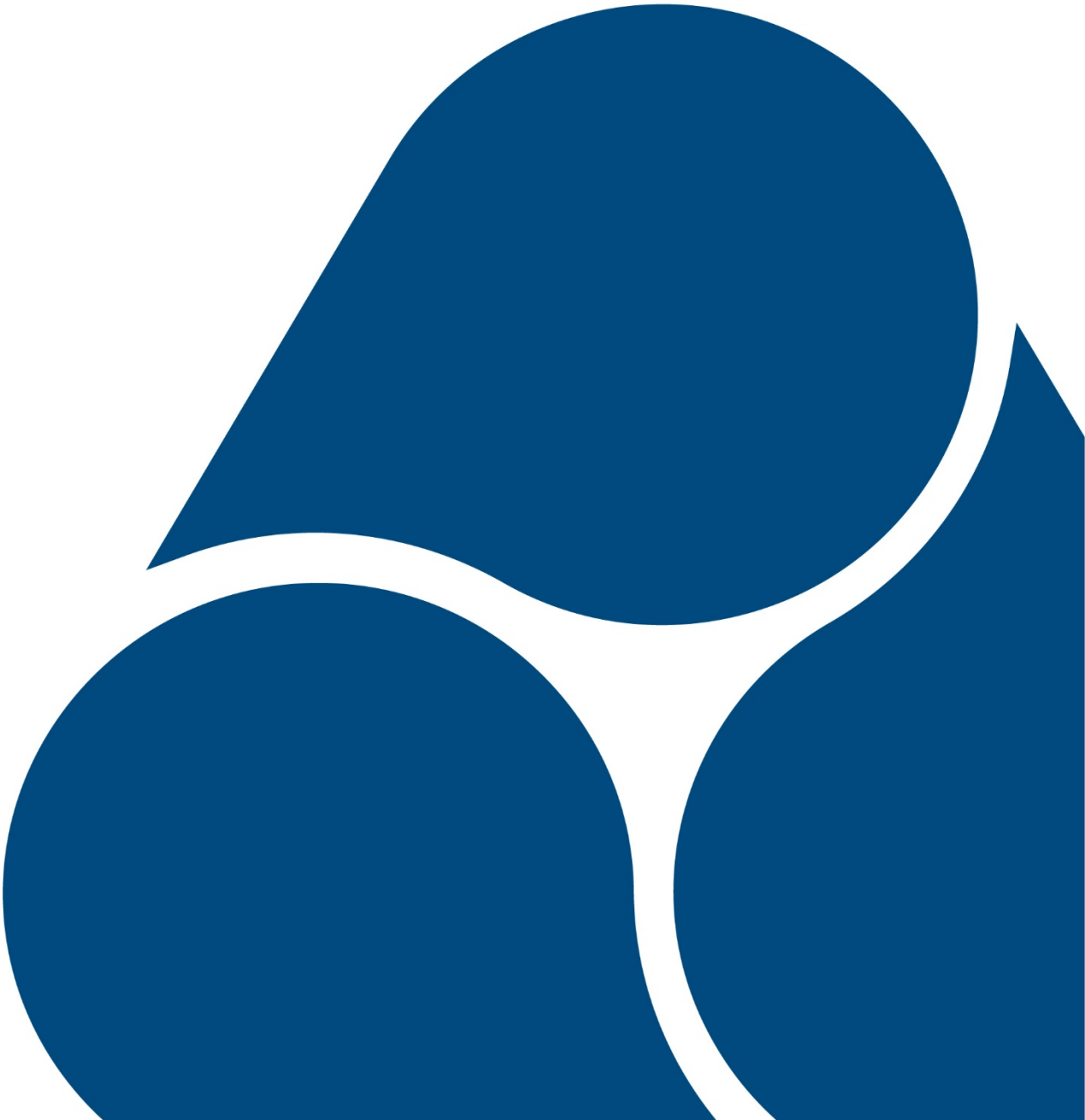
Office for Product Safety & Standards

UK Product Safety Review

Call for Evidence

March 2021



Contents

Introduction

The government is committed to protecting consumers from unsafe products. From cosmetics to electrical goods, products are essential to our daily lives. Ensuring they are safe underpins consumer confidence and competitive markets.

In 2018, the government created a new national regulator for product safety within BEIS, the Office for Product Safety and Standards (OPSS), to lead and coordinate the UK's product safety system. Since then, significant steps have been taken to improve the way the product safety system is delivered with greater national leadership, including investing in research into product hazards, and central co-ordination of both intelligence and checks on unsafe products at UK ports and borders.

From online marketplaces to connected devices, the way we buy products and the products themselves have gone through huge changes in the last few decades and the pace of change is increasing. It is essential regulation keeps pace with rapidly advancing technology and innovation, and evolving models of supply, to ensure people are protected and businesses are supported to invest and grow. In order to meet our ambitions around Net Zero and clean growth we may need to need to think more broadly about how we use and regulate products.

The UK already has one of the strongest product safety systems in the world. It is underpinned by product safety legislation that currently regulates how safe products are supplied and sold, by placing legal obligations on those in the supply chain. This body of law is extensive and complex, running to over 20 sets of regulations and many hundreds of pages.

This framework is largely inherited from our time as a member of the European Union (EU). But now we have left the EU and the Transition Period has ended, we have full regulatory autonomy. We can set our own rules in the best interests of UK consumers and businesses, and divergence may occur as both entities make changes to their rules over time.

As a result of our exit from the EU, some new domestic regulatory arrangements came into force in the UK on 1 January 2021, including the application of the Northern Ireland Protocol in Northern Ireland. However, the technical requirements and framework are largely the same. The government supported businesses to prepare for the end of the Transition Period and full guidance is available.

OPSS is now seeking views on the longer-term approach to product safety and how to ensure that the framework is fit for the future. In particular, we will consider whether our product safety framework:

- adequately protects consumers from unsafe goods;
- is sufficiently simple to follow and flexible enough to be able to take account of new risks and opportunities, so it delivers both safe outcomes and supports business growth and innovation;
- can respond quickly to new and emerging threats, and opportunities for product safety, including digital technologies and new models of supply; and
- supports both regulators and business to be open and transparent about product safety so consumers can make informed decisions.

General information

Purpose of this Call for Evidence

The government recognises that the current regulatory framework, though substantial in size and extending to many individual pieces of regulation, is familiar and generally understood by businesses who use it most regularly. But we also need to consider businesses looking to develop innovative new products or ways of supplying them to consumers.

The government is committed to ensuring that only safe products can be legally placed on the market now and in the future. But the world in which we operate is changing and it is important that the framework that protects consumers from unsafe products is reviewed and updated where necessary, to deal with new and novel products or business models.

This is also an opportunity for us to invite and listen to a wide range of views on the UK's overarching product safety regulations, so that any prospective reform results in a product safety framework that is fit for the future – protecting people and supporting both growth and investment.

To ensure a structured and comprehensive approach, we've split this document into a series of topics, led by explanatory text and followed with a set of related questions. We are looking for evidence in the following areas:

- Product design, manufacture and placing on the market
- New models of supply
- New products and product lifecycles
- Enforcement considerations
- A diverse and inclusive product safety framework

Call for Evidence details

Issued: 11 March 2021

Respond by: 17 June 2021 – Extended from 3 June 2021 to allow more time to respond in the light of COVID-19 and the run-up to the local elections.

Enquiries to:

Please do not send enquiries by post to the department at the moment as we may not be able to access them.

Email: productsafetyreview@beis.gov.uk

Tel: 0121 345 1201

Reference: Product Safety Review: Call for Evidence

Audiences:

We want to hear from the broad range of individuals, businesses and organisations that interact with all aspects of product safety, including manufacturers, trade associations, consumers and consumer organisations.

While we welcome responses from any interested party, we are particularly keen to hear from:

- consumers and consumer organisations, including those who work with vulnerable consumers or under-represented groups;
- small businesses and those in emerging sectors, such as artificial intelligence;
- businesses who have recent experience of bringing new or innovative products to market;
- businesses operating new or innovative ways of bringing products to consumers, including sharing economy models or e-commerce;
- conformity assessment bodies, particularly those who have recently worked with any of the above businesses; and
- local authorities and national regulators that have enforcement duties under product safety and related legislation.

Territorial extent:

We are interested in gathering evidence on a UK-wide basis.

How to respond

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence, in particular relevant data and analysis, are also welcome. These can be attached as separate documents with your response via email if necessary. You do not have to answer every question.

Your response should be submitted online using the dedicated online portal:

beisgovuk.citizenspace.com/opss/productsafetyreview

Alternatively, email your responses to: productsafetyreview@beis.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Please do not send responses by post to the department as at the moment we are unable to access them.

Confidentiality and data protection

Information you provide in response to this call for evidence, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want your information treated as confidential please tell us, but we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable UK and EU data protection laws. See our privacy notice.

We will summarise all responses and publish this summary on GOV.UK. The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This call for evidence has been carried out in accordance with the Government's Consultation Principles.

If you have any complaints about the process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

Email: enquiries@beis.gov.uk

Catalogue of Call for Evidence questions

Questions	
1	How easy is it to understand the current framework of product safety regulation? What areas, if any, could be simplified or made easier to follow?
2	In what areas, if any, should product safety regulation be strengthened or improved?
3	Should regulation be targeted more at the product itself or the manufacturer's systems that produce it? Please explain.
4	How could the current product safety framework do more to support innovation or the supply of new technologies to consumers? Using examples, how could it better anticipate upcoming changes in manufacture and production?
5	What areas of the current regulatory framework could be tailored to create more opportunities for UK innovation and manufacturing?
6	How well is the conformity assessment system working? What are your experiences of it and of self-assessment?
7	Reflecting on the response to the COVID-19 pandemic (as set out in the case study), what changes could be made to help bring safe products to market more quickly?
8	What role should voluntary standards play in product safety? What are the benefits and drawbacks of linking regulation to voluntary standards?
9	What are the key challenges for regulating product safety in online sales? What has worked well in terms of regulation and where are the opportunities?
10	Thinking particularly about new models of distribution and supply (including online sales and the sharing economy), is it always clear where responsibility / liability for product safety lies?
11	To what extent are product safety issues arising from consumers producing (e.g., 3D printing) and / or hiring out and selling products to each other?
12	Have you any insights on whether consumers know what to look out for ensure a product is safe when buying online and /or how to raise safety concerns? How could these processes be made easier or clearer?
13	What role should voluntary commitments, such as the Product Safety Pledge, play in consumer protection from unsafe products? Can you share any evidence or experiences of the benefits and drawbacks?

14	What might a typical product lifecycle look like in the future as we move towards a circular economy? Can you provide examples, including of connected and second-hand products?
15	How can we build in flexibility to the regulatory framework to adjust to changes in product lifecycles and technology, including changes in understanding of risk? How do businesses integrate safety considerations with other aspects of product regulation such as environmental considerations?
16	For how long should responsibility for the safety of the product lie with the manufacturer? What responsibilities should apply to software integral to products, second-hand goods or supply of replacement parts?
17	How is enforcement of product safety changing in light of new products (e.g., connected devices, 3D printed) and new ways of distributing products (e-commerce, sharing economy). What are the greatest challenges?
18	How well does the current system for corrective action and recalls system work? How could the regulatory framework better support it?
19	When it comes to product enforcement, how well does the system deliver transparency and confidence while maintaining confidentiality? Please explain.
20	What toolkit of enforcement duties and powers is needed for effective enforcement now and in the future? Do enforcement authorities have the right tools they need, including data availability, to do the job?
21	How could greater use of technology and innovation support more effective, business friendly enforcement and compliance?
22	When it comes to product liability, do consumers have the right tools and information to take action on their own behalf? Please explain.
23	Does the current framework adequately protect all people in society, including vulnerable groups and those with particular needs? And could it be improved?
24	Are there any examples of, or issues where, the impact of regulation is different for people from different groups in society?
25	How can we ensure the processes for consumer recourse are accessible to all kinds of consumer?

1 Background

What is in scope?

Our aim is to protect people from unsafe products in a way that delivers public confidence and choice and supports innovation and competitive markets.

Innovation in consumer goods has always been one of Britain's strengths – from the automatic kettle to the bagless vacuum cleaner. Such products make our lives better and as consumers we want to access the latest technology and innovation. But we also want products to be safe, and to have confidence that they will be safe for all groups and sections of society, including vulnerable consumers. Increasingly, environmental impacts will also be a consideration, both for consumers and for product manufacturers as businesses prepare for the transition to reach Net Zero by 2050 or earlier.

This call for evidence is focussed on regulations within the remit of OPSS that cover the majority of consumer products, including electrical equipment, cosmetics, toys and gas appliances, as well as those that go beyond consumers to protect users of, for example, machinery, lifts, equipment used in explosive atmospheres and pressure equipment. It will include cross-cutting regulations, such as the General Product Safety Regulation 2005, as well as product specific rules.

We are interested in exploring all the various ways a product can be brought to market, including business to consumer sales, business to business and consumer to consumer. This includes second-hand and repaired goods.

This review will focus on how to ensure the safety of products and the liability for them and will not extend to regulations designed to protect consumers from unfair or misleading trading practices.

It does not cover food, chemicals, medical or healthcare products, construction products or vehicles, all of which are regulated separately. OPSS is working closely with other government Departments to ensure a joined-up approach where appropriate. Annex B provides a full list of the legislation in scope of the Review.

Respondents should note that a new approach to the Furniture and Fire (Safety) Regulations 1988 is currently being developed in parallel with this review[1].

What does the current regulatory framework look like?

OPSS was launched in January 2018, following the recommendations of the Working Group on Product Recalls and Safety. We regulate a wide range of products with a focus on their safety and integrity. We work with local, national and international regulators, with consumer representatives and with businesses to deliver effective protections and to support compliance.

---

1 https://www.gov.uk/government/consultations/furniture-and-furnishing-fire-safety-regulations-proposed-changes-2016

The latest OPSS Delivery Report sets out the progress made by OPSS, including ensuring effective action on white goods' recalls leading to the modification or replacement of 1.8 million appliances and publishing the first government-backed code of practice on product recalls.

Before a product can be placed on the market, the manufacturer or importer must ensure that the product meets the relevant safety requirements. The current product safety framework is primarily derived from the EU but also includes some older, national legislation made under the Consumer Protection Act 1987. Some EU-derived legislation follows an EU framework known as the New Legislative Framework or "NLF" – a modular framework for agreeing essential safety requirements in law that offers a fixed set of conformity assessment modules. The characteristics of this framework (from 1 January 2021) are:

- UKCA Marking as a declaration that products meet essential health and safety requirements. Some regulations require use of third parties for certification.
- Responsibility for ensuring the safety of products is placed on those in the supply chain – manufacturers, importers or distributors.
- Use of designated standards where appropriate to give a Presumption of Conformity against essential requirements.

Within this framework there are significant variations and adaptations for different products, as well as some legislation which follows an 'old approach'. Products that do not have specific legislation are regulated under the General Product Safety Regulations 2005. This provides a baseline of safety that places requirements on producers, including to ensure their products are safe, and on distributors, including to act with due care to ensure that consumer products are safe before being placed on the market.

Conformity assessment processes are specified for individual products where they are regulated under the NLF and can involve product design, manufacturing process controls and product testing. For some products, conformity assessments can be done by the manufacturer through self-declaration. Other products require them to be carried out by third party organisations, known as approved bodies in the UK. Certain products require conformity marking, applied by the manufacturer to state that it conforms to all relevant legislation.

Voluntary product standards can assist manufacturers in meeting the requirements of the applicable legislation. Some regulations allow for a presumption of conformity, which means that products complying with designated standards are deemed to be safe in relation to the areas they cover. Fast track standards documents, known as Publicly Available Specifications (PAS), set out good practice in products or processes. Regulators have also made use of voluntary commitments, such as the Product Safety Pledge to encourage businesses to sign up to commitments that go beyond their legal responsibilities.

Following the end of the Transition Period, the EU (Withdrawal) Act 2018 has retained EU regulations in UK law. Amending regulations[2] have been made under the same Act to ensure that there is a functioning UK product safety framework. Guidance on the legal framework that applies now the Transition Period has ended can be found on GOV.UK.

---

[2] Particularly, The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019

Enforcement of product safety at a local level is primarily conducted by Local Authority Trading Standards. At a national level, OPSS provides leadership where issues are novel, contentious or nationally important and delivers national enforcement responses on cross-cutting issues.

In respect of the Devolved Administrations, product safety policy is reserved, meaning that in the majority of cases, rules are set at the UK level.

While the Northern Ireland Protocol[3] is in force, from 1 January 2021, Northern Ireland is aligning with relevant EU rules relating to the placing on the market of manufactured goods. Guidance on how products can be placed on the market in Northern Ireland can be found on GOV.UK. The government has committed to providing unfettered access for qualifying Northern Ireland goods to the rest of the UK market after 1 January 2021. This means that products placed on the market in Northern Ireland in accordance with the regulations, as they apply to Northern Ireland, can be sold in the rest of the UK without any additional approvals. Further guidance on how Northern Ireland businesses can benefit from unfettered access is available on GOV.UK.

The government has set out separately on GOV.UK new rules for placing products on the market in Great Britain, use of the UKCA mark, conformity assessment bodies and moving goods under the Northern Ireland Protocol.

[3] The Protocol on Ireland/Northern Ireland (also known as 'The Northern Ireland Protocol' and referred to in this document as 'the Protocol').

2 Product design, manufacture and placing on the market

Current context and future considerations

The current framework of product safety regulation has been designed around traditional, physical products, but technology is constantly and rapidly evolving. A product that is understood as safe today, may not be in light of tomorrow's developments in scientific knowledge and understanding. The growth of internet-connected devices blurs the boundary between product and service, and between an individual product and a connected one.

Furthermore, manufacturing techniques like 3D printing mean that production can now take place in consumers' homes. This opens new possibilities in areas such as product repair and customisation. Because of these developments, greater clarity on legal responsibilities may be needed for products that incorporate software and new manufacturing techniques in their design, manufacture, and use.

Taking steps to ensure a product is safe before it is placed on the market, including making sure that manufacturers have adequate quality assurance processes in place, may be more effective than interventions once products are already on the market. Through this call for evidence, OPSS would like to understand perceptions and experiences of the current system. We want to explore whether the right guidance and other approaches by regulators are available to ensure products are fit for intended purpose before being placed on the market – whether in the future that production is in a factory or in someone's home.

Personal Protective Equipment (PPE): case study

The COVID-19 pandemic significantly increased demand for PPE worldwide. To help ensure supply for the national health and care services across the UK and other frontline workers for the duration of the COVID-19 pandemic, OPSS introduced two temporary Regulatory Easements on 25 March 2020:

- For government and NHS purchases of COVID-19 PPE for use by health care workers, OPSS introduced an alternative route to market to deliver safe supplies of PPE. Until 30 June 2021, this allows PPE to be supplied without the need for formal third-party conformity assessment, providing it has been manufactured in line with a relevant European standard, in accordance with a standard referenced in the WHO guidelines, or to an alternative technical solution that delivers adequate safety. These products have to be approved by Health and Safety Executive/Health and Safety Executive NI (HSE/HSE NI) against the essential health and safety requirements (EHSR) to ensure they are safe and effective.
- For other supplies of Covid-19 PPE, conformity assessment must be underway, but until 31 March 2021, it can be supplied before the process is completed, provided it is assessed as meeting EHSR by an Approved (formerly Notified) Body and is cleared by HSE/HSE NI.

The coronavirus crisis has demonstrated the importance of confidence in the safety of the product for the end user. By changing how regulatory requirements for certification are applied for those manufacturers who have taken up the easements, the government has allowed for a shortened production and approval cycle for PPE.

Questions:

1. How easy is it to understand the current framework of product safety regulation? What areas, if any, could be simplified or made easier to follow?
2. In what areas, if any, should product safety regulation be strengthened or improved?
3. Should regulation be targeted more at the product itself or the manufacturer's systems that produce it? Please explain.
4. How could the current product safety framework do more to support innovation or the supply of new technologies to consumers? Using examples, how could it better anticipate upcoming changes in manufacture and production?
5. What areas of the current regulatory framework could the UK tailor to create more opportunities for UK innovation and manufacturing?
6. How well is the conformity assessment system working? What are your experiences of it and of self-assessment?
7. Reflecting on the response to the COVID-19 pandemic (as set out in the case study above), what changes could be made to help bring safe products to market more quickly?
8. What role should voluntary standards play in product safety? What are the benefits and drawbacks of linking regulation to voluntary standards?

3 New models of supply

Current context and future considerations

The way e-commerce has revolutionised and disrupted the way products are bought, sold and distributed is not new. The proportion of online sales has been rising steadily, making up 20% of retail sales at the start of 2020[4]. The impact of pandemic has accelerated this – online sales in August 2020 were 46.8% higher than February's pre-pandemic levels. While we do not know the extent to which this acceleration will represent a permanent change in behaviour, it's clear that online will remain a major part of the retail landscape.

The bulk of the current legal framework was designed before the world of internet shopping. Certain aspects of regulation may require greater clarity to fully align with the reality of today's online market landscape and new business models of sale and distribution.

Consider, for example, how online marketplaces have revolutionised the way we buy products. They have created new global online marketplaces where billions of products are bought and sold by consumers and businesses. Often these marketplaces provide or work in tandem with additional services such as payment services, or new distribution models, such as fulfilment services. These have enabled products, new and second-hand, to be sold more easily, quickly and cheaply, often from other countries.

This brings benefits for consumers, but also presents new challenges to ensure products sold are safe. For example, new models for selling and distributing products have led to blurring of lines between different actors in the supply chain. When a product is bought and fulfilled by third parties via an online marketplace, the roles of businesses in the supply chain do not neatly fit with traditional operator roles of manufacturer, importer and distributor. In some cases, consumers are technically acting as importers when they buy from online platforms. All of this may make it less clear where responsibility for product safety lies. Voluntary approaches to address some of these issues have been tried by the European Union through their Product Safety Pledge, a series of commitments that some online marketplaces have signed up to that go beyond their legal responsibilities.

Another new market area is the sharing economy. This has given people new ways to rent and share goods through online applications. Technology allows individuals to actively participate in peer-to-peer exchange schemes: the platform or app facilitates the introduction between individuals, who then contract with each other. Driven by online social networks, the sharing economy has environmental, economic, cost-saving and flexibility benefits. In this call for evidence, OPSS would like to explore the extent to which safety is considered in these models and whether greater clarity is needed on the legal responsibilities of those involved.

---

4 ONS, Retail sales, Great Britain: September 2020

The government recognises the scale of the challenge in regulating online sales. Since its establishment, OPSS has been engaging proactively with major online platforms to ensure that they are playing their part in protecting UK consumers from unsafe goods. For example:

- In summer 2019, the Minister for Small Business, Consumers and Corporate Responsibility wrote to the UK heads of major online marketplaces (Amazon, Alibaba, eBay, Gumtree, Facebook) to determine what steps they are currently taking to ensure that unsafe and non-compliant goods are not made available to consumers via their platforms.
- OPSS is encouraging UK platforms to establish Primary Authority arrangements that will give them access to expert and tailored advice on compliance. Effective Primary Authority arrangements are already in place for Amazon and eBay.
- OPSS is exploring the role that voluntary agreements can play to encourage best practice from businesses who play a role in facilitating individuals buying consumers products.

This review is an opportunity to step back and gather evidence on how the legislative framework is working in light of the changes to traditional supply and distribution chains brought about by e-commerce.

Questions:

9. What are the key challenges for ensuring product safety in online sales? What has worked well in terms of regulation and where are the opportunities?
10. Thinking particularly about new models of distribution and supply (including online sales and the sharing economy), is it always clear where responsibility / liability for product safety lies?
11. To what extent to do you see product safety issues arising from consumers producing (e.g., 3D printing) and / or hiring out and selling products to each other?
12. Have you any insights on whether consumers know what to look out for to make sure a product is safe when buying online and / or how to raise safety concerns? How could these processes be made easier or clearer?
13. What role should voluntary commitments such as the Product Safety Pledge play in consumer protection from unsafe products? Can you share any evidence or experiences of the benefits and drawbacks?

4 New products and product lifecycles

Current context and future considerations

It's not just the way that we buy products that has changed since the regulations were drafted – so have the products themselves. From the Internet of Things (IoT) to Artificial Intelligence (AI), a growing number of products can now communicate with each other and us, learn and evolve in a way that was not envisioned when product regulations were drafted.

Connected devices – or IoT – are already prevalent in the market and are expected to reach 50 billion devices globally by 2030, a fivefold increase in 10 years[5]. IoT is attractive to both consumers and businesses because it offers greater convenience, which ultimately saves time, effort and money across everything from home security to energy. Through software updates and AI techniques, such as machine learning, products can now continually develop over their lifetimes. While careful consideration is needed to assure the safety of a product for the duration of its lifecycle at the time of placing it on the market, connected products could also present opportunities, for example with devices able to alert the consumer to emerging safety risks or recall information.

At the same time, the connected nature of IoT and AI makes them more susceptible to hacking and they require regular software updates. The Department for Culture, Media and Sport recently ran a call for views on proposals for regulating the cyber security of consumer smart devices[6]. Similar issues arise with regards to product safety as the interface of software and hardware blurs the boundaries of producer responsibility.

Another dimension to changing product lifecycles is demand for products to last longer either by being more durable, more repairable, or more upgradeable to contribute to the targets for Net Zero, zero avoidable waste and double resource productivity by 2050. Products may need to be re-designed to better enable disassembly or repair or be manufactured from different materials, such as those that are more easily recyclable. There may need to be more sharing, including second-hand use and product-as-a-service business models. This more circular and therefore, more resource efficient economy, may have implications for product safety and how we continue to ensure safety in this emerging system.

Second-hand goods also bring with them their own product safety challenges, including how to ensure the safety of products many years, or even decades after they were first sold, and how to engage new owners in any corrective or recall action.

---

5 https://www.statista.com/statistics/802690/worldwide-connected-devices-by-access-technology/
6 https://www.gov.uk/government/collections/secure-by-design

Case Study: Sales of second-hand electrical goods

OPSS commissioned Electrical Safety First (ESF) to undertake a study of 'brick and mortar' sales of second-hand electrical appliance via personal / private and business channels in eight regions across the UK.

While research found clear consumer demand for purchases of second-hand electrical products via bricks and mortar sales channels, the condition of items found during the study varied significantly – from nearly new unused items to very dated, damaged, worn and poorly maintained products. A number of potentially unsafe electrical products were also found, based on visual checks.

Despite legally binding safety obligations for businesses selling second-hand electrical products, only around half of the outlets visited claimed to undertake safety checks before placing items for sale. Overall awareness of the need to check second-hand electrical goods against recall notices was low, particularly via private sellers.

This study has helped to understand the 'brick and mortar' second-hand market better and formed the basis of training for frontline trading standards officers to support the work they do to ensure compliance with safety regulations.

Questions:

14. What might a typical product lifecycle look like in the future as we move towards a circular economy? Can you provide examples, including of connected and second-hand products?
15. How can we build in flexibility to the regulatory framework to adjust to changes in product lifecycles and technology, including changes in understanding of risk? How do businesses integrate safety considerations with other aspects of product regulation such as environmental considerations?
16. For how long should responsibility for the safety of the product lie with the manufacturer? What responsibilities should apply to software that is integral to the product, second-hand goods or supply of replacement parts?

5 Enforcement considerations

Current context and future considerations

The set of laws that make up the current product safety framework were developed for a world where most transactions were conducted at a local level and supply chains were less complex. The enforcement system that is designed to ensure compliance with product safety regulations reflects that world. Of course, today, a significant proportion of our products are sold online through a variety of supply models, some very complex, and new technologies such as artificial intelligence are changing what may be possible in compliance and enforcement.

Significant steps have been taken in recent years to improve how effective enforcement of product safety is delivered. The creation of OPSS has brought national leadership and focus to product safety enforcement. OPSS provides support to the many, dedicated Local Authority Trading Standards teams throughout the UK through central training, intelligence, testing and strategic research programmes.

These developments in the product safety and business landscapes are not reflected in the legal framework. We want to ensure that the tools available to regulators, and their duties, powers and obligations, are up-to-date, consistent and appropriate for working with the different business models and complex supply chains that provide the huge range of products available to us.

Effective and proportionate regulation also relies on informed decisions, using evidence to assess and balance the various factors relating to risk, hazard and harm. These factors include the product itself and how likely and severe the harm, as well as how and where the product is being used and by whom. Rigorous assessment of risk requires a supply of good quality data and information, and careful judgement on its application.

Product safety risks and priorities can sometimes change overnight in response to new information which comes to light through a specific tragic event or incident. The extraordinary circumstances and demand for PPE have brought to the forefront the issue of flexibility in regulatory frameworks and whether we have the right tools and levers to respond to crises.

New technologies, complex supply models and new risks, have increased the complexity of product safety investigations. The need for regulators to have access to specialist skills, including the best scientific advice has increased as a result. These demands have traditionally been met through public spending, but other models are increasingly being adopted in new areas of regulation, such as the Health and Safety Executive's Fee for Intervention.

Consumers also have a role to play in product safety. Consumers need access to accurate information so that they can make informed decisions when purchasing and using products. Open data models have been used successfully in food safety to raise public awareness of food safety and to incentivise business compliance. Greater sharing of information, including with consumers and other regulators, may speed up enforcement action and improve product safety outcomes, but personal data must also be protected. As markets for products are increasingly global, regulators are increasingly working with international counterparts to protect UK consumers.

Liability is placed on producers for damage caused by defects in their products under the Consumer Protection Act 1987. These rules are designed to hold manufacturers to account for unsafe goods and to allow consumers to claim compensation if a defective product has caused personal injury, damage to property or death. The provisions are largely unchanged in over 30 years and do not reflect new technologies such as internet-enabled devices, AI, and 3D printing which are complicating how liability can be attributed.

Questions:

17. How is enforcement of product safety changing in light of new products (e.g., connected devices, 3D printed) and new ways of distributing products (e-commerce, sharing economy). What are the greatest challenges?
18. How well does the current system for corrective action and recalls system work? How could the regulatory system better support it?
19. When it comes to product enforcement, how well does the system deliver transparency and confidence while maintaining confidentiality? Please explain.
20. What toolkit of enforcement duties and powers is needed for effective enforcement now and in the future? Do enforcement authorities have the right tools they need, including data availability, to do the job?
21. How could greater use of technology and innovation support more effective, business friendly enforcement and compliance?
22. When it comes to product liability, do consumers have the right tools and information to take action on their own behalf? Please explain.

6 A diverse and inclusive product safety framework

OPSS is committed to being a diverse and inclusive regulator. Being inclusive is vital because there is a responsibility for the safety of all consumers. Focussing on the experiences of those who have been under-represented will improve the products and the system for everyone. We want to make the framework better for everyone, particularly more vulnerable consumers and under-represented groups.

If products are designed or tested using only the average metrics for one group in society, for example a single ethnic group, single age group or a single gender, then safety risks may be increased for other groups that have not been considered in the design or testing process. For example, research has suggested that some Virtual Reality headsets can be associated with higher levels of motion sickness in female compared to male users[7]. Elsewhere, there are examples of voice and body recognition technologies that do not fit all body types and so may not recognise the wearer, respond to female voices, or recognise certain skin tones.

Cultural and socio-economic factors will affect what products we buy and where we buy them, as well as how we use them. All these factors can have an impact on risk and safety. Consider the case study below on product safety and an Ageing Society.

Case Study: An ageing society and product safety

Recently completed research commissioned by OPSS with BritainThinks suggests that design processes and practices affect product safety for older people. Changes to ability vary greatly among older people, though can include changes to strength and dexterity, mobility, sensory function, and cognition and memory. In turn these factors impact on the risk posed by, and the safety of products.

There are a number of safety implications associated with certain products being less easy to use for older people. Consider for example, everyday products that require strength and dexterity to operate, such as can openers or heavy vacuum cleaners. Corded products may present an increased tripping hazard. Products such as remote controls, SMART TVs or washing machines may have small buttons, small writing or complex instructions.

Another source of risk stems from the use of ‘workarounds’, employed to enable continued use of a product. Examples included using knives instead of can openers or fixing custom adjustments to handrails or banisters that could be unsafe. Safety is an important dynamic in all of these, and small changes could improve overall accessibility or usability.

Hearing a wide range of views and different experiences is important to us. The product safety framework should work to protect everyone.

---

7 Munafo, J., Diedrick, M. & Stoffregen, T.A. The virtual reality head-mounted display Oculus Rift induces motion sickness and is sexist in its effects. Exp Brain Res 235, 889–901 (2017). https://doi.org/10.1007/s00221-016-4846-7

Questions:

23. Does the current framework adequately protect all people in society, including vulnerable groups and those with particular needs? And could it be improved?
24. Are there any examples of, or issues where, the impact of regulation is different for people from different groups in society?
25. How can we ensure the processes for consumer recourse are accessible to all kinds of consumer?

Additional Information

Please provide any other information or evidence that you think we should take into consideration during this call for evidence. Further comments and supporting evidence, in particular relevant data and analysis, are also welcome. These can be attached as separate documents with your response via email if necessary.

Next steps

All responses will be considered and analysed. The government will aim to publish a follow up summary and evidence paper within 12 weeks of the close of the call for evidence.

Annex A – Glossary of Definitions

Artificial Intelligence – A system or device able to perform tasks normally requiring human intelligence, such as visual or audio perception, and decision-making.

Conformity Assessment – The assessment of a product, before it is placed on the market, against all of the legislative requirements, including testing, inspection and certification. The processes are set out within the relevant legislation.

Conformity Assessment Body – A legal entity appointed to carry out Conformity Assessment. In the UK they must be accredited by the United Kingdom Accreditation Service, the National Accreditation Body.

Connected Device – See Smart Device

Consumer Product – Products designed to be primarily used by consumers rather than professionals in a workplace setting, regulated by the suite of legislation listed in Annex B

Distributor – As defined in the General Product Safety Regulations 2005: a professional in the supply chain whose activity does not affect the safety properties of a product, for example a retailer; or

As most commonly defined in legislation derived from the NLF: Any person in the supply chain, other than the manufacturer or the importer, who makes products available on the market.

Drop Shipping – A retail business model where products are shipped directly to a consumer, often from overseas without the need for UK importer, by a business other than that handling the retail transaction.

E-Commerce – Commercial transactions, including, but not limited to, the purchase of consumer products, conducted via the internet.

Fulfilment Service – A commercial service offering at least two of the following services: warehousing, packaging, addressing and dispatching, without having ownership of the products involved.

Harm – As most commonly defined in legislation derived from the NLF: Physical injury to persons or domestic animals or material damage to property.

Importer – As most commonly defined in legislation derived from the NLF: The first person who is established within the UK and makes available a product from a third country on the GB market.

Internet of Things (IoT) – The collective network of connected consumer devices, enabling traditional consumer products to ‘communicate’. See Smart Device and Connected Device.

Net Zero – The target of completely negating the amount of greenhouse gases produced by human activity, specifically achieving a balance between the amount of greenhouse gas emissions produced and the amount removed from the atmosphere. The UK has enshrined the target of achieving this by 2050 in law.

Manufacturer – As most commonly defined in legislation derived from the NLF: Any person who manufactures a product, or has a product designed or manufactured; and markets that product under that person's name or trademark.

Online Marketplace – An E-Commerce site that provides a platform for listing items for sale by third-party businesses. Online Marketplaces may offer a location to list products or offer fulfilment services for third parties. See also Fulfilment Service.

Online Retailer – An online business that sells goods directly to consumers.

Personal Protective Equipment – Equipment designed and manufactured to be worn or held by a person for protection of that person against one or more risks to their health or safety.

Producer – As defined in the General Product Safety Regulations 2005: The manufacturer of a product or their representative; the importer; or another professional in the supply chain, insofar as their activities may affect the safety properties of a product.

Right to Repair – European Union rules adopted under the Eco-Design Directive that aim to ensure household goods are easier to repair and maintain for an extended period of time.

Risk – An assessment that includes calculating the probability of harm and the possible significance of that harm.

Safe Product – As defined in the General Product Safety Regulations 2005: A product which, under normal or reasonably foreseeable conditions of use, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons.

Sharing Economy – The sale or hiring of goods or services in a non-traditional, consumer to consumer model.

Smart Device – A consumer product that has the ability to connect to the Internet and, in many cases, communicate with other devices in the network. Examples include WIFI-enabled kitchen appliances and children's toys.

Unsafe product – A product that fails to meet the legal safety requirements. See Safe Product.

Upstream Interventions – Interventions that take place at an early stage in the product lifecycle

3D Printing – The process of making a physical object from a three-dimensional digital model, typically by laying down many thin layers of a material in succession.

Annex B – List of Regulations in Scope

Cross cutting regulations

The Consumer Protection Act 1987

The General Product Safety Regulations 2005

Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (Regulation on Accreditation and Market Surveillance) (retained direct EU legislation)

The Accreditation Regulations 2009

Product Specific regulations

The Gun Barrel Proof Acts 1868 to 1978

The Nightwear (Safety) Regulations 1985

The Furniture and Furnishings (Fire) (Safety) Regulations 1988[8]

The Food Imitations (Safety) Regulations 1989

The Plugs and Sockets etc. (Safety) Regulations 1994

The Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001

The Supply of Machinery (Safety) Regulations 2008

The Aerosol Dispensers Regulations 2009

Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (Cosmetics Regulation) (retained direct EU legislation) and the Cosmetic Products Enforcement Regulations 2013

The Toys (Safety) Regulations 2011

The Pressure Equipment (Safety) Regulations 2016

The Pyrotechnic Article (Safety) Regulations 2015

The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 2016 (ATEX)

Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC (Personal Protective Equipment Regulation) (retained direct EU legislation) and the Personal Protective Equipment (Enforcement) Regulations 2018

Regulation (EU) 2016/426 of the European Parliament and of the Council of 9 March 2016 on appliances burning gaseous fuels and repealing Directive 2009/142/EC (Gas Appliances Regulation) (retained direct EU legislation) and the Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018

The Electromagnetic Compatibility Regulations 2016

---

[8] A separate review of these regulations is ongoing https://www.gov.uk/government/consultations/furniture-and-furnishing-fire-safety-regulations-proposed-changes-2016.

The Lifts Regulations 2016

The Simple Pressure Vessels (Safety) Regulations 2016

The Electrical Equipment (Safety) Regulations 2016

The Recreational Craft Regulations 2017

The Radio Equipment Regulations 2017

Note: most of the above are subject to amendments by EU Exit regulations (see below).

EU Exit regulations amending product safety legislation

The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019

The Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019

The Product Safety and Metrology etc. (Amendment to Extent and Meaning of Market) (EU Exit) Regulations 2020

The Product Safety and Metrology (Amendment) (EU Exit) Regulations 2020

The Product Safety and Metrology etc. (EU Withdrawal and EEA EFTA Separation Agreements) (EU Exit) Regulations 2020 –

The Product Safety and Metrology etc. (Amendment etc.) (UK(NI) Indication) (EU Exit) Regulations 2020

Office for Product Safety and Standards
Department for Business, Energy and Industrial Strategy
4th Floor Cannon House, 18 The Priory Queensway, Birmingham B4 6BS
www.gov.uk/government/organisations/office-for-product-safety-and-standards

Alternative format versions of this consultation are available on request from enquiries@beis.gov.uk