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The Office for Product Safety and Standards
Cannon House
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Dear Sir/Madam,

Product Safety Review: Consultation Response – By email

We are the trade association for UK retail businesses, our purpose is to make a positive difference to the retail industry and the customers it serves, today and in the future.

We tell the story of retail, work with our members to drive positive change and use our expertise and influence to create an economic and policy environment that enables retail businesses to thrive and consumers to benefit. We have over 200 retail members, and almost every high street and large online retailer is a member of the BRC.

This consultation response has been put together by the BRC's buying community. This community consists of over 850 product safety professionals, based within the UK's largest retailers.

Proposal 1: Examine options for a new approach centred around potential hazards, cross-cutting risk-based safety requirements and transparency.

1. Are there any specific products where action within the current product safety framework could be taken to reduce business burden, encourage innovation and/or increase consumer choice without compromising safety? Please provide evidence to support your suggestion

In general, we would welcome regulations that list a set of core essential requirements, this would make them easier to follow.

Policymakers should bear in mind that manufacturers do not usually manufacture for the United Kingdom, they usually manufacture for the European Market. Therefore, British businesses will be at a disadvantage should regulations diverge from

European regulations. Divergence adds costs for consumers due to manufacturers and retailers having to add UK costs for:

- *Labelling*
- *Training*
- *Declarations of conformity*
- *Re-testing in some cases*
- *Re-tooling manufacturing equipment*

Oven gloves

The classification of oven gloves as PPE, and therefore the need to have 3rd party UKCAB (UK Conformity Assessment Body) conformity assessment is an area we would welcome a review and reduction in regulation. The current regulatory requirements provide no greater safety for customers than the previous British Standard, but add cost & time (there are still backlogs for conformity assessments at all UKCABs) for manufacturers.

Toys

One retailer mentioned difficulty with toy safety & play value and how subjective this is, given that most things could be said to have play value from a child's point of view.

A voluntary guide is currently the best source of information to documenting decisions on play value, due to the grey nature of the legislation.

Chemical requirements

Chemical requirements – these are now frequent across all types of legislation:

- *Regulation on the registration, evaluation, authorisation and restriction of chemicals REACH,*
- *Persistent Organic Pollutants (POP)*
- *Energy Related Products*
- *Battery regulations*
- *Restriction of Hazardous Substances (ROHS)*

One legislation and programme to look after chemical restrictions would be a lot easier to keep track of, however with the caveat that this would still see divergence from the EU and make compliance more difficult.

Energy-related products

The complex legislation to understand and refer to, the EU portal requirements, the fiche being mandatory for customers but containing information that most customers would not be familiar with, the different requirements again for UK energy-related products in addition to energy efficiency labelling.

2. Do you agree that we should examine options for a framework where regulatory requirements are more closely linked to the risks of the product in question? Yes / No / Don't know .Please provide reasoning (including relevant evidence), considering risks and benefits, to support your answer, particularly any positive impacts or downsides on you or other stakeholder groups.

A hazard-based approach is already in place as a lot of non-food legislation has grey areas and requires interpretation. For example, there is no officially required testing on pet products beyond the General Product Safety Regulations (GPSR) requirement to be 'safe'. A lot of products are tested to Toy Safety by responsible retailers, that don't require it.

A hazard-based approach also opens the floodgates for certain businesses to make monetary gains by indicating the need for more tests than is suitable in practice. This does happen sometimes under the current framework but if left as wide open as being dependent on 'hazard', this is a potential stumbling block for innovation and a cost driver unnecessarily.

We can understand that the government would look towards a risk-based approach, and the retail sector would support risk-based, proportionate regulations.

Again, we would look to avoid unnecessary divergence from European Union regulations.

Risk can also be difficult to define, and in some cases is subjective. For example, children's clothing is low risk, unless a button comes off, then it becomes high risk.

Some products may move up and down the risk scale where when they are placed on the market, they are safe, but then become unsafe later, due to technological or societal changes.

Designation of standards currently has a 28-day notice period and no transition period. This is a wholly unrealistic timescale for adoption (particularly where there is a different industry-accepted standard in place/previously designated standard e.g. with the restricted designation of EN 60335-2-24). Designation of standards must have an enforcement timescale that allows time for manufacturers to adopt, and ideally with a transition period.

We would suggest 12 months to be a realistic enforcement date, with a 12-month transition period.

3. What role should standards and testing requirements play in supporting businesses to comply with the new approach? Please provide reasoning (including relevant evidence) to support your answer, particularly any positive impacts or downsides on you or other stakeholder groups.

Listing standards for everything will make the regulatory framework very difficult. A current example of this is toy safety legislation, where there is a crossover between

various legislation. However, we should avoid making too many standards. OPSS can currently designate standards in response to an urgent product safety need. This has recently been done for toys, safety gates and fridge freezer backings. However, we do not feel that the industry was properly informed or consulted about the changes, leading to some vital parts of the supply chain, not knowing about the new designated standards.

Standards should be free and easily available, and to make it easier for businesses, OPSS should host a searchable portal for standards. Regarding costs to access standards. If the framework changes and the standards to accompany it change, the compliance rate is likely to be low, as there is no affordability to retrieve and keep all relevant standards on file as it is, let alone if the whole approach changes. Supply chains are very complex and any changes to standards do take time to implement, currently, notice of changes to designated standards is unclear and without time to interpret and implement. This may be because currently the standard with specific changes highlighted won't be published due to the cost element.

Policymakers should bear Northern Ireland in mind, and not make it difficult to place products on the market in Northern Ireland.

4. What type and areas of guidance would most likely help you understand your requirements under any new framework? Please provide reasoning to support your answer.

Guidance documents are always welcomed from the retail sector. Retailers need to know what new regulations mean for them, and what they need to do to comply. Standards should also be free to access so that businesses of all sizes can access and use them.

Frequently asked questions also help, and would reduce the demand on government for support. A good example of this is the FAQ section of the European Chemicals Agency (ECHA) website.

A 'decision tree' style of guidance where businesses answer simple questions to understand what they need to do, would be welcomed.

Regulations need to have clear definitions, to avoid ambiguity, and provide certainty and clarity for consumers and businesses.

Both written & online training may be needed depending on the change. Any guidance needs to be clear & immediate, not 18 months after something is implemented and businesses have already potentially spent time and cost. Any Risk Assessment guidance needs to be extremely clear with examples.

5. Whilst anticipated costs and benefits would depend on the design of a new framework, what type of costs, quantified, if possible, would you anticipate in understanding a new framework? Please provide relevant evidence to support your answer or clarify whether this is from your own experience. (For understanding, the process of familiarising yourself with a new framework and not the costs to comply with a chosen framework).

The anticipated costs involved will be:

-Training and time to comply with the new framework.
-Time spent in understanding and interpreting rules and regulations. The clearer, more straightforward the framework (including regulations) the less time that businesses will need to spend on interpretation.
- Implementation
- administration (record keeping)
- Legal advice
- Labelling costs

6. Do you support the development of guidance to assist businesses in carrying out pre-market risk assessment? Yes / No / Don't know Please provide reasoning to support your answer, including any views on the most effective way to support pre-market risk assessments in the UK. Please provide relevant evidence to support your answer, particularly in relation to any impacts on you or other stakeholder groups.

Yes, we would support the development of guidance to assist businesses in carrying out pre-market risk assessments. As with above, any guidance should be clear, unambiguous and backed by FAQs and decision trees.

Proposal 2: Establish a derogation process, enabling businesses to apply for temporary regulatory easements to speed up supply of essential products in emergencies.

7. Do you agree with the proposal to establish a derogation process to help ensure the supply of critical products in emergencies? Yes / No / Don't know Please provide reasoning (including relevant evidence) to support your answer, particularly any impacts (business costs and benefits) on you or other stakeholder groups, and any suggestions you have on key aspects of the design or implementation.

Yes, we are supportive of a derogation process. However, there should be a system of 'checks and balances' in place where the private sector can challenge the government on the length and scope of the derogation. There should also be a process for establishing when a derogation ends.

There were a large amount of withdrawals of hand sanitiser from the market due to an unclear derogation during the Covid emergency.

If you are a supplier who is already compliant in a derogation scenario, for example Filtering Face Piece 2 (FFP2) standard, you are immediately put at a commercial disadvantage.

Could existing suppliers manage and produce enough as needed before derogations are introduced or can the Government support putting arrangements in place to ensure that they can meet the demand first? Close engagement with laboratories

would be advisable in a derogation scenario. During COVID-19, two particular labs put a lot of work into a face mask standard alongside their usual work.

If there is an emergency response set up to introduce something like this at pace this would be helpful, so it is much clearer for all what is acceptable and what timelines are.

8. Are there other circumstances, in addition to those set out in this proposal, where a derogation process would be helpful? Yes / No / Don't Know Please provide reasoning (including relevant evidence) to support your answer, including any specific examples of other circumstances in which a derogation process would be useful.

A recent example of an area where a derogation would have been helpful is where lightbulbs have required new minimum energy performance standards. Light bulbs that are perfectly safe but didn't meet proposed minimum energy performance standards would need to have been sent to landfill. A derogation would have meant that light bulbs could still be placed on the market.

Another situation would be where there is a backlog at conformity assessment bodies, where products are just waiting for a 'rubber stamp' before being placed on sale.

It may be worth considering a derogation process for Northern Ireland, where an EU Standard is in direct conflict with a UK Standard and it's impossible to meet the standard.

Proposal 3: Take full advantage of digital labelling.

9. Are there any other mitigations we need to consider as we look to introduce voluntary e-labelling to devices with screens or designed for use with screens? Yes / No / Don't know Please provide reasoning (including relevant evidence) to support your answer, particularly any impacts on you or other stakeholder groups.

We need to be careful to avoid 'digital isolation' this is where there are consumers who cannot access digital services. E-labels and links to instructions would be useful for self-assembly products (including furniture). There are some markets such as nursery furniture where e-labelling, alongside safety information would be very useful, and would support the circular economy. E-labels should link into the incoming digital product passports (DPP) in the EU, as most manufacturers manufacture for the EU and not just for the UK. Should the UK choose to look at the adoption of DPPs then the retail sector should be involved in this.

What about a scenario where a screen becomes damaged or otherwise inaccessible?

E-labelling should be voluntary, and not mandatory.

10. Are there other labelling requirements to which you consider that voluntary e-labelling could be expanded in future (to further types of statutory labelling requirements/additional product areas and/or to permit the use of QR codes)? Yes / No / Don't know Please provide reasoning (including relevant evidence) to support your answer, particularly any impacts on you or other stakeholder groups.

Products that are commonly re-sold/re-used/re-hired by consumers could be considered for e-labelling. This would be helpful as consumers increasingly look for digital equivalents to printed instructions. This also means that if the manufacturer updates contact information, usage instructions etc, they can be easily updated.

Electronic products could be considered for e-labelling.

11. What additional mitigations, if any, do you think could be needed if voluntary e-labelling is expanded in future? Please provide reasoning (including relevant evidence) to support your answer, particularly any impacts on you or other stakeholder groups.

Not everyone has immediate access to the internet, and some consumers are not online at all. Thought and consideration must be given to those users' needs.

Systems and platforms are costly and time-consuming to implement in some businesses, but it would be helpful if the government provided a platform for such a use. This also prevents issues in the event a business shuts down and those individual platforms can no longer be hosted or accessed.

Proposal 4: Clarify cooperation duties for new business models, particularly 'online marketplaces', to ensure effective cooperation.

12. Do you agree with the proposal to clarify cooperation duties for new business models, particularly 'online marketplaces'? Yes / No / Don't know Please provide your reasoning (including relevant evidence on impacts, costs and/or benefits for you or other stakeholder groups).

We agree in principle that online marketplaces (OMPs) should have clear, established duties. We understand that the household name OMPs operating in the UK are already compliant with most of the intended requirements.

Consideration needs to be given to the definition of a distributor. If an OMP is not selling directly to the consumers at all, then it should be classed as a distributor.

OMPs are based all over the world, and operate across many markets, so to insist on an established compliance function physically based in the UK, shows a misunderstanding of the way OMPs operate. Product safety is a global function, that is carried out all over the world. An alternative would be to look at data protection

legislation which mandates a 'responsible person', who is responsible for regulator interaction with entities.

13. What practical considerations would the Government need to take into account if such cooperation duties applied to new business models in the online supply chain?

Not all marketplaces are the same, and many operate different business models. This includes how marketplaces interact with customers, but also how they list and 'number' products on OMPs.

Going forward, retailers and OMPs are keen to see that OPSS safety alerts are machine-readable, meaning that they can be read and actioned easier.

Proposal 5 – Set out due care requirements in relation to unsafe product listings.

14. Do you agree with the proposal to introduce due care requirements in relation to unsafe product listings? Yes / No / Don't know Please provide your reasoning (including relevant evidence on impacts, costs and/or benefits for you or other stakeholder groups).

In respect of:

"Gathering their own information about products and sellers which could indicate a product is unsafe (for example, analysing customer reviews or product return data) and using this alongside information from enforcement authorities to regularly assess which products warrant greater due diligence. Based on this, carrying out targeted monitoring and scrutiny of relevant product listings with a view to addressing listings which reasonably look like they could be advertising non-compliant or unsafe products"

We urge the government not to be overly prescriptive and reliant on consumer feedback. This is because this is gathered in different ways by each marketplace.

Some products like laptop chargers all look the same, but aren't the same, meaning that just because a product looks like an unsafe product, it doesn't mean that the product is unsafe.

Enforcement action should be the last resort, and OMPs would welcome cooperation with regulators before enforcement action.

Proposal 6 – For higher risk products, increase consumer-facing information on online product listings to support informed purchasing decisions.

15. Do you agree with the proposal to increase consumer-facing information on online product listings for higher-risk products? Yes / No / Don't know Please provide your reasoning (including relevant evidence on impacts, costs and/or benefits for you or other stakeholder groups).

There are already statutory requirements for OMPs (and many other commercial businesses) under existing legislation such as the Consumer Rights Act and the Consumer Contracts Regulations. The Consumer Protection from Unfair Trading Regulations also places obligations on businesses to avoid committing misleading actions or omitting material information.

16. What additional information would be useful to support consumers in purchasing safe products? Please provide your reasoning (including relevant evidence on impacts, costs and/or benefits for you or other stakeholder groups).

Most BRC members have a Primary Authority relationship, which supports them in placing safe products on the market. Many retailers have integrated PAS 7050 (placing safe products on the market), and PAS 7055 (supporting better product recalls) into their operations. Retailers follow the information requirements required in those PAS', in addition to their legal obligations.

Proposal 7: Enhance the leadership and coordination role of OPSS.

17. Do you agree with the proposal to enhance the leadership and coordination role of OPSS? Yes / No / Don't know If you agree, which specific areas, duties or functions which would be most helpful to set out in guidance? Please provide your reasoning (including relevant evidence) to support your answer and advise what organisation you are from.

As mentioned, most retailers have a Primary Authority Partnership, so already have a good relationship with local trading standards services. If a leadership and coordination role for OPSS would lead to a safer commercial environment for all businesses, then we would be in favour of this.

Proposal 8: Facilitate a rich source of data, by creating a new legal data gateway.

18. Do you agree with the proposal to create a new legal data gateway? Yes / No / Don't know If so, what would you like shared e.g., in your role as market surveillance authority, business or consumer and how would you like access to it? Please provide your reasoning (including relevant evidence) to support your answer.

Yes, we agree with the proposal to create a new legal data gateway.

As with all systems, they should be easy and efficient to use.

With regards to the requirement for all product-related incidents of a certain level of seriousness raised by a business to be reported, this requires further consideration.

Customer reported incidents, are not necessarily product issues. It should not be mandatory to report on issues which have arisen due to serious misuse or factors unrelated to the safety of the product and not before an investigation has been conducted by the relevant business to identify likely root cause.

If the information in the gateway is publicly available to customers, you are likely to see some customers take advantage of this and perhaps try to manipulate the process by requesting refunds on product that is not impacted by an issue, therefore confidentiality and potential anonymisation should be considered.

Proposal 9: All notification of recalls and serious product safety incidents and other corrective action by a manufacturer or distributor is sent to OPSS, rather than the local authority, as soon as the economic operator has knowledge of an unsafe product.

19. Do you agree with the proposal to have a single point of contact for product safety recalls? Yes / No / Don't know Do you have any concerns with OPSS as single point of contact for business to notify all products as described above? Please provide your reasoning (including relevant evidence) to support your answer.

If this would make product safety recalls easier and more efficient for businesses, then yes, we would agree to this.

Proposal 10: Consolidate and align our existing enforcement legislation.

20. Do you agree with the proposal to consolidate and align existing enforcement legislation? Yes / No / Don't know What are the consequences for consolidating existing enforcement powers? Please provide your reasoning, including any impacts this may have on you or other stakeholder groups.

Consolidating and aligning existing enforcement legislation sounds sensible.

Proposal 11: Introduce improvement notices, civil monetary penalties, and enforcement undertakings.

21. Do you agree with the proposal to introduce improvement notices, civil monetary penalties, and enforcement undertakings? Yes / No / Don't know How will these new powers assist in ensuring businesses meet their product safety obligations? Please provide your reasoning (including relevant evidence) to support your answer.

Yes, however, we would like to ensure that usual rights of appeal exist in case a business has cause to reasonably disagree with an enforcement authorities' approach to enforcement.

Proposal 12: Explore options for changing inspection powers.

22. Do you agree with the proposal to explore changing inspection powers? Yes / No / Don't know If there are substantial risks posed by home-based businesses, can the risk be balanced with the privacy rights of residents when carrying out inspections? Please provide your reasoning (including relevant evidence) to support your answer.

As product safety is so important, it is right that powers of inspection are reviewed. It seems reasonable for home-based businesses to be considered, but that should be balanced with the individual's right to privacy.

Proposal 13: Reviewing the civil product liability regime in light of technological developments.

23. To inform consideration of whether the civil product liability regime remains fit for purpose, can you provide any examples where the current product liability regime: a) is unclear because of technological developments (e.g., lack of clarity about who is responsible for the safety of an AI/smart product or when software is updated); or b) doesn't enable consumers to seek fair redress; or c) doesn't provide businesses with clarity and confidence to develop new products?

We feel that AI/smart tech is an area that is increasingly becoming part of consumers' lives, and should therefore be considered in further detail.

Yours sincerely,

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