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trading standards law explained

Candles, diffusers, oil heaters, etc

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Although the United Kingdom left the European Union (EU) in 2021, certain pieces of legislation (known as 'assimilated law') continue to apply until such time as they are replaced by new UK legislation, revoked or permitted to expire. This means that our guidance still contains references to legislation that originated from the EU.

To fully understand this guidance, it is important to note the difference between the United Kingdom and Great Britain:

- UK: England, Scotland, Wales and Northern Ireland
- GB: England, Scotland and Wales

This guidance is for England, Scotland and Wales

Candles, diffusers, room sprays, fragrant aromatherapy oil heaters and lamps need to be assessed on their safety before being sold to consumers, which includes taking into account their packaging, instructions

and other labelling, the effect of the product on other products, and the special needs of certain groups of people - children, for example.

Product safety

Goods sold to the public should not present any unnecessary risk to anyone during normal or reasonably foreseeable use. If you sell goods that are found to be unsafe, you risk a substantial claim for compensation, as well as being prosecuted for a criminal offence.

In assessing the safety of products, account is taken of (among other things):

- the packaging, all accompanying instructions and any other labelling
- the effect of the product on other products with which it may foreseeably be used
- the special needs of particular types of person, especially children

If there is a European or British standard relating to the product, the standard will be taken into account in deciding whether the product is safe.

What are my responsibilities as a producer?

Most consumer protection laws are not aimed at private individuals conducting pastimes and hobbies in their own home, but are directed towards people operating in the course of a trade or business. A person repeatedly producing goods for intended sale to consumers will be classed as acting in the course of trade. Sales conducted to raise funds for charity are not exempt and have to be as safe as those sold for commercial profit.

The law in this area is complex and technical but exists to ensure that:

- consumers receive adequate warnings and instructions for use
- consumers are protected from inhaling or touching harmful chemicals
- goods sold are legal, safe and accurately described
- fire risks are minimised

The current law that applies to the overall safety of these particular products is the General Product Safety Regulations 2005 (GPSR). Under the GPSR, manufacturers, own-branders and importers have the same responsibilities and are collectively termed 'producers'. See 'General product safety: producers' for more information on these Regulations.

Candles and similar products are considered to be articles that intentionally release a substance during use. Therefore, consideration needs to be given to the substance that gives these products their fragrance. It may be a substance that is classified under assimilated Regulation (EC) No 1272/2008 *on classification, labelling and packaging of substances and mixtures*, in which case the product will require labelling in accordance with the requirements of this Regulation. This EU Regulation adopted the United Nations' 'globally harmonised system' and, since leaving the EU, it has been adopted as part of GB legislation and is now known as GB CLP.

In addition, these products and their fragrances must meet the requirements of assimilated Regulation (EC) No 1907/2006 *concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)*. This EU Regulation was adopted into UK law on 1 January 2021 and is now known as UK REACH.

Since leaving the EU, the Health and Safety Executive (HSE) has become the relevant GB CLP agency, overseeing GB CLP functions for substances and mixtures placed on the GB market.

There are also applicable designated standards* (for example, BS EN 15426: *Candles. Specification for sooting behaviour*, BS EN 15493: *Candles. Specification for fire safety* and BS EN 15494: *Candles. Product safety labels*), which give clear guidance as to how candle safety might be achieved. Following these standards will assist you in demonstrating 'due diligence' under the GPSR. Furthermore, the concept of 'presumption of conformity' applies to candles: where a product conforms to these designated standards, the product shall be presumed to be a safe product so far as concerns the risks and categories of risk covered by those standards.

[*'Designated standards' are those approved by the Secretary of State and published by the British Standards Institution (BSI).]

Decorative oil lamps for supply to the general public must not be supplied unless they conform to the designated Standard BS EN 14059: *Decorative oil lamps. Safety requirements and test methods*. Fuels for decorative oil lamps that present an aspiration hazard and are harmful if swallowed are prohibited if they contain colouring agents or perfumes. Lamp oil fuel must be packaged in black opaque containers not exceeding one litre and must be visibly, legibly and indelibly marked as follows:

- 'Keep lamps filled with this liquid out of the reach of children'
- 'Just a sip of lamp oil - or even sucking the wick of lamps - may lead to life-threatening lung damage'

If a fragrant aromatherapy oil heater needs water and only a little oil to be used, or if a specific heat source is required (such as a night light or tea light candle), written instructions to this effect are needed. Oils may require specific warnings - if they cannot be used on human skin, for example.

A producer of domestic indoor candles must assess their safety with respect to their burning characteristics, such as sooting, flame size, potential sources of secondary ignition (such as embedded materials, coatings and decorations), stability, and the adequacy and legibility of labelling and instructions for safe use. All risks must be assessed and precautions must be taken against those risks. To be effective, safety instructions must be suitably legible.

How children might interact with your product must also be considered, and if any risks are identified they should be mitigated. The presence of warnings does not exempt any person from their legal liability to supply safe products and mitigate the risks, nor does it free them from their duty of care to users of the product.

Product composition

A starting point for assessing safety is to know what is in your product and in what proportions, depending on the size of the end product. Apart from helping assess the safety, by looking at chemical concentrations for GB CLP, it will also help when you come to design compliant labels.

It is best practice for producers to keep technical documentation pertinent to the product's safety, including product composition and a product safety assessment. This may help you to meet the obligations set out in regulations 6 and 7 of the GPSR, and the relevant safety standards.

Furthermore, this documentation will be necessary to fulfil your obligations under the GPSR if an incident arises that requires corrective action, such as a recall. Guidance to assist with putting together a product safety incident plan (PSIP) can be found in PAS 7100: *Product recall and other corrective actions. Code of practice*, which can be downloaded for free from the BSI website.

Additionally, BSI has produced PAS 7050: *Bringing safe products to the market. Code of practice*, which

can also be downloaded for free from the BSI website.

Having discussions with your suppliers and getting copies of their safety data sheets (SDS) for each material you use will tell you what is going into your product.

Use of consultants

Depending on your level of knowledge and competency, expert input from an appropriate consultant could help with identifying the ingredients, calculating their quantities and assessing concentrations in the end product. This will help determine any hazards or risks, and therefore help with appropriate labelling. A consultant experienced in the candle industry can also advise or assist with safety test methods, technical documentation and designing legally compliant labels.

Safety testing plan

For larger producers with the skills, knowledge and equipment to do so, most safety testing is conducted in-house following a quality management system, including GPSR requirements and testing against the three European standards (BS EN 15426, BS EN 15493 and BS EN 15494). Smaller producers may need to submit product samples for external laboratory testing where the burning characteristics can be assessed under a series of controlled laboratory conditions, including burning in a burn-test chamber or ventilation controlled burn-test room, and using the standard wire mesh cylinder to measure sooting.

Safety testing is scalable, so larger producers are expected to test (and keep records of) more samples. Records and test house certificates of safety testing should form part of the filed technical documentation. Before releasing a new product on to the market, producers are under a legal obligation to assess it for safety. For products you already have on the market, you are advised to have an ongoing monitoring process with periodic random sample safety testing commensurate with adequately addressing the risks. A producer that carries out no safety assessments or testing at all will not have demonstrated due diligence, which means they will have no defence in law if an incident occurs, or a breach is identified.

Safety data sheets and GB CLP labelling

Suppliers' duties for safety data sheets (SDS) and GB CLP labelling only apply if a mixture has hazardous properties (as defined in assimilated Regulation (EC) No 1272/2008) or where it contains certain hazardous components above specified concentrations. The HSE website covers the requirements for the classification, labelling and packaging of products containing hazardous substances.

Candles are considered to be mixtures under both UK REACH and GB CLP as they are blends of wax, fragrances and possibly colourants. These duties, in general, apply to small scale home-based suppliers in the same way they apply to larger scale suppliers and industry. When producers are considering what information should be on a label or whether one is needed at all, the requirements are very much dependent on the substances used in the candles and their respective hazard classification. This has to be determined for each of the candle formulations individually, as they will each have different 'ingredients'.

The main concern for candles, diffusers, room sprays, fragrant aromatherapy oil heaters and lamps is likely to come from the fragrances used. In particular, a number of common fragrances are classified as 'sensitisers' (which means they can cause allergic reactions) and this can manifest at very low

concentrations:

- for mixtures containing substances that are classified as sensitisers at a concentration of 0.1% or above, there will generally be a requirement to include some information about this hazard on the label of the product. For example, this could include the use of the statement 'Contains [name of sensitising substance]. May produce an allergic reaction'. Such a statement serves to warn users who are already sensitised to a particular substance
- if a sensitising substance was present at higher concentrations (generally higher than 1%) the entire mixture would be classified as a sensitiser and would need to carry a pictogram (for example, the exclamation mark symbol), a hazard statement (for example, 'May cause an allergic skin reaction') and precautionary statements about safe use
- for particularly potent sensitisers, these requirements can be triggered when the substance is present at even lower levels (0.01% for the special warning and 0.1% for classification of the mixture)
- a small number of substances have a concentration limit that is specific to them and this may differ to the values noted above

These latter two points are not common and it is most likely that the 0.1% and 1% limits will be applicable in the vast majority of cases and will be what producers need to consider.

Buying premix fragrances is simpler than developing your own blends, as it may be that the fragrance supplier can provide producers with the GB CLP data required. Substances can be classified for other hazards, such as skin irritation, eye irritation, hazardous to the aquatic environment, etc.

For common composition of candles, these are less likely to be applicable, but if the ingredients are classified for other hazards (which will be known from the SDS) producers will need to consider whether they are relevant to the candle. This will be based on the concentration of the substance in the final candle mixture. However, there are different concentrations to consider for the different hazards - for example, if an ingredient is classified as a skin irritant, it would generally trigger classification of the mixture as a skin irritant when present at 10% or above.

Unscented candles often require no labelling at all. If the candle is not classified (because it does not contain any ingredients that are classified as hazardous) then there is no requirement for it to be labelled in accordance with GB CLP. The waxes used in candles that are readily available in bulk from suppliers are unlikely to be classified as hazardous; it is the fragrances that should be focused on. The classification criteria are provided in Annex I to assimilated Regulation (EC) No 1272/2008 (see link in 'Key legislation' below).

Selling directly to consumers does not require producers to produce or pass on SDS to them; the label will give all the consumer information required. If producers are not directly supplying the end user, an SDS will have to be produced and provided to the retailer for each formulation that is supplied.

Labelling requirements: hazards and warnings

Labelling must be compliant with the GB CLP requirements outlined above. In addition to this, candles must be labelled in accordance with the designated standards, particularly BS EN 15494, which specifies the format and content of product warning labels for indoor candles. The standard requires that all information supplied with a candle is presented in a clear format on the product and should be easily and non-verbally comprehensible.

Such warnings may be on the product or the packaging itself, or available as a separate leaflet if

appropriate. Provided that the safety label aspects and GB CLP are both considered there is no reason why the information cannot be combined on the one label.

Traceability

A distributor is required to keep and provide documentation necessary to trace the origin of unsafe products. Ordinarily, producers mark their products with a product code or reference and/or its production batch to ease traceability. In this way, distributors' records can be used to trace an unsafe product back to its source and enforcement authorities gain an opportunity to resolve the problem at source. Some producers base the batch number on the date of production.

The format and position of the labelling in terms of GB CLP labelling

The labels of hazardous substances and mixtures have to be firmly affixed to the packaging that immediately contains the hazardous substance or mixture. If this is not possible due to an awkward shape or small size, it is possible to apply the labels in alternative ways, including the use of ties or tags, fold-out labels or by providing full information on outer packaging (the box, for example) with minimal information on the inner packaging.

How the labels are applied will therefore depend on how they are packaged and what labelling information is required. Warnings should be readable horizontally when the package is set down normally and should be easily visible.

The position for the other safety label that relates to compliance with the designated standards and the GPSR is not specified by law in the same way; however, the standard requires that it is visible and legible on the packaging or the product. In cases where having the safety labelling on the packaging or product is not practical, an instruction leaflet must be available at the point of sale.

If warnings are being used to mitigate any risk, to be effective they must be visible. It is not expected that products will be labelled with a warning about every conceivable potential hazard; it is for the producer to assess the risks and hazards. Whether a warning should be given must depend on a variety of factors, including the:

- severity of the hazard
- risk of that hazard being realised
- degree to which the risk is obvious
- type of consumer likely to be at particularly risk

Imitation foods

The Food Imitations (Safety) Regulations 1989 apply particularly to candles that could be mistakenly eaten by children or present a choking hazard. Examples would be candles with the same shape or smell as fruit, sweets, chocolates or cakes. These Regulations prohibit the marketing, import and manufacture of products that look like food stuffs but are not edible. In particular, they prohibit the supply of any goods that have one or more of the following that children could confuse with food and put them in their mouth, or suck or swallow them, possibly causing death or injury:

- form
- odour
- colour
- appearance
- packaging
- labelling
- volume

See 'Food imitations' for more information.

Organic and vegan claims

Making the claim 'organic' is not a very straightforward matter in relation to candles. It is well regulated for food, with all parties in the supply chain being registered with a Defra-approved control body, and a recognised system is in place for cosmetics, called COSMOS.

Unfortunately, unlike food and cosmetics, there is not a designated standard for organic candles. The claim 'organic' for candles is nevertheless still subject to control in order to maintain high standards as it is a label recognised by consumers. Under the Consumer Protection from Unfair Trading Regulations 2008, misleading claims on products are illegal. For further guidance, contact your local trading standards service.

Vegan claims are less regulated than organic claims (there is no legal definition of 'vegan') and a product may be claimed to be vegan or vegan friendly if you have checked the ingredients and sourcing of the product and are satisfied that it does not contain any parts of animal origin and no animals have been exploited in the harvesting / production processes. Beeswax is not considered vegan friendly. Consumers should be confident that a product described as vegan meets with their ethical expectations. The Vegan Society operates an international vegan standard and logo scheme, which producers can consider applying for.

Quantity marking

There are two aligned requirements - under Article 17 of assimilated Regulation (EC) No 1272/2008 and the Weights and Measures (Packaged Goods) Regulations 2006 (PGRs) - to give the nominal quantity of a substance or mixture on the product label (unless this quantity is specified elsewhere on the package). For candles this is normally expressed as a weight in grams (g), and for diffusers and room sprays it would be by liquid volume in millilitres (ml).

However, the PGRs do not automatically apply to candles. They only apply if the seller intends to sell by the 'average quantity system' and voluntarily applies the E-mark. For more information see 'Packaged goods: average quantity'.

Unless the requirements for GB CLP labelling apply (see above), candles do not need to be marked with their weight at all; however, if they are given a weight indication it must not be misleading.

Under the PGRs, markings must be indelible, easily legible and visible on the package in normal conditions of presentation (on the outside, or inside if the packaging is transparent). The minimum font size is also specified. Equivalent 'imperial' quantities - such as pounds, ounces, fluid ounces and pints can be given in addition to the required metric indications, but they must not be more prominent.

Equipment that is used to weigh or measure goods for consumers must be suitable for the quantity being determined and accurate within specific tolerances. It is required to be 'Government stamped' as approved fit for trade use. This refers to markings that show the equipment has been made to a particular standard and meets accuracy requirements. See 'Weighing equipment for legal use'.

Insect-repellent candles

Under the Consumer Protection from Unfair Trading Regulations 2008, great care should be exercised with candles or diffuser products intended to repel mosquitos, midges, etc. Insect repellent products are controlled by, and must be registered with, the HSE.

If your candle or diffuser is not an HSE-registered product, and you have no other substantial scientific evidence to back up the efficacy of the product, then you cannot describe it as an insect repellent as it has no proven active ability to repel insects and is not on the official register.

It is perfectly legal to sell citrus-scented garden candles with no marketing claims at all, but no misleading claims may be made about what effect they have on repelling insects. Even candle packaging containing pictures of insects is likely to be considered misleading as it falsely implies a link between using the product and actively repelling insects. There is currently a lack of compelling evidence to support any marketing claim that citronella candles are in any way effective at repelling insects.

UK National Poisons Information Service notification

A new requirement of GB CLP is for all chemical-containing products with hazards to be notified to the HSE. Notification to the HSE must be within one month of placing new substances on the GB market. Notifications already made to the European Chemicals Agency (ECHA), and included in the ECHA classification and labelling inventory on 31 December 2020, do not need to be re-notified.

You may see this in the form of a 'unique formulation identifier' (UFI) on the SDS. This will be is a sixteen digit alphanumeric code on the packaging (for example, 'UFI: HUF0-F02Y-8001-UV1E'), and will be linked to the SDS and the notification to the UK National Poisons Information Service (NPIS) notification. This allows the product to be rapidly identified and allow access to the appropriate safety information.

Any notifications are made available to medical practitioners and other healthcare professionals working in the NHS as the primary source of poisons information, and therefore this resource must be kept up-to-date and relevant. This information is notified to the NPIS and will include information regarding the formulation and hazard classification of the substance concerned.

Substances requiring notification are:

- substances subject to UK REACH registration and placed on the market
- hazardous substances placed on the market on their own
- hazardous substances placed on the market in a mixture, resulting in that mixture being classified as hazardous

The information sent must be in the HSE's required format. Notifications can be submitted via the HSE website, which also has further advice on GB CLP. The GOV.UK website has guidance on how to comply with both the EU and UK REACH regulations.

Where substances subject to REACH registration have been registered under EU REACH (up to 31 December 2020) or UK REACH (after 31 December 2020) GB CLP notification is deemed to have been fulfilled.

Mixtures that are not classified as hazardous (such as unscented candles) or are dangerous only to the environment (not people) will be exempt.

What are my responsibilities as a retailer?

The producer has the primary responsibility for the safety of products sold to consumers, but retailers can also be held liable for unsafe products. If a product is found to be unsafe, or if it causes property damage or personal injury, you will be held solely liable if you cannot identify who supplied the goods to you. It is therefore in your interest to keep full records that will enable you to identify the supplier for each product you sell.

Please tell your local Trading Standards service if you are offered goods that you think may be unsafe or breach consumer regulations.

You should make sure that all items you have for sale have the necessary instructions for safe assembly, use and maintenance. In particular, new novelty items usually require some appropriate instructions. You should remember that it might not be adequate simply to give verbal instructions or demonstrate the product to the buyer. They may wish to give it to someone else, or they may need to refer to instructions in the future. You must pass on all user instructions included with the product.

Trading Standards

For more information on the work of Trading Standards services - and the possible consequences of not abiding by the law - please see 'Trading Standards: powers, enforcement and penalties'.

In this update

No major changes.

Last reviewed / updated: May 2024

Key legislation

- General Product Safety Regulations 2005
- Weights and Measures (Packaged Goods) Regulations 2006
- assimilated Regulation (EC) No 1907/2006 *concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)*
- assimilated Regulation (EC) No 1272/2008 *on classification, labelling and packaging of substances and mixtures*
- REACH etc (Amendment etc) (EU Exit) Regulations 2019

Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links go to the legislation.gov.uk website. The site usually updates the legislation to include any amendments made to it. However, this is not always the case. Information on all changes made to legislation can be found by following the above links and clicking on the 'More Resources' tab.

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