

Product Liability reform in the EU and UK

Preparing for change



New Product Liability Laws

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New EU legislation

The new EU Product Liability Directive was approved by the European Parliament in September 2024 and formally adopted by the Council on 10 October 2024. The Directive will be published in the Official Journal of the European Union in the coming weeks and will enter force 20 days following its publication. Once in force, Member States of the EU will have two years to transpose the new Directive into national law.

The new Directive represents the biggest reform to the civil liability framework for defective products since the introduction of the first Product Liability Directive in 1985. The new Directive will replace the existing legislation, reflecting dramatic developments of technology and supply chains over the last four decades.



What's changing in the UK?

Reform of product liability laws is also on the agenda in the UK. A 2023 government consultation recognised that reform of the UK's product liability framework is long overdue. In September 2024 the UK government introduced the Product Regulation and Metrology Bill in the UK Parliament. The Bill gives the UK government powers to recognise EU product safety rules. The indications from the 2023 consultation, and government briefing concerning the Bill, are that reform of UK liability laws will be driven by the same developments in the consumer landscape that led to the new Directive, and that updated UK law may well be designed to align with the new EU regime.



Next steps

Companies should now be reviewing their strategies towards mitigating product liability risks. The next tabs set out guidance on some key steps manufacturers can take to prepare for change.



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Steps to prepare for the new Directive include:

1. Map the scope of the new Directive to your product portfolio

2. Triage areas of increased risk

3. Watch out for national divergence

4. Assess the new Directive alongside other product regulations

5. Audit your processes and documentation

6. Work through case studies

The new Directive significantly widens the scope of products that are caught by strict liability laws designed to make it easier for consumers to hold manufacturers of defective products to account. Now software, AI and digital services will be within the scope of product liability law. Products and services that had been outside the scope of strict liability laws may now be caught by the new Directive and so at risk of allegations that they are defective.

Action: assess whether your products will be caught by the new Directive. If products or services were previously outside the scope of 1985 Directive, but will come under the new Directive, companies should review their processes to guard against an increased risk of being sued over allegations that products are defective. Companies should also review whether their existing insurance coverage is still sufficient in light of the widened scope of the new Directive.

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Changes brought in by the new Directive cover the scope of product liability laws, the burden of proof, disclosure obligations and limitation periods (to name but a few). You may be concerned that your company does not have the time to get to grips with all the detail of the new legislation immediately. Some companies may take a triaged approach, and identify the areas most material to their risks and focus on them as priorities.

Action: Work out a way of digesting and navigating the new Directive's requirements that's user-friendly for your business. This could involve a platform to filter the new Directive by themes or risk ratings as they affect your products, for example by types of obligation, affected products or risk categories.

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The new Directive will need to be implemented by EU member states by Autumn 2026 (final date TBD). Accordingly, there may be issues on which the new law will diverge between member states. Equally, whilst the UK may adopt much of the new Directive, new UK law may diverge from EU law in some respects. This means that you should be alert to differences between jurisdictions, particularly if you have greater liability exposure in some jurisdictions compared to others.

Action: Engage with colleagues and external advisors to track legislative processes and note the different nuances or approaches which emerge between jurisdictions. Horizon scanning tools can be invaluable to achieve this.

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Your products do not exist in a regulatory vacuum. You will need to address how the new Directive interacts with related legislation and influences your overall compliance work. For example, the General Product Safety Regulation applies to new products placed on the EU market from 13 December 2024 and places obligations on manufacturers over customer facing materials and reporting safety issues. Compliance with these obligations is amongst the factors a court would consider in order to determine whether a product is defective under the new Directive.

Action: Translate product compliance requirements into practical actions and filter them through your company's different functions from research and development through to market surveillance.

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Any element of the product manufacturing and marketing process could create liability risk under the new Directive. Flawed product specifications, sub-standard materials, misleading customer facing documents, defective third party components and missteps by marketing teams have all contributed to high profile product liability cases in recent years. The new Directive gives claimants enhanced disclosure rights over your documents.

Action: Ensure that design, manufacturing and marketing policies and documentation are fit for disclosure; get on the front foot with evidence of decision-making that underpins the production of safe and compliant products.

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You may have had to deal with product liability claims in the past or faced potential exposure where a product has not met consumers' expectations. These experiences can be valuable opportunities to learn from. In the context of the new Directive, drilling down into a case study concerning one of your products, and the processes to manufacture and bring it to market, will give insight into how claimants could use the new Directive to bring claims against your company. Mounting a dry run is a no-risk means of learning lessons, to avoid being forced to learn lessons for real.

Action: review products in your catalogue that have been subject to litigation, recalls, notifications to insurers, or significant customer complaints; track how claimants could use the new Directive to bring a claim over those products, and use the experience to improve your processes.

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Our extensive knowledge enables us to advise on liability strategies, including liaising with regulators, the merits of "going beyond compliance", approaches to inquests, steps for placing products on the market, contractual arrangements with third parties, and specialist due diligence during corporate acquisitions. Our team has experience with high-profile product liability litigation, including Group Litigation Orders and other collective action models. We defend personal injury claims, from lower value to catastrophic injuries, and regularly advise insurers on liability claims, working with them on your behalf.



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As leading product regulation and consumer protection advisers, we are here to help maximise success in bringing products to market, advising on safety, legal and regulatory issues at all stages of a product's journey and on all interactions with consumers.

Our experience of defending businesses against product liability claims encompasses a diverse range of products and industries, including:

- Life sciences
- Healthcare
- Energy
- Aviation
- Transport
- Electronics
- Toys

Our experience

Our recent experience:

Advised a global technology company on the categorisation of their software platforms and architectures under the new EU Product Liability Directive, and the obligations which will arise from the reformed legal framework

Provided a training programme for a consumer products manufacturer on assessing its product liability risks when engaging with regulators and launching advertising campaigns

Supported a components manufacturer in assessing its product liability risk arising from disputes with its customers over the cost of replacing recalled products

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Worked with a toy manufacturer on product safety laws, as well as electrical and chemical regulations, in anticipation of responding to compliance or personal injury risks

Supported a supplier of domestic goods on personal injury claims, corrective actions and liaison with Trading Standards

Advised a parts manufacturer on liability risks for personal injury and property damage and its options to mitigate its exposure via contractual terms

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