



Product liability insurance

Producers and farmers should be aware from December 4th 2000 proposed changes to the Consumer Protection Act will increase their legal responsibility to the general public. This is the date an EU directive is expected to become law.

Farmers and growers might be forgiven for thinking their liability, under the Sale of Goods Act 1979 and Supply of Goods and Services Act 1982, is already onerous. Technically however, while the actual purchaser of the goods has a good case in contract law, other injured persons must prove the producer/supplier was negligent. The European Union decided that individual "consumers", as opposed to companies, required additional protection by making the supplier "strictly" liable for any injury or loss caused by goods supplied. Legal actions arising from the sale of an allegedly defective product do not require the injured person to prove fault (negligence) on the part of the "producer", where strict liability applies, only that a defect existed in the product and the injured person suffered as a result.

Strict liability for an individual's loss or injury was effected under the Consumer Protection Act (CPA), 1987. The CPA did not however apply in respect of "primary agricultural products" i.e. farm produce before any industrial processing is undertaken. Recent

problems with BSE, E. Coli and other food poisoning incidents have convinced the EU that strict liability must also apply to primary agricultural products.

After December 4th, primary food producers (including egg producers) in England and Wales will, for the first time, be strictly legally responsible for the safety of their produce. Even where a farmer has taken all reasonable precautions to ensure produce is top quality, he will still be legally liable if there is a defect and the consumer suffers loss or injury. Under devolution, it is intended the EU Directive be implemented separately in both Scotland and Northern Ireland.

This does not, however, mean that all product liability claims against farmers will succeed. There will still be "defences" available, but the chances of a successful defence to an action will be less.

Further, with the introduction of genetically modified organisms (GMO's) and the continued public concerns regarding foodstuffs, the EU is currently reconsidering the remaining legal defences to an action.

It is expected there will be an increase in the number of claims for alleged defective products when the new regulations come into force. Greater traceability ensures the

producer can be identified. The answer for producers is:

- a) continued professional management to ensure produce quality control
- b) carry comprehensive product liability insurance protection, with a high limit of indemnity, in case a catastrophe should occur.

Each producer should carefully consider the level of insurance protection needed, keeping in mind that for goods sold this is the total liability for all claims in the policy year.

"For risk management advice please contact NFU Mutual Risk Management Services on 01789 204211. Des Grainger ACII Chartered Insurer, NFU Mutual Risk Management Services Poultry Specialist"