



Consumer Affairs Directorate

STRENGTHENING CONSUMERS AND BUSINESS

Guide to the Consumer Protection Act 1987

Product Liability and Safety Provisions

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Department of Trade and Industry

While every effort has been made to ensure that the information in this document is accurate, the Department of Trade and Industry cannot accept liability for any errors, omissions or misleading statements in that information.

FOREWORD

This guide explains in general terms how the product liability and consumer safety provisions of the Consumer Protection Act 1987ⁱ work. The guide is not a legal document and it does not attempt to cover all the details. Anyone who wants to know exactly how the legislation affects them should refer to the Act itself and in case of doubt should seek legal advice.

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INTRODUCTION

Every day of our lives we consume, use, or simply come into contact with countless different products. We should be able to assume that those products are safe. Not absolutely safe - that remains unattainable. Nor safe at unbearable cost to industry - that would put innovation at risk. But as safe as is reasonable to expect. The aim of the Consumer Protection Act is to help safeguard the consumer from products that do not reach a reasonable level of safety.

Clearly the consumer gains from this legislation. But forward-looking firms will also recognise that it is in their interest to outlaw unfair competition from traders who cut corners on safety. The Act is important to all those with an interest in the safety of products that are put onto the market.

Part I of the Act, which implements into UK law the provisions of the Product Liability Directive (85/374/EEC), came into force on 1 May 1988. Although Part I applies in Great Britain only, equivalent provision for Northern Ireland was made by Order in Council. Part I of the Act, and the Northern Ireland Order, excepted primary agricultural products and game (i.e. food sold in its raw state) from the scope of the legislation. However, Directive 1999/34/EC amended the 1985 Product Liability Directive by requiring the removal of this exception with effect from 4 December 2000. From this date food sold in its raw state is included in the legislation. This change was implemented in:

England and Wales - the Consumer Protection Act 1987 (Product Liability) (Modification) Order 2000 (Statutory Instrument 2000 No. 2771)

Scotland - the Consumer Protection Act 1987 (Product Liability) (Modification) (Scotland) Order 2001 (Statutory Instrument 2001 No. 265)

Northern Ireland - the Product Liability (Amendment) Act (Northern Ireland) 2001.

Part II of the Consumer Protection Act, containing consumer safety provisions, came into force on 1 October 1987. These provisions apply throughout the UK.

PRODUCT LIABILITY

What does it mean?

- 1** People injured by defective products may have the right to sue for damages; product liability is the term given to laws affecting those rights.
- 2** In the past those injured had to prove a manufacturer negligent before they could successfully sue for damages. The Consumer Protection Act 1987 removes the need to prove negligence. A customer can already sue a supplier, without proof of negligence, under the sale of goods law. The Act provides the same rights to anyone injured by a defective product, whether or not the product was sold to them.
- 3** The Act does not affect any existing civil laws governing product liability. No liability is imposed under the Act in respect of products first supplied before 1 March 1988.
- 4** The Act implements the European Community directive on product liability, which provides a similar degree of protection for people throughout the European Community.

Who is liable?

- 5** An injured person can take action against:

Producers:

usually the manufacturer or, in the case of raw materials, the person who mined or otherwise obtained them. Also included are processors (for example pea canners), but those involved solely in packaging are not affected unless the packaging alters the essential characteristics of the products.

Importers:

meaning importers into the European Community, not just into the United Kingdom. Where goods are imported into another EC country and subsequently sold in the United Kingdom, liability rests with the first importer, not the United Kingdom importer.

Own-branders:

suppliers who put their own name on the product and give the impression that they are the producers.

- 6 Other suppliers, such as wholesalers and retailers, are not liable unless they fail to identify the producer, importer or “own-brander” if asked to do so by a person suffering damage.
- 7 Liability under the Act is joint and several, so the plaintiff may sue both (or all, if more than two) defendants. It is not possible to exclude liability under the Act by means of any contract term or other provision.

What products are covered?

- 8 Liability under this part of the Act applies to all consumer goods and goods used at a place of work. From 4 December 2000 all food is covered. Prior to this date food sold in its raw state was excluded (see page 1).
- 9 Buildings are not covered although individual goods from which they are built (e.g. bricks and beams) are covered.
- 10 Liability under the Act extends to components and raw materials. If a finished product contains a defect in a particular component, both the manufacturer of the finished product and the component manufacturer may be liable.
- 11 The Act is not intended to extend to pure information. Printed matter is not therefore covered, except in the case of instructions or warnings for a product (in which case the producer of the *product* - not the printer - will be liable for errors or omissions in the instructions or warnings which make the product unsafe). Similarly, a design consultant will not be liable under the Act for a mistake in a design which causes a product to be defective; the producer of the product itself will be liable. Similar considerations are relevant to software. Computer software is often supplied as an intrinsic part of a product and in some cases can cause personal injury (for example airline navigation systems or production line robots). Again, liability in such cases is imposed on the producer of the product.

What is a defective product?

- 12** A defective product is defined as one where the *safety* of the product is not such as persons generally are entitled to expect. This definition provides an objective test of defectiveness and refers neither to the particular injured person nor to the particular producer. A product will not be considered defective solely because it is of poor quality. A product will not be considered defective simply because a safer version is subsequently put on the market.
- 13** When deciding whether a product is defective, a court will take into account all the relevant circumstances including:
- ◆ the manner in which a product is marketed;
 - ◆ any instructions or warnings that are given with it;
 - ◆ what might reasonably be expected to be done with it
 - ◆ the time the producer supplied the product
- 14** The criteria of what might reasonably be expected to be done with a product, and consequently what instructions and warnings are given, are particularly important for producers and importers whose products are often misused.

What sort of damage is covered?

- 15** A person can sue under the Act for compensation for:
- ◆ death
 - ◆ personal injury
 - ◆ private property (provided the amount of loss or damage is £275 or more).
- 16** The Act imposes no financial limit on a producer's total liability.
- 17** The plaintiff must be able to show that, on the balance of probabilities, the defect in the product caused the damage.

What defences are there?

- 18** A producer or importer can avoid liability if he can prove any of six defences:
- ◆ he did not supply the product (e.g. it was stolen or is a counterfeit copy of his products);
 - ◆ the state of scientific and technical knowledge at the time he supplied the product was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control (the so-called “development risks defence”);
 - ◆ the defect was caused by complying with the law. Compliance with a regulation will not necessarily discharge a producer from liability; in order to claim the defence he would have to show that the defect was the *inevitable* result of compliance;
 - ◆ the defect was not in the product at the time it was supplied (e.g. if a product becomes defective because a retailer handles it carelessly);
 - ◆ the product was not supplied in the course of a business, for example, the donation of homemade toys for sale at the occasional church bazaar or sales by private individuals of second-hand goods;
 - ◆ the producer of a component will not be liable if he is able to show that the defect was due either to the design of the finished product, or to defective specifications given to the component manufacturer by the producer of the finished product.
- 19** The extent of the defendant’s liability could be affected by any contributory negligence on the part of the plaintiff, e.g. if he contributed to his injuries by his own carelessness.

When can injured people sue?

- 20** A plaintiff must begin his court action within three years of the date he was injured by the defective product or, if later, the date when they knew they had a claim against the defendant. However, an injured person cannot sue under this part of the Act if ten years have elapsed since the defective product was supplied by the producer.
- 21** Anyone considering making a claim under this legislation should seek legal advice at an early stage.

CONSUMER SAFETY

- 22** The general safety requirement under section 10 of the Consumer Protection Act 1987 has been largely superseded by the General Product Safety Regulations 1994 (the GPS Regulations), which came into force on 3 October 1994. The GPS Regulations - made under the European Communities Act 1972 - implement the General Product Safety Directive which introduced a Community-wide general safety duty.
- 23** Although section 10 of the Act remains in force, it will now apply only in very limited circumstances.

Standards

- 24** The system of “approved standards” under section 10 of the Act has been revoked by the General Product Safety Regulations 1994. The approvals which had been made under that provision were cancelled by administrative act with effect from 2 August 1994. Those standards which previously had approved status, will, of course, remain in being as standards of safety.
- 25** Standards will continue to have a role to play in assessing safety. Under the GPS Regulations safety is assessed taking into account a variety of factors, including any European or British standards for the goods in question.

Safety regulations

- 26** Section 11 of the Act enables the Secretary of State to make emergency regulations, without consultation, when it is necessary on grounds of public protection. Regulations made under this procedure lapse after 12 months.
- 27** However, under normal circumstances, the Act requires consultation with interested parties prior to the making of regulations. Regulations made under this procedure remain in force indefinitely unless specifically revoked.

- 28** Such regulations, which can cover both new and second-hand goods, can set out in detail how specific products must be constructed, and what instructions and warnings must be given. Examples are regulations covering the safety of prams and pushchairs and flammability of upholstered furniture.
- 29** Failure to meet the requirements of safety regulations made under the Act can result in a fine not exceeding Level 5 on the standard scale (currently £5000) or a prison term of up to six months, or both.
- 30** The Act also provides powers for the Secretary of State to make prohibition notices preventing named suppliers from supplying particular unsafe products.

Enforcement

- 31** Enforcement of the safety provisions of the Act is primarily the responsibility of trading standards officers of local authorities in England, Wales and Scotland and in Northern Ireland environmental health officers of District Councils. Complaints about unsafe products should be made to the relevant enforcement authority.
- 32** Enforcement officers have authority to make test purchases, seize goods, enter premises for the purpose of ascertaining whether there has been a breach of safety provisions of the Act and bring prosecutions.
- 33** They can also issue suspension notices prohibiting suppliers from selling goods which they believe contravene safety legislation. They can apply to a magistrates' court for an order that such goods be forfeited and destroyed.
- 34** Suppliers can appeal to a magistrates' court against suspension and forfeiture of goods.
- 35** In certain circumstances enforcement authorities are liable to pay compensation for losses to a supplier against whom enforcement action has been taken, if there has been no contravention of a safety provision.

36 European Council Regulation 339/93 relating to products imported from non-Community countries empowers customs officers in all member States to detain goods at the external frontier, for up to three working days, to permit checks by enforcement authorities if products:

- ◆ have characteristics suggesting that they pose a serious and immediate risk to health and safety; and/or,
- ◆ are not accompanied by a document required by, or are not marked in accordance with, the Community or national rules on product safety applicable in the member State in which release for free circulation is sought.

37 In the United Kingdom this Regulation extends to three working days the power formerly exercised by customs officers under section 31 of the Act to detain potentially unsafe imports for two working days.

38 UK customs officers can no longer use section 31 powers in respect of goods in free circulation in the Community. However, customs officers continue to liaise with enforcement officers where either party has intelligence indicating that any such imports may not meet safety requirements.

WHAT BUSINESSES NEED TO DO

39 The vast majority of firms in this country already monitor and control the safety of the products they supply. The Consumer Protection Act provides an additional incentive for businesses to ensure that their products provide the safety that people using them or affected by them are reasonably entitled to expect. Use of the following checklist may help businesses to ensure that they meet their obligations under the legislation:

- ◆ review management procedures to check that all stages of production (design, manufacture, presentation and marketing) help to ensure that only safe products reach the customer;
- ◆ check whether there are any specific regulations setting mandatory requirements for the firm's products: also check whether there are any published or proposed safety standards for its products and to what extent they meet or could be made to meet the standard.
- ◆ consider introducing quality assurance at each stage of the production process.
- ◆ assess whether the business's insurance cover is adequate, including product liability insurance. The amount of insurance cover obtained is a matter for commercial judgement, but businesses should seek advice from their own insurance advisors;
- ◆ review any contractual arrangements with suppliers, customers or others with whom the business has relevant contracts (a business cannot contract out of any liability under the Act, but might, for example, seek an indemnity from others in the event of liability under the Act);
- ◆ decide whether the records kept by the business are adequate, bearing in mind the working life of the product, the 10 year potential liability for product liability claims, and the possible need to identify suppliers of defective products to the business in defending a product liability action (particularly relevant for "own branders").

Many of these preventative measures form part of quality systems such as those specified in BS EN ISO 9000 family of standards.

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