

# Product Liability

"The responsibility of a manufacturer or vendor of goods to compensate for injury caused by defective merchandise that it has provided for sale."

*Expert knowledge means success*

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Note: This publication has not been updated since it was last published. Some of the hyperlinks may have changed and may need updating. In addition, some of the information in this publication may be out of date.

## Introduction

If your business supplies products to consumers, you need to make sure the products are safe.

The heaviest responsibility falls on producers, e.g. the manufacturer of a product. But distributors - such as shops and wholesalers - also have legal responsibilities. Failing to meet your responsibilities can have serious consequences. You could face legal action with possible fines or even imprisonment. You could also be sued by anyone who has been injured or has suffered damage to personal property. You should be aware that you can't avoid liability just by warning people the product isn't safe. You could be sued by anyone who is harmed by your product - even if you sold the product to someone else.

This publication outlines the basics of product liability and product safety law. It will help you understand how you are affected, and what action you need to take.

### Product Liability Legislation

Directive 85/374/EEC, which was transposed into UK law in Part 1 of the Consumer Protection Act 1987 (CPA), imposes strict liability on producers for harm caused by defective products. This means that people who are injured by defective products can sue for compensation without having to prove the producer negligent, provided that they can prove that the product was defective and the defect in the product caused the injury. The Directive applies to consumer products and products used at a place of work.

An amendment (Directive 1999/34EC) was adopted in 1999 extending product liability for defective products to include primary agricultural products and games with effect from 4 December 2000, which was matched by a corresponding amendment to the CPA. This means that all products are now covered.

General product safety is regulated by the General Product Safety Regulations 2005 (GPS Regulations). They apply to all

products (new and second-hand) used by consumers. Product-specific legislation continues to take precedence in areas where the provisions have similar objectives to the GPS Regulations:

<http://www.legislation.gov.uk/ukxi/2005/1803/contents/made>

## Your Responsibilities

By law, products sold to consumers must be safe. Of course, some products can't be completely safe - e.g. knives with sharp edges but all products must be as safe as people have a general right to expect.

The main responsibility falls on producers - seen as manufacturers and importers into the European Community - to ensure they sell safe products. They also need to:

- take action to warn about potential risks;
- ensure consumers have information to help them understand the risks - e.g. what safety precautions they need to take;
- monitor the safety of products - eg by keeping a register of complaints and investigating them, and testing products;
- take action if a safety problem is found;
- recover and recycle set amounts of packaging;
- ensure safe disposal at the end of a product's life, if it is electrical or electronic equipment.

If your business handles more than 50 tonnes of packaging materials a year and has a turnover of more than £2 million, you need to follow the Producer Responsibility

Obligations Regulations 2007:

<http://www.legislation.gov.uk/ukxi/2007/871/contents/made>

You can find out about packaging waste obligations on the NetRegs website at:

<http://www.environment-agency.gov.uk/netregs/>

Producers and distributors are legally obliged to notify the relevant authorities of unsafe products. In respect of consumer products in the UK this will be your local authority (typically, the Trading Standards Department). General guidance on product safety is available on

Business Link:

<http://tinyurl.com/3zc78cm>

Directgov:

<http://www.direct.gov.uk/en/Governmentciti>

### Key Facts - Consumer Protection Act 1987 (Part 1):

- Part 1 of the Consumer Protection Act 1987 transposes the Product Liability Directive (85/374/EEC and 1999/34/EC\*) into UK law. The legislation imposes strict liability on producers for harm caused by defective products. \*The 1999 Directive - extending coverage to food sold in its raw state - was transposed in England & Wales by the Consumer Protection Act 1987 (Product Liability) (Modification) Order 2000.
- This means that people who are injured by defective products can sue for compensation without having to prove the producer negligent, provided that they can prove that the product was defective and the defect in the product caused the injury.
- The legislation applies to all consumer products and products used at a place of work.

[zensandrights/Consumerrights/index.htm](http://zensandrights/Consumerrights/index.htm)

Be particularly careful with high-risk products that might be misused, or children's toys.

Specific regulations apply to products like fireworks, food and medicines. Read guidance leaflets on safety on the Trading Standards Central (TSC) website at: [www.tradingstandards.gov.uk/cgi-bin/bgllist.cgi#cs](http://www.tradingstandards.gov.uk/cgi-bin/bgllist.cgi#cs)

Even if you don't manufacture the products you sell, you will still have safety responsibilities. You mustn't sell any product which you know, or should know, is unsafe. You can find recent product recall notices on the TSC website at [www.tradingstandards.gov.uk/cgi-bin/newslist.cgi?area=safe](http://www.tradingstandards.gov.uk/cgi-bin/newslist.cgi?area=safe)

You also need to:

- pass on safety information to all your customers;
- help monitor product safety – e.g. by investigating complaints and passing information back to the producer;
- co-operate with producers and others – e.g. if a product is recalled because it is unsafe;
- notify the authorities - usually your local Trading Standards officer - of any unsafe products;
- retain all relevant documentation to enable the origin of unsafe products to be traced

In any case, you need to take an active approach to preventing problems. If you don't you could face enforcement action, fines or even imprisonment. If a safety defect causes harm to someone or their property, they may be able to sue under product liability laws.

It's strongly advisable to insure your business against potential damages claims. Business Link provides a guide to liability insurance on their website. If you import or export your products, you should also read their [guide on insurance for international trade at: <http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1074298598&type=RESOURCES>](http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1074298598&type=RESOURCES)

## Am I Liable?

The main responsibility for product safety falls on producers. This includes:

- manufacturers;
- importers;
- businesses that supply own-brand products;
- businesses that change the safety of the product - for example, by customising or servicing it.

Often, several businesses are involved as producers. For example, several component makers might supply parts to a manufacturer that assembles the product. If the product causes harm, all of these businesses could be jointly liable.

Distributors, such as shops, are not normally liable for harm to consumers or their property resulting from an unsafe product as long as they identify the producer. But distributors do have some responsibility for safety, and can face enforcement action.

Anyone who is harmed by an unsafe product could sue - even if they didn't buy the product themselves. They can begin their court case up to three years from the date of the injury, and sometimes later. In some cases, they can even sue up to ten years after the product was sold.

If you're involved in producing or supplying consumer products, you will need to take practical steps to prevent problems.

It's strongly advisable to insure your business against potential damages claims.

### Product Recall: Top Ten Tips for Success

- Plan ahead - before you need to recall.
- Discuss with all businesses that may have an interest.
- Keep good records to help trace products.
- Act quickly.
- Stop the problem from getting worse and keep the business going.
- Draft your recall message clearly and simply.
- Target owners and users of your products.
- Consider new technologies to deliver your message.
- Monitor the recall and assess its success.
- Think about how to re-launch your product.

Source: BIS

### Key Facts - Consumer Protection Act 1987 (Part 2):

- The general safety requirement under section 10 of the Act has largely been replaced by the General Product Safety Regulations 2005 (see separate fact sheet).
- Section 11 empowers the Secretary of State to make emergency regulations without consultation to secure the safety of products when public protection is deemed necessary. Regulations made under this procedure lapse after 12 months.
- However, under normal circumstances, the Act requires prior consultation with interested parties. Safety regulations made under the procedure remain in force indefinitely, unless specifically revoked.
- Section 12 makes it an offence to supply goods that do not meet safety regulations made under the Act.

## What Happens If I Am Liable?

If you are liable for harm caused by an unsafe product you can be sued. Anyone who is harmed can sue - even if they didn't buy the product themselves. The user can sue for compensation for death or injury. They can also sue for damage or loss of private property of at least £275 in value. The amount they can claim will depend on the harm they have suffered. There is no fixed upper limit.

Many businesses take product liability insurance to protect them from legal costs and damages awards. In any case, you need to take practical steps to make sure that products are safe to begin with.

Action can also be taken by the enforcement authorities if they think unsafe products are being supplied.

Trading Standards officers in local councils are responsible for most safety enforcement. Some special products, such as food and medicines, are dealt with by other authorities. Check with your local Trading Standards office if you are unsure. You can find your local Trading Standards office on the Trading Standards Central (TSC) website at [www.tradingstandards.gov.uk/index.cfm](http://www.tradingstandards.gov.uk/index.cfm)

Trading Standards officers can buy or seize goods to see whether they are safe. They can also enter your premises to see whether you are breaking the rules. If they think your products are unsafe, they can order you to stop selling them. They can go to court and ask for the products to be destroyed.

They can also prosecute you. If you're convicted you could be fined or imprisoned. Enforcement authorities also have powers to order the recall of an unsafe product from consumers.

## Defending a Product Liability Claim

If someone sues you under product liability laws, your first step is to consider who is liable. If you are a distributor, such as a shop, you may not be liable if you can identify the original producer.

If you're the producer and you believe the problem was caused by a fault in your production process, you may want to admit liability and settle the claim. Alternatively, you will need to prove one of six defences:

- You did not supply the product. For example, you are not liable if a product is stolen, or it is a counterfeit copy of one of your products.
- You could not reasonably be expected to discover the safety defect. For example, if scientific evidence first comes to light after you have manufactured or sold your product.
- The safety defect was an inevitable result of complying with other laws.
- Someone else caused the defect after you supplied the product.
- You didn't supply the product in the course of business. For example, the law does not apply to private gifts.
- If you make components, you are not liable if you can show that the manufacturer who assembled the product caused the fault. For example, the manufacturer might have made a poorly designed product or ordered the wrong components from you.

You can't defend yourself simply on the basis that a user was careless. But if you can show that they contributed to a problem, the amount of damages may be reduced.

If Trading Standards take enforcement action against you under product safety regulations, you can also choose to defend yourself. You need to prove you did everything that could reasonably be expected. If you're successful, you may get compensation for any loss you suffer, for example, if Trading Standards destroyed your goods.

You should be aware that court cases are usually expensive and complicated. Take professional legal advice before taking any action.

## Preventing Problems

Producers, such as manufacturers, must make safety a key part of production. This means that you must:

- Include safety at every stage, from initial design through to selling.
- Check whether there are any specific regulations covering your product.

### Product Liability Insurance

*"A Product Liability (Insurance) Policy protects businesses against liability claims resulting from defects in the products they sell."*

Source: Association of British Insurers

- Check whether there are any safety standards that apply to your product. If so, check that you meet the standards.
- Think how you can ensure that your products meet your quality standard. This could be by testing samples. You could consider introducing a formal quality assurance scheme.

Importers are responsible in the same way as manufacturers. Although you cannot control production, you should take a similar approach to preventing problems.

Distributors, such as shops, must not do anything that affects product safety. Otherwise, you could have the same responsibilities as a producer. You should therefore:

- give customers any safety information provided by the producer
- investigate safety complaints from customers, and tell the manufacturer
- co-operate with Trading Standards officers

Think about ways to protect yourself if you are sued. Consider the following:

- Purchasing product liability insurance to cover damages and legal costs.
- Agreeing contracts that pass on costs. For example, you can ask a supplier to indemnify you against any claim for damages caused by their products.
- Keeping adequate records. You may need to defend yourself against a claim up to ten years after supplying a product.

If you think you're at risk, take advice from your business adviser or solicitor. Your trade association may also help with information about standards and best practice in your industry.

## Insurance Protection

People who suffer damage from a design defect can win compensation without having to prove negligence. Manufacturers, suppliers and importers can all be responsible.

If you are in business and you sell a product, it is advisable to take out product liability insurance. "Product" is anything that is tangibly used, touched or consumed. Product liability insurance protects you in case a product you produce or provide causes harm to a user.

Most business policies include product liability coverage. If, however, you don't have this cover through a business policy and your product runs the risk of inflicting harm on other people, you may need to buy product liability separately.

## Useful Links

View recent product recall or safety notices at:

<http://www.tradingstandards.gov.uk/advice/advice-recall-list.cfm>

Download a guide to *Product Safety In Europe: A Guide to corrective action including recalls* at:

<http://www.bis.gov.uk/files/file23025.pdf>

Find out about safety standards on the British Standards Institution website at:

<http://www.bsigroup.com/en/Standards-and-Publications/About-standards>

Read a guide to price marking requirements on the TSC website at

<http://www.tradingstandards.gov.uk/advice/advice-business.cfm>

Find trade associations for your business on the Trade Association Forum website at

<http://www.taforum.org/>

## FAQ – The Consumer Protection Act 1987

Q1. What products are covered by the Act?

All consumer goods and goods used in the workplace. All food is covered. Buildings are not covered but building materials such as bricks are covered.

Q2. When can an injured person sue?

A plaintiff must begin court action within 3 years of the date he or she was injured.

Q3. What sort of damage is covered?

A person can sue under the Act for compensation for death, personal injury and damage to private property (provided the amount of loss or damage to property is £275 or more).

Q4. Where can I get advice as a plaintiff?

Anyone considering making a claim should seek legal advice at an early stage.

Q5. What can I do as a manufacturer/importer to cover myself for product liability?

Consider seeking advice from insurers about product liability cover.

Q6. Does the Act include enforcement powers?

The Act sets out the powers available to the enforcement authorities to deal with unsafe products.

Q7. Who are the enforcement authorities?

Local authority trading standards departments have primary responsibility for day-to-day enforcement of safety legislation. The Secretary of State for Trade and Industry also has enforcement powers.

Q8. What penalties are available to enforcement authorities?

Failure to meet the requirements of safety regulations made under the Act can result in a fine of up to £5000 and/or a prison term of up to six months.

Q9. Where should complaints about unsafe products be sent?

Complaints about unsafe goods should be made to Consumer Direct on 08454 04 05  
06. Consumers in Northern Ireland should contact ConsumerLine on 0845 600 6262

## Further Information

This guide is for general interest - it is always essential to take advice on specific issues.

We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

### Acknowledgement :

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