businesscompanion
trading standards law explained

Product safety: due diligence

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This guidance is for England, Scotland and Wales

If you are a wholesaler or retailer, the steady rise in counterfeit and illegal products makes the purchasing of products increasingly complex.

The implications of purchasing or supplying products that are unsafe are far-reaching, and in some cases the results can be fatal. With this in mind, how can you be sure that products are what they say they are and do what they say they can do?

Many consumer protection laws include 'strict liability' offences where it does not matter that the person accused did not intend to break the law. In order to create a balance of fairness, specific due diligence defences are normally included in strict liability consumer protection laws.

To use this defence, a person must prove that they took all reasonable precautions and exercised all due diligence to avoid an offence being committed.

Due diligence principles

The following broad principles have been drawn from past views of the courts on what due diligence involves:

- sitting back and doing nothing is unlikely to enable a person to create a defence
- the nature of the necessary action will depend upon the individual circumstances
- taking reasonable steps or precautions involves setting up a system of control that has regard to the risks involved
- all reasonable steps or precautions should be taken; the defence fails where there was a reasonable step or precaution that could have been taken but was not
- what is reasonable depends on the particular circumstances; one factor will be the size of the business concerned
- the control system must cover all aspects of the business affected by the legislation
- due diligence means ensuring the proper operation of the system

- the operation of the system should be kept under review and be amended as necessary

Any due diligence system should be written down so that it can be followed. Any issues raised should be coordinated in one department or section, or by one person who has overall responsibility for the system.

A formal quality management system, though only mandatory where you manufacture products such as gas appliances, electrical appliances, cosmetics or personal protective equipment, may be of value in supporting a defence of due diligence. Further advice on quality management systems is available from the Association of British Certification Bodies. Additionally, BSI has 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 the Business in Focus guide 'Providing safe products for the UK (PAS 7050)'.

To reduce the risk of purchasing unsafe products, always buy from a reputable source and follow the golden rule: if it looks too good to be true, take extra care.

CE / UKCA marking

There is a legal requirement for certain products to be marked with this when placed on the market. CE / UKCA marking is a key indicator of a product's compliance with legislation. By affixing the CE and/or UKCA mark on a product, a manufacturer is declaring conformity with all of the legal requirements to achieve CE and/or UKCA marking. This may mean that there is more than one set of legal requirements that apply to a product.

Test reports

Distributors need to know that the CE and/or UKCA mark has been affixed correctly and that the item is safe to be sold in the UK. A formal test report is the best way to verify compliance to a safety standard. There are three basic types of report available:

- an in-house report, which means the product was tested by the manufacturer
- a third-party report, which means the product was tested by someone else
- a third-party test report issued by an accredited laboratory

All three of these are valid methods of demonstrating safety. However, the accredited test report gives a far higher degree of confidence that the tests have been carried out correctly by competent laboratory staff.

Schemes such as the Kitemark certification can demonstrate that the product has met the applicable standard and that the manufacturer has effective quality control processes in place. In addition, both the factory and the product are audited on an ongoing basis to ensure the products that have the mark are safe.

To meet your due diligence requirements:

- buy from a reputable supplier and always obtain an invoice
- make sure the product / packaging is marked with the name and address of the manufacturer or importer
- keep all invoices
- ask to see proof that the product is safe (a test certificate or declaration of conformity)
- inform your supplier about any safety complaints you receive about 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

Link to PAS 7050 added.

Last reviewed / updated: November 2024

Key legislation

- Consumer Protection Act 1987
- General Product Safety Regulations 2005

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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