



**Law
Commission**
Reforming the law

Law Commission Consultation Paper on Product Liability

Commercial and Common Law Team

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About the Law Commission and our project

- The Law Commission is an independent statutory body that makes recommendations for reform to Parliament
- The project on the law on liability for defective products is sponsored by the Department for Business, Innovation, Science and Trade
- Work started in September 2025
- The consultation period will run between 8 October 2026 and 14 January 2027
- Final recommendations, possibly draft bill, towards the end of 2027



- Current framework contained in Consumer Protection Act 1987
- Strict-liability regime: no fault required to establish liability but defendants may rely on statutory defences
- The case for reform:
 - The CPA was designed for tangible products. Consumers now use software, AI systems, online platforms
 - The way products reach consumers has changed (online marketplaces)
 - Has the CPA worked as it should in practice?



Updated and future-proof definition of “product” to include software, AI systems and design features of online platforms

- Mode of supply would not matter
- Some reasons:
 - These technologies can create risks and cause harm just as physical products can
 - Their developers are often best placed to understand and control those risks
 - They are commonly developed for widespread deployment and commercially exploited across a large user base
 - They profit from bringing them to market
 - New technologies can be opaque and complex: strict liability regime justified in this context



Questions on which we particularly welcome consultees' views:

- Would it be helpful and workable to identify core features of software, AI systems, and online platforms?
- Should 'related services' also be included in the CPA?



The current law

- Producers, own-branders, importers
- Suppliers (can avoid liability)

Provisional proposals: four main areas

- New categories of liable persons
- Supplier liability
- Definition of producer
- Liability for components and modified products

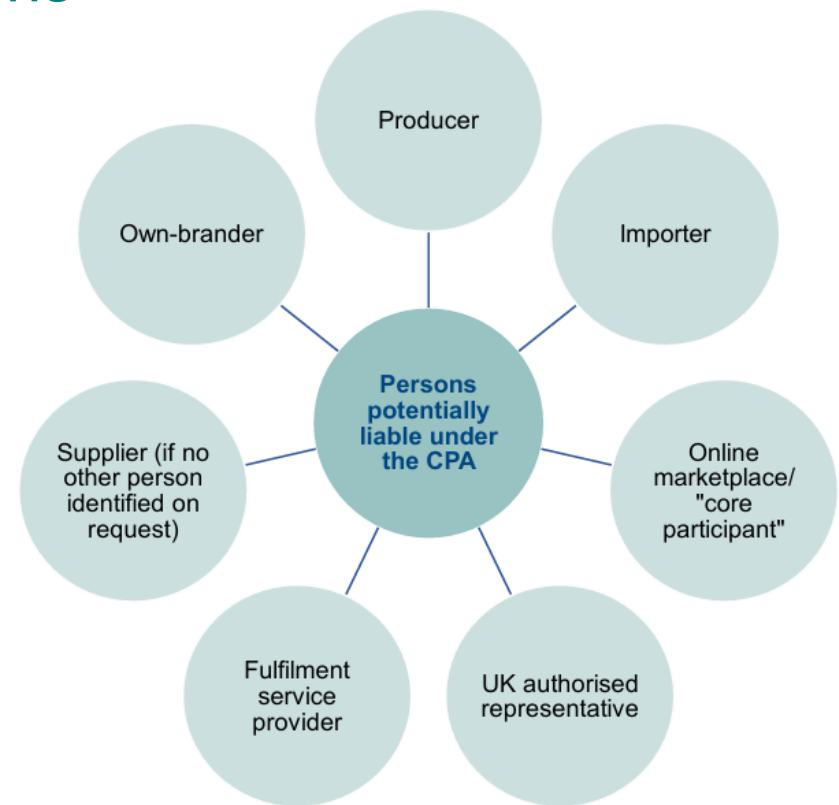


New categories of liable persons

- Fulfilment service providers
- Online marketplaces (under a new category of “core participants”)
- UK authorised representatives

Suppliers

- Retention of current approach but expanded list of persons they can identify to avoid liability





Expanded definition of “producer”

- Include “developer” of product

Producer liability for defective components

- Producer of finished product liable if defective component integrated or interconnected within their control

Substantial modifications of a product

- Criteria for what amounts to a “substantial modification”
- Original producer liable if modified within their control
- Modifier liable if modified outside control of original producer and commercially supplied



The current law

- Product defective if safety is below the level persons generally are entitled to expect
- Objective assessment of all relevant circumstances
- Claimant proves defect and causation

Why reform?

- Flexible tests, but uncertainty and inconsistent approaches
- Technical complexity, evidential asymmetry and cost
- New challenges from software, AI, connected products and cybersecurity



Proposed principles for determining defect

- Normal and reasonably expected use
- Information enabling acceptance of risk
- Instructions and warnings to avoid harm
- Accurate and clear presentation of risk
- Reasonable avoidability of risk
- Proportionality between risks and benefits
- Comparison with available alternatives



Updated relevant circumstances

- Marketing, presentation, design, features, composition and warnings
- Needs of intended user groups
- Failure of safety products to prevent harm
- Learning or new features after supply
- Interconnection with other products
- Cybersecurity guidance, standards and legal requirements
- The time when the producer's control over the product ceases.
- The producer's capacity to resolve the risk by exercising their control over the product



Express statutory purpose

- Fair apportionment of risks
- Allocate risk to those who create, control or benefit from it
- Effective compensation without proof of fault
- Mitigate evidential difficulties where consistent with fair allocation of risk

Causation

- Preserve a flexible, principled judicial approach to be guided by a new express statutory purpose



Exceptional evidential difficulties

- New risk sharing mechanism
- Strict gateway where necessary evidence does not exist or cannot be obtained
- Defendant chooses to accept alleged defect or rebut a presumption
- Acceptance: starting point of 50% damages, adjustable for risk understanding and claimant conduct
- Failed rebuttal: defect established and ordinary damages assessment



The current law

- Section 5 CPA recognises three types of actionable damage:
 - Death
 - Personal injury
 - Property damage
- Categories are broad and unclear



Our proposals

- We aim to clarify and update the law:
 - A **minimum threshold** for actionable personal injury
 - Measures taken to **prevent risk of personal injury**
 - Clear framework for recovery of **psychiatric harm**
 - Updated liability for **property damage**



Minimum threshold for personal injury

- Material harm

Preventing personal injury

- No personal injury occurs
- Recovery for necessary measures
- Consumers should not wait for damage to arise



Psychiatric harm

- Compensation for direct victims, subject to conditions
- Compensation for indirect victims, subject to conditions

Damage to property

- Damage to mixed-use property recoverable
- Corruption or destruction of data recoverable
- Lower threshold of £275 removed



Key proposals: Defences and long-stop

The current law

- Multiple defences
- 3-year limitation period
- 10-year long-stop period

Provisional proposals: focus on three key defences

- The defendant **did not supply** the product to another
- The defect **did not exist** when the product was supplied
- The “**development risks defence**”



No supply to another

- Should not apply where a defective product is used in the provision of commercial or publicly funded services (rather than being supplied directly to another)

Defect arising after supply

- Should not apply where the defendant caused the product to become defective after supply

Development risks defence

- Should be based on an *objective* assessment
- Where the producer caused the product to become defective after supply, state of knowledge should be assessed at the time the product became defective



Modified products

- Where a product is substantially modified after supply, the 10-year long-stop period should reset

Latent injuries

- Where it was not possible to begin proceedings within the initial 10-year period because of the injury's latent nature, the long-stop period should be extended to 25 years



- Consultation period ends on **14 January 2027**
- Publication of our final recommendations and, potentially, a draft Bill towards the end of 2027
- It will then be for Government to decide whether to take those recommendations forward
- We want to hear your views. They will help shape our final recommendations
- There are **62 CQs** – you don't need to respond to all of them!
- All responses must be in writing



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More about the project: <https://lawcom.gov.uk/project/product-liability/>

Online response form: <https://consult.justice.gov.uk/law-commission/product-liability>

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