businesscompanion
trading standards law explained

General product safety: producers

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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.

In this guide, the words 'must' or 'must not' are used where there is a legal requirement to do (or not do) something. The word 'should' is used where there is established legal guidance or best practice that is likely to help you avoid breaking the law.

This guidance is for England, Scotland and Wales

Consumer products must be 'safe'. Safety can be assessed by the application of standards; if the product complies with a designated standard*, it is automatically taken to be safe. This is known as a presumption of conformity.

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

The General Product Safety Regulations 2005 (GPSR) provide the main basis for ensuring the safety of consumer goods by imposing certain controls. These ensure that all products intended for or likely to be used by consumers under normal or reasonably foreseeable conditions are safe.

As a manufacturer, own-brander or importer of consumer goods (all of which are termed a 'producer' under the Regulations), you will have certain obligations, including traceability and monitoring requirements.

Product safety

Where a product is already subject to other existing regulations (for example, toys), those regulations will apply to that product. The GPSR do not apply to the safety of a product where there are specific provisions of UK law governing all aspects of its safety; instead, they operate as a kind of 'mop-up' set of regulations.

However, they do apply to all second-hand consumer products, including toys and electrical equipment.

The GPSR also apply where they go further than the existing regulations in terms of the specific aspects of safety covered and the extent of the obligations on producers. The GPSR apply to all products intended for or likely to be used by consumers (even if not intended for them) that are supplied or made available; the test would be whether a consumer can purchase the product without challenge. This includes products supplied or made available to consumers for their own use in the course of a service - for example, gym equipment for use in a gym, high chairs provided for use by diners in a restaurant and trolleys for use by shoppers.

Unlike sector-specific laws, the GPSR do not permit CE / UKCA marking (in other words, the CE / UKCA mark cannot be placed on products that do not require it); however, the GPSR do require that producers and distributors only supply safe products.

The following types of consumer goods would fall within the GPSR:

- children's articles, such as cots, prams, high chairs and bunk beds
- bicycles
- household goods, such as crockery, cutlery and cooking utensils
- gardening tools
- furniture and soft furnishings
- clothing
- candles and other ornaments
- hobby and art materials

If there are aspects of safety under the GPSR that are not covered by the products' own sector-specific regulations (such as the packaging of cosmetic products), the GPSR aspects will apply.

The Regulations also cover products that were originally designed and intended for professional use but subsequently 'migrate' on to the consumer market (such as certain power tools). Where consumers can acquire professional products, they must be treated as 'consumer goods'.

Where it is reasonably foreseeable that a professional product may find its way on to the consumer market (intentionally or otherwise), suitable instructions for consumer use and warnings of any risks that are not obvious must be provided. However, where it is unlikely that the product could ever be safe for use by consumers, producers must take such steps as are reasonable and necessary to ensure the marketing and supply of the product is very strictly controlled. Labelling a product 'for professional use only' (or similar) is unlikely to be sufficient on its own unless, for example, it can only be purchased through a strict 'trade

only' outlet.

Defining a safe product

A safe product is one that does not present any unnecessary risk to anyone when the product is used in a normal or reasonably foreseeable way. In assessing the safety of products, you must take account 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 classes of person, especially children

A framework for assessing safety

The Regulations set out a 'hierarchy' that must be taken into account when the safety of a product is being assessed.

The Regulations refer to a 'presumption of conformity': "Where a product conforms to a voluntary national standard of the United Kingdom giving effect to a European standard ... the product shall be presumed to be a safe product so far as concerns the risks and categories of risk covered by that national standard".

These standards are referred to as 'designated' (see above for definition) and give a presumption of conformity. An example of a designated standard is BS EN 14682: *Safety of children's clothing. Cords and drawstrings on children's clothing. Specifications.*

Where no published standards giving a presumption of conformity exist, the safety of a product will be assessed by taking into account:

- voluntary European standards or standards drawn up in the UK
- industry codes of good practice
- the state of the art and technology
- reasonable consumer expectations concerning safety

Producers therefore need to keep abreast of such matters as they relate to their business, such as amendments to designated standards, and technological and safety developments.

Finally, the Regulations' "reasonable consumer expectations concerning safety" will require some elements of risk assessment and putting quality systems into place to ensure that products are made in compliance with specification.

Producer obligations

The main obligation on a producer is to supply a safe product.

As a producer you must also provide consumers with relevant information to enable them to:

- assess the risks inherent in a product throughout the period of its use (where such risks are not immediately obvious)
- take precautions against those risks

This means clear, legible, durable warnings and instructions.

Producers must also allow for traceability by indicating on the product or its packaging:

- the name and address (in Great Britain) of the producer
- the product reference or, where applicable, the batch of products to which it belongs

Also, to enable you to become aware of risks that the product might present, you must:

- sample and test marketed products
- investigate and, if necessary, keep a register of complaints concerning the safety of the product
- keep distributors informed of the results of such monitoring, where a product presents a risk or may present a risk

Examples of good practice can be found in 'Product safety: due diligence'. Additionally, BSI produced PAS 7050: *Bringing safe products to the market. Code of practice*, which can be downloaded for free from the BSI website. Further guidance on PAS 7050 is available in 'Providing safe products for the UK (PAS 7050)', which be found in Business Companion's Business in Focus section.

As a result of the monitoring undertaken, where you discover that a product you are placing on the market or have already supplied poses risks to the consumer and is unsafe, you must immediately, in writing, notify your local Trading Standards service of:

- that information
- the action taken to prevent risk to the consumer
- the identity of each business it has been supplied to

In the event of a serious risk, the notification must include the following:

- information enabling a precise identification of the product or batch of products in question
- a full description of the risks that the product presents
- all available information relevant for tracing the product
- a description of the action undertaken to prevent risks to the consumer

The authorities will advise on actions aimed at removal of the risk and work with you on completing the notification.

Risk assessment is a procedure for identifying and assessing hazards, consisting of three steps:

- identify the hazard that is intrinsic and determine how serious it is (injury scenario)
- determine the probability of injury
- combine the hazard with the probability to determine risk

Using the model, the resultant risk level may be 'serious', 'high', 'medium' or 'low'.

In order to assist in assessing the risk, the European Commission produced 'Risk assessment guidelines for consumer products', which can be found in the Annex to assimilated Decision (EU) 2019/417 *laying down guidelines for the management of the European Union Rapid Information System* '*RAPEX*' (see link in 'Key legislation' below). There are other risk assessment models that can be used, and further guidance can be found in PAS 7100 (see 'Recall notices' below).

The Government developed a Product Safety Risk Assessment Methodology (PRISM) for use by market surveillance authorities and enforcing authorities that have responsibility for consumer product safety in Great Britain. Currently, this is in the form of an Excel spreadsheet, but an online tool will be available in time. Producers will need to become familiar with this toolkit.

It is an offence under the GPSR not to fulfil these obligations.

Enforcement action by the authorities

Where producers have not fulfilled their obligations under these Regulations, enforcement authorities have access to a range of measures that can be employed in removing risk to consumer safety. These are known as safety notices. They are only used when voluntary actions have not removed the risk.

All parties concerned must, whenever feasible, be given an opportunity to submit their views before the adoption of a measure.

The measure chosen will be proportionate to the seriousness of the risk.

Suspension notices

Where there may have been a breach of the Regulations, these notices temporarily ban the placing on the market or the supply of a product, while tests are undertaken and the results are awaited.

Requirement to mark / requirement to warn

These powers allow an enforcement authority to order the marking of a product with suitable warnings where it could pose risks in certain conditions, or require that specific warnings be given to certain persons considered to be at particular risk from a product (for example, young children, the elderly, etc).

Withdrawal notices

Where a product is already on the market, enforcement authorities can issue a withdrawal notice to permanently prevent a person from further supplying that product if it is believed to be dangerous. A notice is only issued when the voluntary action taken by producers and distributors is insufficient or unsatisfactory.

Recall notices

Where an enforcement authority has reasonable grounds for believing that a dangerous product has already been made available to consumers and voluntary action falls short of that considered necessary and sufficient to remove the risk, a last resort (that is, no other measure available to the authority will suffice) power to serve a recall notice exists. This will require the person it is served on to take such steps as are identified in the notice to organise the return of the product from consumers.

Where a disagreement exists between the authority and the producer over whether recall is necessary, businesses may require the authority to seek a reasoned opinion on the case for recall under a scheme operated by the Chartered Institute of Arbitrators, set up by the Department for Business and Trade (DBT) specifically for the purpose. The cost of the scheme is to be met by the business that requested its use. Enforcement authorities are expected to take account of the advice received when coming to a final decision on whether to serve a recall notice.

There are codes of practice on recall, which may assist in determining the nature and scope of a recall

action, such as PAS 7100: *Product recall and other corrective actions. Code of practice*, which can be downloaded for free from the BSI website. PAS 7100 gives good advice on preparing a product incident plan, so that when an incident happens your business is prepared.

The Office for Product Safety and Standards (OPSS) produced *Product Safety and Non-compliance Notification Guidance*, which is intended to help businesses understand their obligations regarding notifying authorities about unsafe products.

Forfeiture and destruction

Where products are dangerous, the enforcement authority may apply to the court for an order for their forfeiture and destruction. However, as an alternative to destruction, the court may, on condition that any order to pay the costs and expenses of the proceedings is complied with, permit the supply of the product to a person for repair or reconditioning, or for scrap.

Distributor obligations

Different obligations under the GPSR apply to retailers and wholesalers of consumer goods whose actions do not affect the safety of the goods (termed a 'distributor' under the Regulations).

See 'General product safety: distributors' for more information.

Further information

The Office for Product Safety and Standards (OPSS) produced guidance on the General Product Safety Regulations 2005.

It has also published a number of PRISM resources.

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

Clarified that the producer must have an address in Great Britain.

Last reviewed / updated: December 2024

Key legislation

- General Product Safety Regulations 2005
- assimilated Decision (EU) 2019/417 *laying down guidelines for the management of the European Union Rapid Information System 'RAPEX'*

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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