

RPC



Product bulletin

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Product Safety and Metrology Bill

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Toy Stor-E.U.

The European Parliament has approved, by an overwhelming majority, the text of a new draft Regulation expanding the obligations on toy manufacturers to protect children from "invisible dangers" such as harmful chemicals and online harm. This follows figures from EU Safety Gate which confirmed that toys were the most notified product category, accounting for 23% of all notifications in 2022.

The proposed new Regulation will replace the existing Toy Safety Directive (2009/48/EC), which contains a general safety requirement that toys must not present a risk to the safety or health (including psychological, mental health, wellbeing, and cognitive development) of users. This requirement applies when the toy is used as intended or in a foreseeable way, bearing in mind the behaviour of children.

In addition to this general safety requirement, toys caught by the proposed new directive will be subject to a new wider prohibition on harmful chemicals. The use of carcinogenic and mutagenic substances and substances toxic for reproduction are already prohibited, but the proposed new Regulation also introduces further bans on certain chemicals that can cause allergic reactions on contact with skin, toys with a biocidal function and on the treatment of toys with biocidal products, except those intended to be permanently placed outside. The negotiating mandate similarly updates rules around allergenic fragrances.

- Particularly harmful to children, such as endocrine disruptors or chemicals affecting the respiratory system.
- Toxic to specific organs.
- Persistent, bio accumulative and toxic.

All toys sold in the EU will also need to have a digital product passport instead of an EU declaration of conformity, which is required by current laws. The new digital passport will detail compliance with the relevant safety rules, enhancing the traceability of toys and making information easily accessible to consumers, for example, via a QR code.

Proposals earlier in the year had included changes to address harms posed by digital or smart products. Under the current regime, the following are expressly excluded from the definition of toy:

- Electronic equipment, such as personal computers and game consoles, used to access interactive software and their associated peripherals, unless the electronic equipment or the associated peripherals are specifically designed for and targeted at children and have a play value on their own, such as specially designed personal computers, keyboards, joy sticks or steering wheels; and
- Interactive software, intended for leisure and entertainment, such as computer games, and their storage media.

Interactive software will no longer be excluded if it is specifically designed for, or can reasonably be expected to be played by, children. The current version of the new rules (following amendments tabled in December 2023 and approved by the European Parliament in March 2024) expressly includes "computers and smart phone games" as subject to the proposed new regulation.

Similarly, connected toys, smart toys and online games must comply with essential safety requirements, including for the protection of privacy and security, by design and by default. They will also be required to incorporate safeguards against cybersecurity and protection from fraud. Interactive internet-connected toys that have social interactive features may also require a third-party conformity assessment. Toys containing AI are classified as high-risk which requires them to be assessed by a third-party, proactively risk-managed, and be subject to human oversight.

However, the Council's press release in May 2024 (found [here](#)) is silent as to such changes, and therefore although it seems likely they will be adopted, this remains to be seen.

Automated Vehicles Act comes into force

Since 2017, the government has taken a number of steps to produce a framework that would safely allow automated vehicles ("AVs") to use the UK's roads. (You can read our other articles relating to this [here](#) and [here](#)).

On 20 May 2024, the Automated Vehicles (AV) Act came into force. This Act, described by Ministers as "world leading" aims to enable AVs to use UK roads by 2026, and lead to the growth of a multi-billion-pound industry which could help create over 38,000 jobs by 2035.

AVs will need to operate as safely as a careful and competent human driver, and satisfy rigorous safety checks, before they can access UK roads. The new framework sets out the following, to ensure AVs can safely operate:

- **Authorised self-driving entity (ASDE):** This entity will be legally responsible for the AV and this is expected to be the manufacturer of the vehicle or, at least, an entity appointed by the manufacturer to assume those responsibilities.
- **User-in-Charge (UIC):** This function is engaged when a human operator takes control of an AV. The Act provides immunity for the UIC in certain circumstances and sets out the exceptions to that immunity or instances where the UIC will be liable due to still being defined as a "driver" - i.e. they were not in control of the AV when they should have been.
- **No-User-in-Charge (NUiC):** This function is engaged when an AV is operating independently without any human intervention. The licenced operator - i.e. the vehicle's manufacturer, and not the user will be responsible for any problems that arise during a journey where this function is engaged.
- **Increased powers to Police:** The Police will be granted with powers to stop and seize AVs.
- **AV vehicle inspectors:** A new position created by the Act to investigate the factual cause of an accident without determining blame or liability.
- **Marketing restrictions:** The use of terminology that implies self-driving capabilities which may confuse or mislead road-users will become a criminal offence.
- **Permits for Automated Passenger Services (APS):** Entitles the "appropriate national authority" to grant permits for APS, whilst disapplying the relevant taxi etc legislation. The local body where the APS will operate will also need to provide a second level of consent before the service can commence.

The use of AVs is still a developing area with Tesla having been scrutinised in the USA by regulators who determined that the Autopilot feature across different models of Tesla's vehicles had been a feature of at least 13 fatal crashes. The regulators also determined that Tesla's claims about the Autopilot facility in their vehicles did not match up with the reality of it in practice. Tesla also recently settled a lawsuit pursued by the family of an engineer who died in a crash whilst relying on the Autopilot feature after the vehicle collided with barrier on a busy highway.

Whilst it is yet to be seen what effect the change in Government will have on the continued development and completion of the secondary legislation required to flesh out the frameworks to get AVs on roads by 2026, it will likely remain a priority of the government, regardless of the outcome of the election, to enable the UK to remain at the forefront of this industry.

A new regime for Connectable Products

The Product Security and Telecommunications Infrastructure Act 2022 and The Product Security and Telecommunications Infrastructure (Security Requirements for Relevant Connectable Products) Regulations 2023 ("the Regulations") came into force on 29 April 2024.

The new regime will apply to products, intended for use by consumers, that can connect to the internet or a network. Please read more about this legislation in our article [here](#).

The UK sees new E. coli outbreaks

E. coli (known by its full name – Shiga toxin-producing E. coli) is a type of bacteria found in the intestines of animals and humans. Many strains are harmless whilst others can cause serious harm. It is contracted by touching infected animals or coming in contact with their faeces. Symptoms include diarrhoea, stomach cramps, vomiting and fever. In severe cases, infection can lead to kidney failure, neurological damage and death.

The UK has suffered E. coli outbreaks (ie two or more cases from separate households linked to a common source) emanating from butchers to milkborne outbreaks from camping and children's nurseries. The UK Government has even made policy changes to food policy as a result of some larger outbreaks. The World's worst outbreak of E. coli reportedly occurred in Wishaw, Scotland in 1996. The O157 strain infected over 500 people, 21 of whom died. The outbreak was linked to cold and cooked meat products sold by a butcher, John Barr and Son, in the Lanarkshire town, and supplied to dozens of outlets in the surrounding area.

More recently, cases have been linked to watercress, walnuts and raw cheddar whilst an unestablished source caused 138 cases from people eating at a restaurant in Belfast.

Last month, the UK Government issued E. coli advice following a recent uptick in cases of the O145 strain (considered to be less virulent than the O157 type). In one week alone, 19 more cases were reported, bringing the total, as at 25 June 2024, to 275 confirmed cases in the UK, split as follows:

- 182 in England
- 58 in Scotland
- 31 in Wales
- 4 in Northern Ireland (with evidence that they were infected in England)

These have been linked to a type of lettuce used in sandwiches which led to some sandwich manufacturers withdrawing various sandwiches as a precautionary measure. Almost half of these cases were admitted to hospital and two people with underlying medical conditions died.

The UK Government report that more cases are expected, even though reporting rates are declining, as further samples are submitted for testing. Amy Douglas, Incident Director at UKHSA, advises people wash hands with warm soapy water and disinfect surfaces to stop the infection spreading. Those infected should wait 48 hours after symptoms subside before returning to school or work and avoid preparing food for others whilst unwell or visiting hospitals or case homes to avoid spreading the infection.

EU proposes new template for product recall notices

The EU Commission has produced a new template for product recall notices. This is set out in the [Implementing Regulation \(EU\) 2024/1435](#) (the **Implementing Regulation**) in order to comply with the [Product Safety Regulation \(EU\) 2023/988](#) (the **Product Safety Regulation**). The Implementing Regulation will apply from 13 December 2024, the same time as the Product Safety Regulation.

Under Article 36(1) of the Product Safety Regulation, written information on a recall needs to be set out in a recall notice, with the requirements of such a notice being set out under Article 36(2). Under Article 35(4) of the same Regulation, a recall notice should be clear and visible if consumers affected by the recall cannot be directly contacted.

The Product Safety Regulation sets out the mandatory information which needs to be provided in the recall notice in a clear and transparent way so that the hazard is clearly described.

A single, standardised, template has been created to provide a harmonised approach across the EU. This is to ensure consumers' understanding as well as compliance by those releasing the notice (economic operators and providers of online marketplaces).

The Regulation sets out that it would be technically advantageous for the EU Commission to host the template on its website in accessible formats. A copy is annexed to the Implementing Regulation.

Whilst use of the template isn't mandatory, it may be advisable in order not to fall foul of the rules.

EU Product Safety and Metrology bill

The new Labour government announced a Product Safety and Metrology Bill in the King's Speech on 17 July 2024. The key aim of the Bill is to ensure that the UK can respond quickly to changes in technology and EU legislation. In particular, the Bill will give the UK the option to adopt or reject EU regulation as it develops. This is of particular concern since the EU is currently undertaking a programme of updates and reforms, such as the Product Liability Directive, to improve safety or respond to emerging risks. In the interests of stability and to limit business' compliance costs, the UK will be able to adopt the EU's reforms as they are made. This also paves the way for a more consistent approach.

At present, existing EU product regulations, including CE marking, are applicable to UK products, but any changes made by the EU will only be applicable in Northern Ireland due to the application of the Windsor Framework. The Bill will give the regulator powers to manage this divergence.

The government considers overhauling UK product safety regulation a priority in light of new risks. It specifically identified the following as risks of concern:

- AI
- fire risks of e-bikes and lithium-ion batteries
- ingesting button batteries
- online platforms enabling unscrupulous overseas suppliers to sell unsafe goods to UK consumers.

The Bill also proposes to strengthen compliance and enforcement, with greater information sharing between regulators and market surveillance authorities to deal with new challenges such as modern, digital borders.

More information can be found in the [Briefing Note released with the King's Speech](#).