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trading standards law explained

Unsafe goods: liability

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This guidance is for England, Scotland and Wales

When goods are sold to consumers, the goods must be safe. If the goods are not safe, and they cause death, injury or damage to property, then the manufacturer, the retailer and/or anyone else in the supply chain may have to meet a claim for compensation.

Legislation specifies who is liable for damage caused; this includes the producer, anyone who puts their name or brand on the product, importers, and anyone else in the supply chain who cannot identify where the product has come from.

The Consumer Protection Act 1987 covers both the civil and criminal aspects of the safety of products. This guidance deals with only the civil aspects of the Act (in other words, the possibility of a claim for compensation), and these aspects are commonly known as 'product liability'. Information regarding the criminal aspects of the Act and the detail of the many product-specific regulations are available from your local Trading Standards service.

In addition to claims under the Act, it may be possible for consumers to make claims for breach of contract or negligence when a product is unsafe.

The meaning of 'product liability' and 'defective'

The product liability provisions of the Consumer Protection Act 1987 create a strict liability for damage caused by defective products. Damage is defined as death or personal injury, or any loss of or damage to any property, including land.

The definition of a defect is very wide. A defective product is one where the safety of the product is not what persons are generally entitled to expect.

Exemptions

The law covers any goods, including components and raw materials.

The Consumer Protection Act 1987 can only be used to claim damages in respect of loss of or damage to property where the amount claimed is a minimum of £275. This minimum amount does not apply to claims for death or personal injury.

Liability under the Act only extends to damage caused by the product and not to the cost of replacing or repairing the product itself.

Components

If you are a manufacturer of finished goods, it is important that you can identify who supplied the components to you. If the finished product is defective, a claim arises and the fault is traced to a particular component, this information will be required to enable a claim against the supplier or producer of the component.

It may also be prudent for a component supplier to include some means of identification in the product, to avoid being held liable for a component that has been made by another company.

Liability

The Act specifies who is liable for damage caused, wholly or partly, by a defect in a product. These are as follows:

- the 'producer' (manufacturer, abstracter, etc in the case of raw materials) or processor
- any person putting their name or mark on the product - for example, a supermarket could be liable for damage caused by its 'own brand' products, even though the products were made by someone else on its behalf
- importers
- anyone else in the supply chain can be held liable for damage if they cannot identify where the product came from

If two or more parties are liable for the same damage, their liability will be joint and several (which means a claim could be made against either or both of them).

Making a claim

Any person who suffers damage caused by a defective product can make a claim under the Act, even if

they were not the person who originally bought the product.

Claims for damage to property can be made only in respect of personal property for private use.

Defences

There are limited defences available for businesses that face a claim under the Act. These include what is known as 'the development risks defence'. This means that at the time the product was put into circulation, the state of scientific and technical knowledge was such that no producer of the product, or one like it, could have discovered the existence of the defect.

Actions

Make sure that there are instructions and warnings for the safe use of the product.

If the Act applies to your business, you may need to check your contractual arrangements with suppliers and customers. Your systems of quality control and record keeping may also need to be reviewed. Furthermore, you should investigate the possibilities of insurance cover for liabilities arising under the Act.

Claims for breach of contract

When you sell goods, it is a contractual requirement that the goods are of satisfactory quality and, therefore, are safe. If the goods are unsafe, the person who bought them can claim compensation for any damage that the goods caused.

Unlike claims under the Consumer Protection Act 1987, the buyer can also claim compensation for the cost of repairing or replacing the goods. There is no minimum claim amount for breach of contract.

Normally, it is only the buyer who can make a claim for breach of contract and the claim can be made only against the direct supplier (who may then be able to claim against their supplier and so on throughout the supply chain). The buyer can only claim for damage that they have suffered personally. There are some limited circumstances where another person (such as the recipient of a gift) can also make a similar claim.

If you offer a guarantee and the goods prove to be defective, you must honour that guarantee, whether or not you supplied the goods direct to the end user yourself.

See 'Selling and supplying goods' for more information.

Negligence claims

Where a person suffers damage caused by a defective product, they may also be able to make a negligence claim. This claim for compensation can be made against any person in the supply chain who has breached a duty of care to the person who suffers damage.

Mixed claims

Claimants will often make alternative claims under the Act and the law of negligence, as well as a contractual claim, where appropriate. It is also possible that a compensation order could be made where

criminal proceedings are brought for the supply of unsafe goods.

However, no-one is entitled to be compensated twice for the same loss and the courts will have regard to this principle when making a decision about the total amount of compensation payable.

Contracting out of liability

You cannot escape liability under the Consumer Protection Act 1987 by any contract term, notice or other provision.

You cannot limit your liability to consumers for selling unsafe goods in breach of contract. However, where you sell to a business (as opposed to a consumer), you can limit your liability for breach of contract, but only in so far as is reasonable.

You cannot limit your liability for personal injury or death caused by your negligence. You may, in some cases, be able to limit your liability for other damage caused by your negligence, but only so far as is reasonable (and often not at all in respect of the final consumer).

Trading Standards

For more information on the work of Trading Standards services - and the possible consequences of not abiding by the law - please see 'Trading Standards: powers, enforcement and penalties'.

In this update

No major changes.

Last reviewed / updated: November 2024

Key legislation

- Consumer Protection Act 1987

Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links go to the legislation.gov.uk website. The site usually updates the legislation to include any amendments made to it. However, this is not always the case. Information on all changes made to legislation can be found by following the above links and clicking on the 'More Resources' tab.

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