

Chartered Trading Standards Institute (CTSI) response to DBT and OPSS Consultation - Smarter Regulation: Product Safety Review

Response sent to – productsafetyreview@beis.gov.uk

This response is being sent on behalf of The Chartered Trading Standards Institute and has been compiled by the expertise of CTSI members.

ABOUT CTSI

Founded in 1881 (as the 'Incorporated Society of Inspectors of Weights and Measures'), today's Chartered Trading Standards Institute (CTSI) is one of the world's longest-established organisations dedicated to the field of Trading Standards and Consumer Protection.

At CTSI and through the trading standards profession we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices. We provide information, guidance and develop evidence-based policies and campaigns to support local and national stakeholders including central and devolved governments. CTSI also provides the secretariat to the All-Party Parliamentary Group on Consumer Protection and campaigns on range of topics including product safety issues. CTSI is responsible for business advice and education in the area of Trading Standards and consumer protection legislation, including running the Business Companion service to provide clear guidance to businesses on how to meet their legal and regulatory obligations.

CTSI is also contracted to support the CTSI Approved Codes scheme which was established to give consumers greater confidence when they buy from members of the approved scheme and also raises the standards of trading of all businesses that operate under the relevant sector's Approved Code.

CTSI run training and development events for both the Trading Standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

Consultation response:

Q1. 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.

No. The current retained EU regulatory regime in Great Britain has gaps that have been filled in the EU regulatory system which has further evolved since the UK exit from the Union. There is significant risk in trying to reinvent the regulatory framework based on the mistaken perception that it is overly burdensome on businesses. Conformity assessment procedures need to continue to align with the risks presented by particular classes of products. The likely effect of reducing the perceived burden on business could present significant challenges for high-risk products such as toys and electrical items. The conformity assessment procedure for these products is self-certification, which is already less onerous for businesses than many other regulatory models for product safety, so it's not possible to lower this any further. The market is already flooded with unsafe toys and electrical items because manufactures are not even getting the basics right.

Any move towards allowing small business to enter the market through a reduced set of compliance principles would be unacceptable. The playing field remains level for all business to achieve acceptable levels of consumer safety.

The Toy safety regime can be improved as will be demonstrated when Europe implements the new Toy Safety Directive. This will increase safety provisions such as reducing harm from chemicals, considering cybersecurity risks and ensuring online marketplaces are recognised as a discrete economic operator with subsequent responsibilities. There is nothing wrong with having specific regulations for products such as toys and cosmetics. It is necessary to have a list of banned substances for any regulations that are in place. It is the nature of the market and the resourcing of the profession that is the primary problem rather than the legislation we are currently working with.

OPSS/DBT may be able to support market entry by for example, facilitating access to relevant designated standards for small business through a Business Gateway, which can otherwise prove prohibitive. This would also allow for more regular updates by small business, who may ordinarily be unable to re-purchase a set of designated standards where they have been updated.

OPSS Delivery Report 21/22 States that 70% of businesses feel that there are no barriers to compliance.

OPSS Delivery report 21/22 also states that 89% of businesses say they have all the support and guidance they need to ensure that products they manufacture, sell and distribute are safe.

[Office for Product Safety and Standards Delivery Report 2021/22 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

What businesses want and need is consistency, and a level playing field, where effective enforcement action is taken against those avoiding the relevant obligations and contributing the flooding of unsafe goods into the UK Market

Legitimate business may find it expensive to comply largely because the market is distorted by non compliance of a few who are unwilling to comply with legislative requirements through choice, rather than design. The question needs to be asked that if allowing easier market entry to more of those business that choose to not follow the rules already actually hurt legitimate business.

CTSI carried out a very small sample of product safety testing of products sold on a local highstreet and found some very serious risks to the public - including toys that contained 100 times the legal limit of Restricted Phthalates. Trading Standards would not want to see more of these types of products entering UK marketplaces when non-legitimate businesses hear that the UK have taken down some of the barriers for businesses to place goods on the market.

Q2. 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.

No. Currently, for products such as toys and electrical safety equipment the actual conformity assessment procedure is self-certification, which poses minimum requirements on business. Therefore, it is already at the lowest level it can go. The conformity assessment is already risk based, it is risk based on the product but also the maturity of the market and the maturity of the standards. The current framework is already aligned with risk so it will be interesting to see what the actual proposal would be here. PPE is a good example of how this is already being done –it is sub divided into products that have different risk profiles in the event of a product being non-compliant with essential requirements.

Q3. What role should standards and testing requirements play in supporting businesses to comply with the new approach?

A great deal, as it already does. What is being proposed is already part of the European Framework that we already work to, this shows a lack of understanding in the proposals as this is already something that is taking place. Harmonised/designated Standards are vital, as are uniform test procedures, they are already in existence. It would be favourable if the UK continued to recognise the EU Notified Body framework.

This could be an opportunity to fill the gaps, for example, to adopt the new General Product Safety Regulation and to align the UK Market Surveillance Framework with EU Regulation 1020 on Market Surveillance— this would help to deal with issues around online marketplaces. There is no need to reinvent the wheel here as these things are already happening and can be applied to UK markets.

Local Trading Standards are receiving feedback from local businesses that the information in Standards should be freely available. Perhaps this could be a measure taken by OPSS to support, for example, SME/Startups that would have limited funded access to standards which would allow businesses to start and grow and to get things right from the offset.

Q4. 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

CTSI is happy with the current guidance that is currently produced. If changes are implemented everyone will need robust guidance to help to understand the new obligations.

CTSI would ask OPSS to provide guidance as to the expectations for enforcement levels at local level (i.e., adequate FTE per population/business level) to fulfil any new framework based on a reasoned evaluation.

Standard guidance documents will be required as to any new framework to provide consistency of interpretation as per normal.

Q5. 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?

There would potentially be significant costs and confusion associated with having a framework that is divergent from the European framework because there would be two frameworks operating within the GB market simultaneously. The upskilling of enforcement officers would be costly and would need to be taken into serious consideration for any new framework to be affectively implemented. Two divergent frameworks also present risks to consumers from unsafe products as ambiguity in legislative requirements are likely to be taken advantage of by those entities who would choose to use ignorance as an excuse, or those less than scrupulous traders who are able to profit from regulatory uncertainty.

Having more than one regulatory framework for the safety of products is dysfunctional in a mature market surveillance system.

Q6. Do you support the development of guidance to assist businesses in carrying out pre-market risk assessment?

Yes. There should be increased resources for market surveillance to inform businesses that they are obligated to carry out pre-market risk assessments now, so this could be a positive development. This would not be new, it's an obligation now.

CTSI would encourage OPSS to ensure that specifically this intervention is targeted at the areas whom are most problematic, like toys and electrical goods as these present the most risks.

Q7. Do you agree with the proposal to establish a derogation process to help ensure supply of critical products in emergencies?

No. Generally we do not agree with derogation and Ministerial control creeping into the processes as they are not experts in this field and will not fully understand the impact from an enforcement point of view. However, Parliament already has this power, as an example of how this has caused huge product safety and enforcement issues we should be using the learning from the PPE scandal, where we saw lots of non-compliant products entering the marketplace.

[Department of Health writes off £9bn spent in England's Covid PPE drive | Health policy | The Guardian](#)

CTSI would like any changes to be associated closely with risk and go through the normal parliamentary process and for this to not sit with Ministers alone.

Q8. Are there other circumstances, in addition to those set out in this proposal, where a derogation process would be helpful?

No comment other than that any derogations from safety regulation must not be on the basis of, for example, business size.

Q9. 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. Serious consideration would need to be taken to protect those that are not digitally able, and we would ask that these vulnerable groups of consumers are taken into account when looking at e-labelling. Vital labelling including safety warnings and traceability information should always be on the product or on documentation that comes with the product, not just on a screen. There is potential for loss of functionality with a screen which puts users at risk from not being able to access the safety information if needed.

Q 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)?

Labelling is designed for the most vulnerable users, and any move towards QR code based labelling, should be supplementary only to existing provisions. There is undoubtedly value in QR coding as this will mean that any information will essentially accompany the product when this might otherwise be lost (e.g. second hand market).

This does present difficulties, however, in terms of ensuring digital legacy where, for example, SME's hold this virtually. What happens when that business fails. If there is no physical copy then the goods are potentially more unsafe than they would be. This especially present a challenge in terms of unsold stock within the liquidated market.

Q11. What additional mitigations, if any, do you think could be needed if voluntary e-labelling is expanded in future?

Just to reiterate the continued need for safety critical information and traceability requirements to be in a 'paper' format as well.

Q12. Do you agree with the proposal to clarify cooperation duties for new business models, particularly 'online marketplaces'?

Yes, but they do not go far enough. Following the provisions of the Regulation 1020 as that work is already being done would be a good option. Particularly with online marketplaces as they are already

familiar with it because they operate in the 27 member states that operate that system. This would make it easier for businesses if the standards and obligations are consistent across markets. Even non-EU countries have adopted versions of this, including marketplaces operating in China, for example Wish. There would not need to be cost analysis carried out on this as the work has already been done and we just need to adopt it.

CTSI works very closely with the British Toy and Hobby Association and would echo their disappointment that under the current proposals Online Marketplaces would still not have any legal duties before the facilitating the listing, particularly for non-UK third-party sellers. There is strong evidence to show that the number of unsafe goods being sold by non-UK entities is huge. Reducing the number of unsafe toys and other consumer goods entering the UK can only be done through prevention and tackling the issue at source.

Q13. What practical considerations would Government need to take into account if such operation duties applied to new business models in the online supply chain?

Resources for market surveillance and enforcement are relevant – particularly data harvesting systems and the processing power to target products, as well as the resources needed to maintain ongoing relationships with online marketplaces.

The listing/relisting of unsafe goods is problematic where this relates to goods which are difficult to positively identify, or relates to batch specific issues, for example, heavy metal contamination in jewellery.

This presents issues insofar as the information which may be held by enforcement authorities (e.g., importation information) is possibly the only way to positively tie products/product type/product lines together. OPSS should ensure that this information is being proactively screened to identify opportunities across such spheres.

Regarding the proposal for national enforcement relating to online platform – how does this integrate with existing Primary Authority relationships?

In relation to Online Marketplaces – Has OPSS undertaken any form of capacity assessment of how many e.g. online takedowns/referrals have been actioned as a result of Local Authority Action and how many by OPSS action?

We agree that in relation to non-UK present businesses selling on Online Marketplaces, OPSS should take the lead in dealing with those businesses, however where the business themselves have a substantive UK entity, that role should remain with the relevant Local Authority/Primary Authority.

Q14. Do you agree with the proposal to introduce due care requirements in relation to unsafe product listings?

Yes. There is lots of data from stakeholder partners that show there is improvement needed in this area. For example, the last report from the British Toy and Hobby Association (BTHA) shows that 64% of notified toys to the UK Unsafe Product Report from 2021 study have seemingly identical listings still for sale. The BTHA has been evidencing the high levels of unsafe toys being sold by third-party sellers for four years and the latest results show that the situation is not improving.

CTSI believe that Online Marketplaces should be expected to undertake further action in relation to products which may present a risk without intervention from an Enforcement Authority.

The products in question for delisting etc, where they are present in the UK, however, MUST be reported to Market Surveillance Authorities, and stock should not be simply diverted.

There must be positive obligations to report the actions, and the outcomes in each case to Market Surveillance Authorities.

Q15. Do you agree with the proposal to increase consumer-facing information on online product listings for higher risk products?

Yes. It should be for all products as some products pose risks without the necessary information being provided. Consumers make purchasing decisions based on that information, and quite often that will be the information they take forward to use the product. Therefore, if that information is not complete or correct a risk may arise.

Q.16 What additional information would be useful to support consumers to purchase safe products?

See question 15.

Consumers should be clearly informed within the online environment if they are leaving the regulatory regime of the UK.

Q17. Do you agree with the proposal to enhance the leadership and coordination role of OPSS?

Greater clarity on OPSS's remit and role would be desirable. Currently, there is not a clear division of responsibilities and obligations within the current framework and feedback from the profession is that this is not always clear, whereby OPSS would take the lead, or a Local Trading Standards would take the lead. OPSS should be taking leadership as the Government department responsible for product safety, but we welcome further clarification on this.

CTSI members have raised concerns that the relationships between OPSS and Local TS does not feel like a full "peer to peer" partnership.

The criteria for taking the lead on issues that are National/Novel/Contentious would benefit from review and clarification provided to all.

Care needs to be taken that new guidance does not duplicate that which already exists. Trading Standards are already guided by the Regulators Code, which sets out the methodology and processes for enforcement generally. There is already a duty within GPSR and RAMS to place notifications on the product safety database.

Existing activities such as the Sampling Protocol, guidance documents and access to standards are greatly appreciated.

Guidance on specific complex areas like Construction Products would be useful.

It must be noted that additional statutory guidance will not address the significant capacity issues within Trading Standards which means that some Local Authorities do not have sufficient resources to complete all the data entry requirements.

Enforcement capabilities are dependent on resources so any additional enforcement duties would need to be funded.

If OPSS plan to use grants then existing grant funds (such as OPSS ports work and NTS grants) that are annual are sub-optimal. With workforce pressures, Trading Standards need longer term assurance of funds.

CTSI, ACTSO and SCOTSS would be willing to work with OPSS on what this might look like and OPSS and Local Authority respective remits and engagement to ensure the protection of place based

regulatory delivery and role of the local TSS supporting a national regulator - it's critical to have the local capacity to make this effective. CTSI would have concerns over any move to centralisation and the unintended consequence of Local Authority cuts enabling them to step away from what should be statutory duties.

CTSI would ask for further conversation and consideration around a general statutory competency requirement which would include a requirement for Product Safety enforcement officers to be suitably qualified and to maintain their competency over time. This statutory requirement could be fulfilled through the existing CTSI qualification framework and Chartered Trading Standards Practitioner definitions. This would provide assurance to businesses that officers maintain necessary knowledge and skills for the areas of law they enforce.

The new statutory competency requirement could be backed up by a supporting Code of Practice. The Code would be drawn up by OPSS & CTSI and other interested parties. It could set out the qualifications and competencies officers in Trading Standards Services should possess for the work they perform and how they can be assessed and maintained. Defining qualifications and competencies through a Code of Practice will provide assurance to businesses and signpost employers to a flexible tool and enable Trading Standards Services to benchmark their officers' skills and competencies. It will also enable local authorities more flexibility in resourcing and structuring their services, perhaps specialising in certain areas, and cooperating with neighbouring authorities, especially at a time of increased budgetary pressures.

This recommendation would be consistent with the approach taken by the Food Standards Agency and the Health and Safety Executive.

Q18. Do you agree with the proposal to create a new legal data gateway?

Yes. At the moment the data that is necessary for the most targeted market surveillance is difficult to share. This should have already been done as part of BREXIT. A central online protected portal/system that everyone can access would be the most effective format.

CTSI would like to add that whatever is established needs to be clear, simple and accessible and we would welcome further consultation as proposals are developed for this.

Q19. Do you agree with the proposal to have a single point of contact for product safety recalls?

Yes.

A SPOC, at Government level, to deal with product safety recalls is welcomed. The power imbalance between a global company and an individual local authority was raised as an issue of concern in the Whirlpool Review. This would also enable simpler access to authoritative information by both consumers and businesses.

Having access to good, timely and comprehensive information about product safety risks is essential to managing them effectively. We support the proposal to require business to notify OPSS when they identify that they placed an unsafe product on the market. This reform to the system will make it simpler for businesses to understand their obligations and how to act when they identify one of their products is unsafe. Central co-ordination of this notification process will result in better data and should lead to quicker and more effective action to keep consumers safe.

Any such SPOC must be integrated with the existing enforcement network.

Do you have any concerns with OPSS as single point of contact for business to notify all products as described above?

There have been past concerns about engagement and relationships between OPSS and local TS. This needs to be addressed and a real partnership established in order for a SPOC system to work effectively.

It is noted however that GPSR Regulation 9 notifications are rare and a significant proportion relate to recalls for quality issues rather than serious safety breaches.

Some recalls are not even notified to the Local Authority or are notified with limited evidence that a certain product is being sold by a business in their area leading to unnecessary time spent at local level to establish the situation and risk. If OPSS act as the SPOC then these referrals would be mere notifications with little need for action at local level.

Any SPOC must be obligated to notify, in a timely manner, the relevant Local Authority/Primary Authority before contacting any business in the Local Authority area. Examples have been given where this has not happened and the Local Authority has undertaken visits to local businesses not knowing that OPSS were involved in product recalls.

CTSI would advise OPSS to consult on what an effective SPOC would like look.

Q20. Do you agree with the proposal to consolidate and align existing enforcement legislation?

Yes. It would be beneficial to have the legislation all in one place. It would also be easier if it was clearer in relation to suspension notices in particular.

CTSI would want to ensure that no Trading Standards powers are lost during the consolidation and options for strengthening them where appropriate.

In particular we would like to see the terminology within the existing legislation to be aligned for key definitions for economic operators, e.g. producer, manufacturer, responsible person, authorised representative, importer, seller, distributor, fulfilment house, online marketplace etc.

Currently Trading Standards have the power to request information without the need to serve a notice, so the suggestion of a 'single, agile information notice' is not necessary and would create further enforcement barriers.

There are specific issues relating to powers at ports and borders and we would urge OPSS to engage directly with the ports and borders group to ensure these are fully understood and addressed.

Q21. Do you agree with the proposal to introduce improvement notices, civil monetary penalties, and enforcement undertakings?

Often muted that cost recovery would be useful for Trading Standards. HSE already use this model, but this is unlikely to be a power given to Trading Standards. An improvement notice will not bring anything extra here than what is in the current regulations in place. There is not enough detail on this in the proposals to provide a clear answer so we would welcome further clarification.

How will these new powers assist in ensuring businesses meet their product safety obligations?

More effective enforcement will reduce market risk, and reduce the number of unsafe products in the supply chain, thus protecting consumers.

Q22. Do you agree with the proposal to explore changing inspection powers?

Yes. With the growth of online trading and people now trading from their homes, it has changed the business model. Market developments must be catered for. As online markets have evolved, enforcement powers must reflect that.

Any changes must ensure provisions remain practical and clear.

There has been a significant shift to trading from home, facilitated to some degree by the services of online marketplaces, ease of creating a web site, and option to use fulfilment services. In many cases, operators of such businesses have little understanding of the legislative framework that they are expected to comply with. An individual with no experience or knowledge can easily import goods, store them at home or at a fulfilment house, and offer them to consumers without ever taking any steps to confirm safety or compliance.

Obtaining a warrant to visit a business operated from home is an extremely expensive process, by way of officer and court time. Any enforcement visit would be restricted to areas used for the business, e.g., manufacture/storage space or simply a desk with a laptop. Access to other areas would not generally be sought, unless there was reason to believe that something was being concealed. There would likely be concerns about invasion of privacy. It is suggested that additional safeguards would be needed, either via a court warrant or a similar authorisation regime to RIPA could apply to show intelligence and proportionality.

Q23. 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 safety of an AI/smart product or when software is updated); or

It is unclear because it was written in the 1980s and has not been updated since. It should be updated to reflect technological developments to be fit for purpose.

b) doesn't enable consumers to seek fair redress; or

It does, in theory. But the legislation is not generally used, people always use contract or negligence as that is where lawyers have the knowledge of.

c) doesn't provide businesses with clarity and confidence to develop new products?

This is something that needs to be answered directly by businesses and insurers.

FOR FURTHER INFORMATION

CTSI is happy to work with DBT and OPSS and contribute to work in this area in order to protect the interests of Trading Standards, consumers and reputable businesses.

Please contact Kerry Nicol, Policy Executive at CTSI for further information (kerryn@tsi.org.uk or 07496 254 934)