Act 1977.

Contributory Negligence

6.5.3 Contributory negligence does not reduce liability but it could reduce the damages to be awarded to an injured visitor. This is applicable if, for example, the visitor was negligent of his or her own safety by ignoring warning signs.

6.5.4 It is therefore essential to be aware of potential risks that visitors may be exposed to and if necessary sufficient and prominent warnings should be displayed. This is particularly important if industrial work is being performed or dangerous equipment is being used.

6.6 What are the penalties?

6.6.1 If this statutory duty is ignored or breached, the penalties involved can include criminal prosecution and fines as well as damages and compensation to the injured party.
CHAPTER 7: INTELLECTUAL PROPERTY

7.1 The General Law

7.1.1 In any commercial enterprise it is vital for the manufacturer or designer of a product to monitor competitors and keep tabs on what they are doing. This gives an indication of the state of the market in general and whether any competitors are invading your market share. So prison enterprises should be able to assess customer demand and also be able to judge the strength of any competitors.

7.1.2 The law values new ideas or innovation, so a system of laws has been developed to protect an idea by conferring a property right on the person who devised it. These rights are collectively known as Intellectual Property Rights. There are four main rights given protection under intellectual property law: copyright, design rights, patents and trademarks.

7.1.3 Intellectual Property Law is an extremely complex field and the following notes are for very general guidance only. Specialist legal advice must be taken before any commitment is made.

Copyright

7.1.4 Copyright is a form of protection given to originators of creative works such as books, music or artistic works. This protection prohibits others from copying the original and is also available for derivative work such as films, sound recordings and broadcasts. Copyright protection does not stop another person producing a similar format entirely independent from the original.

7.1.5 The copyright of an artistic work arises when the work is made so the owner gets immediate protection and there is no lengthy period for registration. Generally, the copyright period is for the life of the author plus another 50 years.

Design Rights

7.1.6 There are works that technically fall within the scope of copyright but are actually technical drawings to be used in the production of engineering components or industrial products. These are industrial designs and are treated differently from artistic, literary or musical works. Technical designs are protected by a modified form of copyright called a design right. Similar to a true copyright, the design right is also created when the design is completed.

Patents

7.1.7 Patents protect ideas that actually result in technical advancement, such as inventions or scientific developments. Patents are only awarded for work which is novel and not obvious i.e. ‘inventive’. To be protected by a patent the work must be registered with the Patent Office; and to become patented it has to undergo testing to determine whether the work meets the statutory requirements. A patent grants a true monopoly in return for the full disclosure of the invention to the public.

7.1.8 The result is that if another person subsequently invents the same thing totally independently from the patented invention, that person will not be able to take advantage of it since all rights are given to the first inventor.

Trade Marks

7.1.9 A trade mark is any sign that can distinguish the goods and services of one trader from those of another. This Intellectual Property Right gives traders the right to protect themselves from other traders who might take an unfair advantage of their name or logos. The Trade Marks Act 1994 was passed to prevent the misappropriation of the mark of one trader, used to
distinguish his or her work from others on the market. The protection given by a trademark, like the protection given by patents, is only obtained after registration has been successful and formalities fulfilled.

7.2 Specific Issues

7.2.1 The Prison Service may be able to design original and unique products or to develop existing products to meet new market conditions or opportunities. However, a watchful eye must be kept on competitors to avoid breaching any intellectual property rights and, hence, any subsequent liability.

7.2.2 If, for example, the Prison Service produces a design or manufactures a product that resembles one already protected by the right of someone else, the owner of that right may be able to take action. This action would prevent the continuation of the activity and could require compensation to be paid to the party with the protected design for loss of profit or damage incurred from the breach of the copyright, patent or trademark.

7.2.3 The various versions of intellectual property rights are quite similar in nature, and are all enforced in the same way - by an action in the courts for 'infringement'. The main objective of such an action is to make clear that the protected person has the right specified. However injunctions are often granted to prevent any further infringement. These are orders of the court to prevent the infringed person from acting in the same manner in the future.

7.2.4 If the intended market and your competition are kept under close scrutiny two basic advantages will be achieved. First, it could mean more business through the ability to observe the market and anticipate customer demand. Second, it will go some way towards avoiding the production of something similar to an already protected idea or design and so reduce liability for breaching an intellectual property right.

7.2.5 If a customer supplies a specification, design or sample and the goods manufactured or supplied as a result infringes a patent, copyright, design or trademark, under clause 11.1 of the Standard Terms, the customer must provide compensation. This would be an indemnity against all loss, damages, costs and expenses awarded to compensate the holder of the intellectual property right, which is an effective way of reducing liability for infringing those rights.