Wales Safer Communities Network response to: Smarter regulation: UK product safety review Closed 24 October 2023.

Response submitted via the online survey.

Questions:

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 comment

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?**

Yes / No / Don't know

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.

We agree that any regulatory requirement should be linked to risks, but we are concerned that the risks should be independently identified and not be down to businesses or organisations to decide, as they may chose to not acknowledge the risks. The risks should be across health and safety, community safety and public health.

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.**

They should be a key element in the new approach with individual, family and community health and safety being the major concern. It should not just be good enough that one thing doesn't carry another's risk but that it in itself is safe. For example, diesel was seen as an alternative to petrol (damaging to environment) only for the chemicals from diesel being identified as being damaging to physical health. The same for tobacco with vaping been seen as the better option as a means to stop smoking, but the safe messaging for vapes is now leading to new risks and concerns around vaping being taken up instead of smoking and carrying health risks.

4. **What types and areas of guidance would most likely help you understand your requirements under any new framework? Please provide reasoning to support your answer.**

Not applicable.

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).

Training and awareness raising will be an issue but it will depend on the framework and how different it is to the existing systems that will impact on the amount of time and resource that will be needed. As a result, we do not have any specific figure of costs that may be needed. It may also depend on if in person training is needed or if e-learning is an option, as well as the length of any training requirements.

6. **Do you support the development of guidance to assist businesses in carrying out pre-market risk assessment?**

Yes / No / Don't know

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.

We agree in principle as per our previous response about the need to identify all risks rather than focus on just it being a possible solution to another problem.

7. **Do you agree with the proposal to establish a derogation process to help ensure supply of critical products in emergencies?**

Yes / No / **Don't know**

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/implementation.

This may appear to be a good idea but it may lead to being misused especially if what would constitute an emergency and the possible impact this could have on the health of either those who use any items for work purposes or for personal use. For example, standards should be maintained where people either have no choice or are too vulnerable to have any choice, such as hospital workers and patients.

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

Yes / No / **Don't Know**

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.

No comment.

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?**

Yes / No / Don't know

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

Not all items with screens are as compatible with e-labelling as others, a smart phone and a button mobile phone both have a screen but what they are used for and are capable of are very different. Ownership of a machine with a screen does not mean digitally included.

Any e-labelling should be accessible without requiring cookies or the collection of personal data that could place a person at risk. People who are victims or have been victims of stalking are advised to turn off location on devices as that can be used by perpetrators, which could mean either personal risk through the stalker or not being able to read the e-labelling and knowing the risks of the product.

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)**

Yes / No / **Don't know**

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

Technology is likely to change over time and therefore it is difficult to provide an answer especially as it is unclear the impact Artificial Intelligence will have on items that may require labelling but also for the opportunities for labelling. For example, QR codes are now in regular use but are still relatively new, and we don't know what the next area that is developed will be and the possibilities it will provide. Our concern regarding e-labelling is around the impact for those digitally excluded or without the language or cognitive skills to understand and process the information.

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.

There should be an opportunity and method for the same information to be provided in a different format on request. Where an e-label is used this should be clearly marked on any packaging.

12. Do you agree with the proposal to clarify cooperation duties for new business models, particularly 'online marketplaces'?

Yes / No / Don't know

Please provide your reasoning (including relevant evidence on impacts, costs and/or benefits for you or other stakeholder groups).

We agree in principle, our only concern is around how this will be monitored and enforced.

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?

How the same standards would be applied to existing businesses and not just to new ones, or risk a two tier system of older and newer businesses and a risk of transparency and differences in monitoring and enforcement.

There will be resource implications for enforcement.

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

Yes / No / Don't know

Please provide your reasoning (including relevant evidence on impacts, costs and/or benefits for you or other stakeholder groups).

No additional comment

15. Do you agree with the proposal to increase consumer-facing information on online product listings for higher risk products?

Yes / No / Don't know

Please provide your reasoning (including relevant evidence on impacts, costs and/or benefits for you or other stakeholder groups).

No additional comment

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).

This is difficult to answer as it is not always clear to the purchaser that something is not safe in comparison to another product that looks almost identical. Also there is the issue of what is meant by safe, for someone who smoked tobacco vaping is a safer alternative, but for someone who has never smoked tobacco vaping is an unsafe alternative carrying additional health deficits to not smoking or vaping at all.

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

Yes / No / **Don't know**

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.

Whilst we may agree to some extent we are concerned that an increased amount of guidance could increase bureaucracy and lead to additional cost in meeting the duties in legislation for local authorities and other enforcement agencies.

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

Yes / No / **Don't know**

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.

If the sharing of data speeds up identifying risks then this would appear to be a good idea, but if it removes possible competitive advantage then it could limit research and development whilst businesses wait for each other to take action reducing their own financial risks. How this would be enforced and therefore what this would cost to resource for enforcers but also for businesses is not clear from the proposals so we are unable to provide a more detailed response.

However, if the gateway will collect personal information then the reason for this has not been clearly explained in the consultation document and we would suggest more may need to be done to ensure compliance with data protection legislation and personal safety implications.

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

Yes / No / Don't know

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.

Having one point of contact for all product safety recalls should allow for economies of scale. It should also make it easier for businesses and consumers to know where they can access information they require. It should be noted that this would need to be available in English and Welsh if it applies in Wales as well, in the same way that BT has a Welsh language line to meet Welsh Language legislation.

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

Yes / No / **Don't know**

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.

Whilst this may appear to be a good idea to bring all the enforcement legislation into alignment, it will need to be done carefully so as not to lose anything from existing legislation and may lead to additional resource for training and awareness being required.

21. **Do you agree with the proposal to introduce improvement notices, civil monetary penalties, and enforcement undertakings?**

Yes / No / **Don't know**

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.

It is not clear how these will work alongside existing enforcement options or who will be responsible for delivering them or if they will be open to a range of enforcement agencies including local authorities, police and natural resources bodies.

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

Yes / No / Don't know

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.

Many forms of exploitation take place in people's homes, such as cuckooing, and these inspection powers may limit opportunities for organised criminals or groups.

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?

We have no examples to provide at this time