



Department for
Business & Trade

Lord Leong CBE
Lord in Waiting (Government Whip)
Department for Business and Trade
Old Admiralty Building
Admiralty Place
Whitehall
London
SW1A 2DY

Baroness Brinton
House of Lords
London
SW1A 0PW

T: +44 (0) 020 4551 0011

W: www.gov.uk/dbt

By email

9 December 2024

Product Regulation and Metrology Bill – Product Liability and REACH

I wanted to thank you for your valuable contributions to the debate during the second day of committee for the Product Regulation and Metrology Bill (the Bill) on 25 November. You raised a number of questions regarding product liability and the UK and EU chemicals industries, on which I committed to provide further information.

Private individuals selling on online marketplaces

Thank you for raising the important scenario of private individuals selling on online marketplaces during second reading and the second day of committee. You asked for clarity on whether they are covered by the Bill. I hope to reassure you that the Bill scope is intended to include private individuals selling on online marketplaces (as well as others that may be important now or in the future) to allow them to be covered by requirements that ensure product safety. This is important to avoid loopholes – UK consumers need to be protected from unsafe products whether sold by an individual or a business. These actors are captured within Clause 2(3), with private individuals selling on an online marketplace captured by Clause 2(3)(h).

Clause 2(3) is broad, to ensure that regulations can capture all the actors that can impact on consumer safety not only now, but also in the future. Online marketplaces, such as social media marketplaces, will not be the last novel business models that can present particular risks to consumers. Without this clause, future supply chain actors might emerge that are not satisfactorily covered by the legislation, or bad actors might try and exploit gaps to define themselves out of regulation.

Any new requirements introduced using the Bill powers will take a proportionate approach, for example by tailoring requirements to specific types of supply chain actors, while ensuring accountability throughout the supply chain. For example, the type of requirements we may consider for sellers on online marketplaces, including individuals, may include consumer information requirements, such as including a photo of relevant safety warnings on the online product listing.

We intend to use the Bill powers to introduce clear requirements for online marketplaces. We will work to make sure that these are designed in a way that online marketplaces cannot avoid duties by passing on their regulatory responsibilities to their sellers, especially individuals. Before introducing any new requirements, we will consider the range of practical implications, such as how to properly communicate new requirements and responsibilities to relevant actors.

Liability for consumer redress

I also thank you for your contribution in raising the question of who a consumer can sue when an unsafe product is purchased online. There were two separate scenarios discussed, neither of which are intended to be covered by this Bill, as the Bill is about product safety, not liability. The Bill does not provide any civil remedies; rather, it is focused on protecting consumers and providing sufficient powers to enforcement authorities to protect consumers. However, I hope I can demonstrate that the concerns you raised are well covered by other legislation.

The first scenario discussed regards the purchase of a product that doesn't comply with product regulations, is otherwise unsafe, or is not as described. You and Lord Lucas both raised the question of a consumer knowing from whom they are able to seek redress in this scenario. The Bill sets out enforcement measures that relevant authorities can apply for non-compliance with regulations but does not include routes for civil litigation, as there are a number of existing options that could be available to consumers depending on their situation.

For example, The Consumer Rights Act 2015 provides a framework for consumer rights and remedies in relation to the supply of goods, services and digital content, including full or partial refund, repair, replacement and final right to reject. The Consumer Protection from Unfair Trading Regulations 2008, which have been largely restated in the Digital Markets, Competition and Consumers Act 2024, give consumers the right to redress if they have been misled by a trader. Redress includes the right to unwind the contract, claim a discount and claim damages. Furthermore, Part 8 of the Enterprise Act 2002 makes provisions for enforcers and courts to include enhanced consumer measures in undertakings and enforcement orders. This includes compensation or other redress to consumers who have suffered loss as a result of certain breaches of consumer law. The Digital Markets, Competition and Consumers Act requires that traders, including online marketplaces, behave fairly and act with professional diligence in their dealings with consumers. Online marketplaces that do not take sufficient steps to protect their users from, for example, fraudulent activity or scams, are likely to be in breach of the requirement to act with professional diligence and may face enforcement action from the Competition and Markets Authority.

The focus of the current Bill is on updating our framework of product regulations, including responsibilities for compliance and how these are enforced. The Bill does not seek to change or replicate the well-established and recently updated routes for consumer redress that I have set out above.

The second scenario would be where a defective product has caused harm to a person or their property and the consumer wants to sue for compensation. Again, this is not in scope of the Bill but is covered by the Consumer Protection Act 1987, which sets out how a consumer can make a civil claim for damages. The person who can be held liable for these damages under that Act includes the producer of the product or the importer of the product into the market.

During a meeting with myself and my officials on 4 December with Lord Fox, Lord Lucas and Baroness Crawley, which I understand that you were unfortunately unable to attend, we also discussed a hypothetical case where a private individual sells on a second-hand product (such as a bicycle) that goes on to cause the end user harm. Lord Fox asked me to write to clarify from whom the harmed party could seek compensation.

In such a case, the legislation states that liability for the defective product would still sit with the producer of the product, or its importer. However, if the individual selling on the product before harm was caused had made any modifications to the product before selling it to the injured party, the producer or importer would be able to make the defence in court that the defect in the product did not exist at the time it was first supplied, or was wholly attributable to the design of the modified product. If the court found that the producer and importer were not liable for this reason, there would be no one to be held liable for compensation, as the legislation does not allow for the individual selling on the product to be held liable, unless the injured party had asked the seller to identify the producer or importer and the seller had failed to do so.

This is something the EU have addressed through their recently published update to the Product Liability Directive, which sets out that any person who substantially modifies a product outside the manufacturer's control and sells it on will be held liable. This gives us the opportunity to consider how we might extend liability for defective products beyond the current parties as set out in the Consumer Protection Act.

As I mentioned in my closing remarks in Grand Committee on Monday 25 November, the Government is currently reviewing this legislation and we will consider the UK's product liability regime holistically, including the question of how it should apply to online marketplaces and sellers of second-hand goods. I hope you agree that these are not changes we should seek to make without considering all the evidence, so we do not want to pre-empt this important work by adding to the scope of the Bill. I appreciate the important points raised by Peers on this subject and will keep the House updated on the Government's progress with this review and plans for wider engagement.

It is important that we have a robust civil litigation regime to help ensure compliance with regulations and other obligations, but, as I have set out, a wide body of law already exists. If more needs to be done, we should focus on improving the existing legislation.

REACH

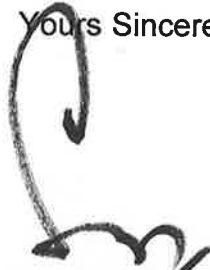
On the UK/EU chemicals industry, specifically the relationship of REACH to the scope of clause 1 of the Bill, the purpose and focus of REACH is to regulate the manufacture, placing on the market and use of in-scope chemical substances, in order to ensure a high level of protection of human health and the environment.

The Bill gives powers to regulate "products", where product is defined as "a tangible item that results from a method of production", where "production" means that it has undergone a process that has an impact on the character of the item. The intention is therefore that the Bill powers are not there to regulate chemical substances in their raw form, where these have not been through a process that impacts on their character thereby making them a product. Such substances are already regulated by the REACH Regulation, which can currently be amended and updated by powers in that Regulation itself and in the Environment Act 2021.

If a chemical substance undergoes a process, such as packaging and branding, that makes it clear the substance is intended for use as a product, e.g. as a cosmetic, such products would be covered by powers in the Bill.

I hope my letter has provided additional clarity and reassurance. I am copying this letter to all Noble Lords who spoke in the debate. I am also depositing a copy of this letter in the Library of the House.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'L. Leong', with a large loop at the top and a flourish at the bottom.

Lord Leong CBE
Lord in Waiting (Government Whip)