

Written evidence submitted by Electrical Safety First (OSB100)

1. Overview

- 1.1. Electrical Safety First is the UK charity committed to reducing the number of deaths, injuries, and fires caused by electricity in the home. We welcome the opportunity to respond to the call for views on the draft Online Safety Bill (“the Bill”). However, we believe the Bill falls short by missing the opportunity to protect people and property from harm caused by unsafe goods available via online marketplaces.
- 1.2. Whilst we welcome the proposed provisions to protect consumers against illegal and harmful content, we believe that consumers must also be protected from purchasing unsafe electrical goods on online platforms. These products can be sub-standard, non-compliant for use in the UK or recalled by a manufacturer, which all have significant implications for consumer safety.
- 1.3. Consumers assume online marketplaces are responsible for ensuring that products sold on their platforms are safe, and that if platforms become aware of dangerous or recalled products, they have a duty to remove them from sale and notify customers who have purchased one. This is not the case.
- 1.4. We believe content relating to unsafe goods should be included within the scope of the Bill. In addition, content that promotes unsafe electrical practices, such as “Do It Yourself” videos can cause serious harm to users, their families, and homes. It is welcome that this type of content falls into the scope of the draft Bill.

Objectives

2. Will the proposed legislation effectively deliver the policy aim of making the UK the safest place to be online?

- 2.1. Whilst we welcome the intentions of the proposed legislation, we believe the draft Bill will not deliver on the Government’s policy aim of making the UK the safest place to be online. This is because the legislation, as it stands, will continue to allow unsafe goods to be advertised and sold on online platforms. These unsafe goods cause consumers significant physical and psychological harm which will persist after the legislation, in its current form, is enacted.
- 2.2. The draft Bill states that online content will not be considered within the scope of the Bill if the physical or psychological impact flows from the safety or quality of the goods featured in that content¹. Disappointingly, on this basis, adverts promoting unsafe goods will not be addressed, despite the serious harm these products can cause to consumers.

2.3. The death of Linda Merron caused by an unsafe electrical product bought on eBay is just one example². A fire in Rachel Kent's home caused by an electrical product bought from an online marketplace is another ³.

2.4. These incidents are symptomatic of a wider issue. An Office for Product Safety and Standards (OPSS) investigation found that nearly two thirds (63%) of electrical goods sampled from online marketplaces were non-compliant, with almost a quarter (23%) being unsafe⁴. Investigations by Electrical Safety First have also found similar widespread concerns. In one study, 14 out of 15 electrical goods we purchased from online marketplaces and tested were deemed unsafe⁵.

2.5. To ensure that the UK is the safest place to be online, it is vital that online shoppers have the same legal protections as they currently have when buying from a high street retailer. Other jurisdictions, including the EU⁶ and states in the USA⁷, have introduced (or are introducing) legislative measures that provide consumers with equivalent protections when shopping online.

3. Will the proposed legislation help to deliver the policy aim of using digital technologies and services to support the UK's economic growth? Will it support a more inclusive, competitive and innovative future digital economy?

3.1. To achieve these policy aims, all online platforms should be required to comply with the same legislation and regulations relating to the safety of products sold on their platforms that are already in place for traditional high street retailers. This would provide clarity, certainty, and protections for both consumers and businesses. In addition, this would prevent current divergences, to the detriment of the consumer, where some online platforms take voluntary steps and others do not.

4. Is the "duty of care" approach in the draft Bill effective?

4.1. Yes, but the "duty of care" should be extended to cover content relating to the safety of goods. Significant physical and psychological harm can arise from the advertisement and sale of unsafe

1 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985033/Draft_Online_Safety_Bill_Bookmarked.pdf
2 <https://www.bbc.co.uk/news/uk-wales-south-west-wales-35870861#:~:text=Linda%20Merron%20died%20after%20a,or%20counterfeit%20goods%20undermined%20safety.>
3 <https://www.bbc.co.uk/news/uk-wales-55128757>
4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941095/opss-delivery-report-2019-2020-annex-product-safety.pdf
5 <https://www.theguardian.com/money/2019/nov/27/e-shoppers-warned-after-electrical-goods-fail-safety-tests>
6 <https://www.lexology.com/library/detail.aspx?g=bc20863f-dfd5-4099-867d-df727e457b1f>
7 <https://www.arkleg.state.ar.us/Bills/FTPDocument?path=%2FBills%2F2021R%2FPublic%2FSB470.pdf>

electrical goods which can cause devastating house fires, electric shocks, serious injuries, and death.

4.2. We believe the following duties (which will be imposed on online marketplaces by the proposed legislation) should apply to the sale of unsafe goods on these platforms. These are as follows:

- A duty, in relation to a service, to take proportionate steps to mitigate and effectively manage the risks of harm.
- A duty to make a dedicated and expedited complaints procedure available to users of a service.
- A duty to operate a service using systems and processes that allow users and affected persons to easily report content.
- A duty to ensure that appropriate records are kept.
- A duty to submit those records for review.

4.3. These requirements are similar in nature to the duties that online platforms have in other jurisdictions relating to the advertisement and sale of unsafe goods online.

5. **Does the Bill deliver the intention to focus on systems and processes rather than content, and is this an effective approach for moderating content? What role do you see for e.g., safety by design, algorithmic recommendations, minimum standards, default settings?**

5.1. Yes. However, similar processes must apply to the systems and processes that allow unsafe electrical goods to be sold on online marketplaces.

5.2. It is not sufficient to take reactive steps once a consumer has bought an unsafe product online. Instead, proactive measures should be implemented through the Bill and include a requirement for online platforms to alter their systems and processes to restrict and prevent content that promotes the advertisement and sale of unsafe goods.

6. **How does the draft Bill differ to online safety legislation in other countries (e.g., Australia, Canada, Germany, Ireland, and the EU Digital Services Act) and what lessons can be learnt?**

6.1. Online safety legislation in other countries includes obligations on online platforms relating to the safety of goods which provide much stronger protections for consumers when shopping online.

6.2 In the United States, the state of Arkansas has introduced the Arkansas Online Marketplace Consumer Inform Act⁸ in March 2021. The Act requires online platforms operating as marketplaces to collect and verify information about sellers. They must:

- Verify information provided by high-volume sellers. These sellers are required to provide information to the online marketplace within 24 hours of becoming a seller.
- Maintain this verifying information and update this on an annual basis to ensure that it remains accurate.
- Display reporting mechanisms to ensure that buyers can report sellers.
- Ensure that products being advertised and sold by third parties are clearly labelled as such.
- Where they warehouse, distribute, or otherwise fulfil a consumer product (i.e., an online marketplace that also operates fulfilment centres), disclose the identity of a third-party seller if they are different to the seller listed on the product listing page.

6.3 The Arkansas Act is similar in content to the federal Integrity, Notification and Fairness in Online Retail Marketplaces for Consumers Act (“the INFORM Consumers Act”) which has not yet been adopted⁹. Other US states are working towards introducing similar legislative measures.

6.4 Online platforms, such as Google have responded positively to these new obligations. Indeed, Google recognises that these new regulations provide for a safe, trustworthy, and more transparent experience for users¹⁰.

6.5 There have also been developments in common law (case law) within the US. For instance, in July 2019, the United States Court of Appeal recognised Amazon (as an online platform) as a seller in a decision in *Obedorf v Amazon.Com Inc*¹¹. The Court applied a four-part test to determine if Amazon was a seller and considered that:

- Amazon is the only member of the marketing chain available to the consumer for redress.
- The imposition of strict liability on Amazon would serve as an incentive to take steps to ensure consumer safety because Amazon exerts substantial control over third party vendors and is fully capable of removing unsafe products from its website.
- Amazon is in a better position than the consumer to prevent the circulation of defective products, being the receiver of reports of defective products.

8 <https://www.arkleg.state.ar.us/Bills/FTPDocument?path=%2FBills%2F2021R%2FPublic%2FSB470.pdf>

9 <https://www.thefashionlaw.com/newly-reintroduced-legislation-wants-marketplace-operators-to-increase-transparency-for-third-party-products/>

10 https://support.google.com/merchants/answer/10878477?hl=en&ref_topic=9216868

11 <https://www.mondaq.com/canada/dodd-frank-consumer-protection-act/1082510/online-marketplace-and-e-retailer-liability-a-new-hope>

- Amazon can and does distribute the cost of compensating customers for injuries they suffer from defective products by inserting indemnity clauses in its vendor contracts and by adjusting commission-based fees charged to third party vendors based on the risks posed by each vendor¹².

6.6 The European Union is also expected to introduce the EU Digital Services Act (DSA). This was published in draft form in December 2020 by the European Commission¹³. It sets out a series of obligations for online marketplaces, such as:

- Establish a mechanism for reporting illegal content.
- State the reason for content moderation decisions.
- Set up complaint and redress mechanisms and out-of-court dispute settlement mechanisms.
- Ensure the traceability of business users and sellers active on the platform.
- Meet risk management obligations.
- Submit to external auditing.
- Provide transparency of their content recommendation and ad targeting mechanisms.
- Share data with authorities and vetted independent researchers¹⁴.

6.7 This legislation will also apply in Northern Ireland because of the Northern Ireland Protocol¹⁵. Consumers in Northern Ireland will, therefore, be afforded greater protections when purchasing products on online platforms compared to the rest of the UK.

6.8 The European Commission also adopted the Product Safety Pledge in June 2018¹⁶. This is a voluntary commitment for online marketplaces to confirm the safety of consumer products sold via their platforms by third party sellers. However, given the content of the draft DSA, it is evident that the EU recognises the need to go further than a voluntary pledge where there is no requirement for online marketplaces to sign up and no liability can be imposed as a result.

6.9 Regulation (EU) 2019/1020 also creates obligations for online marketplaces that operate as fulfilment centres. The Northern Ireland Protocol means that these regulations apply in Northern Ireland too.

12 Ibid.

13 <https://www.lexology.com/library/detail.aspx?g=bc20863f-dfd5-4099-867d-df727e457b1f>

14 Ibid.

15 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1008451/CCS207_CCS072191490-2-005_Northern_Ireland_Protocol_Web_Accessible__1_.pdf

16 https://ec.europa.eu/info/sites/default/files/voluntary_commitment_document_2021_v5.pdf

- 6.10 It is evident that online safety legislation in other jurisdictions is more comprehensive than the draft Online Safety Bill by addressing content that promotes the advertisement and sale of unsafe goods. The proposed legislation should be revised to include unsafe goods to mirror (or go further than) legislation elsewhere.

Content in Scope

- 7. Are there any types of content omitted from the scope of the Bill that you consider significant e.g., commercial pornography or the promotion of financial scams? How should they be covered if so?**

7.1. Yes. Content that relates to the advertisement and sale of unsafe goods should be included within the scope of the Bill. The Department for Digital, Culture, Media and Sport and the Home Office have justified the exclusion of unsafe goods from this Bill on the basis that it would lead to regulatory duplication, given the role of the OPSS.

7.2. However, this is not the case. No regulation exists relating to the sale of unsafe goods on online marketplaces by third party sellers. Government Departments and Agencies must work in a co-ordinated manner to ensure that the advertisement and sale of unsafe goods on online platforms is tackled.

7.3. Given that this legislation, when enacted, will also apply in Northern Ireland, it would be appropriate for analogous legislation to apply across the UK. Alternatively, the Online Safety Bill represents an opportunity to go further than the EU, and ensure that the UK is, indeed, the safest place to be online.

- 8. Are the definitions in the draft Bill suitable for service providers to accurately identify and reduce the presence of legal but harmful content, whilst preserving the presence of legitimate content?**

8.1. We believe that 'Do It Yourself' guidance videos are, by definition, within the scope of the proposed legislation and would welcome this measure. If electrical "DIY" videos provide unsafe advice, they have the potential to cause a user serious physical and psychological harm.

Services in Scope

- 9. The draft Bill applies to providers of user-to-user services such as search services. Will this achieve the Government's policy aims? Should other types of services be included in the scope of the Bill?**

- 9.1. We believe the Government is not achieving these aims by failing to include content related to the safety or quality of goods in the proposed legislation.
- 9.2. There is currently a 'gap' in the current legislative framework. Whilst consumers have protections when shopping on the high street or from a high street retailer's online store, these don't apply when purchasing goods from an online marketplace. Under the Consumer Protection Act 1987, it is possible to hold several actors liable for product safety concerns when a product is purchased on the high street. This is not the case with goods bought on online marketplaces, particularly as it can be difficult to identify a manufacturer, supplier, or importer.
- 9.3. This framework needs to be updated to recognise new methods of commerce, namely e-commerce and m-commerce (conducted on a mobile phone). On this basis, where no other actor can be identified, we believe the online platform facilitating a sale should be held responsible for the safety of that product.
- 9.4. User-to-user and search services that relate to the advertisement and sale of unsafe goods should be included within the scope of the Online Safety Bill. This must include placing 'duty of care' obligations on online platforms relating to unsafe goods, such as verifying sellers and their locations, to ensure that an actor in the supply chain can be held responsible for product safety.