



Title of Report:	Smarter Regulation: UK Product Safety Review Consultation
Committee Report Submitted To:	Environmental Services Committee
Date of Meeting:	10th October 2023
For Decision or For Information	For Decision
To be discussed In Committee NO	No

Linkage to Council Strategy (2021-25)	
Strategic Theme	Resilient, Healthy and Engaged Communities
Outcome	Provide a consultation response
Lead Officer	Head of Health & Built Environment

Budgetary Considerations	
Cost of Proposal	N/A
Included in Current Year Estimates	N/A
Capital/Revenue	N/A
Code	N/A
Staffing Costs	N/A

Legal Considerations	
Input of Legal Services Required	No
Legal Opinion Obtained	No

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	Yes/No N/A	Date:
	EQIA Required and Completed:	Yes/No N/A	Date:
Rural Needs Assessment (RNA)	Screening Completed	Yes/No N/A	Date:
	RNA Required and Completed:	Yes/No N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	Yes/No N/A	Date:
	DPIA Required and Completed:	Yes/No N/A	Date:

1.0 Purpose of Report

- 1.1 The purpose of this report is to provide a Causeway Coast and Glens Borough Council response to the consultation.

2.0 Background

- 2.1 This consultation forms part of the Government's Smarter Regulation programme of regulatory reform. Smarter regulation aims to improve regulation, ensuring it is clear and only used where necessary and proportionate.
- 2.2 The Product Safety Review examines the fundamental principles of the product safety framework with a view to redesigning and modernising it so that it is effective, supports businesses to innovate and grow whilst ensuring consumers are kept safe.
- 2.3 This consultation is focused on regulations within the remit of Office for Product Safety and Standards (OPSS) that cover the majority of consumer products, including electrical equipment, cosmetics, toys and gas appliances, as well as those that go beyond consumers to protect users of, for example, machinery, lifts, equipment used in explosive atmospheres and pressure equipment. It includes cross-cutting regulations, such as the General Product Safety Regulations 2005, as well as product-specific rules. It does not cover food, chemicals, medical or healthcare products, construction products or vehicles, all of which are regulated separately.
- 2.4 The consultation can be found at [UK Product Safety Review: consultation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- 2.5 Attached as Appendix 1 is a suggested response to the consultation.
- 2.6 The closing date for submission of responses to the Department for Business & Trade is 24th October 2023.

3.0 Recommendation.

It is recommended that Council approves and submits this response.

Response to the Consultation - Smarter Regulation: UK Product Safety Review (Closing date: 24 October 2023)

The consultation can be found at [UK Product Safety Review: consultation \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/consultations/uk-product-safety-review-consultation)

This response is provided by Causeway Coast and Glens Borough Council.

Council has concerns about how issues of divergence which have arisen to date have been addressed, in particular the level of assistance, support, guidance and communication provided. This needs to be addressed in a timely, proactive manner from both a GB and EU/NI perspective. Council Officers are conscientious in carrying out their duties and feel the level of support provided to this point has been disappointing. Council is concerned that this could be further complicated by the proposed changes within this consultation. With these concerns in minds, the following responses are provided:

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.

The sale of refurbished/repaired/second-hand goods; help support net zero through waste reduction and the introduction of specific safety checks to allow products to be reused/recycled.

Proposal 1: Examine options for a new approach centred around potential hazard, cross-cutting risk-based safety requirements and transparency.

- 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?
- What role should standards and testing requirements play in supporting businesses to comply with the new approach?
- What type and areas of guidance would most likely help you understand your requirements under any new framework?
- 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?
- Do you support the development of guidance to assist businesses in carrying out pre-market risk assessment?

Council believes that examining options is to be welcomed but should not necessarily mean an automatic change across the board. Options need to be examined in a meaningful and transparent way with input from Market Surveillance Authorities (MSAs) who need to be part of the auditing process re: categorisation of products. Further clarity will be required regarding the determination of cumulative

risk. Presumption of conformity should be provided by standards and existing standards should be enhanced under any new proposed framework.

Again, Council is of the view that guidance is always welcome if it helps businesses to design/manufacture/supply safe, compliant products, however it needs to be meaningful, relevant, practical and product specific – Approved Codes of Practice (ACoPs) could be considered. Guidance needs to be produced by competent persons who have experience and knowledge of Product Safety. Training costs should also be considered as part of any proposed new framework.

Proposal 2: Establish a derogation process, enabling businesses to apply for temporary regulatory easements to speed up supply of essential products in emergencies.

- Do you agree with the proposal to establish a derogation process to help ensure supply of critical products in emergencies?
- Are there other circumstances, in addition to those set out in this proposal, where a derogation process would be helpful?

Council is of the view that it is not appropriate for an MSA to agree on whether derogations should be in place given their role is to enforce product safety legislation and not to support a process that could increase the risk of unsafe/non-compliant products entering the market via derogation in non-emergency circumstances.

Proposal 3: Take full advantage of digital labelling.

- 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?
- 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)?
- 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 group.

Council would request that consideration be given to how MSA's can access digital labelling on products for market surveillance purposes and any proposal is to the benefit of MSAs and not just for the purposes of supporting industry-led proposals.

Proposal 4: Clarify cooperation duties for new business models, particularly 'online marketplaces', to ensure effective cooperation.

- Do you agree with the proposal to clarify cooperation duties for new business models, particularly 'online marketplaces'?
- What practical considerations would Government need to take into account if such cooperation duties applied to new business models in the online supply chain?

Council is of the opinion that further information should be provided on the proposed duty for an online marketplace to establish a compliance function in the UK and if this would be underpinned in legislation, ACoP or guidance/recommendation. 'Given the international nature of online sales, the Government considers that enforcement would best sit with a national enforcement authority'. Consideration would need to be given to the role of MSAs if this was the case and associated resource implications.

Proposal 5 – Set out due care requirements in relation to unsafe product listings.

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

Council is of the view that the purpose of the data sharing needs to be clarified, for example if it is for intel or actioning by the MSAs.

Proposal 6 – For higher risk products, increase consumer-facing information on online product listings to support informed purchasing decisions.

- Do you agree with the proposal to increase consumer-facing information on online product listings for higher risk products?
- What additional information would be useful to support consumers to purchase safe products?

Council agrees with this proposal and believes that additional information could include product recall information, instructions for assembly and safe use.

Proposal 7: Enhance the leadership and coordination role of OPSS.

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

Council believes this may result in a requirement to fundamentally change legislation regarding enforcement responsibility and this would require the input and views of Local Authorities being actively sought by OPSS. Consideration also needs to be given to the capacity required by Local Authorities to deal with referrals back from OPSS.

Proposal 8: Facilitate a rich source of data, by creating a new legal data gateway.

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

Council agrees on the understanding that it is underpinned by a statutory requirement for businesses (manufacturer, importer, distributor) to register with LA (similar to food businesses) to enable MSA to obtain relevant info from relevant operators.

Any information shared needs to support Council enforcement and investigatory roles. Data should be available via a portal with consumer-facing and MSA-facing aspects.

Proposal 9: All notification of recalls and serious product safety incidents and other corrective action by a manufacturer or distributor is sent to OPSS, rather than the local authority, as soon as the economic operator has knowledge of an unsafe product.

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

Council would agree on the basis that the criteria for 'level of seriousness' is agreed by all relevant stakeholders, with input from MSAs. MSAs should also be able to report incidents to OPSS in a similar way to businesses. There should be no dilution of the roles of the MSA/Primary Authority/Home Authority and the importance of these relationships and mechanisms. Council also believes that consideration should be given to ACoPs being made available.

Proposal 10: Consolidate and align our existing enforcement legislation.

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

Council agrees in principle to a standard set of notices and offences, provided there is no loss to range of offences, options etc available. Local (NI) issues need to be taken into consideration when addressing 'inland' and 'border' authorities.

Proposal 11: Introduce improvement notices, civil monetary penalties, and enforcement undertakings.

- 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?

Council agrees in principle to improvement notices and civil monetary payments and agrees that any new powers would assist MSAs by offering more enforcement options. However, it is unclear how this would assist businesses. Roles and responsibilities of OPSS and MSA would need to be clearly defined and both online and 'high street' marketplaces considered.

Proposal 12: Explore options for changing inspection powers.

- 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?

Council agrees with the concept of exploring options, but it is essential to consult on the findings from any exploratory exercises to determine the need to change inspection powers and the importance of balance being achieved.

Proposal 13: Reviewing the civil product liability regime in light of technological developments.

- 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).
 - b) doesn't enable consumers to seek fair redress; or
 - c) doesn't provide businesses with clarity and confidence to develop new products.

Council believes this is within the remit of Trading Standards Service Northern Ireland and not Environmental Health Departments in local authorities who deal with product safety matters in NI.