

ALERTER

Tightening the Net: the OPSS consults on the future of the UK product safety regime

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The Office for Product Safety & Standards (“OPSS”) has announced a new consultation on the UK’s new product safety framework,¹ and a companion consultation on product safety market surveillance and enforcement.²

This Alerter provides a short outline of the new product safety framework, referred to below as the “Consultation”, and some of its implications for practitioners, industry, regulators and public policy.

The Consultation is a significant first step in reshaping this jurisdiction’s product safety regulatory landscape. It is a clear indication that the government intends to implement a “*broader and more comprehensive*” product safety framework, grouped around five themes, the effects of which are summarised below:

- a. getting the basics right: the OPSS proposes a consolidated, unitary approach to product safety regulation.
- b. accountability across the supply chain: the Consultation indicates that actors across a supply chain (including, for the first time, online marketplaces) should bear more responsibility for minimising the risk of harmful products reaching consumers and causing harm.
- c. a new approach to product information: the proposal contemplates a digital-first model for provision of product safety information to consumers. This is one of the very few areas where the OPSS proposes divergence from EU Law (the remainder of the Consultation emphasises close alignment).
- d. supporting enforcement activity: all supply chain actors will be subject to a more extensive duty of cooperation, with producers and online marketplaces being required to identify a single

- e. point of contact for enforcement authorities; and building on new foundations: the OPSS lays out (in very high-level form) proposals to ‘future-proof’ the product safety regime for AI-enabled products.

One significant effect of this Consultation (assuming some version of its proposals is implemented in the future), and discussed in the final part of this Alerter, is that, by untethering the UK’s product safety regime from EU law, the government may create a new (strict liability) cause of action for those harmed by unsafe products under s. 41 of the Consumer Protection Act 1987.

BACKGROUND

The object of the Consultation is to streamline and modernise the existing product safety framework, presently contained in the General Product Safety Regulations 2005 (“**GPSR 2005**”), introduced pursuant to the Consumer Protection Act 1987, and sector-specific regulations.

There are three other important regulatory and legislative contexts:

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- a. the Product Safety and Metrology Act 2025 (“**PSMA 2025**”), which empowers the government to introduce new secondary legislation to control product risks. This is the enabling legislation under which the government is likely to implement the proposals foreshadowed in the Consultation;
- b. the Product Safety Review, which preceded the introduction of the 2025 Act, and demonstrated that there was substantial support for product safety reform from a wide-range of stakeholders, including trade bodies, local government, and consumer representative organisations;
- c. the EU’s Product Liability Directive 2024 and the General Product Safety Regulation 2024 (the “**New EU Regime**”) which (though they have no direct bearing on English law) articulate similar themes to those described in the Consultation. The former’s objectives include making the EU’s product safety regime “*fit for the digital age*”, fit for “*global value chains*”; and to “*provide better protection for victims and legal certainty*”. The latter introduces changes including broader product coverage and a requirement for EU ‘economic operators’ (i.e. EU manufacturers, importers, and authorised representatives) to conduct more rigorous risk assessments, who will be held more accountable for ensuring product safety.

THE FIVE THEMES

Getting the basics right

The central change proposed by this ‘theme’ is that, whereas the existing GPSR 2005 only regulates consumer products, while business (i.e. non-consumer) products are regulated on a specific, sector-by-sector, basis, the Consultation (reflecting the New EU Regime) proposes that the new product safety framework should apply to all products, regardless of type.

While this new approach will be subject to exceptions for certain products, including agricultural, food, aircraft, military equipment, medicines/medical devices, antiques, artwork and second-hand products, the Consultation envisages that, save for these product types, there be no differentiation between product types unless there is a clear reason to do so – such as where a product is particularly hazardous.

It follows that unless a product falls into one of the above categories, then the starting point may soon be that it will fall within the scope of a new ‘unitary’ product safety regime. The purpose of this revised approach is expressed to be: (a) to avoid certain kinds of product slipping through gaps in the existing regulatory regime, and (b) to enable simplification of the regulatory landscape.

The Consultation does not propose changing the definition of a safe product as expressed in the GPSR 2005, viz. a product that, under normal or foreseeable conditions of use, presents no risk of harm or only the minimum risk compatible with its use. In view of the ‘generalist’ approach, however, more products are likely to be required to comply with that definition.

The Consultation also proposes a limited extension to the kinds of harm covered by the GPSR 2005’s definition: it is proposed that in addition to health and safety impacts (the single risk covered by the GPSR 2005), a product’s safety should involve consideration of the risk of harm to property and domestic animals – but only where there is a designated standard or other product safety legislation which requires a product to be safe in relation to property or domestic animals in place.

The Consultation authors are alive to the evolving EU regulatory regime. In this respect, the Consultation proposes convergence with the changes introduced under the New EU Regime: “*To ensure that ... we enhance product safety, support businesses ... continue trading between the UK and EU, and allow the circulation of goods, we propose to broadly mirror the considerations for assessing safety...*”.

Supply chain accountability

This section focuses on three categories of supply chain actor: (i) producers (defined in the same way as under the GPSR 2005); (ii) onward suppliers (i.e. all intermediaries in the supply chain between producer and consumer; these are known as distributors under the GPSR 2005), and (iii) online marketplaces (i.e. sites or apps where goods are available to buy online).

The Consultation envisages that future product safety regulation will focus on online and international supply chains. It makes clear that businesses may perform multiple supply chain roles dependent on their activities. For this reason, it is proposed that (so far as possible) consistent or equivalent obligations will fall

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on each category of actor, to ensure proportionality and minimise the burden on business.

Producers and ‘onward suppliers’

The Consultation proposes retaining core elements of the GPSR 2005 as they apply to producers (such as the general safety requirement that prohibits producers from supplying or offering to supply an unsafe product) and distributors, whom the Consultation proposes to re-name ‘onward suppliers’ – (such as the obligation to act with due care to ensure product safety and compliance).

It is also proposed that onward suppliers should be subject to additional duties in respect of higher risk products. While onward suppliers are generally subject to a duty to take due care to supply any product only if it is safe, where a product is high risk, the Consultation indicates that it may be required that onward suppliers should take actions to check product compliance in detail or follow specific procedures. The theme of more substantial regulation of higher risk products feeds into the regulation of online marketplaces, as set out below.

Regulating online marketplaces

Where the Consultation does propose to introduce key changes is in the regulation of online marketplaces. It is “*not sufficient*” for an online marketplace to adopt a “*reactive approach that relies on relevant authorities to identify and report dangerous products to online marketplaces*”. Instead, the Consultation proposes three new obligations:

- a. a duty on an online marketplace to act with due care to prevent, identify, and remove dangerous products being sold by their platforms;
- b. a duty to practice due diligence to identify and take action against ‘bad actors’ who repeatedly sell dangerous products or otherwise fail to meet their product safety obligations. This will include a specific requirement for online marketplaces to verify seller contact details; and
- c. a duty in respect of higher risk products – to act with due care to identify and remove them from the marketplace, and to have specific processes in place for doing so.

These are potentially wide-ranging obligations, with significant consequences for online marketplaces whose participation in the supply chain is, on any view, indirect. The Consultation recognises the potential

burden on online marketplaces these new obligations will create, indicating that online marketplace regulation is intended to be outcome-based, not proscriptive. This is not set in stone, however: the Consultation also seeks views on whether the legislation should require an online marketplace to take specific actions to prevent, identify and remove dangerous products. It follows that a more paternalistic approach to online marketplaces cannot be ruled out.

Dangerous products at home and in the workplace and the expanded duty of cooperation

The Consultation also proposes to introduce requirements on all supply chain actors to participate, within the limits of their activities, in monitoring the safety of the products they have supplied and to cooperate in corrective action, with cooperation specifically requiring timely cooperation, provision of relevant information, and (for online marketplaces) access to their interfaces.

It is stated that this would extend the existing GPSR 2005 obligations – presumably the Consultation is here referring to the existing obligations on producers (under regulation 7) and distributors (under regulation 8) to keep themselves and others informed of product risks, and the obligation shared by producers and distributors to notify an enforcement authority if they know that a product they have placed on the market or supplied poses risk to the consumer (regulation 9). The nature of this proposed new duty is, however, both broader in scope, and more onerous: all actors (including the new category of online marketplaces) are affected in the same way, including in respect of the duty to cooperate in corrective action.

The Consultation also proposes reform to how producers and online marketplaces are required to cooperate in corrective action: it is proposed that both shall be required to have a single point of contact for relevant authorities, to which the Consultation proposes (inter alia) safety notices may be issued.

A new approach to product safety information

The Consultation makes two core proposals:

- a. Product safety information be provided on a flexible, ‘digital by default’ basis; and
- b. Online sellers are to be required to make product

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safety information available online, unless they are selling in a non-business capacity.

The digital first approach endorsed by the Consultation includes a reform proposal to allow supply chain actors (at least in England, Wales and Scotland) to communicate product safety information by way of digital labelling, such as QR code. This marks a divergence from EU Law – which does not permit digital labelling under the New EU Regime.³

To mitigate some of the risks of digital-first labelling, the Consultation proposes that: (1) the producer be required to ensure that digital information remains accessible through the label for the expected lifetime of the product, and (2) consumers can request a physical copy of safety information at no extra cost.

Building on new foundations

The Consultation ends with two core proposals for future product safety regulation (unsurprisingly, these may better be described as statements of intent). These two proposals are as follows:

- a. To consolidate and simplify the product safety regulatory landscape, and
- b. To future-proof the regulatory landscape for products which may not yet exist, including AI-enabled products which may be able to “*evolve and adapt throughout their operational life, potentially in ways that are unpredictable*”.

For specific examples of how AI-enabled products may create new risks of harm, see Lucy McCormick’s and James White’s article on the [unpredictable quality](#) of AI agents; Lucy has also written extensively on the risks of autonomous vehicles; and the author of this article also contributed to the ‘infrastructure’ section of the Employment Lawyers Association’s response to the government’s recent consultation on AI in the workforce.

The need for an intelligent regulatory regime, which can cope with the challenges of AI-enabled products, is obvious. However, there is little detail in the Consultation about what the OPSS intends to do to mitigate and control the growing risk arising from AI-enabled products which it has identified: the Consultation makes no reference at all to the government’s own initial guidance to regulators on responsible AI development, and the criteria of

“*safety, transparency, fairness, accountability, and contestability*” identified therein.⁴

WIDER IMPLICATIONS OF THE PROPOSED CHANGES

Enforcement implications

The Consultation shines a spotlight on particular types of product about which the OPSS has present concerns. These include:

- a. Lithium-ion batteries. The Consultation refers to the OPSS’s ongoing engagement with fire and rescue services to improve the information it receives regarding e-bike and e-scooter fires. It may be that this is an area that may be a target for enforcement action by the OPSS in due course.
- b. The listing rules of online marketplaces. The Consultation refers to a Which? Undercover investigation, which showed that it was possible to list (and re-list) an unsafe product for sale with a number of major online marketplaces. The Consultation is right to flag these concern. Another investigation, by the British Toy & Hobby Association (“**BTHA**”), found that 85% of toys purchased from third party sellers on online marketplaces are unsafe.⁵

The law of unintended consequences? Regulatory reform and a new cause of action

Section 41 of the Consumer Protection Act 1987 (“**CPA 1987**”) notionally confers a direct cause of action on any person who may be affected by the contravention of a regulatory obligation. Until now, this statutory tort has been constrained by the lingering effect of EU Law.

It was held in *Wilson & Ord v Beko plc* [2019] EWHC 3362 (QB) by Knowles J at [115] that:

“ Section 41(1) operates by making a breach of the obligations imposed by safety regulations actionable. In my judgment, in order to conform with what I have held to be the correct interpretation of the Directive, breaches of obligation imposed by safety regulations made under Part II of the 1987 Act are not actionable under section 41(1) if and to the extent the breach of duty in question would fall within Part I of the 1987 Act as relating to a defective product that caused actionable damage. ”

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Any new product safety regulations made under the PSMA 2025 (and following this Consultation) would not be regulations made under Part II of the 1987 Act.

They could not now reasonably be described as giving effect to EU Law: notably, while EU convergence is a running theme of the regulations, there are areas (such as in relation to digital labelling) where the UK's product safety regime appears likely to diverge.

The principle of EU supremacy that led the claimant's claim in *Wilson* to fail may no longer apply in the same way.

It is outside the scope of this Alert to explore this question in full, but it may be that the most significant impact of the Consultation (and any regulations enacted thereunder) is that, in a post-Brexit landscape, those harmed by unsafe products will have a new, independent, and strict cause of action under section 41 of the CPA 1987.

CONCLUSION

For industry, practitioners and regulators the potential implications of this Consultation are profound and, coupled with the extensive changes to market surveillance and enforcement which are foreshadowed in the companion consultation, reflect an increase in regulatory oversight by the OPSS.

END NOTES

¹ See: <https://www.gov.uk/government/consultations/product-regulation-the-uks-new-product-safety-framework/the-uks-new-product-safety-framework>

² See: <https://www.gov.uk/government/consultations/product-regulation-market-surveillance-and-enforcement-framework>

³ Products marketed in Northern Ireland will be required to comply with the New EU Regime, and so cannot be sold with digital labelling.

⁴ [Implementing the UK's AI regulatory principles: initial guidance for regulators - GOV.UK](#)

⁵ See the BTHA's 2024 report, 'Still Toying With Children's Safety': <https://www.btha.co.uk/advocacy/campaigns/>

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