Office for Product Safety and Standards

The UK's new product safety framework

A response by the association of personal injury lawyers

June 2026

Introduction

APIL is grateful for the opportunity to respond to the Office for Product Safety & Standards' (OPSS) consultation on the proposed new product safety framework.

We welcome the proposals to improve enforcement and accountability for online marketplaces. However, we believe that the most effective way to regulate online marketplaces is by imposing joint and several liability on them, so that consumers have a statutory right when they purchase a product through a platform from a third party. All online marketplaces should also appoint a responsible person based in the UK who can deal with product safety and liability matters on behalf of the platform.

The government has an opportunity to address the uneven playing field between consumers and businesses in the new framework. Regarding enforcement, we believe that appropriate funding and a national and cohesive approach is key to ensure that risks are investigated and the regulations are enforced effectively to protect the public from defective and unsafe products.

APIL has responded to the questions within its remit.

General comments

Consumer protection

We believe that an effective product safety regime prevents products from reaching the market, but also ensures that when harm occurs, those responsible can be held to account. We have shared our concerns over the years about the product safety framework and with the Consumer Protection Act 1987 (CPA). Both the framework and the CPA should intend to strike a balance between consumer protection and business interest. Currently, the position is too favourable for businesses and manufacturers. The balance needs to be readdressed to allow consumers redress where harm is caused by a product.

We are aware that the Law Commission is carrying out a review of the CPA, and that the Act is not part of this consultation's remit. However, it is important to highlight that product safety reform can have an impact on product liability and the way the legislation is interpreted. We strongly disagree with the introduction of any presumptions of safety, as we have seen the impact that such a presumption can have in litigation. There are currently issues regarding whether or not regulatory approval now provides a complete defence or is such a significant circumstance as to defeat an argument that a product is defective. The same situation must not be created regarding designated standards.

We would suggest that at the very least, a presumption of defectiveness should apply in relation to a product recall. The removal of a product from the market by requirement of a regulator should lead to a presumption of defectiveness. The EU's Product Liability Directive establishes that an intervention or product recall by an authority should be considered in the assessment of defectiveness.[1] We would welcome a similar approach in the UK.

Enforcement

We note that the OPSS is also consulting on proposals regarding enforcement and market surveillance. We believe the enforcement powers and penalties should be strengthened to protect consumers.

Regarding enforcement for online marketplaces, we acknowledge the difficulties due to the global supply chain. We agree with both proposals under consideration, namely the introduction of Online Interface Orders where other means to enforce against them have been exhausted and requiring a UK presence. Alongside the requirement for a single point of contact for authorities covered in this consultation, we believe these proposals could improve enforcement and accountability for online marketplaces.

Consultation questions

Question A1: Do you agree or disagree with the proposed scope of the regulations, including the exemptions from scope?

Disagree. We believe the proposed focus of the framework is unnecessarily narrow. It is ineffective to exclude the regulation of food, medicines, and medical devices from scope. The Government should take this opportunity to broaden the scope of the product safety framework to ensure a consistent approach to regulation. We agree with the existing exemptions in GPSR 2005 and those that apply in Northern Ireland, including antiques, artwork, and products needing to be repaired, reconditioned or refurbished before use, if the consumer is explicitly informed of this.

Question A2: Do you agree or disagree with the proposed definition of a safe product?

Disagree. We believe the definition should be updated to reflect modern products. There should be a shift towards a stricter, more liability-based definition, with less scope for interpretation and arguments. For example, the 'minimum risk' included in the definition can give rise to challenges in litigation as these terms are inherently open to interpretation.

The current definition also creates a gap by excluding considerations of safety in relation to property and domestic animals. We believe these should be included to reflect a more holistic approach to regulation in the framework.

[1] Recital 34 of the Product Liability Directive 2024/2853

Question A3: Do you agree or disagree with the new list of considerations when assessing safety?

We agree with the new list of considerations. We recommend widening the list to include considerations regarding fitness for purpose and the quality of the product. From a litigation perspective, this would be important given the issues currently experienced with the CPA including challenges regarding the definition of product and defect.

Question A5: Do you agree or disagree that essential safety requirements, testing or conformity assessment may be useful in the new framework?

Agree. We acknowledge the move towards risk-based regulation mentioned in the consultation as part of the new framework. We agree that regulatory requirements should be more closely linked to the risks of products and the potential for harm. Higher-risk products should be carefully identified, which will require sufficient funding to underpin the process and ensure that scientific and technical bodies are available to assess the products.

There must be rigorous oversight and proof that products are safe, and that the framework does not result in an easing of regulation for manufacturers. We believe that when building flexibility into the regulatory framework, safety should always come first and should be the paramount consideration that the OPSS should take into account. The enforcement mechanisms must ensure that the standard of testing is sufficient rather than just a tick-box exercise.

Question A6: Do you agree or disagree with introducing the 'designation' mechanism for products covered by the framework?

We agree that the designated mechanism can be helpful to allow the government to give more specific indication to businesses on how they can make their products safe while retaining flexibility. However**,** we have concerns that voluntary standards are not the most effective way to ensure consumer protection. The new framework should address the current overreliance on self-regulation and voluntary standards.

We strongly disagree with the suggestion that a designated standard would provide a presumption that a product is safe in relation to the risks covered by that standard. We recognise that compliance with a standard can be a relevant consideration, but it should not amount to a presumption of safety as there are other important factors.

This presumption could create significant challenges for injured consumers when trying to obtain redress. Consumers are already disadvantaged by a similar presumption that has been adopted by the courts in the UK over the years regarding regulatory approval as a presumption of safety.

The courts have taken the approach that if a product is the subject of regulatory approval, then that is a significant factor in favour of saying that the product is not defective. It is very clear however, that the regulatory approval and the granting of a UKCA/CE mark is not a measure of safety or quality assurance. In fact, it is a form of self-assessment by the manufacturer to confirm that the product complies with the manufacturing specification. It is based on assumptions of safety related to previous products, and it does not mean that the

product has been rigorously tested or regulated. Only devices of higher risk require classification that a designated Notified Body assessed the product prior to the application of the mark. A product may comply with the requirements of a UKCA/CE mark but be unsafe for consumers to use. The vaginal mesh litigation illustrates our concern that simply because something has been granted a mark does not mean that the product is safe.

There are currently issues in litigation as to whether or not regulatory approval now provides a complete defence or is such a significant circumstance as to defeat an argument that a product is defective.

We would be concerned if more presumptions of this kind are established in the new framework. The product safety framework and the consumer protection legislation must strike a balance between business interests and consumer protection. We believe that currently, the position is too favourable for businesses and manufacturers and that the balance needs to be readdressed to allow consumers redress where harm is caused by a product.

If presumptions of safety are allowed, we believe that at the very least, a presumption of defectiveness should apply relating to a product recall. The removal of a product from the market by requirement of a regulator should lead to a presumption of defectiveness.

Question A8: Are there any further actions you believe we should be taking to ensure lithium-ion batteries within consumer products are safe?

We suggest that the OPSS consider introducing requirements that create clearer accountability, including establishing a single point of contact and requiring supply chain actors to appoint a UK-based responsible person.

Question A9: Do you agree or disagree with the requirement that producers must only place safe products on the market?

Agree.

Question A10: Do you agree or disagree with the requirement that onward suppliers should act with due care and not supply a product unless it is compliant?

Agree

Question A11: Do you agree or disagree that online marketplaces should be required to act with due care to prevent, identify and remove non-compliant products from their sites?

APIL agrees with the proposal and the steps that online marketplaces could take to comply with this duty. However, we believe that introducing due care requirements for online marketplaces in relation to unsafe product listings is not enough to protect consumers. There is also a risk that, for the purposes of litigation, the assessment that products are safe

presents a false picture. Compliance with standards should not create a presumption of safety.

Currently, there is a lack of culpability for a selling platform where it is not the manufacturer, but identifies it and nor is it the importer, whilst nevertheless benefiting from the profit generated by the sales. We believe that the most effective way to regulate online marketplaces is by imposing joint and several liability on them so that consumers have a statutory right when they purchase a product through a platform from a third party. Many online purchases involve a complex supply chain, and the third party may not be traceable or may no longer be solvent.

Most UK consumers assume their statutory rights on such platforms are broadly equivalent to making a purchase on the High Street. This is not currently the case. Amazon, for example, includes a jurisdiction clause in their terms and conditions providing that the contract is made according to foreign law. Amazon themselves do not guarantee that the product is of satisfactory quality, fit for purpose, reasonably durable or has any of the statutory consumer rights. Customers are not adequately warned of this in the purchasing process, despite the consumer having an expectation of safety from these well-known online marketplaces. The average person would not know that their right to redress may be different if a product is purchased in a high street shop or from an online marketplace, and often only find this out after they have been injured or suffered loss as a result of the product.

Regardless of where the product came from, it should be subject to the law in the jurisdiction in which it was purchased by the consumer. If the product was purchased by a consumer in England and the product was produced by a third party in China, the product safety issue should be dealt with under English law. We strongly believe that the Government should change legislation to make online marketplaces a producer rather than a supplier under the Consumer Protection Act 1987 (CPA). This should also be implemented into the Sale of Goods Act 1979 and Consumer Rights Act 2015 (CRA) to ensure that such platforms also owe a statutory duty of satisfactory quality.

We have concerns about the suggestion to introduce due care requirements in consumer-to-consumer sales. We believe greater clarity and detail are needed on how these requirements would be implemented and how consumers would be expected to comply.

Question A12: Do you agree or disagree with the introduction of a requirement that online marketplaces should practice due diligence to identify and take action against non-compliant sellers and sellers that provide non-compliant goods?

Agree. Online marketplaces should be required to take a more proactive approach to identify non-compliant sellers and non-compliant goods. This proposal could prevent non-compliant or counterfeit products from being placed on the market in the first place. We also welcome the requirement for online marketplaces to verify seller contact details, as it would improve traceability.

Question A13: In which situations or for which products do you think additional verification requirements or local presence requirements would be useful?

We believe all online marketplaces should appoint a responsible person based in the UK who can deal with product safety and liability matters on behalf of the platform. Again, it is important to strike an effective balance between the interests of consumers and businesses effectively, and we believe this proposal could help address the uneven playing field. We do not consider the appointment of a UK-based representative as a disproportionate burden for businesses who want to access UK consumers. They can be responsible for responding to regulators, maintaining technical documentation, co-ordinating recalls and accepting service of legal documents.

We disagree with the suggestion that this requirement should not apply to low-risk products and suggest that it should be based on the potential to cause harm. Products that are generally regarded as low risk may still cause serious harm if poorly designed, manufactured, or subject to inadequate quality control. While some high-risk categories may be easily identifiable, there will be a substantial number of borderline cases where risk is not apparent at the outset. For all of these reasons, we believe the requirement for a responsible person should apply to all online marketplaces with a UK presence.

Question A14: Do you agree or disagree that we should give all supply chain actors a duty to participate in monitoring of products already supplied and to cooperate in corrective action?

APIL agrees with this proposal.

Question A15: Do you agree that all supply chain actors should have a duty to cooperate with relevant authorities and others in the supply chain?

Agree. Supply chain actors need to be transparent in their surveillance of products and be required to report bad actors, non-compliant or counterfeit goods, and cooperate with enforcement authorities. There should be greater data sharing between OPSS, Trading standards, NHS Bodies, coroners, and regulators.

Question A16: Do you agree or disagree with the proposal for online marketplaces and producers to have a single point of contact?

Agree.

Question A17: Do you agree or disagree with the proposal for information that must be provided on or with the product?

APIL agrees with the information requirements outlined in the consultation. In particular, we welcome that where there are specific safety regulations or standards, the information should be provided physically. For example, a warning of a choking hazard for a toy, should still be provided physically with the product as an indelible marking or on paper, as required, even where the device has an e-label accessible.

We believe that digital exclusion should be considered when looking to implement e-labelling and the use of QR codes, given that some consumers will not be able to use them. We agree that producers and onward suppliers should be required to provide a physical copy of the safety information on request, for no additional cost.

We recognise the advantages of e-labelling and QR codes in relation to the environment and ease of update. To capitalise on these advantages, there should be a publicly accessible online log that would register the updates and changes made to the product labelling. The responsibility should not be on the consumer to frequently check for updates. The producer or supplier should implement effective mechanisms to inform the consumer of a recall or safety update.

Question A18: Do you agree or disagree with the proposed types of information that can be provided digitally?

Agree.

Question A19: What, if any, protections would be necessary to ensure that consumers with limited digital access or low digital confidence online are not disadvantaged?

As mentioned above, we agree with the proposed requirement for producers and onward suppliers to provide a free physical copy of the safety information on request. Consumers need to be informed that this option is available to them when purchasing a product in person or online.

Question A21: Do you agree or disagree with the proposed information that producers and onward suppliers selling products online should provide on an online listing?

We agree with the proposed information outlined in the consultation. In particular, we welcome the need for online marketplaces to clarify whether a product is being sold by a third party or by the online marketplace itself, as well as providing the contact information of the seller and producer. There is a pressing need for greater transparency and traceability in online marketplaces. Consumers must be able to easily identify who they are purchasing from, who is responsible for the product, and where to raise concerns if issues arise.

Question A22: Do you agree or disagree that online marketplaces should be required to design their interface to allow sellers to provide customer information?

APIL agrees with this proposal. As above, greater transparency is needed in online marketplaces.

Question A23: Should online marketplaces introduce additional steps, such as verifying certain product information or making some information mandatory before listings are published?

Agree. We believe this ties with the proposed duty for online marketplaces to identify and take action against non-compliant sellers and sellers that provide non-compliant goods.

We recommend the additional steps to include checking whether sellers have product liability insurance. APIL believes that product liability insurance should be compulsory for producers, suppliers, and retailers. Our members report challenges in securing compensation when retailers lack insurance, the product manufacturer cannot be identified, or the manufacturer is no longer in business. These gaps leave injured consumers without an effective route to redress. Requiring all parties in the supply chain to hold adequate product liability insurance would help address the gap and ensure that compensation remains available even in cases where the manufacturer or retailer is insolvent, untraceable, or no longer able to meet a claim.

Question A26: What do you think are the current or potential harms associated with AI-enabled products?

Question A27: How can we ensure that the reformed product safety framework effectively addresses the unique challenges posed by AI-enabled products and digital innovations, while supporting innovation?

Question A28: Considering that the role of AI can adapt and evolve across a product's entire life cycle, how can regulation best account for this?

The product safety framework must be future-proof, define accountability for AI-enabled products and ensure that consumers can access redress when things go wrong. We expect significant challenges related to the current liability framework in the CPA.

One concern would be that the inherent complexity in identifying the correct defendant in a product liability case will be exacerbated by AI. For example, in a situation where products have embedded AI software and there is a defect which causes harm. We foresee difficulties regarding where accountability lies, whether it is the fridge manufacturer or the manufacturer of the AI software. It is highly likely that the manufacturer of the AI software is not in this jurisdiction. AI systems and upgrades are not limited by borders in the same way that physical products are. There will also likely be questions around the identity of the importer, particularly if the issue revolves around a software update. If the importer can be identified, there are also sometimes issues with importers lacking the relevant insurance. There will be lengthy and costly arguments around causation, and ultimately the claimant may be unable to pursue those who are actually responsible for the defect.

A further concern is the impact of AI updates to products. Some updates have the potential to significantly modify a product after it has been placed in the market, potentially distancing the original producer from the risk of harm. This would raise questions about where liability should sit. It is important to avoid creating a liability gap in which no party is clearly responsible for substantive modifications to a product. We believe this needs to be considered in the new framework and that accountability must be clearly defined to ensure consumers access to redress. Again, the jurisdictional element of this must also be considered.

We would also like to see the state-of-the art defence in the CPA reformed or removed. The application of this defence in claims involving AI-enabled products will create significant

challenges for consumers, as it allows producers to avoid strict liability for defective products if they can demonstrate that the state of scientific and technical knowledge at the time the product was circulated was not advanced enough to discover the defect. With AI evolving rapidly and the uncertainty of its impact in this area, this defence would be significantly detrimental to consumers while allowing producers to avoid accountability. It undermines the basic principle of strict liability for defective products which is intended to protect consumers and deter non-compliance of product safety regulations.

Any queries related to this response should be directed to:

Ana Ramos

Legal Policy Officer

ana.ramos@apil.org.uk