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Smarter Regulation: UK Product Safety Review

The National Fire Chiefs Council (NFCC) is pleased to respond to this consultation, published on 02nd August 2023, regarding product safety in the UK. NFCC is the professional voice of the UK fire and rescue services (FRSs) and is comprised of a council of UK Chief Fire Officers. This response was collated by NFCC's Protection Reform Unit and Strategy and Policy team and was drafted in consultation with our members across UK FRSs. Our response reflects their expertise and competence with the subject matter.

NFCC supports the general direction of the proposals and is pleased to see the development of a regulatory framework for which risk is centrally important, though there are recommendations contained within our answers where we think there are extra considerations to be made.

Lessons Learned from the Failure of Construction Products

Dame Judith Hackitt's Independent Review, 2018's *Building a Safer Future* (BaSF), and 2023's *An Independent Review of the Construction Products Testing Regime,* contained some key insights for construction product safety, which although outside the scope of this consultation can and should apply more generally. One of these recommendations was that regulatory bodies should be more active in monitoring and ensuring compliance with testing requirements. Additionally, the reports were clear that more should be done to ensure the independence and credibility of testing bodies, standardised testing methodologies, a more effective market surveillance regime, and improved traceability of test results and certifications.

BaSF also recognised the need for a centralised system to track essential information about construction products, including their origin, performance characteristics, test results, and compliance with safety standards. This can and should apply more widely too, particularly in products of significant fire safety concern, such as those containing lithium-ion batteries, so NFCC welcomes the consultation proposals toward centralisation in this regard. A centralised system would improve transparency, enable effective traceability, and support regulatory oversight. In the event of a fire safety investigation, this information would be readily available, allowing authorities to quickly assess the compliance of products.

General Comments

It is our position that a system is needed to assess and verify the competence of manufacturers. This could involve evaluating their adherence to quality management systems, certification standards, and relevant safety regulations. Manufacturers should be required to demonstrate their expertise, quality control measures, and commitment to maintaining a safe manufacturing process, and should have proper accreditation and adhere to quality management systems. We appreciate that these measures and certifications could be difficult and costly to implement for micro or small businesses, and suggest that a risk-based and proportional approach is taken. This certification ensures that manufacturers have implemented robust quality control measures and are committed to continuously improving their processes.

NFCC supports the ambition to make product regulation more efficient and ensure that businesses can continue to develop innovative products in emerging sectors. However, we are concerned that an eagerness to remove 'red tape' and encourage business innovation always comes with increased safety risk. We suggest that a baseline level of safety should be applied to all businesses based in and trading in the UK, after which further regulatory impact to business can be considered on a risk-assessed basis. It is clear that some product markets can outpace the relevant legislation, lithium-ion batteries being one such area, and we would suggest that further consideration should be given to ensuring that emerging trends and rapidly escalating safety threats can be incorporated into the new product safety framework.

With the rise of online business, the risk posed by unregulated products from overseas has increased dramatically. NFCC is reassured to see such risks incorporated into the consultation proposals, including the ambition to ensure products must have a compliance function based in the UK to sell products in this country. This would be a significant safety enhancement if correctly implemented, and NFCC strongly supports it, though with the proviso that clarification should be given as to how this would be managed in a practical way, along with details about how these regulations would be enforced and resourced.

NFCC hopes this response is helpful and welcomes further discussion following the outcome of the consultation.

Regards,

Gavin Tomlinson
Protection & Business Safety Scrutiny Committee Chair
NFCC

Bringing Products to Market

Question 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.

No. NFCC has a general concern about reduced business burdens for new/innovative products in markets where the risks may not yet be fully understood. Any streamlining of processes to reduce burdens could have unintended consequences and increase risk.

Given that the current regulatory system for building regulations has already been described and accepted by the Government as 'not fit for purpose' even for traditional standards, this serves to highlight the significant additional caution that should be applied before introducing even more unknown and untested products into places where people live, work and play.

Current guidance via the Approved Documents means that many parts of the built environment are not designed to withhold or withstand modern fire loadings. Greater reliance on technology is now an integral part of our lives. Fire loading is increasing in homes due to both the materials used, which create toxicity, and also a greater quantity of materials which create a larger volume of smoke.

Devices with lithium power cells and electric vehicles are among these examples. London Fire Brigade has reported that in 2023 it has been called out to an e-bike fire approximately every two days. Another example is domestic Battery Energy Storage Sites. These technologies support the drive toward greener energy and net zero ambitions, and NFCC supports the drive to encourage innovation and support decarbonisation ambitions. However, this should not be at the cost of safety and the associated regulations should not be seen as a burden to businesses of any size.

In addition, recent high-profile car park fires have provided some evidence that the current levels of fire resistance are not fit for purpose. At the time of writing, a car park fire at Luton Airport is reported as resulting in a partial collapse of the structure, with approximately 1,500 vehicles unlikely to be salvageable, mirroring a similar car park fire at the Liverpool Echo Arena[1] in 2017.

In order to support safe innovation, relevant guidance and standards must be kept up to date. Unfortunately, this has not happened. Following the Grenfell Tower Fire, the Government announced in 2018 that it was going to undertake a full review of Approved Document B and that it was likely to take five years. Five years on from this we are yet to see anything beyond piecemeal updates to the guide.

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[1] https://www.bafsa.org.uk/wp-content/uploads/bsk-pdf-manager/2018/12/Merseyside-FRS-Car-Park-Report.pdf

Question 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? 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.

Yes ~~/ No / Don't know~~

Whilst NFCC broadly supports the proposal, in establishing and assessing the risks which the framework could be based upon, there needs to be full consideration of the specific hazards associated with certain products to ensure they are not unduly dismissed as low risk.

An example that serves to highlight how seemingly innocuous, low-risk products can lead to significant safety concerns is artificial foliage. These decorative artificial green wall products are now ubiquitous in both domestic and commercial settings. We have concerns that flammable products are being used to cover extensive sections of wall or ceiling, creating a serious risk of ignition and resultant rapid fire spread. Whilst it is acknowledged that businesses have their own legal responsibilities to make sure their premises are safe, there are no such requirements in people's homes.

Another key example would be products containing lithium batteries, which clearly have the potential to cause significant and severe fires that can develop rapidly and burn for protracted periods. In 2015/16, there was a sudden and large increase in worldwide hoverboard sales and a corresponding rise in fires, which led to [large-scale corrective action](#) and hundreds of thousands of hoverboards being recalled in the UK. To avoid similar crises in the future, a framework closely linked to the risk levels of such products seems to be the most reasonable approach.

NFCC is also concerned about unregulated products, usually cheap in comparison with those that do meet UK standards, and often sold online. This includes purchases through the bigger online retailers such as Amazon. A report published in September 2022 by electrical safety charity [Electrical Safety First](#) found nearly 60 listings on prominent marketplaces including Amazon, eBay, Wish.com, and AliExpress which fell below the required safety standards for sale to UK consumers. We would therefore welcome much-needed legislation to ensure these dangerous products are more strictly regulated.

Question 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.

While the concept of the proposal is logical, we have a significant concern that some risk data may take time to reach an evidential threshold for action (e.g. corrective action such as a product recall being required). This leads to a scenario in which marketplace

innovation is significantly ahead of product safety standards. Therefore, we believe that standards and testing requirements should be considered for emerging trends where there is a safety hazard based on criteria such as the rate of escalation in such events.

While there may be a perception that this could create a burden for some businesses, the counterpoint is that it could reduce the risk to businesses (for example, the cost of corrective action, or inventory that cannot be sold) if clear standards are in place.

Question 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.

We do not believe we are best placed to answer this question.

Question 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).

We do not believe we are best placed to answer this question.

Question 6: Do you support the development of guidance to assist businesses in carrying out pre-market risk assessment? 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 / No / Don't know

While FRSs are not experts in this area, it is logical that robust guidance could assist in pre-market risk assessment, as many micro, small, or medium enterprises are less likely to have in-house expertise. This would also be a logical extension of the Publicly Available Specifications (PAS) 7050 and 7100.

We would also like to note that the language used in risk assessments should be abundantly clear. Wording such as 'thermal event' has been used in the past, when the term 'fire' would be much more useful to those completing and reviewing risk assessments.

Question 7: Do you agree with the proposal to establish a derogation process to help ensure supply of critical products in emergencies? Please provide reasoning (including relevant evidence) to support your answer, particularly any impacts (business costs and benefits) on you or other stakeholder groups, and for any suggestions you have on key aspects of the design or implementation.

~~Yes / No /~~ Don't know

While FRSs are not experts in this area, it is logical that a derogation process could help the supply of critical supplies in an emergency situation. However, lessons learned from the COVID-19 pandemic (such as procurement of sub-standard PPE) should be revisited to protect public confidence. We are therefore reluctant to support the proposal fully until further detail is provided.

Question 8: Are there other circumstances, in addition to those set out in this proposal, where a derogation process would be helpful? 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.

~~Yes / No /~~ Don't know

We do not believe we are best placed to answer this question.

Question 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? Please provide reasoning (including relevant evidence) to support your answer, particularly any impacts on you or other stakeholder groups.

Yes ~~/ No / Don't know~~

While FRSs are not experts in this area, e-labelling should be supported with an equalities impact assessment to ensure that due regard is given to all our communities and business types. NFCC does not disagree with the concept of e-labelling but would note that safety warnings must be made extremely clear within any and all e-labels.

Consideration should be given to the impact this proposal could have on the second-hand market for any products where e-labelling is permitted. Whilst it is acknowledged that the history of many second-hand products is largely unknown, traditional labelling would provide the consumer with information that the product conformed to certain standards when it was initially sold. E-labelling may not make such information immediately available, and we are concerned that it may not always be possible to draw a distinction between a safe product and an unregulated, potentially unsafe product.

Question 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)? Please provide reasoning (including relevant evidence) to support your answer, particularly any impacts on you or other stakeholder groups.

~~Yes / No /~~ Don't know

We do not believe we are best placed to answer this question.

Question 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.

As explained above, future expansion of e-labelling should be supported with an equalities impact assessment to ensure that due regard is given to all our communities and business types. A switch from traditional marking to e-labelling would necessitate significant communication works and an awareness campaign to explain the changes and how they might affect businesses and consumers.

Online Supply Chains

Question 12: Do you agree with the proposal to clarify cooperation duties for new business models, particularly 'online marketplaces'? Please provide your reasoning (including relevant evidence on impacts, costs and/or benefits for you or other stakeholder groups).

~~Yes / No /~~ Don't know

It would depend on the scope of the cooperation duties – if there is not equity for all businesses, for example by implementing a UK compliance function or a responsible/accountable person in the UK, which we would strongly support, rogue businesses or sellers may have an advantage. Regulations covering online marketplaces should apply to both companies selling products directly and intermediary platforms (including fulfilment services), and there should be accountability for all products sold in the UK.

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

A regime without adequate resources for market surveillance, intelligence, product testing, and enforcement activity where needed, will indirectly support an unsafe environment for product safety, putting consumers at risk. Enforcement powers should be able to be applied at all parts of the supply chain, otherwise, the new regulations may result in a lack of change in practice. It should also be clarified how the Office for Product Safety and Standards (OPSS) intends to enforce against businesses based overseas, particularly if mandatory UK compliance functions are introduced for online marketplaces.

Question 14: Do you agree with the proposal to introduce due care requirements in relation to unsafe product listings? Please provide your reasoning (including relevant evidence on impacts, costs and/or benefits for you or other stakeholder groups).

Yes / No / Don't know

As illustrated by the sale of unsafe products including e-bike battery packs/conversion kits via online marketplaces, there is a risk to consumers. Consumers should have confidence that when they buy a product, the seller and/or marketplace have taken due care to ensure that the product is safe and compliant with appropriate standards.

Due care requirements should be applicable to all product listings, so NFCC would query why "unsafe" product listings have been specified in this question.

We also believe that clarity is needed around the sentence in the consultation which notes that, under the proposals, online marketplaces will start "identifying any specific risks, developing systems and processes proportionate to their business and risk levels." While the principle of proportionality is relevant in a business context, we would ask that there is still a baseline level of requirement that all businesses should meet, even for a micro or small enterprise.

Question 15: Do you agree with the proposal to increase consumer-facing information on online product listings for higher risk products? Please provide your reasoning (including relevant evidence on impacts, costs and/or benefits for you or other stakeholder groups).

Yes / No / Don't know

Consumer choice is enhanced when they are provided with relevant information. However, we would suggest that learnings from the OPSS Consumer Insights team (and other relevant sources) are used, so that information is presented in a way that increases the

chance of it being noted by the prospective buyer. In practice, this would mean short, concise, and direct warnings (the term "risk of fire" should be used, rather than "risk of overheating" or "thermal event", to give one example).

Whilst NFCC broadly supports the proposal, in establishing and assessing the risks which the framework could be based upon, there needs to be full consideration of the hazards associated with products. For example, any electrical item brings with it a source of ignition and a fuel source which could potentially result in a serious fire. Limiting consumer information to "higher risk" products may inadvertently suggest that all other products are completely safe.

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

Consideration should be given, where appropriate, to include information highlighting that there is no current standard for the product being sold. This information should be available centrally and coordinated by OPSS. E-bike conversion kits are an example of one product that does not have a safety standard. This may highlight that, for example, there may not be compatibility or conformity between makes/models/accessories.

With regard to online marketplaces where second-hand goods may be sold, it should be made clear that the product has been checked and that it is not subject to a product recall/corrective action.

Compliance and Enforcement

Question 17: Do you agree with the proposal to enhance the leadership and coordination role of OPSS? 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.

Yes / No / Don't know

We believe that this may enhance the efficiency of the regulatory regime, subject to appropriate resourcing being in place. It is recognised that local Trading Standards teams are often under-resourced. Furthermore, a regional approach to serious incidents related to online markets seems ineffective due to the lack of geographical boundaries, and NFCC therefore welcomes additional centralised support from OPSS.

Question 18: Do you agree with the proposal to create a new legal data gateway? 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 / No / Don't know

Evidence has been provided via previous fora and the initial product safety review which demonstrates that data has not been routinely shared. Data is essential to understanding emerging and current risks, and the UK FRS has long held concerns about significant gaps in data. We believe that private sector actors (e.g. insurance agents or investigators) may hold data that is not being shared with key stakeholders to inform effective risk assessment and if need be, corrective action. Consumers should have at least a base level of or redacted access to data when corrective action is being considered, and enforcing bodies should have full access to all relevant data.

We would strongly urge OPSS to make it a legal offence for businesses (online or physical) to fail to comply with the obligation to provide relevant information regarding risk.

Question 19: Do you agree with the proposal to have a single point of contact for product safety recalls? 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.

Yes / No / Don't know

We believe that there are clear opportunities to improve efficiency and effectiveness by having OPSS as the single point of contact for product safety recalls. Our experience with white goods clearly highlights that there is confusion from the public and business when it comes to reporting, which was demonstrated in recent years during the Hotpoint/Whirlpool tumble dryer recall issues.

Question 20: Do you agree with the proposal to consolidate and align existing enforcement legislation? 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.

Yes / No / Don't know

While FRSs are not experts in this area, the proposal is logical as long as implemented appropriately.

Question 21: Do you agree with the proposal to introduce improvement notices, civil monetary penalties, and enforcement undertakings? 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 ~~/ No / Don't know~~

We agree with this in principle, as long as compliance with the undertaking can be checked. NFCC would like to see a public register detailing where formal enforcement is undertaken to support transparency and accountability.

Question 22: Do you agree with the proposal to explore changing inspection powers? 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.

Yes ~~/ No / Don't know~~

We support this proposal as we cannot ignore how the pandemic has changed how many businesses, particularly micro and small businesses, operate from locations such as homes. As noted previously, we believe that an effective product safety regime needs suitable market surveillance – this would include inspection where necessary. Making such inspections less burdensome should improve efficiency. Businesses operating from home should not have a significantly unfair advantage from this perspective.

Question 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 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?

Whilst FRSs are not experts in this area, with regards to part b), there appears to be an issue with online marketplaces and consumers' ability to seek fair redress.

We will also be watching with interest the potential for improvements following the commencement of the Building Safety Act 2022, and the extension of the period of limitation for consumers to take claims. Construction products are increasingly being brought into the market with short shelf lives (such as cladding systems which are intended to be replaced every 20 years). It is unclear how much consumer awareness there is of

these issues, and how this will potentially be approached in the future, including whether such products should be deemed capable of fulfilling the functional requirements of the Building Regulations 2010. We believe this area should be kept under review, with more attention placed on consumer education, and would welcome the OPSS playing a central coordinating role in this space.